

Opinion No. 149.

**Taxation—Tax Sales—Redemption of
Undivided Interest in Real Estate.**

HELD: One owning an undivided interest in real estate sold for taxes may not redeem such interest by paying only his proportionate share of the delinquent taxes.

August 2, 1935.

Mr. Thomas C. Coiton
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In your letter of July 29, you asked us whether or not in our opinion a person who owns an undivided one-tenth interest in land which was assessed as a whole and so sold to Wibaux County at a tax sale held in January, 1931, may be permitted to redeem such interest upon payment to the county treasurer of his proportionate share of the delinquent tax and other taxes since accruing against said land.

The authority for the redemption of land sold for taxes is found in Section 2211, Revised Codes 1921, as amended by Chapter 48, Laws of 1923, which, so far as pertinent, is as follows: "Whenever any person, firm, co-partnership, corporation, or association shall desire to redeem from a tax sale and pay all subsequent taxes upon any lots, piece, or parcel of real estate, which said person, firm, co-partnership, corporation, or association shall own or hold a mortgage or other lien against or have any interest in such property, it shall be the duty of the county treasurer of the county in which such real estate is situated to permit such redemption and payment; and 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." It is evident that the law does not cover such a situation as is here presented.

The right to redeem being wholly statutory, the person seeking to redeem must bring himself within the statutory provisions which apply. (State ex rel. Federal Land Bank v. Hays, 86 Mont. 58; State v. Schaack, 10 N. W. 22.)

A joint tenant or a tenant in common holding an undivided interest in a tract of land sold in solidum for taxes may redeem, but if he does so,

as a rule he must redeem the entire estate, not merely his undivided interest. (61 C. J. 1249.) A different principle would result occasionally, at least, in making the owner of the undivided interest and the county tenants in common, a condition which the legislature neither contemplated nor intended when it passed Section 2211 as amended.

It is our conclusion, therefore, that redemption cannot, under the circumstances, be made in the manner outlined above.