

\$94.78 in penalty and interest. There is still due in delinquent taxes the amount of \$460.00 which Mrs. Thompson intends to pay today. The above \$193.15 was paid without protest.

"The question now is whether Mrs. Thompson be allowed a refund of the penalty and interest which she paid when she redeemed the 1926 taxes. The law provides that the redemption must be made before December 1, 1935, which has been done by Mrs. Thompson, although the payments were made in two installments."

Chapter 88, Laws of 1935, permits a taxpayer to redeem real estate by the payment of the original delinquent tax without penalty and interest. The redemption is from the sale. By paying the subsequent tax for the year 1926, the taxpayer in question did not redeem the real estate from the sale thereof, and, therefore, did not comply with the provisions of said Chapter 88. Since this payment was made voluntarily prior to the redemption later made, the payment of penalty and interest, in my opinion, could not be legally refunded.

Such taxes were not paid erroneously or illegally within the meaning of Section 2222, R. C. M. 1921, so as to authorize the County Commissioners to order a refund thereof. There was no error or illegality in the tax or the penalty or interest. Furthermore, the taxpayer could not have paid such taxes under protest as delinquent taxes are not payable under protest by the provisions of Section 2269, R. C. M. 1921, as amended by Chapter 142, Laws of 1925. Moreover, no unlawful levy is claimed and this also is a prerequisite for payment under protest.

Opinion No. 206.

Taxation—Delinquent Taxes—Penalty and Interest, Refund of.

HELD: Chapter 88, Laws of 1935, applies only to redemptions from tax sales. Penalty and interest may not be refunded where a portion of the delinquent taxes, together with penalty and interest, were voluntarily paid, but without effecting a redemption, during the time the Act was in force.

December 4, 1935.

Mr. Eugene L. Murphy
County Attorney
Choteau, Montana

You have submitted the following:

"Mrs. Harry Thompson, residing in this county, had about eight years delinquent taxes upon her property. On last March 12, after the passage of the above law, she paid the 1926 delinquent taxes amounting to \$193.15. Of this amount there was