

Opinion No. 36.**Taxation—Personal Property Taxation
—Distribution of Funds—Refunds to
be Paid by County General Fund and
Charged to Proper Fund.**

Held: Taxes collected by county treasurer on motor vehicles should be held in suspense fund and some time between March 1st and March 10th of each year, and every sixty days thereafter, shall be distributed in the relative proportions required by the previous year levy. Taxes collected by county treasurer on personal property, which are not liens on real property, shall be immediately distributed to various and proper funds, based on previous years' levy. Refunds shall be paid from county general fund, and county treasurer shall charge state and other funds their proportionate part of refund and make transfer to general fund to pay same.

April 3, 1943.

Mr. Sam D. Goza, Chairman
State Board of Equalization
State Capitol
Helena, Montana

Dear Mr. Goza:

You have referred to your Tax Memorandum No. 116, and particularly the portions thereof advising that under Section 2247, Revised Codes of Montana, 1935, taxes collected on personal property should be immediately distributed to the various and proper funds, and that under Section 4 of Chapter 72, Laws of 1937, taxes collected on motor vehicles should be held in a suspense fund, and at some time between March 1st and March 10th of each year, and every sixty days thereafter, shall be distributed in the relative proportions required by the several levies. You ask my opinion as to the correctness of your conclusions.

The reason for your request for opinion, as I understand the matter, is that there is an apparent conflict between your memorandum and an opinion of this office appearing in Volume 15, Report and Official Opinions of the Attorney General, No. 199, in which opinion it was held taxes collected on personal property, collection being based on the levy of the previous year, should be designated as "unfinished business," subject to correction when levy is finally made in August.

In the Attorney General's opinion referred to, it was held that, by reason of the holding of the Supreme Court in *First National Bank v. Sanders County*, 85 Mont. 450, 279 Pac. 247, it was proper to hold these funds in the county treasury, until the final determination of the tax levy in August, as otherwise if the county were forced to make a refund, it would, in effect, amount to a diversion of county funds from county purposes to the state, in view of the fact refund could not be made by the state, in the absence of a specific appropriation therefor by the state legislature.

Section 2239, Revised Codes of Montana, 1935, as amended by Chapter 107, Laws of 1939, makes it the duty of the county treasurer, when notified by the county assessor, to proceed to collect the taxes on personal property, which are not a lien upon real property, and provides:

"... For the purpose of determining the taxes due, on such personal property, the treasurer must use the levy made during the previous year, if the levy for the current year has not been made. . ."

Section 2247, Revised Codes of Montana, 1935, provides:

"... The treasurer shall, upon collection of any such taxes, (taxes on personal property), immediately distribute the money so collected to the various and proper funds in his charge. . ."

Section 4, Chapter 72, Laws of 1937, provides:

"The county treasurer shall credit all taxes on motor vehicles so collected to a motor vehicle suspense fund, and at some time between March 1st and March 10th of each year, and every sixty days thereafter, the coun-

ty treasurer shall distribute the same in relative proportions required by the levies for state, county, school district and municipal purposes in the same manner as other personal property taxes are distributed. . ."

The statutes of the state, insofar as the question under consideration is concerned, have divided personal property into two classes: (1) motor vehicles, the tax upon which is paid at the time license is obtained; (2) all other personal property where the tax thereon is not a lien upon real property sufficient to secure the payment. It is provided, as to the first class, the county treasurer must distribute the taxes between March 1st and March 10th of each year, and every sixty days thereafter, and, as to the second class, the distribution must be made immediately upon collection. The terms of the two statutes in question are mandatory. There is no discretion left to the county treasurer when the distribution must be made.

In *Wheir et al. v. Dye*, 105 Mont. 347, 359, 73 Pac. (2nd) 209, attack was made on the constitutionality of Chapter 72, Laws of 1937, one of the grounds being there would not be uniformity of taxation, as applied to motor vehicles, in that Chapter 72 made no provision for adjustment of the tax when finally determined for the year in which collection was made. This claim was rejected by our Supreme Court, with the explanation Section 2247, Revised Codes of Montana, 1935, providing for refund, applied to the motor vehicle tax.

It is to be noted the statutes above cited cover the proposition of the distribution of the taxes to the proper fund, but not the remission of the state's share to the State Treasurer. The actual remission of the state's share is provided for in Section 2255, Revised Codes of Montana, 1935:

"The county treasurer, between the first and twentieth days of each month, must remit to the state treasurer, all moneys belonging to the state of Montana which were collected by such treasurer during the preceding month. Such remittance shall be accompanied by a detailed report upon such form as the state treasurer may prescribe, and for all such moneys by him collected and not remitted by him to the state treasurer within five days from the time herein

required he shall pay interest at the rate of 10% per annum."

This section was in identical form when the opinion in Volume 15, Report and Official Opinions of Attorney General, No. 199, was given. However, it is to be noted that—at the time of the rendition of the opinion—there was no method provided by law for a refund to the county by the state when a refund had been made to a taxpayer, except by legislative appropriation. Since then, Section 2222, Revised Codes of Montana, 1935, was amended by Chapter 201, Laws of 1939, so that it now provides:

"... Whenever any payment shall have been made to the state treasurer as provided in Section 2255 of this code, and it shall afterwards appear to the satisfaction of the board of county commissioners that a portion of the money so paid should be refunded as herein provided, said board of county commissioners may refund such portion of said taxes, penalties and costs so paid to the state treasurer, and upon the rendering of the report required by Section 2257 of this code, the county clerk shall certify to the state auditor, in such form as the state auditor may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts so refunded.

"All refunds ordered to be paid by the board of county commissioners shall be paid by the county treasurer out of the general fund of the county and the county treasurer shall then make such transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made therefrom on account of such funds."

In *First National Bank v. Sanders County*, 85 Mont. 450, 279 Pac. 247, cited in the Attorney General's opinion above referred to, it was held Section 2222 Revised Codes of Montana, 1921, being numbered the same in the 1935 codes, was inoperative insofar as money in the state treasury was concerned by reason of Section 34 of Article V of the State Constitution: "No money shall

be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officers in pursuance thereof, except interest on the public debt." By the amendment to the section provided by Chapter 201, Laws of 1939, this objection was removed, as the state's money from which refund is made has not reached the state treasury. The reason for the ruling in the Attorney General's opinion cited no longer exists, and for that reason the opinion has no further force.

Chapter 201, Laws of 1939, contains a two years' limitation for filing claims for refunds. This is in conflict with Section 2247, Revised Codes of Montana, 1935, providing claims for refunds on personal property must be made before November 1st of the year in which the excess tax was collected. Chapter 201 is a general law applying to all refunds. Section 2247 is a special law applying to personal property taxes collected by the county treasurer based on the previous year's rate. Under the general rule of statutory construction, the provisions of a special law apply rather than those of a general law, where there is a conflict, so that refunds of the taxes in question can only be made where claim is filed before the first day of November, as provided in Section 2247, *supra*.

While it is true strict compliance with the statutes cited, and distribution of taxes in accordance therewith, may result in some taxing agency, or some fund, getting more or less than would be received if the collection were made on the levy finally adopted for the year in which collection is made, there is no authority given any of the executive officers of the state or the county to change the method provided by the legislature. In the absence of any provision of the law permitting an adjustment upon the final adoption of the tax levy, it follows the distribution when made is a final one.

It is therefore my opinion taxes collected on motor vehicles should be held in a suspense fund, by the county treasurer, and at some time between March 1st and March 10th of each year, and every sixty days thereafter, the taxes shall be distributed in the relative proportions required by the previous year's levy. Taxes on other personal property, which are not a lien on real property,

shall be immediately distributed to the various and proper funds, also based on the previous year's levy.

Sincerely yours,
R. V. BOTTOMLY
Attorney General