

Opinion No. 23-3701

May 8, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. J. E. Saint, Chief Tax Commissioner, Santa Fe, New Mexico.

The 5% Penalty Does Not Apply to Delinquent Taxes Collectible for Years Prior to 1920.

OPINION

{*51} We are in receipt of a request from your office as follows:

"Please give us an opinion this date whether or not the five per cent penalty, as provided for by Sec. 416 of Chapter 133 of the Session Laws of 1921, may be applicable to delinquent taxes for years prior to 1920."

Sec. 416, Chap. 133 S. L. 1921 provides:

"Fifteen days after any tax shall become delinquent and unpaid, there shall be added thereto, by the County Treasurer, a penalty of 5 percent of the amount thereof, * * *; Provided, however, that no penalties shall become due upon taxes assessed and levied for the year 1920, in the event such taxes shall be paid on or before the 1st day of August, 1921."

Sec. 478 of said chapter provides:

"* * * Provided, that the provisions of this act shall not affect or be applicable to taxes heretofore assessed, or which are delinquent at the date of the approval hereof, except that suit for the same may be brought, and judgment thereon rendered in the manner provided by this act, but the validity of such delinquent taxes shall be determined by the law in force at the time of making the assessments therefor."

Said Sec. 416 in itself seems not to carry with it the idea of any retro-active effect, and said section 478 makes it clear that no retro-active effect is intended. We, therefore, conclude that said 5 percent penalty does not apply to delinquent taxes collectible for years prior to 1920.