

Taxation, of Property That Has Escaped Assessment. Procedure Where Property Has Escaped Assessment.

Where property has escaped taxation, the owners should be notified, and if the taxes are not paid within a reasonable time, then the method pointed out by statute for collection should be resorted to, or action instituted, and in such case the penalty added.

December 4th, 1913.

Hon. T. H. Pridham,
Deputy County Attorney,
Chouteau, Montana.

Dear Sir:

I am in receipt of your letter of the 26th ultimo, submitting the question

“As to the method of procedure of levying and collecting taxes on property that has escaped taxation, and also as to the legality of procedure therefor.”

Secs. 2541 and 2542 give authority for such procedure. This department has had occasion heretofore to consider similar questions.

Opinions Attorney General, 1908-10, 238.

Opinions of Attorney General, 1908-10, 402.

Opinions of Attorney General, 1910-12, 336.

The case cited in the code—*Clunie v. Siebe*, 112 Cal. 594; 44 Pac. 1064—has a somewhat direct bearing upon the question, although the California statute is somewhat different from ours.

Under the provisions of Sec. 2511, Revised Codes, it is the duty of the assessor to demand a statement from all property owners, but there does not seem to be any specific duty enjoined upon the property owner to volunteer this statement. If, however, the statement was demanded, and the fault rests with the property owner, he would probably come within the meaning of Sec. 2541. If, however, it is merely an oversight or the statement was not demanded, the provisions of Sec. 2542 would probably apply, and in the latter case it would seem but fair that the taxpayer should have notice and an opportunity to pay before the penalty is fastened upon him. The provisions of Secs. 2657 et seq. and 2683 et seq. point out one method of collecting personal property taxes. Sec. 2738 seems to recognize the fact that collection may be made by civil action, although we confess that we are not able to give an analysis of that section. However, I believe that the right to collect personal property taxes by suit exists, and while it seems to be generally held that a tax is not “a debt in the ordinary sense of the word” (37 Cyc. 710), yet it seems to be conceded that it is an obligation which the property owner should fulfill by payment of the taxes. As this is a question that has been more or less discussed, I insert here a quotation from a North Carolina case, which seems to be in point:

"The defendant insists that a tax is not a debt. It is not a debt in its most limited sense; that is, it is not liable to set-off and the other incidents of a simple contract between individuals. This is so on grounds of public policy, and also because though a debt (or due) it does not arise out of contract. *Gatling v. Commissioners*, 92 N. C. 536. But it is a debt in the higher sense of the word. In this sense it is defined by Bouvier as "any kind of a just demand"; by the Century Dictionary as "that which is due from one person to another, whether money, goods or services"; and by Webster substantially the same, with "thing owed, obligation, liability," given as synonyms. All causes of action become debts after judgment. *Dellinger v. Tweed*, 66 M. C. 206; *Rap. and Law. Law Dict.*, pages 352 and 696. The old action on a judgment was an action for debt (3 Blk. 159), and so is an action for a penalty. "The government has the same right to enforce a duty as a debt, and may enforce it in the same way." *People v. Seymour*, 16 Cal. 332. When a tax is imposed, the taxpayer becomes a debtor. *Savings Bank v. United States*, 19 Wall, 227; *Attorney General v. _____*, 2 Anstruther, 558, cited and approved in 19 Wall, 227. "Debt lies in favor of the United States against an importer for the duties due on goods imported." *United States v. Lyman*, 1 Mason C. C. 482. In this case the argument for the government was by Mr. Webster, and the opinion of Judge Story was approved in *Savings Bank v. United States*, supra."

State and Guilford v. Georgia Company, 112 N. C. 34.
17 S. E. 10.
19 L. R. A. 485.

Substantially the same holding has also been made by the Indiana Supreme Court in a somewhat recent case:

Darnell v. State, 174 Ind. 143; 90 N. E. 769.

The validity of procedure under the provisions of Secs. 2541 and 2542 does not appear to have ever been determined by our supreme court, and of course until it is so determined there will be some doubt. However, that is a right which appears to be given by statute, and it is proper that it be enforced, unless the supreme court should say otherwise. As a method of procedure, I would suggest that these parties be notified and that if they do not then, within a reasonable time, pay the taxes, that the method pointed out by the statute for seizure and sale be resorted to, or that an action be instituted for the collection of the taxes, and in such case the penalty should be added.

Yours very truly,

D. M. KELLY,
Attorney General.