

Opinion No. 45-4720

May 17, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mr. E. R. Cooper Asst. District Attorney Las Vegas, N. M.

{*71} I have your letter of May 16, 1945 wherein you request an opinion of this office as to whether a man in the armed forces can be penalized by the Assessor for non-rendition of his taxes as provided by statute.

Title 50, App., Sec. 560 U. S. C. A. provides in part, as follows:

"(1) The provisions 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 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 this section applies only in respect to taxes on 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 {*72} at the commencement of his period of military service and still so occupied by his dependents or employees.

If such property is involved, in our opinion, under the provisions of Sub-section 4 of this section, no penalty in addition to the 6% provided in the statute, may be collected in addition to the actual taxes assessed.

You further ask whether it is necessary to get a court order to cancel a penalty for non-rendition of taxes, if such penalty is placed on the roll by the assessor.

While the Soldiers and Sailors Relief Act is silent as to this question, it would appear that since the penalty, while placed on the tax roll in error is void, it should only be removed by order of court.

By HARRY L. BIGBEE,

Asst. Atty. General