

**County Treasurer—Personal Checks—Payment of Taxes
—Taxes.**

Acceptance of a personal check by the County Treasurer is not payment of the taxes for which it was given until the check is presented and paid.

Chas. F. Huppe, Esq.,
County Attorney,
Roundup, Montana.

My dear Mr. Huppe:

You have submitted to this office for an opinion the following statement of facts and question:

“A taxpayer remitted to the County Treasurer his personal check in payment of taxes. The Treasurer forwarded the check for collection in the regular course of business and the check was charged to the account of the taxpayer and draft sent by the drawee bank to its correspondent, in this case the Helena branch of the Federal Reserve Bank of Minneapolis, in payment of this check and others. Before this draft had been paid, the bank drawn upon by the taxpayer closed its doors and of course the draft was not paid. Ordinarily, under the authority of Federal Reserve Bank of Richmond vs. Malloy, 68 L. ed. 288, Adv. ops. No. 10 of March 15th, 1924, a case decided by the United States Supreme Court February 18, 1924, the indebtedness existing between the drawer of the check and the payee would have been paid. Does this rule apply to the facts cited above where the check was given in payment of taxes without any notice by the Treasurer that checks would be accepted only subject to final payment of drafts issued in payment of same?”

It is my opinion that the rule announced by the Supreme Court of the United States in the above cited case does not apply to the extent of warranting the conclusion that the acceptance by the County Treasurer of a check, for which a draft is subsequently issued and dishonored, constitutes payment of the taxes for which the check was given.

Taxes operate as a judgment against the person (Section 2152, R. C. M. 1921), and the only way that the judgment can be satisfied, and the lien of the tax removed, is by payment of the amount of taxes into the public treasury.

A County Treasurer cannot, in my judgment, by accepting a check in payment of taxes, bind the county or the state to satisfy the judgment created by the tax until the money, for the payment of which the check is an order, has actually been paid into the county treasury.

If a tax receipt was issued by the Treasurer, upon receipt of the check in question, it should be cancelled and payment of the taxes should be again demanded.

Very truly yours,

L. A. FOOT,
Attorney General.