

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 76

THIS OPINION SUPERSEDES VOLUME 39, NO. 70, WHICH IS WITHDRAWN.

COUNTY GOVERNMENT - Interest rate on delinquent property taxes;

DEPARTMENT OF REVENUE - Interest rate on delinquent property taxes;

FINES - Interest rate on delinquent property taxes;

INTEREST - Interest rate on delinquent property taxes;

PROPERTY, REAL - Interest rate on delinquent taxes;

TAXATION AND REVENUE - Interest rate on delinquent taxes;

MONTANA CODE ANNOTATED - Sections 1-2-109, 15-16-102.

OPINIONS OF THE ATTORNEY GENERAL

HELD: The interest rate of 5/6 of 1% per month provided by chapter 6, 1981 Montana Laws, First Special Session, applies to all delinquent taxes collected after November 30, 1981, for the entire period of delinquency.

26 October 1982

Robert L. Deschamps, III, Esq.  
Missoula County Attorney  
Missoula County Courthouse  
Missoula, Montana 59801

Ted O. Lympus, Esq.  
Flathead County Attorney  
P. O. Box 1516  
Kalispell, Montana 59901

Gentlemen:

You have requested my opinion concerning the interest rate on delinquent taxes under section 15-16-102, MCA.

Prior to 1981 the interest rate on delinquent taxes was 2/3 of 1% per month. § 15-16-102, MCA (1979). The regular 1981 legislative session amended section 15-16-102, MCA, to provide an interest rate of 5/6 of 1% per month on the first \$3,000 of delinquent taxes, and 1% per month on the remaining delinquent taxes. 1981 Mont. Laws, ch. 576, § 2. Subsequently the November, 1981, special legislative session amended section 15-16-102, MCA, to provide for a uniform interest rate of 5/6 of 1% per month on all delinquent taxes. 1981 Mont. Laws 1st Spec. Sess., ch. 6, § 2. The issue is whether the new uniform interest rate should be applied retroactively to the entire period of delinquency or only to the period of delinquency after the effective date of the amendment.

The question of retroactivity of interest rates was considered by the Montana Supreme Court in State v. Marsh, 175 Mont. 460, 575 P.2d 38 (1978). In that case, the Montana Legislature had changed the interest rates on condemnation awards from six percent per annum to ten percent. The Court held that "the rate of interest payable should be that rate current in the periods during which the delay in payment has occurred." 175 Mont. at 469, 575 P.2d at 44. Based on this holding, it

OPINIONS OF THE ATTORNEY GENERAL

would appear upon first examination that the calculation of interest rates on delinquent taxes collected after November 30, 1981, might involve the use of all three of the formulas in effect over the past several years, including the two-tiered formula that was approved on May 1, 1981, and rejected on November 25, 1981. I am persuaded, however, that the latest amendment to section 15-16-102, MCA, differs significantly from the law discussed in Marsh, and that the holding in Marsh therefore does not apply.

The Montana Supreme Court recognized in Marsh that laws may apply retroactively if the Legislature expressly declares such an intent. 175 Mont. at 469, 575 P.2d at 44 (citing the predecessor to section 1-2-109, MCA, and Davidson v. Love, 127 Mont. 366, 370, 264 P.2d 705 (1953)); see also Burr v. Department of Revenue, 175 Mont. 473, 476, 575 P.2d 45, 47 (1978); Penrod v. Hoskinson, 170 Mont. 277, 281, 552 P.2d 325, 327 (1976). In Marsh, the amendment to the interest rate provision was entirely silent as to effective date or applicability. 1975 Mont. Laws, ch. 534. In the present case, by contrast, the act amending section 15-16-102, MCA, included the following section:

Section 4. Effective date and applicability.  
This act is effective on passage and approval and applies to real and personal property taxes that become due on or after November 30, 1981, or that became due prior to November 30, 1981, and remain unpaid on or after November 30, 1981. [Emphasis added.]

1981 Mont. Laws 1st Spec. Sess., ch. 6. Had the Legislature intended the new interest rate to apply only to the period of delinquency after the effective date of the amendment, no language concerning applicability would have been necessary under the Marsh holding. The language adopted indicates that the applicability of the amendment is to be determined according to the date of payment of the taxes, rather than the period of delinquency. The new interest rate applies to all taxes paid on or after November 30, 1981, retroactive to the date the taxes became delinquent. See Mills v. State Board of Equalization, 97 Mont. 13, 22, 33 P.2d 563, 566 (1934) (retroactive income tax law upheld); State ex rel. Rankin v. District Court, 70 Mont. 322, 332, 225 P. 804, 808 (1924) (retroactive inheritance tax upheld);

OPINIONS OF THE ATTORNEY GENERAL

cf. Webster v. Auditor General, 80 N.W. 705, 707 (Mich. 1899) (retroactive statute, increasing interest on delinquent property taxes, upheld).

This conclusion is buttressed by the legislative history of chapter 6 of the First Special Session. The two-tier system that was approved on May 1, 1981, had created an "administrative nightmare." Minutes, Senate Taxation Committee, 11/23/81. To eliminate these problems, the Legislature adopted the new uniform rate of 5/6 of 1% per month. If the new rate were to apply prospectively only, the administrative problems would not be eliminated, but would be aggravated. I do not believe that the Legislature intended such a result.

THEREFORE, IT IS MY OPINION:

The interest rate of 5/6 of 1% per month provided by chapter 6, 1981 Montana Laws, First Special Session, applies to all delinquent taxes collected after November 30, 1981, for the entire period of delinquency.

Very truly yours,

MIKE GREELY  
Attorney General