

**Taxation—Improvements—Destruction—Assessments—
Refunds.**

Improvements upon land destroyed by fire prior to the first Monday in March should not be assessed. Where they were assessed and the taxes paid without protest there is no provision at law for a refund.

Mr. Dean King,
County Attorney,
Kalispell, Montana.

June 7, 1932.

My dear Mr. King:

I have your request for an opinion. It appears that certain improvements upon real estate were destroyed by fire prior to the first Monday in March, 1930, but nevertheless they were assessed for taxes in the year 1930 and the taxes were paid. The question is whether these taxes can be refunded.

The improvements should not have been assessed for the year 1930 for the reason that they were not in existence on the first Monday in March, 1930. However, the taxes were paid without protest and the money has been distributed to the state, county, school district and various funds. There is no provision for making a refund unless it be section 2222, R.C.M. 1921, but in the case of *First National Bank of Plains vs. Sanders County*, 85 Mont. 451, and in *Harvey vs. Williams*, 6 (2nd) Pac. 418, the Montana supreme court has held that that section has been repealed by the law relating to payment of taxes under protest, except as to taxes collected more than once. This being true, there is no law which authorizes the refunding of the taxes paid on these destroyed improvements.

While it may seem harsh that this taxpayer cannot recover taxes paid upon the destroyed improvements, nevertheless, the purpose of the protest statute was to facilitate the settlement of tax disputes and to provide a means of refunding the taxes if they should be refunded, by holding them intact until the decision of the court. If that decision is that the taxes be refunded they may be refunded promptly because they have not been distributed to the various trust funds for which they were levied.

Where the taxes are paid without protest they are at once distributed and there is no way of the county reclaiming at least that part which was paid to the state, except through the cumbersome and uncertain method of applying to the legislature for an appropriation. One of the purposes for the enactment of the protest statute was to avoid distribution of the moneys until the dispute concerning the tax is settled by the courts. The protest statute gives the taxpayer ample means for contesting taxes such as are involved here by paying them under protest and bringing suit to recover. If he pays the taxes without protest, as is the case here, he waives the only remedy which the law provides and there is no law which would authorize the county to make a refund of the taxes paid.

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