

Opinion No. 20

**FISH AND GAME; Motor Boats; numbers for—FISH AND GAME;
Motor Boats; property tax — TAXATION; Motor Boats — Section
69-3504, Revised Codes of Montana, 1947—Chapter 219, Laws
of 1961**

Held: Montana Fish and Game Department may issue certificates of numbers on motor boats and vessels without having a certificate of tax payment on such property where the boat owner is the owner of real property or is exempt from the payment of Montana property taxes.

July 25, 1961

Mr. W. J. Everin, Director
Montana Fish and Game Department
Mitchell Building
Helena, Montana

Dear Mr. Everin:

You have requested my opinion concerning the effect of Section 1, Chapter 219, of the Laws of 1961, which amends Section 69-3504, RCM, 1947, to provide that an application for a certificate of number on a motor boat "must be accompanied by a certificate of tax of personal property showing payment of tax on the motor boat or vessel for the current year," as contrasted to certain other provisions of the statutes on taxation. Your particular concern is with owners of real property, to whom are issued no special receipt or certificate for payment of tax on personal property, and who by law do not have to pay any part of their 1961 taxes until the 30th day of November, when only the first half need be paid, and the second half may be postponed until the 31st day of May, 1962.

It is my opinion that this amendment to the Motor Boat and Vessel Regulation Act is not intended to supersede or repeal any of the general tax statutes of the State of Montana, as repeals by implication are not favored. *Wheir v. Dye*, 105 Mont. 347, 73 Pac. 2d 209. Accordingly, it is necessary to reconcile these conflicting provisions, and to comply with the spirit and intent of this act of the legislature, insofar as possible.

As to those owners of motor boats or other vessels who do not own real property, there does not appear to be any problem. These individuals are required by Section 84-4202, RCM, 1947, to pay their personal property taxes within thirty days after assessment and levy. Under the circumstances, such individuals will have or should have a tax receipt which can be used to comply with the 1961 amendment requirement.

As to owners of real property, it is plainly not possible under existing statutes for them to have a receipt or certificate of the taxes being paid on their motor boats or vessels. They are not required by the statutes to pay personal taxes separately, where they are a lien on their real property, and there is no machinery in the tax statutes and procedures for segregating any specific items of personal property such as motor boats, as is the case with motor vehicles.

Under the circumstances, it is my opinion that the Montana Fish and Game Department may issue certificates of numbers on motor boats and vessels without having a certificate or receipt of tax payment on such property, where the individual is the owner of real property. There are several methods by which the Montana Fish and Game Department license agents can be satisfied that the motor boats have been assessed for taxation, such as by inspection of the records of the county assessor, or by obtaining from the county assessor a certificate that the individual is a real property owner and his motor boat or vessel is listed on the tax rolls.

It would appear that either of these methods would impose a rather burdensome requirement upon either Fish and Game Department license agents or upon the staffs of the county assessors of Montana. A third alternative, which in my opinion will satisfy the requirements of the law, is for the Montana Fish and Game Department license agents to obtain from the individual boat owner an affidavit describing the motor boat in question, specifying that the individual is the owner of real property assessed on the tax rolls of a specific county, that such real property is subject to the lien provided by law, that the individual has returned to the assessor a statement setting forth his property on the first Monday of March, and that said statement includes the motor boat or vessel described. In the case of servicemen and non-residents who are not required to pay a Montana property tax, the exemption should be claimed by affidavit.

If a copy of this affidavit is furnished to the county assessor of the individual boat owner's county of residence, and the original is attached to the application for a certificate of number, it is my opinion that this will satisfy the intent and spirit of the requirement of the 1961 amendment. By statute, the assessor of each county is required to ascertain all taxable property, and a copy of this affidavit is adequate notice of the existence of such property, as will enable the assessor to check against his records and determine that the motor boat or vessel in question is on the tax rolls and the taxes against it will be paid.

Very truly yours,
FORREST H. ANDERSON
Attorney General