

## Opinion No. 32-374

February 11, 1932

**BY:** E. K. Neumann, Attorney General

**TO:** Mr. J. M. Lujan, State Comptroller, Santa Fe, New Mexico.

{\*136} Your letter of February 10th calls for an interpretation of Section 141-702 of New Mexico Statutes, Annotated, 1929 Compilation, and you desire information as to the procedure to be followed in computing interest on delinquent taxes.

You have enclosed a copy of an opinion by Honorable M. A. Otero, Jr., former Attorney General, dated October 28th, 1929, and a circular letter of J. D. Mell, Special Tax Attorney {\*137} for the State Tax Commission dated November 21st, 1931.

The opinion to which we have referred quotes the 1921 law which is now cited as Section 141-414 of the 1929 Compilation, which 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."

Following this there is also quoted the section now under consideration and which is the 1929 Law and cited as Section 141-702 of the 1929 Compilation. The first sentence of this provision is as follows:

"Thirty days after any tax shall become delinquent and up-paid 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."

It was then held by Mr. Otero that there was no conflict between these provisions and that the 1921 law fixed the respective dates of delinquency of the first and second halves of the taxes unpaid and provided for interest on same **from such dates** at the rate of one per cent per month until paid.

In so far as concerns the dates of delinquency we agree that there is no conflict in these sections, but we do wish to specifically call attention to the fact that there is a very patent conflict in regard to the method of computation of the interest and the dates upon which it is to be charged.

Under the 1921 law, using the first half of the taxes as an example, the tax is due on December 1st and from that date the unpaid tax bears interest at the rate of one per cent per month.

Under this Act if taxes are not paid until December 15th or until some other time after December 1st, the date of the delinquency, then the interest charge is to be added, where as under the 1929 Act, the taxpayer is allowed a thirty day period in which to make his payment without incurring any liability for interest as it is provided "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 cent per month from the date of such delinquency, etc."

In other words, if the tax is not paid within thirty days from December 1st, then it must bear interest of one per cent from December 1st. But if it is paid within the thirty days period no interest is to be charged.

To further illustrate and avoid misunderstanding we set forth an example of the foregoing as follows: John Doe's taxes are due December 1st, on December 30th he pays same and is charged no interest. If, however, he does not pay until January 1st, then he must pay an additional one per cent for the month of December. If he does not pay until February 1st, he must pay one per cent for December plus one per cent for January and if he is still delinquent on March 1st, he must pay one per cent for December plus one per cent for January plus one per cent for February and so on. In other words on January 1st he owes one per cent, On February 1st he owes two percent and on March 1st he owes three percent and so on for each following month.

We may add that the circular letter from Mr. Mell to which we have heretofore referred was prepared after consultation with this office and the construction therein given has our approval.

In view of all the foregoing it is, therefore, our conclusion that the 1929 law, to-wit; Section 141-702 of the 1929 Compilation is controlling regarding the method of assessment and computation of the interest to be charged on unpaid delinquent taxes.

We would suggest that your office have this letter mimeographed and copies mailed to all county treasurers so each of them may be enabled to follow a uniform system and in accord with the law.

By Frank H. Patton,

Asst. Attorney General