

Taxation—Delinquent Taxes—Interest—Penalty.

Under chapter 67, laws of 1931, a failure to pay the first half of taxes levied renders only that half delinquent, the second half not becoming delinquent until 5:00 o'clock p. m. May 31, regardless of whether the first half was paid or not.

Delinquent taxes bear interest at the rate of two-thirds of one per cent per month and a five per cent penalty.

Mr. A. N. Longfellow,
County Treasurer,
Fort Benton, Montana.

June 24, 1931.

My dear Mr. Longfellow:

You inquire if under chapter 67, laws of 1931, a failure to pay the first half of taxes on or before November 30th renders the whole of the taxes delinquent, as was the law heretofore, or whether under said chapter only the first half of the taxes becomes delinquent on that date if not paid.

Prior to the enactment of chapter 67, laws of 1931, chapter 79, laws of 1929 (which said chapter 67 amends), provided that all taxes levied and assessed in the state of Montana, except special assessments made

for special improvements in cities and towns, were payable in the following manner: one-half of the amount on or before 6:00 o'clock p. m. on the 30th day of November of each year and one-half on or before 6:00 o'clock p. m. on the 31st day of May of each year, subject to the following proviso:

“provided, that unless one-half of such taxes are paid on or before 6:00 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, * * *.”

By virtue of the proviso aforesaid a failure to pay the first half of the taxes on or before 6:00 o'clock p. m. of November 30th rendered not only that half of the taxes delinquent but also the remaining half, which had the first half been paid, would not have become delinquent until 6:00 o'clock p. m. on May 31st following.

By virtue of the amendment made by said chapter 67, laws of 1931, certain changes were made as follows: first, the hour fixing the time when delinquency occurs on November 30th and May 31st was changed from 6:00 o'clock to 5:00 o'clock p. m., and, second, the rate of interest was changed from 1% per month to two-thirds of 1% per month. If these were all the changes that were intended to be made by the amendment the legislature would have found it necessary to change but little the phraseology of the existing statute to make clear its purpose. However, certain other changes were made which were necessary to express the intention of the legislature to further modify the existing law. The proviso above mentioned was eliminated and in lieu thereof it was enacted, “provided, that unless one-half of such taxes are paid on or before 5:00 o'clock p. m. on the 30th day of November of each year then such amount so payable shall become delinquent * * *.”

From a comparison of the old and new provisos the intent of the legislature is made plain that the failure to pay one-half of the taxes on or before November 30th would render delinquent only the half that was payable on November 30th, in which event the half so becoming delinquent would draw interest at the rate of two thirds of 1% per month and five per centum of the taxes delinquent on that date (the first half) would be added as a penalty. The second half is not delinquent until after 5:00 o'clock p. m. on May 31st, regardless of whether the first half was paid on or before 5:00 o'clock p. m. of November 30th. In case the second half of the taxes becomes delinquent it bears the same rate of interest from and after 5:00 o'clock p. m. on May 31st, and there is also added the same penalty as is the case when the first half becomes delinquent on November 30th.

The intention of the legislature to effect this change is also shown by a comparison of section 2169 as amended by chapter 96, laws of 1923, with section 2 of said chapter 67, laws of 1931, amending said section. Prior to its amendment by said chapter 67 the county treasurer was required to publish a notice stating, among other things, that unless the first half of the taxes were paid on or before 6:00 o'clock p. m. on November 30th the whole of the taxes levied would be delinquent and bear interest and be subject to a penalty. By the amendment to said section

the treasurer must publish a notice stating among other things that one-half of the taxes levied and assessed will be due and payable on or before 5:00 o'clock p. m. on November 30th and that unless paid prior thereto "the amount then due" will be delinquent and draw interest and be subject to a penalty.

It will thus be seen that the legislature eliminated from the notice the statement that the whole amount of the taxes would be delinquent unless the first half was paid on or before November 30th and substituted in its place the statement that the "amount then due" would be delinquent, meaning the first half of the taxes which are payable on or before 5:00 o'clock p. m. on November 30th.

The intention of the legislature to make the change above noted is so plain that it cannot be doubted that under the provisions of chapter 67, laws of 1931, a failure to pay the first half of the taxes renders only that half delinquent and the other half does not become delinquent unless and until the taxpayer fails to pay them on or before 5:00 o'clock p. m. of May 31st following.

It will be observed, however, that the provisions of chapter 67, laws of 1931, apply only to taxes levied in pursuance of assessments made from and after the first Monday in March, 1931.

Very truly yours,

L. A. FOOT,

Attorney General.