

**Taxation—Tax Sales — Penalties — Delinquent Taxes—
Claims.**

Sales of property for taxes levied for 1922 and made before the passage and approval of Chapter 1 of the Laws of 1923 are invalid, and the penalties collected, as well as the original tax, must be refunded by the county upon presentation of proper claims therefor.

Homer A. Hoover, Esq.,
County Attorney,
Circle, Montana.

My dear Mr. Hoover:

You have requested my opinion as to whether Chapter 1 of the Laws of 1923 affects tax sales made prior to its passage and approval for taxes for the year 1922.

Section 1 of Chapter 1 of the Laws of 1923 provides:

“No property upon which taxes of any sort have been levied in the State of Montana for the year 1922 shall be sold for such delinquent taxes until the first day of October, 1923.”

Section 2 provides for the publication of notice of postponement of the tax sale in each county.

Section 3 provides that the penalty of 10% shall be remitted until October 1, 1923, and provides, “that in all cases where such penalty has been paid on taxes delinquent for the year 1922, such penalty shall be refunded by the Board of County Commissioners or the City Council, as the case may be, upon claims filed therefor in the same manner as other claims are filed, as required by law.”

The purpose of the Act was to effect a change in the method of collecting delinquent taxes for the year 1922; it suspended existing laws as to the method of collecting delinquent taxes for that year.

The intention of the Legislature to have the Act apply to all property, upon which taxes were levied in 1922, is apparent. The Legislature specifically provided for a refund of the penalty in all cases where it had been paid prior to the passage of the Act.

The only question, therefore, to be determined is whether the statute is valid insofar as it attempts to operate retrospectively.

Section 3 of the Revised Codes of Montana of 1921 provides:

“No law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared.”

The Act in question expressly declares itself to be retroactive by providing that the penalties already collected should be refunded, and by making the Act apply to all property on which taxes were levied for the year 1922.

A statute must be construed to effect the purpose for which it was enacted, regardless of its retroactive operation, unless it impairs vested rights.

In 25 R. C. L., Section 36, p. 789, it is said:

"It is sometimes held that the intent favoring retrospective application must affirmatively appear in the words of the statute. The better rule of construction, and the rule peculiarly applicable to remedial statutes, however, is that a statute must be so construed as to make it effect the evident purpose for which it was enacted; and if the reason of the statute extends to past transactions as well as to those in the future, then it will be so applied, although the statute does not in terms so direct, unless to do so would impair some vested right or violate some constitutional guaranty. Where the language of an Act plainly makes it applicable to past acts and transactions, it must be given a retrospective operation, even though it thereby becomes invalid because it conflicts with constitutional prohibitions of retrospective legislation, the impairment of contracts, or the disturbing of vested rights."

The Act in question, however, does not impair vested rights. It is simply a remedial Act, the purpose of which is merely to postpone the remedy of the state in the collection of its delinquent taxes. The purchaser of property already sold has no vested right in the property, but merely an inchoate right that may or may not ripen into a complete title.

In 36 Cyc. 1203 it is said:

"Retrospective statutes are usually construed to embrace only those which relate to substantial rights, as those which destroy or impair an existing right, or give a right where none before existed; and statutes which affect remedies only are not within the scope of the inhibition against retrospective laws, unless the remedy is entirely taken away, or is encumbered with conditions which render it impracticable."

In 25 R. C. L., Sec. 37, p. 790, it is said:

"And remedial statutes, which neither create new rights nor take away vested ones, are not within the strict application of the rule."

Of the same general effect are:

- Crane v. Cox (N. M.), 137 Pac. 589;
- State v. Whittlesey (Wash.), 50 Pac. 119;
- Buck v. Canty (Cal.), 121 Pac. 924.

In the Buck case the Court, in discussing this principle of law, said:

"As to this claim of impairment of a right, there was no vested or fixed right in the state to sell property under the old section, or any other section. That such a right existed

is merely the assumption of counsel. The Legislature has full control over the sale of property belonging to the state, which it may direct sold, and to regulate or change at any time the method of its disposition. If there was any merit in this claim advanced by counsel, however considered, it would be sufficient to say that the amendment does not at all impair the right of the state to sell. In furtherance of the policy of the state, and to afford better opportunity of redemption by the delinquent owner before actual sale, the Legislature has simply provided for additional notice to be given before a sale may be made. This does not impair the right of the state to sell. That right is still secured to it. The amendment simply affects a change in the method by which the right may be exercised; a change in the remedy, whereby additional opportunity is given to the former owner, before an actual sale, to regain his property by redemption, without impairing the right of the state to proceed to sell, in case he does not."

It is, therefore, my opinion that sales of property for taxes levied for the year 1922, made before the passage and approval of Chapter 1 of the Laws of 1923, are invalid and that all penalties collected thereby, as well as the original tax, must be refunded upon proper claims therefor being presented within the time named in the statute.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.