

**Opinion No. 121.****Taxation—Tax Moratorium—Soldiers and Sailors.**

Held: Sections 2236 and 2237, Revised Codes of Montana, 1935, are only applicable where affidavit is filed before tax becomes delinquent.

September 16, 1943.

Mr. Walter T. Murphy  
County Attorney  
Mineral County  
Superior, Montana

Dear Mr. Murphy:

You request my opinion as to whether a person in the military or naval service of the United States may, under the authority of Sections 2236 and 2237, Revised Codes of Montana, 1935, redeem his property by payment of the amount of tax due, without penalty or interest, even though a part of the tax was delinquent prior to his military service.

Section 2236 provides all taxes due at the time of its enactment, or thereafter to become due, on property owned by any citizen of the State of Montana in the active military or naval service of the United States, shall be held in abeyance, and no proceedings taken for the collection thereof, and no penalties or interests shall be added thereto, until the period of one year from and after the cessation of hostilities or discharge from military or naval service.

The section is not self executing, as you will note by referring to the

provisions of Section 2237. In order to be entitled to the moratorium provided by Section 2236, it is necessary an affidavit be filed with the county treasurer, showing the person against whom such taxes are charged is in such active service, it being specifically provided the affidavit must be filed on or before the time when such taxes would become delinquent. Upon the filing of the affidavit, the county treasurer notes the fact of service upon his records, and the collection of the taxes is then suspended.

Your request for opinion indicates, by the use of the word "redeem," that you refer to instances where the property of the taxpayer has already been sold for delinquent taxes. However, it would not seem to make much difference whether the question is confined to such facts, or is also intended to apply to delinquent taxes, where the sale of property has not already been had.

By the very terms of Section 2237, the moratorium could not apply to taxes going delinquent before the owner is in active service, as the affidavit must disclose he is in active service at the time of filing thereof.

It is my opinion that in order for the owner of property to be entitled to the moratorium the affidavit must be filed at or before the time when the taxes are subject to both penalty and interest.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General