

VOLUME NO. 40

OPINION NO. 12

COUNTY TREASURER - Collection of property taxes;  
TAXATION - Timely payment of property taxes determined  
by postmark;

MONTANA CODE ANNOTATED - Sections 15-16-102,  
28-1-1202(2), 30-1-201(14).

HELD: Tax payments deposited in the United States mail on or before payment deadlines enumerated in section 15-16-102, MCA, as shown by the postmark on the envelope received by the treasurer's office, are considered timely paid irrespective of the date upon which such payment is actually received by the county treasurer.

1 June 1983

M. Shaun Donovan  
Mineral County Attorney  
Mineral County Courthouse  
300 River Street  
Superior MT 59872

Dear Mr. Donovan:

You requested an opinion concerning:

Whether tax payments deposited in the United States mail on or before payment deadlines enumerated in section 15-16-102, MCA, as shown by the postmark on the envelope received by the county treasurer's office, are considered timely paid irrespective of the date upon which such payment is actually received by the treasurer.

Section 15-16-102, MCA, provides the time for payment of property taxes:

(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....

This statute has never been interpreted in reference to your question. I recognize that the prevailing practice in most counties in this state is to apply the postmark rule; that is to say the taxes are considered to be timely paid if the postmark on the envelope shows a date no later than the deadline set forth in the statute. Other counties, however, interpret the statute to require receipt of the taxes by the county treasurer by the statutory deadline. It is my opinion that the former interpretation is the correct one.

The customary means of payment is by personal check. The majority of the population have checking accounts and pay their bills by mailing personal checks, whether the debt is a charge account, utility bill, mortgage payment, or tax payment. The debtor generally is not expected to seek out his creditor and place the payment in his hands. Mailing on the last day with the envelope postmarked on that day is widely accepted as timely payment. See Berznieks v. Cooper, 275 N.W.2d 221, 226-27 (Mich. 1979).

Timely payment of federal taxes is determined according to the postmark. 26 U.S.C. § 7502. It is interesting to note that at the time of this legislation, Congress recognized that the Internal Revenue Service had been applying the postmark rule long before it was statutorily authorized. See Legislative History of Pub. L. No. 89-713, 1966 U.S. Code Cong. & Ad. News 3676, 3683-84. The Montana Department of Revenue also uses the postmark rule for income taxes, despite lack of express statutory authorization. Additional evidence of the accepted procedure for payment is the Montana Uniform Commercial Code, wherein negotiable instruments and notes become valid and take effect upon delivery. First Security Bank of Bozeman v. Goddard, 181 Mont. 407, 593 P.2d 1040, 1045 (1979). Delivery occurs when the maker voluntarily parts with possession and control of the instrument, i.e., when he places it in the mailbox. § 30-1-201(14), MCA; First Security Bank of Bozeman v. Goddard, 593 P.2d at 1045.

It is well settled that a lawful tender or offer of payment of taxes is equivalent to actual payment for the purpose of effecting proceedings to enforce the payment. Royall v. State of Virginia, 116 U.S. 572 (1886); Stratton v. Del Valle Independent School District, 547 S.W.2d 727 (Tex. 1977). Similarly, in the law of

general obligations, an offer or tender of payment stops the running of interest on the obligation and for that purpose is equivalent to actual payment. § 28-1-1202(2), MCA; Schultz v. Campbell, 147 Mont. 439, 413 P.2d 879, 884 (1966).

The aforementioned application of law in regard to payment of taxes and other obligations convinces me that the customary and generally recognized usage of the term "payment" in reference to payment schedules such as the one in section 15-16-102, MCA, refers to the time of delivery or mailing of the payment and not the actual receipt by the payee.

Section 15-16-102, MCA, was enacted in 1923 and has been amended frequently, as recently as 1981. The Legislature is presumed to have known the common and accepted practice of payments by mail, and the postmark rule, and where it has had opportunity to provide otherwise and has not seen fit to do so, a legislative intent to authorize such practice is presumed. State v. Snider, 168 Mont. 220, 541 P.2d 1204, 1208 (1975). There is nothing in the language of the statute to contradict the presumed intent that timely payment of taxes is determined according to the customary method of payment. I do not construe legislative intent to penalize taxpayers for mailing their payments on the due date or for miscalculating the number of days for the mail to reach the treasurer's office. Statutory penalties must be strictly construed and not extended by construction. Connolly v. U.S., 149 F.2d 666 (9th Cir. 1945); Shipman v. Todd, 131 Mont. 365, 310 P.2d 300 (1975). Tax statutes must be strictly construed against the taxing authority and in favor of the taxpayer. Butte Country Club v. Dept. of Revenue, 37 St. Rptr. 479, 608 P.2d 111, 115 (1980). Such statutes must also be construed in a practical manner. In re Kohr's Estate, 122 Mont. 145, 199 P.2d 856, 871 (1948).

Interpreting section 15-16-102, MCA, to require the envelope of the tax payment to be postmarked no later than the statutory deadline satisfies the rules of statutory construction discussed herein.

THEREFORE, IT IS MY OPINION:

Tax payments deposited in the United States mail on or before payment deadlines enumerated in section

15-16-102, MCA, as shown by the postmark on the envelope received by the treasurer's office, are considered timely paid irrespective of the date upon which such payment is actually received by the county treasurer.

Very truly yours,

MIKE GREELY  
Attorney General