

Opinion No. 112**Redemption of Real Property—County Treasurer—Taxes, Delinquent.**

Held: 1. With respect to the redemption of real property sold for delinquent taxes, where the County is the holder of the tax sale certificate or certificates, the person seeking to redeem may do so without payment of taxes for the current year, or any part thereof.

However, if the tax sale certificate or certificates are held by another than the County and he has paid subsequent taxes, the redemptioner must pay all of the taxes represented by the tax sale certificate or certificates held by such other person, plus the subsequent taxes and interest that have been paid by him so that he will not suffer loss.

May 24th, 1950.

Mr. W. A. Brown
State Examiner
State Capitol
Helena, Montana

Attention: Mr. A. M. Johnson,
First Asst. State Examiner

Dear Mr. Brown:

I have your letter requesting my written opinion concerning redemption of real property sold for delinquent taxes.

It appears from your letter than some County Treasurers in Montana insist that the 1949 tax due on real property sold for taxes for the year 1948 and/or prior years, must be paid as a condition for redemption, without payment of the 1949 tax, or any part of it. You desire to know which is the correct legal procedure.

The question involved may be stated as follows: Does the law require payment of the 1949 tax upon any given piece of real property sold for taxes of 1948 and/or prior years, before such property may be redeemed?

It is my opinion the law does not require payment of the 1949 tax, or any part of it, as condition for such redemption, except as hereinafter stated.

Tax sales of property in liquidation of delinquent taxes thereon, and the right of redemption, are statutory. It is elementary that statutory provisions for redemption must be liberally construed in favor of the redemptioner.

Prior to its amendment, Section 2231, Revised Codes of Montana, 1935, required subsequent assessment of real property struck off to the County, but provided that such property should not again be exposed to tax sale for subsequent delinquent taxes so long as the County held the tax sale certificate. Under such circumstances, the taxes were allowed to accumulate against the property. If the owner sought to redeem from the tax sale, he was required to pay the tax for which the property was sold, with penalty and interest, plus the accumulated taxes. Frequently he could not pay such aggregate amount at one time. As a result, the Twenty-fifth Legislative Assembly of Montana amended said section by Chapter 54, Laws of 1937, effective February 25, 1937. Under the amendment, real property was thereafter sold annually for the delinquent taxes thereon, irrespective of who held the tax sale certificate. Thus each tax sale was separate and independent from any other. The property owner could redeem from any one or more tax sales without payment of the total accumulated delinquent taxes upon the property, so long as the County held the tax sale certificates. The statute was remedial, and as pointed out by John W. Bonner, a former Attorney General of Montana, in his Opinion No. 42, reported in Volume 19, Page 84, Opinions of the Attorney General:

"It is apparent that the Legislature in amending Section 2231, Revised Codes of Montana, 1935, by Chapter 54 of the Laws of 1937—intended to permit redemption by a delinquent taxpayer of any one tax sale where no assignment had been made, thereby lengthening the burden of the taxpayer, permitting him—by paying the oldest tax sale—to lengthen the time of the procuring of a tax deed, giving him more time in which to make redemption of each tax sale separately, instead of compelling him to pay the accumulated taxes as formerly required."

It follows therefore, that when the County is the holder of the tax sale certificate, the redemption may be made without payment of the 1949 tax, or any part thereof.

It may be that some confusion exists by reason of the provisions of Section 84-4188, Revised Codes of Montana, 1947, formerly Section 2233, R.C.M., 1935, which reads as follows:

"In case property is sold to the County as purchaser, pursuant to Section 84-4124 of this code, and is subsequently assessed, pursuant to Section 84-4168 of this code, no person must be permitted to redeem from such sale, except upon payment also of the amount of such subsequent assessment, costs, fees and interest."

It does not appear that the foregoing section has been specifically amended since prior to enactment of the 1921 Codes. However, the former Attorney General in the opinion above referred to held that said section was impliedly amended by said Chapter 54, Laws of 1937. He held as follows:

"Insofar as there is any conflict between Section 2231, as amended, and Sec. 2233, Revised Codes of Montana, 1935, the latter will be deemed to be amended by implication to the extent only of such conflict."

However, where the property was struck off to another than the County, or where the County assigned its tax sale certificate to another, redemption is permissible only upon payment of the subsequent taxes that have been paid by such holder of the tax sale certificate or certificates. It is expressly provided in part by Section 84-4154, Revised Codes of Montana, 1947, as follows:

"In all cases where real estate has been sold for delinquent taxes, the purchaser of such tax sale, or his assignee, may, subsequent thereto, pay the subsequent taxes assessed against said land, . . . and no redemption shall be made until the amount of such sale with interest, and such subsequent taxes and interest shall have been paid by the person seeking to redeem such lands."

It is my opinion, therefore, with respect to such redemption where the County is the holder of the tax sale certificate or certificates, the person seeking to redeem may do so without payment of the 1949 tax,

or any part thereof; but if the tax sale certificate or certificates are held by another than the County and he has paid subsequent taxes, the redemptioner must pay all of the taxes represented by the tax sale certificate or certificates held by such other person, plus the subsequent taxes and interest that have been paid by him so that he will not suffer loss.

It is my further opinion that the taxpayer may pay the 1949 tax, both the tax delinquent for the first half, and the current last half, without paying or redeeming from any tax sale for any prior year.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.