

OPINION
77-82

April 5, 1977 (OPINION)

Mr. John F. Burke
Walsh County State's Attorney
Walsh County Courthouse
Grafton, ND 58237

Dear Mr. Burke:

This opinion is written to you as the result of your request for an opinion concerning the rate of interest to be charged an estate for late payment of an estate tax after July 1, 1975, when the deceased died prior to that date.

Your letter quotes the following from Section 57-37-16, N.D.C.C.:

"The tax imposed by this chapter shall be due and payable at the death of the decedent, and, if not paid within fifteen months after the date of death, shall bear interest at the rate of six percent per annum to be computed from the expiration of fifteen months after death until the amount is paid. . ."

You then further observe that Chapter 57-37.1 went into effect on July 1, 1975. You have correctly observed that this Chapter repeals chapter 57-37 and you quoted the following language from Section 57-37.1-07, N.D.C.C.

"The tax imposed by this chapter shall be due and payable at the death of the decedent, and if not paid within fifteen months after the date of death, shall bear interest at the rate of twelve percent per annum to be computed from the expiration of fifteen months after death until the amount is paid."

You have observed that Section 57-37.1-07, N.D.C.C., contains the language "the tax imposed by this chapter" and that the interests imposed by that section could only be applied in cases of decedents dying on or after July 1, 1975.

Your inquiry is what interest should be charged for the late payment of estate taxes for a decedent who died prior to July 1, 1975, if the delinquent date extends past July 1, 1975.

Senate Bill No. 2278 was enacted by the 1975 legislative session and appears as Chapter 528 of the 1975 Session Laws. The final passage date was March 6, 1975, and this bill had the effect of creating a new estate tax chapter of the North Dakota Century Code known as Chapter 57-37.1 and had the additional effect of repealing the then existing estate tax which appeared as Chapter 57-37, N.D.C.C. The effective date of Senate Bill 2278 was July 1, 1975.

The final passage date of House Bill 1569 was March 13, 1975, and it appears as Chapter 527 of the 1975 Session Laws. Section 6 of House Bill 1569 amended Subsection 1 of Section 57-37-16, N.D.C.C., to provide for an 8% per annum interest charge to be computed from the

expiration of fifteen months after death until the amount of tax is paid. The effective date of House Bill 1569 was July 1, 1975.

It is the opinion of this office that the penalty provisions of Chapter 57-37, N.D.C.C., were not repealed by Senate Bill 2278. The reasons for this opinion follow.

When an act has been repealed by a general repealing clause, the fact of its repeal is sometimes overlooked and a new act purports to amend it. This raises the question of whether a repealed statute can be amended.

Section 22.03 of Sutherland: Vol. 1A, Statutory Construction, 4th ed., at pages 108-109 provides, in part:

"In a majority of the jurisdictions the courts recognize the mistake of the legislature and try to determine and give effect to its intent. If the legislature has expressed its purpose intelligibly in the amendatory act and provided fully upon the subject considered, a majority of courts hold that it is a reasonable conclusion that the legislature did not intend to make the enforcement of the statute contingent on the continued existence of the repealed statute. The reference to the repealed statute is dismissed as surplusage and the will of the legislature as embodied in the provisions of the attempted amendment is enforced as an independent act."

In addition, the Virginia Supreme Court has held that a general repealing clause usually does not contemplate acts of the same session. *Commonwealth v. Sanderson*, 195 S.E. 516 (Va. 1938).

Furthermore, the North Dakota Supreme Court has found that where provisions of an act dealing with a specific subject are repugnant to those of an act more general in its nature, the one dealing with the specific subject will prevail. *Adams County v. Smith and Dakota Collieries Co.*, 23 N.W.2d. 873 (ND 1946).

Finally, Section 1-02-09, N.D.C.C., provides in part:

"Whenever the provisions of two or more statutes passed during the same session of the legislative assembly are irreconcilable, the statute latest in date of final passage by the legislative assembly, irrespective of the date on which it was approved or allowed to become law by the governor or of its effective date, shall prevail from the time it becomes effective."

Therefore, in applying the above rules of construction and interpretation to the facts at hand, the only conclusion which can be made is that any interest charges for the delinquent payment of an estate tax for a decedent who died prior to July 1, 1975, should be computed at the rate of 6% per annum for that period of time prior to July 1, 1975, for which the tax was delinquent and should be computed at the rate of 8% per annum for that period of time on or after July 1, 1975, for which the tax was delinquent.

Sincerely,

ALLEN I. OLSON

Attorney General