

No. 42

**TAXATION—REDEMPTION FROM TAX SALES—TAX
SALE—ASSIGNMENTS**

Held: Any person having an equitable or legal interest in real estate, heretofore sold to county for delinquent taxes, may redeem same from such sale by paying original taxes without penalty and interest if redeemed before May 31, 1942, except tax sales before 1937.

March 14, 1941

Honorable E. A. Dye, Chairman
Board of Equalization
Capitol Building
Helena, Montana

Dear Mr. Dye:

You have submitted the following:

“Under Chapter 13, Session Laws of 1941, the so-called Tax Moratorium Act, may a taxpayer redeem from a tax sale for delinquent taxes of **any one year** without at the same time redeeming from all other tax delinquencies, and still avail himself of the remission of interest and penalties?”

The pertinent part of Chapter 13 of the Laws of 1941 is as follows:

“Section 1. That from and after the passage and approval of this Act, any person having an equitable or a legal interest in real estate heretofore struck off to any county when such property was offered for sale for delinquent taxes and certificate of such sale issued to the county and when no assignment of such certificate has been made, or on which the taxes are delinquent for the first installment of the year 1940, shall be permitted to redeem the same by paying the original taxes due thereon, without the payment of any penalty or interest thereon, provided such redemption be made on or before the thirty-first day of May, 1942.”

It will be noted that Chapter 13, Laws of 1941, has not changed the law relative to a taxpayer redeeming from a prior tax sale, and he may redeem from any tax sale without at the same time redeeming from other tax sales, provided such redemption be made on or before the 31st day of May, 1942, and of course providing no assignment of such certificate of sale has been made by the county.

Chapter 54 of the Laws of 1937 is as follows:

“Section 2231. **Assessment of Property on Which a Tax Sale Certificate Has Been Purchased by County and Adjournment of Sale Thereof.** In case a tax sale certificate on property assessed for taxes is purchased by the county, or otherwise, pursuant to provisions of Section 2191 of this code, it must be assessed for taxes the next year in the same manner as if it had not been so purchased. If the taxes resulting from such assessment are not paid when such taxes become due, said property shall again be sold, in manner as above described, and said assessment of such property, and the sale of same, when the said taxes have not been paid upon coming due, or the property redeemed, shall be continued until the time when such property shall have been redeemed from such sales; provided, however, that no tax deed shall issue to any purchaser, other than the county under said sales, until the applicant for such tax deed shall have paid and discharged all taxes, penalty and interest accumulated at the time of such application. Providing further that purchasers of certificates of tax sale, for years subsequent to the oldest outstanding tax sales certificate, shall have the same privilege of redemption, of such oldest

outstanding tax sales certificate, as is the privilege of the original owner of the property. Nothing herein contained shall be construed to apply to holders of tax certificates, other than counties, at the time this Act becomes effective."

It is apparent that the Legislature—in amending Section 2231, Revised Codes of Montana, 1935, by Chapter 54 of the Laws of 1937—intended to permit redemption by a delinquent taxpayer of any one tax sale where no assignment had been made, thereby lightening the burden of the taxpayer, permitting him—by paying the oldest tax sale—to lengthen the time of the procuring of a tax deed, and giving him more time in which to make redemption of each tax sale separately, instead of compelling him to pay the accumulated taxes as formerly required. Insofar as there is any conflict between Section 2231, as amended, and Section 2233, Revised Codes of Montana, 1935, the latter will be deemed to be amended by implication to the extent only of such conflict. An exception to the foregoing should be noted, namely, that in the redemption by a taxpayer from a tax sale prior to 1937, he may do so under Chapter 13, Laws of 1941, without paying penalty and interest, but he must also pay all subsequent taxes up to the 1937 taxes, as Chapter 54, Laws of 1937, is not retroactive.

Section 3, Revised Codes of Montana, 1935, is as follows:

"Section 3. Laws, When Retroactive. No law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared."

It is therefore my opinion that any person, having an equitable or a legal interest in real estate which has heretofore been struck off to any county for delinquent taxes and certificate of tax sale issued to county and when no assignment of such tax sale certificate has been made, may redeem the same from any such sale subsequent to 1937 by paying the original taxes due thereon, without paying any penalty or interest thereon, in event such redemption is made on or before the 31st day of May, 1942.

Sincerely yours,

JOHN W. BONNER
Attorney General