

**Taxes—Personal Property—Penalty—Interest—Payment.**

Personal property taxes which are not a lien upon real estate draw interest at the rate of two-thirds of one per centum per month from and after November 30th until paid and five per centum is added to the amount thereof as a penalty.

Personal property taxes not a lien upon real estate may not be paid in semi-annual installments.

Mr. Melvin N. Hoiness,  
Deputy County Attorney,  
Billings, Montana.

December 8, 1931.

My dear Mr. Hoiness:

I have your request for an opinion upon the following questions:

"1. What is the amount of penalty and rate of interest that should be charged on delinquent personal property taxes where the personal property is not assessed with real estate?"

"2. May personal property taxes be paid in two installments as real estate taxes are paid?"

Answering your first question will say that chapter 67 of the laws of 1931 provides that all taxes levied and assessed, except special assessments made for special improvements in towns and cities shall be payable in two installments, one-half of the taxes being payable on or before November 30th and the other half on or before the 31st day of May. If the first half is not paid on or before the 30th day of November then that half becomes delinquent and draws interest at the rate of two-thirds of one per centum per month from and after the delinquency until paid and five per centum is added as a penalty. If the second half is not paid on or before the 31st day of May of each year that half becomes delinquent and draws interest at the rate of two-thirds of one per centum per month after such delinquency and five per centum is added to the amount as a penalty.

Other sections of the law require the county treasurer to seize personal property immediately upon notification by the assessor that the taxes thereon are not a lien upon real estate and to sell the same for the purpose of making the taxes against said personal property. Personal property taxes, where they are not a lien upon real estate of the owner, are required to be paid upon assessment and the county treasurer is authorized and required to enforce payment without waiting for the 30th day of November to arrive. The chapter above mentioned was not intended to change this rule in regard to the collection of personal property taxes where they are not a lien upon real estate. It must be read in connection with the other laws pertaining to the collection of personal property taxes. There is not any evidence which would tend to show that the legislature intended to abrogate the laws providing for the forthwith payment of personal property taxes where the taxes thereon are not a lien on real estate.

Therefore, force and effect must be given to said chapter 67 in all of its provisions except such as pertain to matters that are controlled by specific provisions of the laws relating to the payment of personal property taxes that are not secured by a lien upon real estate. When this is done the provision of chapter 67 providing for the semi-annual payment of taxes must be confined in its effect to those taxes which are a lien upon real estate. The provisions of said chapter relating to the imposition of penalties and interest are applicable to all taxes including those upon personal property which are not secured by a lien upon real estate, for while personal property taxes are supposed to be collected by the county treasurer prior to November 30th, nevertheless if said taxes are not collected or paid prior to that date they are included within the term "all taxes" found in said chapter 67, and this provision for the adding of penalties and interest is not inconsistent with the laws relating to the collection of personal property taxes where they are not a lien on real estate.

If the county treasurer has failed to collect the personal property taxes prior to November 30th this is an omission of a duty on his part but the liability of the property owner to pay the taxes still exists and unless he discharges that liability on or before November 30th he incurs the penalty and interest provided by said chapter 67, for, as above stated, there is nothing inconsistent in this provision with the other provisions of the law requiring the county treasurer to seize and sell personal property where the taxes thereon are not a lien upon real estate.

It is therefore my opinion that where personal property taxes which are not a lien on real estate have not been collected by the county treasurer on or before November 30th that the whole amount of said personal property taxes become delinquent after 5:00 o'clock P. M. on that date and that the amount thereafter draws interest at the rate of two-thirds of one per centum per month from and after such delinquency until paid and that five per centum shall be added to the amount thereof as a penalty.

It is further my opinion that personal property taxes which are not a lien upon real estate may not be paid in two installments.

Very truly yours,

L. A. FOOT,  
Attorney General.