

No. 65

**COUNTY TREASURER—COLLECTION OF PERSONAL
PROPERTY TAXES—TAXES NOT LIEN ON REAL
ESTATE—PENALTY AND INTEREST**

Held: County Treasurer, performing duties of his office, is required to collect personal property taxes not a lien on real estate immediately or by seizure and sale. Procedure adequate therefore exclusive. No penalty and interest provided by law as none will accrue in event County Treasurer performs his duty; and in event he does not, through wilful failure and neglect, he and his sureties are liable on his official bond.

March 31, 1941.

Mr. John D. French
County Attorney
Lake County
Polson, Montana

Dear Mr. French:

You have submitted the following:

“The matter of penalty and interest on delinquent personal property taxes has been causing considerable confusion in this county, and the County Treasurer has asked me to request your opinion as to whether or not the County Treasurer should collect penalty and interest on delinquent personal property taxes which are not a lien on real property.”

The method and procedure of the collection of personal property taxes, which are not a lien on real estate (other than on motor vehicles), are set forth in Section 2238, Revised Codes of Montana, 1935, as reenacted and amended by Chapter 6, Laws of 1939, and Section 2239, Revised Codes of Montana, 1935, as reenacted and amended by Chapter 107, Laws of 1939.

Chapter 6 of the Laws of 1939 is as follows:

"An Act to Amend Section 2238, Revised Codes of Montana of 1935, Relating to the Duty of the Assessor to Report Certain Personal Property Tax Assessments.

"Be it enacted by the Legislative Assembly of the State of Montana:

"Section 1. That Section 2238 of the Revised Codes of Montana of 1935 be and the same is hereby amended to read as follows:

"Section 2238. **Duty of Assessor.** It shall be the duty of the Assessor, upon discovery of any personal property in the county, the taxes upon which are not in his opinion a lien upon real property sufficient to secure the payment of such taxes, to immediately, and in any event not more than ten days thereafter, make a report to the Treasurer, setting forth the nature, amount and assessed valuation of such property, where the same is located, and the name and address of the owner, claimant, or other person in possession of the same, and where such personal property is located in any city or town, which shall have provided by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, also and at the same time furnish to said city or town treasurer at the same time a duplicate of such notice to the County Treasurer.

"Section 2. All Acts and parts of Acts in conflict herewith are hereby repealed.

"Section 3. This Act shall be in full force and effect from and after its passage and approval."

The language used in the foregoing Chapter 6 is mandatory, clearly stating the duty of the Assessor to make such report, as therein required, to the Treasurer "immediately" and in any event not more than ten days after discovering such property.

Chapter 107, Laws of 1939, is also couched in mandatory words: "The County Treasurer **must** collect the taxes upon all personal property," and "it **shall** be the duty of the Treasurer immediately . . ."

It is to be noted the outlined procedure contemplates accelerated action on the part of the County Treasurer in collecting taxes on personal property, the taxes upon which are not a lien upon real property. It is presumed such taxes in a county will be collected immediately after the Assessor has made his report to the Treasurer, and, in any event, within thirty days after his receiving such report.

The County Treasurer **must**, under this Act, proceed to collect the tax within thirty days; and "The County Treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the wilful failure and neglect of such Treasurer to levy upon and sell such personal property for the taxes levied thereon."

The Treasurer must use the levy made during the previous year, if the levy for the current year has not been made. All these provisions are to facilitate the prompt collection of such taxes; and if so collected, there would be no penalty and interest. The whole procedure is to insure the prompt collection of such taxes, owing to the transitory nature of the property taxed, and the further fact that the lien for taxes on such personal property is a lien only on such property. (Section 2153, Revised Codes of Montana, 1935, as amended by Chapter 97, Laws of 1937.)

A statute which declares a method of collecting taxes is exclusive, if adequate.

State ex rel. Tillman v. District Court of Tenth Judicial Dist. in and for Fergus County, 101 Mont. 176, 53 Pac. (2nd) 107.

"Where a statute . . . provides . . . a special remedy for its collection, such remedy is exclusive . . ."

State v. Nicholson, 74 Mont. 346, 240 Pac. 837.

Where the County Treasurer fails or neglects to discharge the mandatory duties imposed upon him by Chapter 107 of the Laws of 1939 and taxes on personal property are uncollected for this reason, it would appear, in view of the language of said chapter, the County Treasurer and his bondsmen would be liable for the taxes lawfully levied on such personal property and such failure or neglect would constitute wilful "failure and neglect," unless special facts and circumstances were shown. This becomes more apparent when it is noted how drastic is the operation of Section 2239, Revised Codes of Montana, 1935, as amended by Chapter 107, Laws of 1939, when compared with said section before its amendment.

Formerly the Treasurer could show the amount of taxes uncollected and the reason for his failure to collect. Now, however, the County Treasurer and his sureties are liable on his official bond for all personal property taxes remaining uncollected by reason of the wilful failure and neglect of such Treasurer to levy upon and sell such personal property.

It is apparent—from reading the foregoing chapter—the intention of the Legislature was that the County Treasurer, in his collection of personal property taxes which are not a lien on real estate, is not to wait until the 30th day of November to collect said taxes; but he is directed to collect the same immediately.

Chapter 200, Vol. 1, Revised Codes of Montana, 1935, provides a special and adequate method and procedure for the "collection of personal property taxes not a lien on real estate." Therefore, we believe such method set forth is exclusive.

State v. Nicholson, supra.

We do not find any provision in said Chapter 200, Revised Codes of Montana, 1935, providing for penalty and interest. It was no doubt presumed by the Legislature the County Treasurer would perform the duties of his office, as required by law, in regard to the collection of personal property taxes not a lien on real estate. In that event, of course, no penalty or interest would accrue, and no personal property taxes not a lien on real estate would be delinquent, as they would all be paid voluntarily or be collected by sale before the first day of December of each year.

It is therefore my opinion the County Treasurer, in performing his duties as required by law, collects all such taxes before any penalty and interest could attach under any law, and no provision of law has been enacted for the collection of penalty and interest on personal property taxes which are not a lien on real estate.

This opinion expressly overrules a former opinion of the Attorney General printed on Page 219, Volume 14, Report and Official Opinions of the Attorney General.

Sincerely yours,

JOHN W. BONNER
Attorney General