

No. 439

**TAXATION—TAXPAYER—REPURCHASE OF TAX
DEED LANDS—PENALTY AND INTEREST—COUNTIES**

Held: Subsequent to May 31, 1942, a taxpayer—in repurchasing or redeeming property theretofore deeded to the county or struck off to the county at tax sale—is required to pay the original tax together with penalty and interest.

July 3, 1942.

Mr. J. E. McKenna
County Attorney
Fergus County
Lewistown, Montana
Attention: Mr. Aaron R. Shull,
Deputy County Attorney

Dear Mr. McKenna:

You have submitted the following question for my opinion:

The county has made application for tax deed, giving its notice in the month of April. The notice showed the amount due which was without penalty and interest. The notice provided that the county would apply for tax deed on June 25, 1942. The so-called "moratorium" on penalty and interest expired on May 31, 1942.

May an owner now re-purchase such tax deed lands from the county for the amount due as shown on the application for tax deed—or is such owner required to pay, in addition to the amount due as shown in the notice, the additional sum of the penalty and interest?

In answering your inquiry, it will be noted Chapter 13, Laws of 1941, granted a period of grace to taxpayers, providing in substance that, if the taxpayer paid his delinquent taxes before May 31, 1941, he could do so without paying the penalty and interest. The last opportunity of a taxpayer to take advantage of this act of the legislature was at midnight, May 31, 1941. After that time and date there was no authority for the County Treasurer to accept or allow redemption, except by the payment of the original amount due, together with penalty and interest. The statute expired at that time and date.

It is only necessary to quote a part of the second paragraph of Section 1 of Chapter 13, Laws of 1941, to reach the foregoing conclusion:

"The intent of this act is to modify existing laws relating to redemption from tax sales **only to the extent** that any redemptioner who shall exercise his right **during the period of grace granted herein and before tax deed is taken**, shall be relieved of the payment of penalty and interest **which would otherwise be added** to the amount of the original taxes accrued. . . ." (Emphasis mine.)

And the balance of said paragraph plainly determines the intention of the legislature.

If the taxpayer has allowed the time to expire in which he could redeem from tax sale without paying penalty and interest and the tax deed has been taxen, he may now proceed under Chapter 171, Laws of 1941, which provides a preferential right for the taxpayer as follows:

"Provided, further, that at any time before the date fixed for such sale, notice of which has been given as above provided, the taxpayer or successor in interest whose property has been deeded to the county may purchase such property subject to the reservations hereinafter provided by payment to the county of the full amount of the taxes, penalties and interest due on said land at the time of taking said tax deed. . . ."

As the amount due at the time of taking the tax deed herein on the 25th day of June, 1942, was the original tax plus penalty and interest, such amount is the sum the statute requires to be paid.

This preferential right of repurchasing from the county, if exercised within the time prescribed by the statute, is available to the taxpayer or his successor in interest.

Blackford v. Judith Basin Co., 109 Mont. 578, 98 Pac. (2nd) 872.

It is therefore my opinion that, subsequent to May 31, 1942, a taxpayer—in repurchasing or redeeming property theretofore deeded to the county or struck off to the county at tax sale—is required to pay the original tax together with penalty and interest.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General