

Opinion No. 99.**Taxation — Delinquent Taxes — Redemption—Penalty and Interest
—Personal Property Tax
—Hail Insurance.**

HELD: 1. Chapter 88, Laws of 1935, applies to 1934 taxes only where there has been a sale to the county on account of taxes prior to 1934 and no assignment made of the certificate of sale.

2. Chapter 88 has no application to personal property where there has been no sale of real estate on account of such personal property tax.

3. Since Chapter 88 makes no distinction between the kinds of taxes and is broad enough to cover all taxes, it applies to hail insurance taxes.

4. A taxpayer may not pay the delinquent taxes for any one year but is required to pay all the delinquent taxes.

May 13, 1935.

Hon. Frank H. Johnson
State Examiner
The Capitol

You have submitted the following questions for my opinion:

"1. Under this act may the first half or the second half or both of the 1934 taxes be paid without pen-

alty or interest, if paid prior to December 1, 1935?"

Section 1, Chapter 88, Laws of 1935, reads as follows: "That from and after the passage and approval of this Act, any person having an interest in real estate heretofore sold for taxes to any county, or which has been struck off to such county when the property was offered for sale and no assignment of the certificate of such sale has been made by the County Commissioners of the county making such sale, shall be permitted to redeem the same by paying the original tax due thereon, and without the payment of any penalty or interest thereon. * * *"

The statute permits redemption of real estate "heretofore sold for taxes to any county" etc. If, therefore, there has been no sale of real estate to any county on account of the delinquency of 1934 taxes, there can be no redemption; there is no sale to redeem from. If, however, there has been a sale to the county on account of taxes prior to 1934 and no assignment made of the certificate of sale then redemption may be made by paying the 1934 taxes without interest or penalty. While this appears to lead to certain inequalities, our Supreme Court has not regarded them of a character as would make the law invalid or unconstitutional (*Sparling v. Hitsman*, 44 Pac. (2d) 747). Apparently the test must be the language of the statute above quoted.

"2. Does this act also apply to personal property taxes whether or not secured by real estate?"

Since the statute mentions real estate only it has no application to personal property where there has been no sale of real estate on account of such personal property tax. The statute is specifically limited to real estate. In other words, personal property taxes are unaffected by the act unless they are a lien on real estate and the latter has been sold to the county and in that event, of course, redemption of the real estate may be made by payment of the tax on personal property less interest and penalty charged against it.

"3. Does this act apply to hail insurance assessments?"

The Hail Insurance Act, Section 350-361, R. C. M. 1921, as amended by Chapter 40, Laws of 1923, authorizes the levy and collection of a "tax" for the purpose of paying hail losses. Since Chapter 88 makes no distinction between the kinds of taxes and is broad enough to cover all taxes, it is my opinion that the act applies to such taxes. Furthermore, the reason for its application to such taxes is just as strong as its application to other taxes.

"4. Would the fact that taxes were delinquent prior to the November 1934 installment, or whether no taxes were delinquent prior to the November 1934 installment, have any bearing upon the law as above interpreted by you?"

The answer to this question may be found in my answer to question No. 1 herein.

"5. Under Senate Bill No. 55, can a taxpayer pay the taxes delinquent for any one year that are delinquent, or must he pay all taxes that are delinquent up to the time of the passage of the act?"

Since payment of subsequent taxes does not constitute a redemption of real estate "heretofore sold for taxes" etc., and since redemption of the real estate is the object of the act, it is my opinion that a taxpayer is required to pay all the delinquent taxes. He cannot redeem from the tax sale unless he also pays the subsequent taxes as Section 2233, R. C. M. 1921, expressly forbids it. See *Tilden v. Chouteau County*, et al., 85 Mont. 398, 279 Pac. 231; *Morse v. Kroger*, et al., 87 Mont. 54, 285 Pac. 185. The reason for this is that after the first sale without redemption there is no subsequent sale. See Sections 2231-2232, R. C. M. 1921; *Tilden v. Chouteau County*, supra.