

**Drainage District—Taxation—Interest—Penalties—Assessments—Distribution—Redemption.**

Drainage district is entitled to receive its pro rata share of the penalties and interest collected upon a redemption from the county of lands where the taxes and assessments for which the land was sold included assessments made for the drainage district.

Mr. C. C. Guinn,  
County Attorney,  
Hardin, Montana.

March 5, 1932.

My dear Mr. Guinn:

You request my opinion whether a drainage district is entitled to interest and penalties on assessments made for the drainage district when redemption of the land against which they were assessed has been made from a tax sale at which the lands were purchased by the county.

It is the rule that interest, penalties and costs collected on delinquent taxes follow the tax unless the statute otherwise provides. (School District No. 12 vs. Pondera County, 89 Mont. 342, 297 Pac. 498.)

It was held in the case above mentioned that section 2234, R.C.M. 1921, prior to its amendment in 1919, providing that where property is redeemed from tax sale the original tax and twenty per cent paid in redemption should be apportioned between the state and county, the balance to go to the county, applied only to moneys collected on payment of delinquent taxes levied for state and county purposes and that it did not apply to those collected on taxes levied for the support of other municipal corporations or political subdivisions and that these latter were entitled to their proportionate share of the interest and penalties under the general rule.

In the case of City of Wolf Point vs. McFarlan, 78 Mont. 156, 252 Pac. 805, the court held that section 2234, R.C.M. 1921, although not mentioning city taxes, when read with other statutes pertinent to the question, would not be construed to withhold the penalties and interest on delinquent city taxes from the city but that the intention of the law as gathered from all the statutes bearing upon the subject was that they should be collected for the benefit of the city.

Said section 2234 was amended by chapter 164, laws of 1929, so as to read in part as follows:

“Whenever property sold to the county, pursuant to the provisions of this chapter, is redeemed as herein provided, the moneys received on account of such redemption must be distributed as follows:

“The original tax and the penalty and interest thereon paid in redemption must be apportioned and pro-rated to the credit of all the various funds, including state, county, school, school district, city, or town in the ratio of their respective shares of the original tax.”

This amendment made the general rule that interest and penalties follow the tax the statutory rule in all cases where redemption is made from the county. The amendment declares that the penalty and interest must be pro-rated to the credit of “all the various funds” in the ratio of the funds’ respective shares of the original tax. In the case of State vs. McFarlan, 78 Mont. 156, 252 Pac. 805, it was held that special improvement assessments were included within the word “tax” as that word is used in section 5214, R.C.M. 1921, and I have no doubt that the same construction would be placed upon the word as it is used in this amendment.

The amount for which the land was sold to the county would include the drainage district assessments and would be included in the total amount required to be paid in order to redeem the land from the sale. The amount paid upon redemption would be the original tax and assessments, penalties, interest and costs. The statute provides that all of this total amount except costs must be distributed to the credit of all of the various funds in the ratio of their respective shares to the original tax. The drainage district fund for which these assessments were made is one of the funds represented by the amount of the original tax and therefore it would have to be taken into consideration in apportioning the original tax, penalties and interest not only for the purpose of crediting it with its proper amount of the fund to be distributed but also in order that the proper method of calculation as required by the statute would be used in determining what each of the other funds would receive.

It is plain that unless the drainage district fund was included within the funds entitled to the division of the moneys to be distributed the other funds would receive more than the statute provides they shall receive with respect to both the original tax and the penalty and interest. The very process of calculation prescribed by the statute requires a distribution of the original tax, penalties and interest to the drainage district fund, as well as all other funds which are represented in the amount paid to effect redemption.

The specification in particular of "state, county, school, school district, city or town" funds as being included within the general term "all the various funds" does not have the effect of a limitation upon the general term but the specification amounts only to a legislative determination or declaration that these particular funds are included within the general term "all the various funds" but the specification does not exclude other funds represented by taxes or assessments from being included within the general term. If it was the intention to distribute the funds only to those particularly named the legislature would probably have said that the distribution should be made to the named funds and no mention would have been made at all of "all the various funds."

This statute as amended must be read in connection with the drainage district laws just as the court held the statute before amendment had to be read in connection with the laws relating to the collection of city taxes by county treasurers in order to get the true intent of the law. When this is done we find that section 7331, R.C.M. 1921, provides, among other things, "such drainage district shall be entitled to the benefit of all penalties and interest upon delinquent district assessments."

It is my opinion that the provision last mentioned intended that the drainage district should receive the penalties and interest upon delinquent district assessments no matter when or how they are received so long as their receipt is the result of a payment of the delinquent taxes or redemption from a tax sale. There is no reason to suppose that the legislature would prescribe one rule as to the disposition of penalties and interest on delinquent drainage assessments when they are paid before sale or for an assignment of a tax sale certificate by the county to a private purchaser thereof and a different rule for their disposition when redemption is made from the county.

The policy of the law as declared by the legislature is that the penalties and interest on these delinquent assessments shall belong to the drainage district and the history and context of the amendment to section 2234 does not warrant a construction which would deprive the drainage district of the benefit of these penalties and interest when redemption is made from the county. Such a construction would, in my opinion, violate the intention of section 7331 which is a special law upon the subject of the disposition of the penalties and interest upon delinquent drainage district assessments. Both statutes should be so interpreted as to give full effect to both, if possible, and the construction herein placed upon them avoids any irreconcilable inconsistency between them with respect to the question submitted.

It is therefore my opinion that the drainage district is entitled to receive its pro rata share of the penalties and interest collected upon a redemption from the county of lands where the taxes and assessments for which the land was sold included assessments made for the drainage district.

Very truly yours,

L. A. FOOT,  
Attorney General.