

Opinion No. 103.**County Treasurer—Taxation—
Uncollectible Personal Taxes.**

Held: Taxes on personal property, destroyed or moved from county without payment of taxes, must be carried on the tax rolls, and cannot be dropped therefrom.

August 10, 1943.

Mr. H. C. Packer
County Attorney
Ravalli County
Hamilton, Montana

Dear Mr. Packer:

You cite the case of a stock of merchandise which was burned shortly after assessment for taxes, but before collection; also an instance where, after assessment of taxes but before collection, the owner moved from the county, leaving no property.

In connection therewith, you state it now appears there is no way to collect the taxes, and you ask my opinion whether the taxes must be carried on the treasurer's books indefinitely, or if the treasurer is authorized to drop them from the books.

Section 2152, Revised Codes of Montana, 1935, provides every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

And in *Ford Motor Co. v. Linnane*, 102 Mont. 325, 335, 57 Pac. (2d) 778, the Supreme Court ruled:

"This court has long been committed to the theory that all taxes are levied upon persons and not upon property; that it is the person who is taxed, and that, while strictly speaking the property which the person owns is used to determine the

amount of the tax he shall pay, it is the person who after all pays the tax. The person is liable. In addition to property being a means of determining what the person shall pay, it is also security for the payment."

It is thus seen the tax is in effect a judgment against the owner of the property, the property merely being security; the fact the property is destroyed or removed from the county does not release the tax, the liability of the taxpayer continuing until payment is made.

While it is true in many instances the destruction or removal of property will, as a practical thing, result in non-payment of the tax, the fact remains the tax is still an obligation of the owner, and is an asset of the different taxing agencies. To permit the dropping of the tax from the tax rolls, would in effect authorize the taxing officials of the county to determine the owner will not pay a lawful claim against him.

I am unable to find any specific statutory authority for the county treasurer, or any other county official, to make such determination or to drop the taxes from the tax rolls, under these or similar facts.

It is therefore my opinion the taxes must be carried on the tax rolls, until such time as the legislature may, in its discretion, authorize a different procedure.

Sincerely yours,
R. V. BOTTOMLY
Attorney General