

VOLUME NO. 38

OPINION NO. 6

INTEREST - Delinquent personal property taxes;  
 PROPERTY, PERSONAL - Taxes not a lien on real estate;  
 TAXATION AND REVENUE - Collection of personal property taxes not a lien on real estate;  
 TAXATION AND REVENUE - Interest and penalty on unpaid personal property taxes not a lien on real estate;  
 TAXATION AND REVENUE - Payment under protest of personal property taxes not a lien on real estate;  
 MONTANA CODE ANNOTATED - Sections 15-1-402, 15-16-102, 15-16-111, 15-16-113, 15-16-404, 15-16-503, 15-17-901(1);  
 REVISED CODES OF MONTANA - Sections 84-4103, 84-4181, 84-4201, 84-4502;  
 OPINIONS OF THE ATTORNEY GENERAL: 14 Op. Att'y Gen. No. 219 (1931), 19 Op. Att'y Gen. No. 65 at 121 (1941), 21 Op. Att'y Gen. No. 138 at 185 (1946), 23 Op. Att'y Gen. No. 102 at 274 (1950).

HELD: 1. Personal property taxes that are not a lien on real estate, to be collected under section 15-16-113, MCA (84-4202, R.C.M. 1947), become delinquent thirty days after notification of the taxpayer that taxes are due.

2. Section 15-16-102, MCA (84-4103, R.C.M. 1947), applies to personal property taxes not a lien on real estate to the extent that those taxes draw interest from the time they become delinquent until they are paid and a penalty is added.
3. Section 15-1-402(1), MCA (84-4502, R.C.M. 1947), providing for payment of taxes under protest before they become delinquent, applies to personal property taxes not a lien on real estate.

26 January 1979

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Stillwater County Courthouse  
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Dear Mr. Laws:

You have asked for my opinion on several issues concerning the collection of personal property taxes that are not a lien on real estate. I have stated your questions as follows:

1. When do personal property taxes that are not a lien on real estate, under section 15-16-113, MCA (84-4202, R.C.M. 1947), become delinquent, if ever?
2. Does section 15-16-102, MCA (84-4103, R.C.M. 1947), which provides a time for payment of taxes and for the accrual of interest and a penalty on unpaid taxes apply to personal property taxes not a lien on real estate, to be collected under section 15-16-113, MCA (84-4202, R.C.M. 1947)?
3. Does section 15-1-402, MCA (84-4502, R.C.M. 1947), which provides for payment of taxes under protest before they become delinquent, apply to personal property taxes not a lien on real estate, to be collected under section 15-16-113, MCA (84-4202, R.C.M. 1947)?

"Personal property taxes not a lien on real estate" are taxes on personal property, the owner of which does not, at the time of assessment, own sufficient real property to secure payment. Section 15-16-111, MCA (84-4201, R.C.M. 1947), sets forth the duty of the Department of Revenue in the collection of those taxes:

It shall be the duty of the department of revenue or its agent, upon discovery of any personal property in the county the taxes upon which are not a lien upon real property sufficient to secure the payment of such taxes, to immediately and in any event not more than 5 days thereafter make a report to the treasurer, setting forth the nature, kind, description, and character of such property....

The corresponding duty of the county treasurer is given in section 15-16-113, MCA (84-4202, R.C.M. 1947):

(1) The county treasurer shall collect taxes on all personal property and, in the case provided in 15-16-111, shall immediately upon receipt of the report prescribed by 15-16-111 notify the person or persons against whom the tax is assessed... that the amount of such tax is due and payable at the county treasurer's office. The county treasurer shall, at the time of receiving the report and in any event within 30 days from the receipt of such report, levy upon and take into his possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer and proceed to sell the same in the same manner as property is sold on execution by the sheriff....

(2) The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell such personal property for the taxes levied thereon.

Section 15-17-901(1), MCA, which was formerly a subsection of the preceding law, section 84-4202(3), R.C.M. 1947, states:

The tax on personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection.... A resort to any one of the methods provided for does not bar the right to resort to either or both of the other

methods. Any of the methods provided for may be used until the full amount of the tax is collected.

No provisions concern specifically when "taxes that are not a lien on real estate" become delinquent, whether they may be paid under protest, or whether penalties and interest accrue. Section 15-16-102, MCA (section 84-4103, R.C.M. 1947), does provide for interest and a penalty on taxes generally:

All taxes levied and assessed in the state of Montana, except special assessments made for special improvements in towns and cities shall be payable as follows: (1) One-half of the amount of such taxes shall be payable on or before 5 p.m. on November 30 of each year, and one-half on or before 5 p.m. on May 31 of each year. (2) Unless one-half of such taxes are paid on or before 5 p.m. on November 30 of each year, then such amount so payable shall become delinquent and shall draw interest at the rate of  $\frac{2}{3}$  of 1% per month from and after such delinquency until paid, and 2% shall be added to the amount thereof as a penalty. (3) All taxes due and not paid on or before 5 p.m. on May 31 of each year shall be delinquent and shall draw interest at the rate of  $\frac{2}{3}$  of 1% per month from and after such delinquency until paid, and 2% shall be added to the amount thereof as a penalty.

Section 15-1-402(1), MCA (section 84-4502(1), R.C.M. 1947), provides for the payment of tax under protest:

In all cases of levy of taxes...which are deemed unlawful by the party whose property is thus taxed ..., such party may, before such tax...becomes delinquent, pay under written protest such portions of such tax...deemed unlawful to the officers designated and authorized to collect the same, specifying the grounds of protest. Thereupon the party so paying or his legal representatives may bring an action in any court of competent jurisdiction...to recover such portions of such tax...paid under protest....

You have correctly pointed out the conflicts in these statutes. Section 15-16-113(1), MCA (section 84-4202(1) R.C.M. 1947), appears to require that personal property, the

taxes on which are not a lien on real estate, must be seized by the county treasurer and sold on execution immediately upon receiving a report from the Department of Revenue that such property exists. Subsection (2) reinforces this interpretation, providing for the treasurer to be liable on his official bond for failure to seize and sell the property. The first conflict appears in section 15-17-901(1), MCA (section 84-4202(3), R.C.M. 1947), which says that seizure and sale is not the exclusive method of collection; a civil action for its collection may be brought instead. Furthermore, section 15-17-901(1), MCA (section 84-4202(3), R.C.M. 1947), allows for the seizure and sale of property "at any time after the date the assessment is made," rather than "within 30 days from the receipt of the department of revenue's report," as section 15-16-113(1), MCA (section 84-4202(1), R.C.M. 1947), provides.

The provisions for seizure and sale immediately upon receipt of the report, section 15-16-113(1), MCA (section 84-4202(1), R.C.M. 1947), also conflict with section 15-16-102, MCA (section 84-4103, R.C.M. 1947), which provides that "all taxes levied and assessed in the state of Montana" are payable in two installments in November and May, and become delinquent and subject to interest and penalty if not paid at those times. Finally, the provisions for immediate seizure and sale refer to all owners of property upon which a tax that is not a lien on real estate has been assessed as "delinquent taxpayer[s]." The implication that the tax is delinquent as soon as it is assessed leaves little room for payment under protest pursuant to section 15-1-402(1), MCA (section 84-4502(1), R.C.M. 1947), which requires that payment to be made "before such tax...becomes delinquent."

You are not the first person to have been troubled by the apparent inconsistencies in these statutes. Several previous Attorneys General have been asked to render their opinion on similar questions and have reached differing conclusions.

In 1931, Attorney General Foot held: (1) personal property taxes that are not a lien on real estate draw interest and a penalty from and after November 30th until paid, and (2) such taxes may not be paid in semi-annual installments. 14 Op. Att'y Gen. No. 219 (1931). He found that the precursor to section 15-16-102, MCA (section 84-4103, R.C.M. 1947), which refers to "all taxes levied and assessed," was controlling on all matters except where inconsistent with one of the specific provisions of law relating to the payment of personal property taxes that are not secured by a lien on real estate. He concluded that the provision for semi-

annual installments was inconsistent with the law requiring the county treasurer to seize the personal property immediately. The latter provision was controlling. Personal property taxes were, therefore, supposed to be collected by the county treasurer prior to November 30th.

[N]evertheless if said taxes are not collected or paid prior to that date they are included within the term "all taxes" found in [the precursor to section 15-16-201, MCA (84-4103, R.C.M. 1947)], and this provision for the adding of penalties and interest is not inconsistent with the laws relating to the collection of personal property taxes where they are not a lien on real estate.

If the county treasurer has failed to collect the personal property taxes prior to November 30th this is an omission of a duty on his part but the liability of the property owner to pay the taxes still exists and unless he discharges that liability on or before November 30th he incurs the penalty and interest provided by [the precursor to section 15-16-102, MCA (84-4103, R.C.M. 1947)]....

Id. at 220.

Ten years after this opinion, Attorney General Bonner expressly overruled it. 19 Op. Att'y Gen. No. 65, at 121, 123 (1941). He found two factors to be significant. First, the provision making the county treasurer liable on an official bond for any taxes uncollected by reason of willful failure to seize and sell the property had been added in 1939. Attorney General Bonner concluded:

It is apparent...the intention of the Legislature was that the County Treasurer, in his collection of personal property taxes which are not a lien on real estate, is not to wait until the 30th day of November to collect said taxes; but he is directed to collect the same immediately.

Id.

This provided the exclusive method for collection of these taxes. Second, no statute specifically provided for penalty and interest on taxes not a lien on real estate:

It was no doubt presumed by the Legislature the County Treasurer would perform the duties of his

office, as required by law, in regard to the collection of personal property taxes not a lien on real estate. In that event, of course, no penalty or interest would accrue, and no personal property taxes not a lien on real estate would be delinquent, as they would all be paid voluntarily or be collected by sale before the first day of December of each year.

Id.

In 1946, Attorney General Bottomly, in an opinion addressing a different question than the ones you have posed, said that the precursors to sections 15-16-111 and 15-16-113, MCA (84-4201, et seq., R.C.M. 1947), were only applicable where personal property came into the county, or was found there, before or after the regular assessment period. 21 Op. Att'y Gen. No. 138 at 185, 186 (1946).

In 1950, Attorney General Olsen was asked whether personal property taxes not a lien on real estate that had been assessed ten years earlier but never collected could be collected by seizure of property other than that assessed. He ruled that only the particular property assessed could be seized. 23 Op Att'y Gen. No. 102 at 274 (1950). While pointing out that the law "requir[ed] speedy performance on the part of...the...County Treasurer, with a severe penalty ...for neglect of duty," he found that the general provisions for a perpetual prior lien on personal property for unpaid taxes applied to taxes not a lien on real estate. Even after ten years, the county treasurer could seize such personal property and sell it for taxes. Id. at 275. Furthermore, the county treasurer also had the option of bringing an action against the owner of the property where the owner had removed from the county, under a general personal property tax provision, section 15-16-503, MCA (section 84-4181, R.C.M. 1947). Id. at 276.

In 1963, a major amendment was made of the provisions on the collection of personal property taxes not a lien on real estate. 1963 Mont. Laws, ch. 165. The portion that is presently subsection (1) of section 15-16-113, MCA (section 84-4202, R.C.M. 1947), was amended to allow the county treasurer to seize and sell "any other personal property in the hands of the delinquent taxpayer" in addition to the property assessed in order to collect the taxes. This provision overruled Attorney General Olsen's 1950 opinion. It also added the first reference to a delinquent taxpayer in connection with this particular kind of tax. Two para-

graphs were added to section 84-4202, R.C.M. 1947. One is now section 15-17-901(1), MCA (section 84-4202(3), R.C.M. 1947), providing for the collection of these taxes by the seizure and sale of property at any time after assessment or by a civil action in addition to other methods. The other paragraph added is now section 15-16-404, MCA (section 84-4202(4), R.C.M. 1947), which says in part, "The county has a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer for any amounts due the county for any delinquent personal property taxes not a lien on real estate of the taxpayer." The amendment again refers to delinquent taxes.

In 1964, the Montana Supreme Court decided a case involving the collection of taxes under section 84-4202, R.C.M. 1947, as amended. O'Brien v. Ross, 144 Mont. 115, 394 P.2d 1013 (1964). In that case, the treasurer had waited over three years from the time of assessment before noticing up for sale certain personal property under section 84-4202, R.C.M. 1947. The major issue raised by the appellant concerned the proper county for payment of the tax. The Supreme Court held "that the tax...was valid and the procedures for the collection thereof were in conformity with the statutory requirements." 394 P.2d at 1016. The Court noted that "neither at [the time of assessment] nor any time thereafter did the appellant, either orally or in writing, protest that assessment." Id. at 1014. Thus the Supreme Court appeared to interpret section 84-4202, R.C.M. 1947, as allowing the payment under protest of personal property taxes not a lien on real estate, and the collection of such taxes by seizure and sale after the thirty day statutory time period.

I have set out this lengthy history of the interpretation of these sections (section 84-4202, R.C.M. 1947) in order to point out the many ways that reasonable persons could disagree thereon. The statutes are ambiguous. Therefore, their construction is controlled by the intent of the Legislature. See, e.g., In re Baier's Estate, \_\_\_ Mont. \_\_\_, 567 P.2d 943 (1977). To determine that intent, the statutes must be considered as a whole. See, e.g., Vita-Rich Dairy, Inc. v. Department of Business Regulation, \_\_\_ Mont. \_\_\_, 553 P.2d 980 (1976). However, where two legislative enactments relating to the same subject-matter are in conflict, and cannot be harmonized, the act last enacted controls. Nichols v. School District No. 3, 87 Mont. 181, 287 P. 624, 627 (1930). Here, then, where the 1963 amendments conflict with the original act, the amendments control.

Section 15-17-901(1), MCA (section 84-4202(3), R.C.M. 1947), which was added as part of the 1963 amendments, states that the county treasurer may use any or all of the usual methods for collection of taxes, including a civil action. County treasurers need not seize a taxpayer's personal property in every case where he or she does not own sufficient real estate to secure a lien for taxes.

The 1963 amendments also added the first references to delinquent personal property taxes not a lien on real estate, indicating the Legislature's intent that those taxes become due at some point after assessment, and delinquent if unpaid when due. The question you have raised is when the taxes become due. When the Legislature left unchanged the reference in section 15-16-113(1), MCA (section 84-4202(1), R.C.M. 1947), to action to be taken by the county treasurer within thirty days of notification of taxes due, it apparently intended that those taxes continue to be collected within that thirty-day period, rather than in semi-annual installments as most other property taxes are collected. If personal property taxes not a lien on real estate are unpaid within thirty days after notice is given that taxes are due they are delinquent.

I agree with Attorney General Foot that section 15-16-113, MCA (section 84-4202, R.C.M. 1947), rather than section 15-16-102, MCA (section 84-4103, R.C.M. 1947), controls with respect to time of payment of personal property taxes not a lien on real estate. The specific provision controls over the general one, where, as here, they are clearly inconsistent. See e.g., Huber v. Groff, \_\_\_ Mont. \_\_\_, 558 P.2d 1124, 1134 (1976).

I also agree that there is no inconsistency between the provision of section 15-16-102, MCA (84-4103, R.C.M. 1947), for the accrual of interest and a penalty on delinquent taxes and section 15-16-113, MCA (84-4202, R.C.M. 1947), particularly since the 1963 amendment, (15-17-901(1), MCA) which recognized that the personal property need not actually be sold for taxes within thirty days of the tax bill. I do not agree, however, with Attorney General Foot's opinion that interest does not begin to accrue until November 30th at 5 p.m. The Legislature's intent in enacting section 15-16-102, MCA (84-4103, R.C.M. 1947), was clearly that interest should begin accruing whenever taxes are not paid on time, and are therefore delinquent. In the case of personal property taxes not a lien on real estate, therefore, interest and penalty accrues from the time for payment, thirty days after the tax bill. I cannot agree with Attorney General Bonner's opinion that the interest and

penalty provisions do not apply because personal property taxes not a lien on real estate can never become delinquent. As I stated above, the 1963 amendment, with its two references to delinquent taxes, and its provision making collection by sale optional, eliminated the basic premise for that opinion--that seizure and sale is the exclusive method for collection of these personal property taxes.

I also must disagree with the 1946 opinion of Attorney General Bottomly. No authority was cited and I have found none, for his conclusion that section 15-16-113, MCA (84-4202, R.C.M. 1947), applied only when personal property came into the county, or was found there, before or after the regular assessment period.

Since personal property taxes not a lien on real estate do become delinquent at a specific time after assessment, it follows from the clear language of section 15-1-402, MCA (section 84-4502, R.C.M. 1947), that they may be paid under protest prior to that time.

THEREFORE, IT IS MY OPINION:

1. Personal property taxes that are not a lien on real estate, to be collected under section 15-16-113, MCA (84-4202, R.C.M. 1947), become delinquent thirty days after notification of the taxpayer that taxes are due.
2. Section 15-16-102, MCA (84-4103, R.C.M. 1947), applies to personal property taxes not a lien on real estate to the extent that those taxes draw interest from the time they become delinquent until they are paid and a penalty is added.
3. Section 15-1-402(1), MCA (84-4502, R.C.M. 1947), providing for payment of taxes under protest before they become delinquent, applies to personal property taxes not a lien on real estate.

Very truly yours,

MIKE GREELY  
Attorney General