

Opinion No. 13**Taxation—Time For Protest**

Held: A taxpayer who had paid the first half of his taxes on or before November 30th without protest, may protest the second half of his taxes due May 31st and his failure to protest the first installment does not constitute a waiver of his right to protest the second installment.

May 8, 1957

Mr. R. E. Towle
State Examiner
Capitol Building
Helena, Montana

Dear Mr. Towle:

You have requested an opinion concerning the question of whether a taxpayer who has failed to protest the first installment of his taxes may protest the second installment. You state the situation as follows:

"A taxpayer has paid his first half of the 1956 taxes on a current basis, that is before November 30, 1956. He now has decided that a portion of the taxes are illegal or excessive and

wishes to protest a portion of the second half of the 1956 taxes, which are due May 31, 1957."

Query: Does the failure to protest the first installment constitute a waiver of the taxpayer's right to protest the taxes for the year involved?

Section 2269, Revised Codes of Montana, 1935 (Sec. 84-4502, Revised Codes of Montana, 1947) governs the procedure for the protestation of taxes and their recovery by the taxpayer. Section 84-4502 states in part:

"(1) In all cases of levy of taxes, licenses or other demands for public revenue which are deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may before such tax or license become delinquent pay under written protest such tax or license . . . provided, that any action instituted to recover any license or tax paid under protest shall be commenced and summons served within sixty (60) days after the date of payment of the same."

This question has been decided by the Montana Supreme Court in the case of *First National Bank v. Sanders County*, 85 Mont. 450, 465, 279 P. 247, wherein the plaintiff bank paid the first half of the assessed taxes without protest and subsequently protested the second payment. The Court held:

"The remedy provided by Section 2269 (84-4502, Revised Codes of Montana, 1947) is applicable, and Section 2222 (84-4176, Revised Codes of Montana, 1947) is not. The tax payment in November, 1927, was made voluntarily, and the plaintiff has no legal nor moral right to recover it."

The Court added further:

"The payment of November 29, 1927, not having been paid under protest, but voluntarily, was beyond recall, but having made the payment, plaintiff was required to pay on or before May 31, 1928, at 5 P. M., on the seven per cent basis, the sum of \$66.24 only; that is, one-half of the amount which plaintiff, according to its own theory, was liable to pay for the 1927 taxes."

It is therefore my opinion, based on Section 84-4502, Revised Codes of Montana, 1947, and *First National Bank v. Sanders County*, 85 Mont. 450, 465, that a taxpayer may protest the second installment of his tax although he did not protest the first installment.

Very truly yours,
FORREST H. ANDERSON
Attorney General