

OPINION
69-382

May 28, 1969 (OPINION)

Mr. Raymond R. Rund

State's Attorney

Steele County

RE: Taxation - Delinquent Taxes - Rate of Penalty and Interest

This is in response to your letter of May 19, 1969, in which you refer to House Bill No. 358, which amends Section 57-20-01 of the North Dakota Century Code. You specifically inquire whether or not the higher penalties and interest rates as provided for in House Bill No. 358 will attach to unpaid 1968 taxes after the effective date of the Act. You also inquire if the higher penalties and interest will affect any unpaid taxes that are delinquent for 1968, or any prior year.

House bill No. 358 basically changes the penalties from one to two per cent on the first installments if same are due and delinquent on the first day of March, and from one to two per cent for installments which are due and delinquent on May 1st, and from one to two per cent for the installments which are due and delinquent on July 1st. It also changes the rate of interest to be charged on delinquent taxes after January 1st of the year following the year in which the taxes become due from six to seven per cent.

It is a rule of law that all statutes operate prospectively, only unless the Legislature otherwise indicates. House Bill No. 358 does not use any language which gives the bill any retrospective application. Consequently, it will operate only prospectively. The bill in question is not an emergency measure, therefore it becomes law and is effective from and after July 1, 1969.

Even though a law only operates prospectively, it does not necessarily mean that the effects of the law cannot be applied to those matters which continue to exist after the effective date of the law. It merely means that the provisions of the law will go into effect on a certain date (July 1st) and apply to the facts or situation as same exist thereafter.

By way of analogy, the habitual criminal act has been challenged in a number of instances on the grounds that it constitutes an ex post facto law. The Courts have consistently held that a second offender who is being subjected to a habitual criminal act, which was enacted after his first conviction, but before his second conviction, cannot claim that such act is unconstitutional and invalid when applied to him. (See 39 AM. JUR. 2d., page 312; Annotations in 58 A.L.R. 21, 82 A.L.R. 347, 116 A.L.R. 211, 132 A.L.R. 982, 139 A.L.R. 674, and *Gomes v. State*, 280 S.W.2d. 278.) The constitutional provisions relating to due process and the prohibition of ex post facto laws would appear to be positive provisions of constitutional law guaranteeing certain basic principles of justice. Yet in view of these positive

provisions, the Courts have held that the habitual criminal act or second offender's act do not violate any of the constitutional rights of an individual and, specifically, that same do not constitute an ex post facto law which is prohibited by the Constitution.

We are also mindful of text references such as 70 C.J.S. PENALTIES, Section 1, which state that penalties will be strictly construed in their application and the text reference of 85 C.J.S., page 579 which, in substance, states that the Legislature may make penalties for violation of tax laws either prospectively or retrospectively, but an attempt to impose a penalty retroactively on delinquent taxes would be void.

House bill No. 358 does not impose a penalty on delinquent taxes retroactively. It does, however, increase the penalty and interest rate for those taxes which remain due after July 1, 1969.

It is our opinion that the increased penalties and increased interest rates as provided for in House Bill No. 358 will apply to all delinquent taxes which remain due and unpaid as of July 1, 1969, and thereafter.

As to your specific question, the unpaid 1968 taxes which were subject to the one per cent penalty on March 1st and an additional one per cent penalty on May 1st, would not be subject to the two percent penalty for each of the respective periods. The one per cent penalty, which was the law in effect at that time, has been assessed or imposed and no further penalty for that period can be imposed under House bill No. 358. However, the penalty which will be imposed on July 1st for 1968 delinquent taxes, if still due and unpaid, will be two per cent instead of one per cent, and if such taxes remain unpaid after January 1st following the year in which the taxes become due and payable, the interest rate will be seven per cent instead of six per cent.

We do not believe the contention that the new penalty and interest rates should not apply to those taxes which were delinquent before July 1, 1969 has any merit or can be supported on any constitutional grounds. The application of House Bill No. 358 as set forth in the preceding paragraphs does not operate retrospectively but operates prospectively and the results are as indicated above.

The bill does not require that the officials go back and impose a two per cent penalty retrospectively for taxes which were delinquent on March 1st and May 1st, but it does require that any taxes which were delinquent and unpaid as of July 1st, and thereafter, be subject to the increased penalties and interest rates.

HELGI JOHANNESON

Attorney General