

May 8, 2004

Mr. Jeffrey A. Noble
Powder River County Attorney
P.O. Box 240
Broadus, MT 59317-0240

Re: Request for Opinion

Dear Mr. Noble:

You have requested my opinion for the following question:

If a taxpayer makes a required tax payment 30 days after the due date, when the due date and payment date fall in two successive months respectively, should the Department of Revenue assess the taxpayer with interest for two months?

It has been determined that a letter of advice, rather than a formal Attorney General's Opinion, provides the appropriate response to your request.

Mont. Code Ann. § 15-1-216 governs penalty and interest assessment for violation of Montana's tax provisions. Relevant to your question is section § 15-1-216(2), which provides, "[i]nterest on taxes not paid when due must be assessed at the rate of 12% a year accrued at 1% a month or fraction of a month, on the unpaid tax. Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid."

You state it is the current practice of the Department of Revenue, where for instance an individual's income tax was due on April 15 but was not paid until May 15, to assess interest against the taxpayer for two months because the delinquency occurred over a two-month period.

As you point out, the answer to your question turns on the definition of "month." Title 15, Taxation, does not provide a definition for the term "month." Mont. Code Ann.

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§ 1-1-301, however, does. It provides, in relevant part, “[u]nless the context requires otherwise, the following definitions apply in the Montana Code Annotated: (3) ‘[m]onth’ means a calendar month.”

The Department of Revenue’s interpretation of a calendar month is not unreasonable. It has interpreted the term to mean the months of the calendar year, i.e. January, February, etc. The Montana Supreme Court in, Montana Power Co. v. Mont. P.S.C., 2001 Mont 102, 23, 26 P.3d 91, 94, stated “the construction of a statute by the person or agency responsible for its execution should be followed unless there are compelling indications that the construction is wrong.” My research did not reveal “compelling indications” that the Department’s construction is wrong. Therefore, I would defer to the interpretation of the Department.

This letter should not be construed as a formal Opinion of the Attorney General.

Sincerely,

CIVIL SERVICES BUREAU

ALI N. BOVINGDON
Assistant Attorney General

anb/jym