

Opinion No. [29-120]

May 1, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: Chas. H. Evans, Treasurer, Clovis, New Mexico.

TAXATION -- Dates of delinquency and time when lien attaches, taxes for 1928.

OPINION

Reference is made to your letter of the 25th ult. in which you ask to be advised as to whether or not sections 1 and 2 of House Bill No. 308, passed by the Ninth Legislature, apply to collection of 1928 taxes, and you also ask to be advised in reference to interest and penalties.

As you have at hand a copy of this bill, it is not necessary that I quote herein the several sections to which reference will be made.

By section 1 of this act, which carries the emergency clause by which it went into effect on the 12th day of March, 1929, jurisdiction and authority to collect all delinquent taxes is vested in the state tax commission. At the time of the passing of this act, all taxes for years prior to 1928 and, in addition thereto, the first half of taxes for the year 1928, then remaining unpaid, were delinquent, and the authority to collect vested in the state tax commission at the time of the approval of the act, March 12, 1929. Section 1 further provided that hereafter, whenever any tax has not been paid within six months after the date on which the second half of property taxes should become delinquent, as provided by law, power, jurisdiction and authority to collect should vest in the state tax commission.

The date of delinquency is fixed by section 415 of chapter 133, Laws of 1921, as amended by section 24, chapter 102, Laws of 1925, as follows:

"On December 1 of each year, if taxes levied in that year shall not have been paid, one-half thereof shall become delinquent, and on May 1 following, if not paid, the remaining one-half of said taxes shall become delinquent * * *."

From this it appears that the jurisdiction to collect the last half of taxes for 1928, which became delinquent today, May 1, 1929, does not vest in the state tax commission until six months after this date. It is nevertheless the duty of the county treasurer to add interest at the rate of one per cent per month from the date of delinquency in each instance until certificates of lien for taxes have been issued as provided in House Bill No. 308, and further penalties as provided in section 2 of this act.

Turning to section 4 of this act, we find it to be the duty of the state tax commission to cause each delinquent tax collector, immediately upon acquiring jurisdiction to collect, to issue certificates of lien for taxes on all real estate appearing delinquent on the tax rolls of his county. Section 5 of the act provides that certificates of lien shall be in form prescribed by the state tax commission, containing items in that section set out, and that from and after the date of issuance such certificates shall bear interest on the face value at the rate of one and one-half per centum per month until paid.

By section 7 of the act it is provided that certificates of lien shall be issued prior to the time the commission shall acquire jurisdiction over the delinquent taxes on the tax rolls for the year 1928. It appears to be the requirement that, at this time, certificates shall be issued on all real estate on which taxes are now delinquent, that is, on all real estate against which there is now any unpaid tax; and hereafter, whenever any tax has not been paid within six months after the date on which the second half of the taxes becomes delinquent, certificates of lien shall be issued.

You will note that, by section 22 of this act, old section 416, as amended by section 25 of chapter 102 of the Laws of 1925 and section 2 of chapter 127 of the Laws of 1927, is repealed. No repeal, however, is to effect any judgment or any pending case.

This, I believe, answers your two questions. If I have not made it perfectly clear or if there is anything further in which I may be of assistance, kindly let me know.