

Opinion No. 138.

**Taxation—Personal Property, Not a
lien on Real Property—County Treas-
urer—Assessor, County, duties of.**

Held: It is the duty of the county
treasurer to determine and ex-
tend the amount of tax due and
payable on personal property
discovered by the assessor at

times other than the regular assessment period, the taxes upon which are not a lien upon real property, and to collect the same in the manner provided by statute.

March 31, 1946.

Mr. John F. McGough
County Attorney
Jefferson County
Boulder, Montana

Dear Mr. McGough:

I have your letter with your opinion attached thereto, relative to the question of the duty of the county assessor and county treasurer in the assessment and collection of personal property taxes not secured by lien on realty when such personal property is subject to assessment at a time during the year other than the regular assessment period. I agree with your opinion.

It appears from the statements in your letter that the duties of the assessor and treasurer with reference to assessment and collection of personal property taxes during the regular assessment period, and such duties when personal property becomes subject to taxation during any time of the year other than the regular assessment period have been questioned.

From a study of the applicable statutes, it is very apparent that there is a difference as to the duties of these officers in the two situations mentioned. The duties of these officers with reference to the regular assessment period, under the provisions of Chapter 167, Laws of 1943, were fully covered by Opinion No. 47, Volume 21, Report and Official Opinions of the Attorney General. However, that opinion would not be applicable to the situation where personal property comes into the state or county, or is found therein, before or after the regular assessment period and may be removed from the county to avoid assessment or payment of taxes. The latter situation is governed by the provisions of Section 2238, Revised Codes of Montana, 1935, as amended by Chapter 136, Laws of 1943, and Section 2239, Revised Codes of Montana, 1935 as amended by Chapter 107, Laws of 1939.

Section 2238, as amended, supra, makes it 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 five days thereafter, make a report to the treasurer, setting forth the nature, kind, description and character of such property, in such a definite manner that the treasurer can identify the same, and the 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 . . ."

Section 2239, as amended, supra, makes it the duty of the county treasurer, upon receipt of the report of the assessor as provided in Section 2238, as amended, to immediately notify the person against whom the tax is assessed that the amount of such tax is due and payable. It then provides that the treasurer must collect the tax within thirty days, if not paid, by levy and sale. This section then 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 yet been made."

The procedure for the assessment, levy and collection of taxes on such property as outlined in the foregoing statutes is clear. The duties of the county assessor and county treasurer in such case are likewise clear. The assessor must make a report to the treasurer showing the description, number, kind, location, ownership and the valuation of such property as made by him. The treasurer then must determine the amount of the tax, using the levy for the previous year, in the event the current levy has not then been made, or otherwise the current levy, and extend such amount on the tax rolls of the county.

It is therefore my opinion that it is the duty of the county treasurer to determine and extend the amount of tax due and payable on personal property discovered by the assessor, at times other than the regular assessment period, taxes upon which are not a lien upon real property, and to collect the same in the manner provided by statute.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General