

Opinion No. 199.

**Taxation—Personal Property Tax—
Payment in Two Installments
Not Permitted, When.**

HELD: Personal property taxes,

which are not a lien against real estate, may not be paid in two installments.

November 6, 1935.

Hon. Frank H. Johnson
State Examiner
The Capitol

You have submitted for my opinion the question whether personal property taxes which are not a lien against real estate may be paid in two installments.

Section 2238, R. C. M. 1921, as amended by Chapter 102, Laws of 1923, Chapter 24, Laws of 1925 and Chapter 143, Laws of 1929, reads: "It shall be the duty of the assessor, upon discovery of any personal property in the county, the taxes upon which are not in his opinion a lien upon real property sufficient to secure the payment of such taxes, to immediately, and in any event not more than ten days thereafter, make a report to the treasurer, setting forth the nature, amount and assessed valuation of such property, where the same is located, and the name and address of the owner, claimant, or other person in possession of the same * * *."

Section 2239, R. C. M. 1921, as amended by Chapter 102, Laws of 1923, reads: "The county treasurer must collect the taxes on all personal property, and in the case provided for in the preceding section, it shall be the duty of the treasurer immediately upon receipt of such report from the assessor to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must at the time of receiving the assessor's report, and in any event within thirty days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed and proceed to sell the same, * * *."

The question has been raised as to whether these sections have been amended by Chapter 96, Laws of 1923, as amended by Chapter 79, Laws of 1929, Chapter 67, Laws of 1931, and Chapter 158, Laws of 1933, reading as follows: "All taxes levied and

assessed in the State of Montana, except special assessments made for special improvements in towns and cities, and except taxes levied and assessed upon motor vehicles, shall be payable as follows: One-half ($\frac{1}{2}$) of the amount of such taxes shall be payable on or before five o'clock P. M. on the 30th day of November of each year, and one-half ($\frac{1}{2}$) on or before five o'clock P. M. on the 31st day of May of each year; * * *"

In 1931, in an opinion to Deputy County Attorney Hoiness of Billings, Attorney General Foot held that personal property taxes were not payable in two installments, or, in other words, that Chapter 96, Laws of 1923, as amended, had application to all taxes on real property and personal property secured by lien on real property. (Volume 14, Opinions of the Attorney General, page 219.)

The only statute which casts any shadow of doubt on the question is Chapter 96, Laws of 1923, as amended. The opinion of the Attorney General was rendered after the 1931 amendment thereof. Since that opinion was rendered there have been two regular and one special session of the legislature. As pointed out, in the 1933 Session, the law was again amended but no change was made which would give an effect contrary to the ruling of the Attorney General. I am informed that public officials concerned with the construction of the sections of the law above quoted have construed Chapter 96, Laws of 1923, as amended, as not affecting personal property when not a lien upon real property. The result has been that the payment of such personal property taxes in two installments has never been permitted. In view of this construction over a period of twelve years, and the opinion of the Attorney General in 1931, and the opportunity of the legislature to correct this interpretation, we are inclined to the view that the opinion of the former Attorney General should stand. In this connection we call attention to the following rules of construction:

"The contemporaneous construction placed upon a statute by the officers or departments charged with the duty of executing it is entitled

to more or less weight, especially if such construction has been made by the highest officers in the executive department of the government, or has been observed and acted upon for a long period of time; and, while not generally controlling, where the case is not extreme and no vested rights are involved, such construction should not be disregarded or overturned except for the most cogent reasons, and unless clearly erroneous." (59 C. J. 1025, Section 609.)

"Where the language of a statute is ambiguous or uncertain, the construction placed on it by contemporaries, although not controlling, may be resorted to as an aid in ascertaining the legislative intent, and should not be overturned except for cogent reasons." (Id., Section 607.)

"On the principle of contemporaneous exposition, common usage and practice under the statute, or a course of conduct indicating a particular understanding of it, will frequently be of great value in determining its real meaning, especially where the usage has been acquiesced in by all parties concerned, and has extended over a long period of time; * * *." (Id., Section 608.)

We are strengthened in this view by reason of the fact that a different and contrary construction would not only result in the loss in many cases of personal property taxes through transfer, loss, consumption, concealment or destruction of personal property during the additional six months for payment of the second installment if permitted, thus resulting in inequality of payment of taxes by the escape therefrom by many, but also by the fact that the adoption of the construction that all personal property taxes are payable in two installments, the first on November 30, and the second on May 31 following, except in those cases where the county assessor, in compliance with the terms of Chapter 143, Laws of 1929, recommends to the treasurer that they be paid at once, would leave the door open to inequality and favoritism.

Sections 2238 and 2239, R. C. M. 1921, as amended, are in the nature of special statutes having to do with

the collection of personal property taxes only. Chapter 96, Laws of 1923, as amended, makes no reference at all to these sections. There was no express intention to repeal or amend them. If the legislature had such intention and wished to make such a drastic change affecting the collection of personal property taxes, it is difficult to believe that it would not have made its intention clear by some express declaration to that effect or reference to these special sections. It seems more likely that the legislature intended that Chapter 96, as amended, should have general application to the payment of taxes except in so far as special statutes dealt with the collection of personal property taxes. "A special or local act on the subject of taxation is not repealed by a general tax law unless the intent to repeal is clearly apparent." (59 C. J. 936, Section 545.)

Repeal or amendment of statutes by implication are not favored. *State v. Cascade County*, (Mont.) 296 Pac. 1; *Nichols v. Ravalli County School Dist. No. 3*, 287 Pac. 624, 87 Mont. 181; *London Guarantee, Etc., Co. v. Industrial Accident Board*, 266 Pac. 1103, 82 Mont. 304; *Ex p. Naegele*, 224 Pac. 269, 70 Mont. 129; *State v. Miller*, 220 Pac. 97, 69 Mont. 1; *State v. Bowker*, 205 Pac. 961, 63 Mont. 1; 59 C. J. 905, Sections 510 et seq.

"The repeal of statutes by implication is not favored. The courts are slow to hold that one statute has repealed another by implication, and they will not make such an adjudication if they can avoid doing so consistently or on any reasonable hypothesis, or if they can arrive at another result by any construction which is fair and reasonable. Also, the courts will not enlarge the meaning of one act in order to hold that it repeals another by implication, nor will they adopt an interpretation leading to an adjudication of repeal by implication unless it is inevitable, and a very clear and definite reason therefor can be assigned. Furthermore, the courts will not adjudge a statute to have been repealed by implication unless a legislative intent to repeal or supersede the statute plainly and clearly appears. The implication must be clear, necessary, and irresistible. The foregoing rules

are particularly applicable where the statute claimed to have been repealed has for a long time been rigidly adhered to and construed as being in existence, as well as where it has been given a settled meaning by adjudications of the court of last resort, or where subsequent legislation shows that the legislature deemed it still in existence." (59 C. J. 905, Section 510.)

For the foregoing reasons I am of the opinion that personal property taxes which are not a lien against real estate may not be paid in two installments.