

Opinion No. [29-111]

October 26, 1929

TO: Office of the Attorney General of New Mexico

TAXATION -- Interest computed on delinquent taxes from date of delinquency.

OPINION

In your letter of the 23rd inst. you request an opinion in what is designated under your file reference "Re: Collection of interest on delinquent taxes between December 31st and 30 days thereafter," and you quote a part of a section of a statute to which you refer as "Section 415 of Chapter 102 of 1925."

From a reading of the letter it would appear that what you desire our opinion on is the question of the collecting of interest on delinquent taxes between December 1 and 30 days thereafter rather than December 31, and I am so construing it.

Since there are but 36 sections in Chapter 102 of the Laws of 1925 and since the statute quoted in your letter is a part of Section 24 of that Act, which amends Section 415 of Chapter 133, Laws of 1921, I assume that a mistake has been made in the reference given. The language quoted by you is as follows:

"On December first of each year, if taxes levied in that year shall not have been paid, one-half thereof shall become delinquent and on May first, following, if not paid, the remaining one-half of said taxes shall become delinquent and such taxes from the respective dates of delinquency, shall bear interest at the rate of one per cent per month until paid."

You also call attention to Section 2 of Chapter 114 of the Laws of 1929, which reads as follows:

"Thirty days after any tax shall become delinquent and unpaid, there shall be added thereto, by the County Treasurer, interest at the rate of one per centum per month from the date of such delinquency until certificates of lien for such taxes have been issued as in this Act provided."

There does not appear to be any conflict between these sections. The first section quoted fixes the respective dates of delinquency of the first and second halves of unpaid taxes for each year and provides that such taxes from the respective dates of delinquency shall bear interest at the rate of 1% per month until paid. Since the first half of the taxes for a given year if unpaid becomes delinquent on December 1 of that year, interest on such delinquent amount is to be computed from December 1 at the rate of 1% per month and until payment is made.

The second section above quoted provides also for interest at the rate of one per centum per month from the date of delinquency to be added and recorded by the treasurer beginning thirty days after the date of delinquency for the purpose of determining the amount of taxes, interest and penalties to be inserted in the certificates of lien for taxes, the form of which is prescribed in Section 5 of Chapter 114, Laws of 1929, at which time there is a compounding of interest, it being provided in the same section that interest and penalty shall be computed on the taxes at the rates provided by law to and including the date of issuance of the certificate and that the amount of taxes plus interest and penalty together with such amounts for subsequent taxes, as may be added from to time, shall be the face value of the certificate and shall from, that date bear interest at the rate of 1 1/2 per centum per month until paid.

As the State Tax Commission does not acquire jurisdiction to collect delinquent taxes for a given year until six months after the date on which the second half of such taxes becomes delinquent (Sec. 1) and since the delinquent tax collector does not issue certificates of lien until after the State Tax Commission has acquired jurisdiction (Sec. 4) and is allowed ninety days after the acquiring of jurisdiction by the commission within which he may issue the certificates. The delinquent tax with penalties and accumulated interest is not merged in the certificate until many months after the date of delinquency of the first half, that is, December 1.

We are of the opinion that treasurers should collect interest at the rate of 1% per month on payments of the first half of any year's taxes after December 1 of that year and on payments of the second half of such year's taxes made after May 1 of the following year and until the amount to be collected is later computed on the face of the tax certificate.