

Opinion No. 191.

**Taxation—Personal Property Taxes—
Apportionment or Transfer—
Mortgages of Lands—
Section 2211, R. C. M.,
1935.**

HELD: A mortgagee who accepted a deed in cancellation of his mortgage on tract A, which was sold for delinquent taxes including personal property taxes, cannot have a transfer of such personal property tax to, or apportionment thereof with tract B, which is still owned by his mortgagor, when such tracts were neither assessed nor sold together.

January 26, 1940

Mr. H. O. Vralsted
County Attorney
Stanford, Montana

Dear Mr. Vralsted:
You have requested an opinion on the following facts:

"Taxpayer 'X' was the owner of certain real estate in sections four and six. The land in section six was subject to a real estate mortgage executed prior to 1930, which remained delinquent and unpaid. In November, 1935, he executed a deed to the mortgagee. The land in section six was the home place and was separately assessed from the land in section four. The tax upon his personal property was attached to section six only. Neither the real estate taxes nor the personal taxes were paid on the land in section six for the years 1931 to 1935 inclusive, and said land was sold for taxes for the year 1931.

"The mortgagee who became the grantee in the deed agreed to cancel the mortgage indebtedness in consideration of the execution of the deed. The deed was made subject to the unpaid taxes. The taxes on the land in section four have been paid.

"The former mortgagee, now owner of the title, desires to have the personal taxes transferred in its entirety from section six to the land in section four which is still owned by the taxpayer 'X', or to have the personal taxes apportioned among all of his lands in said two sections. Can this be done?"

It is my opinion that this question must be answered in the negative and we agree with your conclusion to that effect. The Attorney General, in Volume 14, Opinions of the Attorney General, 250, so held. The facts are the same, except in the case there considered the taxes on the tract other than the home place were not paid and it was sold for delinquent taxes, but this exception does not bring the case under consideration within Section 2211, R. C. M., 1935. For the reasons stated in the above mentioned opinion, we do not think that this section authorizes either the transfer or the apportionment. It is true the Attorney General, in Volume 15, Opinions of the Attorney General, 286, came to a different conclusion, but he gave no reason except that he cited the case of State ex rel. Federal Land Bank v. Hayes, 86 Mont. 58, 282 Pac. 382, in support of his conclusion. It appears, however, that this question was not before the Court in that case and therefore was not considered or decided.