

fits of the payment of taxes on or before December 1, 1938, without the payment of penalty or interest.

1. Any person having a legal or equitable interest in real estate heretofore sold for taxes to any county.

2. Any person having a legal or equitable interest in real estate which has heretofore 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.

3. Any person having a legal or equitable interest in real estate on which taxes are delinquent for the first installment of the year 1936.

The question to decide is whether or not the remission of penalty and interest has application to delinquencies for the last half of the year 1936. If the delinquencies for the last half of the year 1936 are to receive advantage of the remission of penalty and interest, such class of delinquencies must come within one or the other of the two first classes above described. At this point it may be observed that Chapter 70 of the 1937 Session Laws went into force and effect March 1, 1937, and the first two classes, as first above specified, must clearly apply to property sold or struck off to the county prior to March 1, 1937, because we have the word, in section 1, "heretofore" and that word specifically refers to property that was sold or struck off to the county prior to March 1, 1937. The question, then, to be determined, is whether or not the last half of the 1936 taxes were sold or struck off to the county under the law prior to March 1, 1937.

Under Chapter 96 of the 1923 Session Laws, a failure of the taxpayer to meet his tax obligation on or before November 30 rendered both the first and second halves delinquent, but since then said chapter has been amended, and under section 2169.2 a failure to pay the first half of the year's taxes does not render the second half delinquent, and the second half becomes delinquent if it is not paid on or before May 31. In other words, the second half of the 1936 taxes did not become delinquent until May 31, 1937, and it necessarily follows that the second half of the 1936 taxes could not have been sold or struck off to the county prior

**Opinion No. 127.**

**Taxation—Delinquent Taxes—Penalty and Interest.**

**HELD:** 1. No penalty or interest may be charged or collected on taxes delinquent up to and including the first half of the year 1936, if paid on or before Dec. 1, 1938, under Chapter 70, Laws 1937.

2. Penalty and interest must be collected on taxes delinquent after first half of 1936.

July 28, 1937.

Mr. Thomas C. Colton  
County Attorney  
Wibaux, Montana

My Dear Mr. Colton:

Your letter has been received inquiring as to whether or not the last half of the 1936 taxes, and the 1937 and 1938 taxes, may be paid without penalty or interest if the same are paid on or before the first day of December, 1938:

Chapter 70, section 1, of the 1937 Session Laws, enumerates three classes of taxpayers who may receive the bene-

to March 1, 1937. Therefore, the language used in section 1 of Chapter 70, referring to real estate heretofore sold for taxes to any county, or which has been struck off to such county, could not have referred or applied to the second half of the 1936 taxes, because the same could not have been sold or struck off to the county until the date of the first sale after May 31, 1937, following March 1, 1937, when the law took effect, and therefore there is no remission of interest or penalty for the taxes for the last half of the year 1936.

The first half of the taxes for the year 1936 became due November 30, 1936. It has been held by a former attorney general (Vol. 14, Opinions of Attorney General, p. 132) that the first half of the taxes could not be split, or two sales, or double sales made, consequently the first half of the taxes for the year 1936, under said opinion, could not have been sold or struck off to the county until after May 31, 1937. Yet, there having been no judicial decision upon such matter, and there being a reasonable question as to whether or not the first half of the 1936 taxes came within the first two classes first herein enumerated, and the legislature, desiring to exempt persons owing delinquent taxes for the first half of the year 1936, expressly set forth in Chapter 70 that there would be no penalty or interest on taxes which were delinquent for the first installment of the year 1936. In other words, reading Chapter 70 in the light of former rulings and legislation upon the subject, it appears that it is the purpose of the legislature to exclude the payment of interest and penalty upon all delinquent taxes up to and including the first half, or installment, of the taxes for the year 1936, and no further. The intent and purpose of the legislature is to relieve the taxpayer from the payment of penalty and interest for all prior delinquencies up to and including the first installment of the year 1936, but no further, and thus to create an incentive as well as an ability for the taxpayer to pay his delinquent taxes. It is not conceivable that it was the purpose or intention of the legislature to provide a moratorium for future payments of taxes, thus creating a motive and incentive for not paying future taxes. The remission of the penalty and interest for the last half of the year 1936

not having been included within said legislation, as Chapter 70 has provided for, it necessarily follows that no remission of penalty and interest was, or is, contemplated for the years 1937 and 1938.

Therefore, it is my opinion that there is no remission of penalty and interest upon delinquent taxes for the last half of the year 1936, or for taxes accruing in the years 1937 and 1938.