

Opinion No. 207.

**Taxation—Delinquent Taxes—Penalty
and Interest, Refund of—Install-
ment Payment Contracts—
County Commissioners.**

HELD: The county commissioners cannot refund penalty and interest to a taxpayer who was induced by a void law to voluntarily pay delinquent taxes, penalty and interest for 1933-34, concerning which there was no error or illegality, in order to take

advantage of the provisions of such void law and to enter into a contract for the installment payment of other delinquent taxes.

December 4, 1935.

Mr. Horace W. Judson
County Attorney
Cut Bank, Montana

You have submitted a copy of a letter written by the Clapper Motor Company to the county treasurer, which contains the following facts:

"The Clapper Motor Company entered into a number of contracts with Glacier County to pay taxes in 20 semi-annual payments on various tracts of land located in this county, and that in order to come under the law providing for the payment of the same in 20 semi-annual payments it was necessary for the Clapper Motor Company to pay in full all 1933-34 taxes, including the penalty and interest then due, and that if the Clapper Motor Company had then known that such contracts were void the 1933-34 taxes with penalty and interest would not have been paid.

"The Clapper Motor Company has now elected to pay all delinquent taxes on the tracts described in the contracts entered into with the county on December 5th, 1934 in full so as to avoid payment of penalty and interest, and feels that inasmuch as it was required to pay penalty and interest on 1933-34 taxes in order to enter into what is now known to be a void contract, it should be entitled to recover back the penalty and interest on the 1933-34 taxes."

On these facts you have requested my opinion. It is my opinion that taxes for 1933 and 1934 paid by taxpayer before a contract to pay prior delinquent taxes in semi-annual installments over a period of ten years could be made as provided by Chapter 45, Laws of 1933-34, Laws of the Extraordinary Session, may not be refunded to a taxpayer who now wishes to take advantage of Chapter 88, Laws of 1935, by paying all delinquent taxes without penalty or interest.

While it may be considered a violent presumption, such taxpayer is presumed to know the law and was

presumed to know that said Chapter 45 was void and unconstitutional. (Chapter 149, Laws of 1935, which is identical, although subsequently passed by our legislature, was recently held unconstitutional by our Supreme Court, in the case of State ex rel. DuFresne v. Leslie et al, 100 Mont. 449.) A taxpayer, who was induced by a void law to voluntarily pay delinquent taxes concerning which there was no error or illegality, in order to take advantage of the provisions of such void law, cannot obtain a refund of the penalty and interest paid. Such taxes were not erroneously or illegally collected within the meaning of Section 2222, R. C. M. 1921, so as to authorize the Board of County Commissioners to order a refund thereof. In paying such tax, including the penalty and interest, the taxpayer assumed the risk. All that can be done is to restore him to the status quo ante, so far as the payments on the void contract are concerned.