

Opinion No. 79**School Districts, Refunding of Taxes Levied for — Taxes May Be Refunded When Erroneously Collected — Board of County Commissioners, May Refund Taxes When Collected Erroneously.**

- Held:** 1. A tax erroneously collected due to errors in the Treasurer's books which show a deficit and registered warrants for a school district when in fact there were no registered warrants and deficit, may be refunded under the provisions of Section 2222, Revised Codes of Montana, 1935, as amended by Chapter 201, Laws of 1939 (now Section 84-4176, Revised Codes of Montana, 1947). Such refund can only be made where there is strict compliance with the statute as to the time and manner of making claim for refund.

January 7, 1950.

Mr. John J. Cavan
County Attorney
Wheatland County
Harlowton, Montana

Dear Mr. Cavan:

You have requested my opinion concerning the refunding of taxes which were levied for a school district in your County. You advised me that the books in the County Treasurer's office showed a deficit and outstanding registered warrants for the district at the time taxes were levied and subsequent to such time it appeared that the books were erroneous and there was a balance to the credit of the school district.

It is apparent that the increase in levy for the schol district in question would not have been made if the treasurer's books did not erroneously show that there were outstanding warrants that would have to be paid. In other words the additional levy was due to a bookkeeping error and resulted in an unjustified levy.

Section 2222, Revised Codes of Montana, 1935, as amended by Chapter 201, Laws of 1939 (now Section 84-4176, Revised Codes of Montana, 1947) provides:

"Any taxes, per centum and costs, heretofore or hereafter, paid more than once or erroneously or illegally collected, may, by order of the County Commissioners, be refunded by the County Treasurer."

In *Christofferson v. Choteau County*, 105 Mont. 577, 74 Pac. (2d) 427, the court considered the Montana cases which had previously construed Section 2222, *supra*, and held that the Section would apply to taxes erroneously collected and that a previous decision of the court which stated that such recovery could not be had was inadvertently made. The court adopted the rule that an erroneous assessment occurs when the taxing officers have power to act but err in the exercise of that power and that an illegal assessment takes place when they have no power at all to act. Applying this rule to the facts submitted, it is apparent that a refund by the Board of County Commissioners would be proper as the misinformation shown by the Treasurer's books led to an erroneous collection of the tax. It is also important to remember that such refund can be made only if there is strict compliance with Chapter 201, Laws of 1939, which designates the time and the manner in which claim for refund can be made.

This problem has been previously considered by the office in Opinion No. 129, Vol. 20, Report and Official Opinions of the Attorney General and also in Opinion No. 485, Vol 19, Report and Official Opinions of the Attorney General and these opinions are in accord with the views expressed here.

It is, therefore, my opinion that a tax collected, due to errors in the Treasurer's books which show a deficit and registered warrants for a schol district when in fact there were no registered warrants and deficit, may be refunded under the provisions of Section 2222, Revised Codes of Montana, 1935, as amended by Chapter 201, Laws of 1939 (now Section 84-4176, Revised Codes of Montana, 1947). Such refund can only be made where there is strict compliance with the statute as to the time and manner of making claim for refund.

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