

### Assessors—County Treasurer—Taxes.

Taxes upon personal property, where the owner does not own real property, do not come within the provisions of Chapter 96, Laws of 1923, but are governed solely by the special statutes enacted for this particular class of taxes found in Sections 2238 to 2252, inclusive, Revised Codes of Montana, 1921, as amended by Chapter 102 of the Laws of 1923.

The County Treasurer has not only the authority, but it is his duty, to seize and sell personal property where the tax thereon is not a lien upon real property, provided the tax is not voluntarily paid.

State Board of Equalization,  
Helena, Montana.

Gentlemen:

You have requested my opinion as to whether Chapter 96 of the Session Laws of the Eighteenth Legislative Assembly, relating to the time when taxes are payable and the collection thereof, conflicts with Section 2239, R. C. M. 1921, as amended by Chapter 102 of said Session Laws relating to the collection of personal property taxes, and whether in view of said Chapter 96 the County Treasurer has authority to seize and sell personal property where the tax thereon is not a lien upon real property.

Section 1 of said Chapter 96 provides as follows:

"All taxes levied and assessed in the State of Montana shall be payable as follows: One-half of the amount of such taxes shall be payable on or before 6 o'clock P. M. on the 30th day of November of each year and one-half on or before 6 o'clock P. M. on the 31st day of May of each year; provided that unless one-half of such taxes are paid on or before 6 o'clock P. M. on the 30th day of November of each year, then, and in that event, the whole amount of taxes so levied and assessed shall become delinquent, and all delinquent taxes shall draw interest at the rate of one per cent per month from the time they are first delinquent until paid. All taxes not paid on or before 6 o'clock P. M. of the 31st day of May of each year will be delinquent, and will draw interest at the rate of one per cent per month until paid. A penalty of five per cent shall be added to all delinquent taxes."

The object of this enactment was to permit the payment of taxes in two installments and, in accordance therewith, the same Legislature amended Section 2182, R. C. M. 1921, by enacting Section 8 of said Chapter 96, which now reads as follows:

"On or before the last Monday of December and the last Monday of June of each year the County Treasurer and City Treasurer must publish in the manner and for the time prescribed by Sections 2184, 2185 and 2186 of the Revised Codes of Montana of 1921, a notice specifying:

"1. That at a given time and place (to be designated in said notice) all property in the county, or city, respectively, upon which delinquent taxes are a lien will be sold at public auction, unless prior to said time said delinquent taxes, together with all interest, penalties, and costs due thereon are paid.

"2. That a complete delinquent list of all persons and property in the county, now owing taxes, is on file in the office of the County Treasurer or City Treasurer, and is subject to public inspection and examination."

At first reading of the above statutes, it would appear that the Legislature had included all property taxes within the provisions of said Chapter 96, but a careful analysis of said chapter, and construing it in conjunction with the other statutes relating to taxation, discloses that it is not as comprehensive as would on first reading appear. For instance, the taxes referred to in said chapter are such as become delinquent in case they are not paid at the times specified in Section 1 thereof. Taxes upon personal property in Montana, which are not a lien upon real property, have never been considered as becoming delinquent if not paid by the date real property taxes be-

come delinquent. This kind of personal property tax has always been considered due at the time of assessment and Sections 2238 to 2252, R. C. M. 1921, enjoined upon the Assessor the immediate duty of reporting all such taxes to the County Treasurer, and required the County Treasurer to immediately collect said taxes, or seize and sell the property in payment thereof. In fact, Section 2239 required the seizure and sale to be had before November 1st, whereas taxes did not become delinquent until the 30th day of November. By enacting Chapter 102, the Eighteenth Legislative Assembly amended Sections 2238 and 2239, R. C. M. 1921, so that they now read as follows:

“2238. DUTY OF ASSESSOR. It shall be the duty of the Assessor, upon discovering any personal property in the county the taxes upon which are not in his opinion a lien upon real property to secure the payment of such taxes, to immediately, and in any event not more than ten days thereafter, make a report to the Treasurer setting forth the nature, amount and assessed valuation of such assessed property, where the same is located, and the name and address of the owner, claimant or other person in possession of the same. The County Assessor shall file with the State Board of Equalization a duplicate of each of such reports so made to the County Treasurer.”

“2239. DUTY OF TREASURER. The County Treasurer must collect the taxes on all personal property, and in the case provided for in the preceding section, it shall be the duty of the Treasurer immediately upon receipt of such report from the Assessor to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the County Treasurer's office. The County Treasurer must at the time of receiving the Assessor's report, and in any event within thirty days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed and proceed to sell the same, in the same manner as property is sold on execution by the Sheriff \* \* \*. For the purpose of determining the taxes due on such personal property the Treasurer must use the levy made during the previous year, if the levy for the current year has not yet been made.” \* \* \*

It is at once apparent that the Legislature never intended that personal property taxes, which are not a lien upon real property, should be included in Section 1 and subsequent sections of said Chapter 96. It would be an absurdity to say that a tax could become delinquent, which, if the County Assessor and County Treasurer had performed the duties enjoined upon them by law, would have been paid prior to the date taxes become delinquent under Chapter 96 aforesaid; likewise, to say that the person taxed could have the privilege of paying one-half of the tax on or before the 30th day of

November and the other one-half on or before the 31st day of May, and then compel the County Treasurer to destroy that privilege by seizure and sale of the property immediately upon its assessment, which might even be before the tax levies for the current year had been made.

Again, the taxes referred to in Chapter 96 are such as are a lien upon the property to be sold at delinquent tax sale if permitted to become delinquent, as will appear by reference to Section 8 of said Chapter 96 above quoted. The notice provided therein to be given by the County Treasurer is:

“That at a given time and place (to be designated in said notice) all property in the county, or city, respectively, upon which delinquent taxes are a lien will be sold,” etc.

The law is settled in Montana that there is no lien upon personal property for taxes assessed against it, where the owner does not also own real property. It was so held in *Walsh et al. Appellants v. Croft*, 27 Mont. 407, and this decision has neither been modified nor reversed by the Supreme Court.

It therefore appears that in enacting said Chapter 96 the Legislature was dealing only with those taxes which, if not paid by the time specified in said chapter, become delinquent, and which constitute a lien upon the property to be sold at delinquent tax sale. Taxes upon personal property where the owner owns no real property have neither of these attributes and consequently do not come within the provisions of said chapter, but are governed solely by the special statutes enacted for this particular class of taxes found at Sections 2238 to 2252, inclusive, R. C. M. 1921, as amended by said Chapter 102 of the Session Laws of the Eighteenth Legislative Assembly of Montana.

It is, therefore, my opinion that the County Treasurer has not only the authority, but it is his duty to seize and sell personal property where the tax thereon is not a lien upon real property, provided said tax is not voluntarily paid.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.