

June 4, 1934

You inquire if the owner of a piece of land, less than one section in extent and listed as one unit and upon which the taxes are delinquent, can require the segregation of such taxes so that he may pay to the County Treasurer the taxes on a portion of said land and leave the remainder delinquent.

Section 2023, Revised Codes of Montana, 1921, provides: "land must be assessed in parcels or subdivisions not exceeding 640 acres."

The general rule appears to be that where land owned by an individual is assessed in separate tracts or subdivisions he may require the segregation of the taxes as to the tracts so separately listed and may pay the taxes upon one tract without paying it upon other tracts. 61 C. J. 965.

There does not appear to be any general rule or principle nor specific statutory enactment which requires or permits a County Treasurer to segregate taxes of a piece of land listed as one unit so that the owner may pay the tax on a portion thereof. In other words, insofar as the payment of taxes is concerned prior to a tax sale, there appears to be no requirement or authorization for the County Treasurer to accept payment of taxes on lands assessed with other lands. (See: *Webb v. Title Co.*, Ariz., 185 Pac. 128; *Challis v. Hekelnkaemper*, 14 Kans. 474.)

In connection with a redemption of real estate after a tax sale a different rule applies. The right to redeem real estate is fixed by Chapter 48 of the Laws of 1923, amending Section 2211 of the Revised Codes, 1921. This statute states that "in case the said real estate shall have been assessed or sold, together with other real estate, or in case the tax assessed against any other property shall be a lien thereon, then it shall be the duty of said county treasurer to compute and apportion the tax that should have properly been assessed against the said real estate sought to be redeemed, and upon which the taxes are sought to be paid, the same as if said property had been separately assessed."

This statute has been construed in the case of *State ex rel. Federal Land Bank v. Hays*, 86 Mont. 58, to permit

Opinion No. 543

Taxation—Delinquent Taxes—Redemption After Tax Sale of Portion of Tract Assessed as Whole.

HELD: The county treasurer is not authorized, prior to tax sale, to accept payment of taxes on a tract or plot of land which was assessed as part of a unit with other lands.

But after tax sale, the owner or any person interested may redeem a portion of the real estate and require the county treasurer to compute the amount of taxes necessary to be paid to redeem such part.

a mortgagor to redeem a portion of lands included in a mortgage and which have been included with other lands at the time of assessment, without requiring the payment of the taxes on all of the lands assessed in a body or on all of the lands included in the mortgage. The statute also says that it may be done by any persons who "have any interest in such property."

Under this decision it would seem, therefore, that the owner or any person interested might redeem a portion of the real estate and require the county treasurer to compute the amount of taxes necessary to be paid to redeem such part.