

Opinion No. 61-27

April 4, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Norman S. Thayer, Assistant Attorney General

TO: Mr. Jack E. Holmes, Chief Tax Commissioner, State Tax Commission, Santa Fe, New Mexico

QUESTION

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1. When real property is sold to the State for delinquent taxes, does interest continue to accrue after the County Treasurer executes a tax deed to the State of New Mexico?

CONCLUSION

1. No.

OPINION

ANALYSIS

Interest accrues on delinquent real property taxes at the rate of one percent (1%) per month from the date of delinquency until paid. See Section 72-7-3, N.M.S.A., 1953 Compilation. Real property on which taxes are unpaid is "sold to the State" by the County Treasurers on the third Monday in January of each year. See Sections 72-8-1 and 72-8-6, N.M.S.A., 1953 Compilation. This sale is more or less a mere bookkeeping entry, however, for it only gives the state the right to a complete title, rather than title itself, and the property is still assessed in the name of the taxpayer. See Sections 72-8-5 and 72-8-8, N.M.S.A., 1953 Compilation. Property so sold may be **redeemed** by the owner or any person having a legal or equitable interest therein at any time within two (2) years after the date of sale by payment of the amount for which the property was sold, plus interest at the rate of one percent (1%) per month from the date of sale. See Section 72-8-9, N.M.S.A., 1953 Compilation. Upon the expiration of the redemption period, the county treasurers execute tax deeds to the State of New Mexico. See Section 72-8-15, N.M.S.A., 1953 Compilation. When so deeded, the county treasurer marks his tax rolls opposite the assessment of the tax deeded property: "Paid by deed No. --- to State", and the property is not thereafter assessed to the former owner or to any other person until sold by the State Tax Commission. See Sections 72-8-17 and 72-8-18, N.M.S.A., 1953 Compilation. The Tax Commission may not sell tax deeded property for a period of one (1) year from the date of the Tax Deed, except to a person entitled to **repurchase** and the right to **repurchase** continues until the property is sold by the Tax Commission. See Section 72-8-31, N.M.S.A., 1953 Compilation. This right to

repurchase can be exercised by payment of all taxes, penalties, interest, and costs assessed and accrued against the property. See Section 72-8-32, N.M.S.A., 1953 Compilation.

We have, then, three well-defined time periods when dealing with real property on which the taxes are delinquent. Firstly, there is the "period of delinquent payment," which runs from the date of delinquency until the date of sale to the State (third Monday in January following date of delinquency). Secondly, there is the "period of redemption" which runs from the date of sale to the State (third Monday in January following date of delinquency) until two years thereafter. The end of the "period of redemption" marks the beginning of the "period of repurchase", which runs until the property is actually sold by the Tax Commission.

It is clear that interest accrues during the "period of delinquent payment" and the "period of redemption." See Sections 72-7-3 and 72-8-9, *supra*. Your question is whether interest accrues during the "period of repurchase". In our opinion, it does not.

When the tax deed is delivered to the State the tax rolls are marked "paid", and the property is no longer assessed in the name of the former owner. See Sections 72-8-17 and 72-8-18, *supra*. Furthermore, upon issuance of the tax deed to the state all tax liens against the property merge in the state's title, and the resale or repurchase price of the property is deemed to include former tax liens. See Section 72-8-46, N.M.S.A., 1953 Compilation. Under a tax deed, the state has full legal rights over the property as compared with its equitable rights during the period of redemption. See Section 72-8-28, N.M.S.A., 1953 Compilation, and compare Section 72-8-5, N.M.S.A., 1953 Compilation.

In our opinion, delinquent real property taxes are paid by the tax deed to the State, and the tax lien against such lands is extinguished. Obviously, no interest can accrue if no taxes are owing.

We realize that this opinion gives the delinquent taxpayer an interest-free period during which he has a prior or preferred right of repurchase, but we feel that our conclusion is in harmony with the intention of our laws relating to delinquent taxes, which, as expressed in Section 72-8-44, N.M.S.A., 1953 Compilation, is to provide a method whereby persons who have lost title to land because of delinquent taxes may recover their title without undue hardship.