

Opinion No. 83**Taxation—Collection of Taxes—
Omitted Levy—Assessment Book—
Penalties and Interest.**

- Held:** 1. A county wide levy for school purposes, which appears on the minutes of the books of the county commissioners, but which has not been entered or extended against the property of the taxpayers in the assessment book, can be collected after making the proper entries, notwithstanding several months delay.
2. Penalty and interest cannot be collected for non-payment of tax levies which have not been entered and extended against the property of taxpayers in the assessment book.

May 2, 1952.

Mr. John Michael McCarvel
County Attorney
Deer Lodge County
Anaconda, Montana

Dear Mr. McCarvel:

You have requested my opinion concerning a county wide levy for high school purposes which was set by the Board of County Commissioners of your county. You advise me that a 5.6 mill levy was collected and an 11.6 mill levy should have been collected. There has been submitted to this office a certified copy of the minutes of the records of your county which shows that the 11.6 mill levy was fixed for high school purposes at the August 13, 1951, meeting of the Board of County Com-

missioners. You ask if the 6 mills may now be collected.

Section 84-3805, Revised Codes of Montana, 1947, makes it the duty of the Board of County Commissioners to "Fix the rate of county taxes and designate the number of mills" on the second Monday of August, which Section was complied with in the fixing of the levy in question. The computation and the entry in the assessment book of the amount due from each taxpayer for the 6 mills were not done in accordance with the requirements of Section 84-4005, Revised Codes of Montana, 1947, and it was this failure which results in the tax not having been collected. The completed assessment book, with the computations for the omitted 6 mills, should have been delivered to the county clerk on or before the second Monday of October and the county clerk should have delivered on or before the third Monday of October the same book to the county treasurer for the collection of the taxes. Section 84-4007, Revised Codes of Montana, 1947.

It is apparent that the orderly procedure as fixed by our statutes has not been observed as to the levy in question. The problem presented is whether the delay in making the computation and entry in the assessment book will preclude the enforcement of the omitted levy and the collection of the tax. In the case of *Oakley v. Wilson*, 50 Ida. 334, 296 Pac. 185, the Supreme Court of Idaho considered the collection of a tax which had not been charged against the property for three years and said:

"The computation and extension of village taxes upon the general tax roll is no part of the levy, but a purely ministerial duty, a mere step in collection, and where a public officer is by law enjoined to perform a ministerial duty within a time certain neglects to perform it, he may do so, after the expiration of the prescribed time, unless prohibited by some negative language in the statute, or too late to accomplish the desired result."

The above conclusion and reasoning are sustained by the following cases: *State v. Baldwin*, 62 Minn. 518, 65 N.W. 80; *Childs v. Marion County*, 163 Or. 411, 97 Pac. (2d) 955.

It is only reasonable to collect taxes which have been levied and if the error, as here, is a failure of a public official to make the proper bookkeeping entries, the taxpayers should not be relieved of their lawful obligations. Also, under similar reasoning, a taxpayer should not be penalized for the failure of a public official. In *Calkins v. Smith*, 106 Mont. 453, 78 Pac. (2d) 74, our court said in regard to Sections 84-4101, et seq., Revised Codes of Montana, 1947, that these Sections outline the procedure for the collection of past due taxes and that "The provisions are mandatory and exclusive." Section 84-4103, Revised Codes of Montana, 1947, fixes the time of payment of taxes and states that all taxes not paid on the dates designated shall be considered delinquent and penalties imposed. However, the specific language used is important as it reads, "All taxes levied and assessed in the State of Montana . . . shall be payable as follows . . ." As conditions precedent to the imposition of penalties the taxes must not only be levied but also assessed. That there has been a levy cannot be questioned as you submitted a certified copy of the minutes showing that a 11.6 mill levy had been made. The term "assessment of taxes" as used in our law is not so easily defined.

In 51 Am. Jur. 615, the text states:

"Assessment embraces more than simply the amount; it includes the procedure on the part of the officials by which the property is listed, valued, and finally the proportion declared."

The meaning of the phrase "levy and assessment of taxes" was considered exhaustively in *State v. Camp Sing*, 18 Mont. 128, 44 Pac. 516, where the court concluded that the words meant the procedure for the collection of taxes including the amount payable by each individual in proportion that the valuation of his property bears to the valuation of all the property taxes. As under the facts given the amount due for the 6 mill levy has not been extended in the assessment book against the property of each individual in the county, one of the pre-requisite conditions for starting the time after which penalties and interest will be imposed has not been satisfied.

It is, therefore, my opinion that a

county wide levy for school purposes, which appears on the minutes of the books of the county commissioners, but which has not been entered or extended against the property of the taxpayers in the assessment book, can be collected after making the proper entries, notwithstanding several months delay.

It is also my opinion that penalty and interest cannot be collected for non-payment of tax levies which have not been entered and extended against the property of taxpayers in the assessment book.

Very truly yours,
ARNOLD H. OLSEN
Attorney General