

Taxation—Tax Sales—Certificates—Assignments—Subsequent Taxes—Payment—Refunds.

A person who has taken assignments of tax certificates of sale covering lands which were not subject to taxation because owned by the United States is entitled to refund if the sale is declared void by the court.

Purchaser of lands at tax sale may pay subsequent taxes prior to their delinquency.

Mr. Grant Bakewell,
County Attorney,
Plentywood, Montana.

January 3, 1931.

My dear Mr. Bakewell:

You inquire whether a person to whom the county has assigned tax certificates of sale has any recourse against the county for a refund of the amount paid by him when it develops that the lands mentioned in said certificates were not subject to taxation at the time they were taxed owing to the fact that the title was in the United States Government.

Section 1 of chapter 131, laws of 1927, provides that a refund shall be made to the owner of a tax certificate when the sale is declared void by judgment of a court for irregularities in the assessment, levy or sale. I think this section would apply in the case mentioned by you, provided, of course, the sale is first declared void by the judgment of a court of competent jurisdiction. I think this judgment by the court is a condition precedent to the right of refund as ordinarily the purchaser at a tax sale buys at his own peril and this rule is only modified to the extent and upon the conditions mentioned in the statute.

You also inquire if the purchaser at a tax sale may, under section 2210, R.C.M. 1921, pay the subsequent taxes prior to their becoming

delinquent, or if he is required to wait until the owner has allowed them to become delinquent before he may pay the subsequent taxes.

The section mentioned appears to give the purchaser the right to pay the taxes without any limitation as to the time when they may be paid. That statute does not limit this right of the payment of taxes by the purchaser to the payment of delinquent taxes.

As the statute grants the right to pay all subsequent taxes and there is no provision contained therein limiting this right of payment to delinquent taxes it is, therefore, my opinion that the purchaser or holder of the tax certificate is not limited to the payment of the taxes after they become delinquent but that he may pay the same prior to that time.

Very truly yours,
L. A. FOOT,
Attorney General.