

## Opinion No. 45-4673

March 7, 1945

**BY:** C. C. McCULLOH, Attorney General

**TO:** Murray C. Beene, Director New Mexico Veterans' Service Commission Santa Fe, New Mexico

{\*32} You have requested us to give you an opinion concerning the amount of penalty and interest that may be charged for delinquent taxes when the property is owned by a person in the armed services, or for the period when such person might have been in the armed services when this country was officially engaged in war.

I enclose a copy of Opinion No. 4323 which has covered indirectly a certain phase of your question insofar as it relates to the sale of property for delinquent taxes.

Title 50, Section 560, United States Code Annotated, which is the provision of the Soldiers' and Sailors' Civil Relief Act pertaining to the payment of taxes, provides insofar as it is material to your question as follows:

"(1) The provision of this section, shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid."

"(4) Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest {\*33} until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon."

It is noted that there is no relief provided in this act against penalties or interest except on the type of property described in sub-section (1). However, insofar as such personal or real property is concerned, interest may only be computed at the rate of 6% per annum and no other penalty or interest shall be incurred by reason of such nonpayment.

Upon the payment of any delinquent taxes by a person coming within the provisions of the above section, the treasurer should first ascertain whether or not the taxes are levied upon property covered by the act and, if not, they should charge the rate of interest and the penalty provided by our statute. If, however, the treasurer should find

that the property is of the type covered by the above provision of the federal statute, only 6% interest should be charged.

The various county treasurers should be very careful in determining the necessary facts for the reason that they could be held liable on their official bonds if they failed to properly perform their duties in determining the above facts.

By HARRY L. BIGBEE,

Asst. Atty. General