

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 71

COUNTY GOVERNMENT - Duties of county treasurer in accepting partial payment of property tax under section 15-16-102(5), MCA;

LOCAL GOVERNMENT - Collection of delinquent taxes by county treasurer under section 15-16-102(5), MCA;

PROPERTY, REAL - Method of acceptance of payment of taxes when outstanding delinquencies are partially paid under section 15-16-102(5), MCA;

TAXATION AND REVENUE - Collection by county treasurer of partial payment of outstanding tax delinquency under section 15-16-102(5), MCA;

MONTANA CODE ANNOTATED - Sections 15-16-102, 15-16-102(5), 15-17-324, 15-18-111, 15-18-201.

- HELD: 1. The partial tax payment conditions of section 15-16-102(5), MCA, do not apply to taxpayers who tender complete payment of all delinquent taxes.
2. The "current tax year" for purposes of partial tax payments under section 15-16-102(5), MCA, is the current tax billing year which extends from the date the county treasurer mails notice of the tax due to the taxpayer until the following year's tax bill is sent.

26 February 1988

David L. Nielsen
Valley County Attorney
Valley County Courthouse
Glasgow MT 59230

Dear Mr. Nielsen:

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You have requested my opinion on the following questions concerning implementation of section 15-16-102(5), MCA:

1. May a taxpayer make a complete payment of delinquent property taxes without having to pay both halves of the payment for the current tax year?
2. For purposes of partial payment of delinquent taxes, what constitutes the "current tax year" under section 15-16-102(5), MCA?

You have expanded your second question in several hypothetical examples of partial payment that differ in the time of tender of payment during the calendar year. I will first review the statutory subsection at issue and then answer your two questions. Finally, I will apply my analysis to your hypotheticals.

Every year thousands of Montana taxpayers fail to pay their taxes. Property owners routinely allow taxes to become delinquent for several years running. A property tax lien is sold at a tax sale conducted by the county following the first year of delinquency. § 15-17-122, MCA. Thereafter the property owner has three years within which to redeem the tax lien, § 15-18-111(1), MCA (18 months in the case of subdivided land, § 15-18-111(2), MCA). During this time the property continues to be assessed and the delinquencies accrue, § 15-17-324, MCA.

The 1987 Legislature attempted to address the growing problem of property tax delinquencies. The Revenue Oversight Committee introduced Senate Bill 162 which streamlined the tax sale and tax deed process. The bill in its original form expressly prohibited partial payment of outstanding tax delinquencies. Senate Bill 162 was amended following its January 31, 1987, Senate Taxation Committee hearing to provide for partial payment of delinquencies, subject to two conditions: (1) the partial payment tendered must consist of at least one full year's delinquent taxes; and (2) the partial payment has to be applied to the taxes that have been delinquent the longest. On February 16, 1987, the bill was further amended on second reading in the Senate to include a third condition: a partial payment could be accepted provided both halves of the current tax year's bill were paid. The legislation was passed by both houses as amended and the current subsection (5) of section 15-16-102, MCA, reflects the three conditions of acceptance of partial payment:

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If the taxes become delinquent, the county treasurer may accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided both halves of the current tax year have been paid. Payment of delinquent taxes must be applied to the taxes that have been delinquent the longest.

Section 15-16-102(1), MCA, establishes when a tax subjected to subsection (5) becomes delinquent. Subsection (2) allows taxes that have been assessed and levied for the year to be paid in two installments or "halves." One-half of the tax year's taxes are due November 30 or 30 days after tax notices are sent by the county treasurer and postmarked, whichever is later. As a usual matter, tax notices are forwarded by county treasurers on or about October 31 of each year. The second half of the tax payment for each year is due on or before May 31. Thus, tax payments become delinquent generally if either half of the payment is not made on time: by November 30 or 30 days after the tax notice is postmarked, whichever is later, for the first half payment and May 31 for the second half payment.

Without further legal analysis your first question concerning payment of all delinquencies is capable of resolution. The code subsection at issue, § 15-16-102(5), MCA, concerns partial payment of delinquent taxes. Hence, whenever a taxpayer tenders complete payment of all delinquencies as of the date of tender, that payment should be unconditionally accepted because subsection (5) is inapplicable. For example, assume a taxpayer did not pay the May 1988, second half payment of his 1987 property taxes. Further assume that the taxpayer is billed in late October 1988 for the first half of his 1988 property taxes. Although the taxpayer has been billed for 1988, that payment is not delinquent until 30 days following notice or November 30, whichever is later. § 15-16-102(1), MCA. During this time, before the delinquency arises, the taxpayer may tender payment of the prior 1987 delinquency (due in May 1988) without paying both halves of the current tax year, i.e., the 1988 taxes due in November 1988 and in May 1989. The taxpayer would be making a complete payment of all delinquencies as of the time of tender (the 1987 taxes due in May 1988) only. Enlarging on this hypothetical, if the taxpayer does not pay the first half of the 1988 taxes and waits until December 1988 to tender the 1987 tax delinquency (due in May 1988), then the conditions of subsection (5) are invoked. This tender is a partial payment of delinquent taxes, because as of December 1988, the first half

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payment of the 1988 taxes is delinquent as well as the second half of the 1987 taxes. The taxpayer in December 1988 must pay both the past delinquencies to avoid the partial payment conditions of subsection (5), which in this example is the payment of both halves of the current tax year (November 1988 and the future May 1989 payment). Provided a tender is made of all prior delinquencies, including any current delinquency, the county treasurer must accept the payment unconditionally because subsection (5) does not apply.

I. Partial Payment and the Current Tax Year.

Your second question essentially asks the definition of "current tax year," as that phrase is used in section 15-16-102(5), MCA. The drafters of SB 162 did not expressly define the pivotal phrase within their legislation, nor is there an existing statutory definition within the Montana Code Annotated. Since there is no case law directly on point, my analysis and interpretation is directed toward the goal of giving subsection (5) the effect that was intended, though not clearly stated, by the Legislature. Where possible, the intention of the Legislature is to be pursued in the construction of a statute. § 1-2-102, MCA.

The Legislature in enacting subsection (5) sought to legalize partial payments of delinquencies. This fact is evidenced by the policy reversal previously described between the bill as introduced by the Revenue Oversight Committee and the one subsequently amended by the Senate. It is also clear that a county treasurer's authority to accept payment of partial delinquencies was deliberately qualified by certain conditions. The requirements that current taxes be paid and that partial payment be applied to the earliest full delinquent year, demonstrate the intent to assist a taxpayer delinquent for several years in "catching up."

Montana statutes define neither "tax year" nor "current tax year." The assessed year begins on January 1, which is statutorily recognized as the general assessment day. § 15-18-201, MCA. Property ownership as of that date determines the taxable value of property for the year. The two payment halves are considered tax payments for the assessed year, even though the second half payment is due the following year.

The county treasurers of Montana have generally interpreted the "current tax year" provision of subsection (5) to mean the current tax billing year. This interpretation gives effect to the intent of the

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statute to permit partial payment of delinquencies. The billing year extends from one year's mailing of tax notices to the next year's mailing. During this time period the current billing is known by the taxpayer and the county treasurer's office such that current payments, as a precondition to past delinquent year partial payments, are possible. An alternative interpretation would use the assessed year, January 1 to December 31, as a reference. However, if this interpretation were adopted, partial payments could only be accepted after the current halves were billed and before the expiration of the assessed tax year, a period of two months. After that time period, between January 1 and the mailing of the next year's current tax bills (typically late October), a taxpayer would have no way of paying current tax halves because they would not yet be levied and assessed.

I find the treasurers' interpretation of subsection (5) reasonable given the context of the statute. It is apparent that the Legislature was referring to the payment of both halves of the current tax assessment as a condition to acceptance of partial payment of outstanding delinquencies. That bill is payable in a billing year that extends from the mailing of one year's bill to the following year's mailing. Thus, this time frame should be used as a reference for the taxpayer required to pay current bills as a precondition of partial tax delinquency payments. Consequently, I hold that the current tax year for purposes of section 15-16-102(5), MCA, extends from the date the county treasurer issues the tax bills in late October until issuance of the next year's bill one year later. This interpretation is limited solely to the construction of the statute in question, § 15-16-102(5), MCA.

II. Application of the Partial Payment Statute.

Your opinion request submits several hypothetical applications of the partial payment statute.

Example 1: The taxpayer is delinquent for the tax years 1984, 1985, and 1986. In other words, the taxpayer has failed to pay any taxes for the payments due November 1984 and May 1985 (1984 tax year), November 1985 and May 1986 (1985 tax year), and November 1986 and May 1987 (1986 tax year.) The taxpayer wants to pay the 1984 tax year delinquencies as a partial payment in June 1987 before the tax assessments for 1987 are completed.
Analysis: Payment of one year of the total delinquencies constitutes partial payment and subsection (5) applies. Both halves of "the current tax year" must

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be paid. The current tax year for this taxpayer extends from mailing of the tax bills in late October 1986 to the mailing in October 1987. Thus, the taxpayer must pay both of the delinquent payments for the 1986 tax year (November 1986 half payment and May 1987 half payment) at the same time the 1984 tax year delinquencies are tendered.

Example 2: Taxpayer is delinquent for the tax years 1984, 1985, and 1986 as in Example 1. Similarly, the taxpayer wants to partially pay his delinquent 1984 taxes, but the time of his tendered payment is the middle of October 1987, after the 1987 assessments are compiled by the assessor, but before they have been received by the treasurer for mailing. Analysis: This tender of partial payment would be handled by the county treasurer in the same manner as Example 1. The taxpayer would have to remit both halves of the current tax year (1986) in addition to the 1984 delinquencies. Subsection (5) in both the foregoing examples does not permit acceptance of partial payment of only one year's delinquencies. The statute's conditions thwart such a payment: a partial payment has to be for at least a full year, the full current year has to be paid, and the partial payment must first apply to the tax year that has been delinquent the longest. A one-year payment is an impossibility.

Example 3: As in the prior examples, the same factual delinquency exists and an attempt to tender 1984 taxes is made. The time of payment, however, is following the mailing of the 1987 tax bills in late October 1987, but prior to receipt by the taxpayer. Analysis: In accordance with this opinion, the new current tax year begins upon mailing of the current tax year's bills. Thus, this partial payment may be accepted only if both halves of the current year are paid. The taxpayer must pay not only the mailed November 1987 half payment, but also the May 1988 half payment, before the 1984 tax year payment will be accepted. Tender of partial payment during this time frame has the effect of accelerating the future May half payment.

Example 4: The taxpayer wants to make his 1984 partial payment on November 27, 1987, after the taxpayer has received his current tax bill but before the first half has become delinquent. Analysis: Same interpretation as Example 3.

Example 5: The taxpayer tenders his 1984 partial payment on May 30, 1988, just before the second half payment for that year is due, and assuming the first

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half payment is delinquent. Analysis: Same interpretation as Example 3.

THEREFORE, IT IS MY OPINION:

1. The partial tax payment conditions of section 15-16-102(5), MCA, do not apply to taxpayers who tender complete payment of all delinquent taxes.
2. The "current tax year" for purposes of partial tax payments under section 15-16-102(5), MCA, is the current tax billing year which extends from the date the county treasurer mails notice of the tax due to the taxpayer until the following year's tax bill is sent.

Very truly yours,

MIKE GREELY
Attorney General