

**OPINION
59-269**

July 22, 1959 (OPINION)

TAXATION

RE: Payment and Collection of Taxes - Personal Property Taxes,
 Delinquent - Penalty

This is in reply to your letter of July 20, 1959, requesting my opinion on two questions relating to the following provision added to section 57-2001, N.D.R.C. 1943, by Chapter 387, S.L. 1959:

From and after January first of the year following the year in which the taxes become due and payable, simple interest at the rate of six percent per annum upon the principal of the unpaid taxes on personal property shall be charged until such taxes and penalties are paid, with such interest charges to be prorated to the nearest full month for a fractional year of delinquency."

Your first question is whether six percent interest should be charged on all delinquent personal property taxes including those levied before 1959 or whether it should be charged only on personal property taxes levied for 1959 and later years that become delinquent. Your second question is whether the six percent interest should be charged on personal property taxes that have been extended as a lien against real estate pursuant to section 57-2221, N.D.R.C. 1943.

In answer to your first question it is our opinion that the delinquent personal property taxes levied for the year 1959 will be the first year's taxes to which the six percent interest rate will apply and that six percent interest should not be charged on delinquent personal property taxes levied in 1958 and prior years. In answer to your second question six percent interest should be charged on personal property taxes levied for 1959 and later years which become delinquent and are extended as a lien against the taxpayer's real estate pursuant to section 57-2221, N.D.R.C. 1943. The reasons for these answers are set out in the following paragraphs.

In reference to your first question, the language of the above amendment does not refer expressly to personal property taxes that were delinquent at the time the Act became effective or that were delinquent at any other time. Instead, the reference is to the year following the year in which the taxes become due and payable. The intention of the Legislature is not clear insofar as designation of the years in which the taxes were levied is concerned. For this reason resort must be had to various rules for construing statutory provisions of doubtful meaning.

The word "become" as used in the phrase "become due and payable" in this amendment seems to imply that the six percent interest rate should be applied only to delinquent personal property taxes which

are not now due but which will become due and payable in the future and that it should not be applied to personal property taxes which have already become due and payable. See 5 W & P 245, and Supplement thereto, and Hansen v. Henderson, 56 N.W. 2d. 59, 69 (Iowa). Since the 1958 personal property taxes had become due on January 1, 1959, and this amendment was not enacted until after that date and is not yet effective, it would seem that the amendment would apply for the first time to 1959 personal property taxes which "become due and payable" on January 1, 1960, which due date falls after the enactment and effective date of the amendment. In other words, the 1959 personal property taxes would be the first taxes to which the six percent interest rate would apply, and as to the delinquent taxes for that year the six percent interest rate would begin to accrue on January 1, 1961. Other rules of statutory construction we believe also require the same holding. For instance,

A statute creating a new liability, or increasing an existing liability . . . must be strictly construed in favor of persons sought to be subjected to their operation." 59 C.J. 1129, section 668.

. . . . It has also been stated that revenue statutes should be construed strictly, in so far as they may operate to deprive the citizen of his property, by summary proceedings or to impose penalties or forfeitures upon him. . . ." 59 C.J. 1133, section 670.

Also various jurisdictions hold that interest charged on delinquent taxes by statute is not interest in the sense that it is consideration for the forbearance of money but instead is deemed to be a penalty. 31 A W & P, 444-449; Cooley on Taxation, 4th Edition, Page 25, 44, Section 12, 74.

Penalties must be plainly imposed or they cannot be exacted, and if one is illegal in part it is wholly void. The laws imposing them must be followed strictly, and they cannot be given retroactive effect."

The fact that interest on delinquent taxes is usually held by the courts to be a penalty rather than interest suggests that the provision made by this amendment for the charging of interest is in reality a penalty, particularly because it is not computed to the exact day upon which it is paid but rather to the nearest full month. See 47 C.J.S. 72, Section 63, as to computation of interest.

In reference to your second question, the above amendment does not make any reference to unpaid and delinquent personal property taxes that have been extended as a lien against the taxpayer's real estate. It is clear from Sections 57-2221, 57-2222, and 57-2223 that when delinquent personal property taxes are extended as a lien against the real estate pursuant to Section 57-2221 that they do not lose their status as personal property taxes. Extending them as a lien against the real estate simply provides an additional means of enforcing their collection. Whether or not the delinquent personal property taxes have been extended as a lien against the real estate, it is our opinion that they are "unpaid taxes on personal property" within the meaning of those words as used in this amendment and that six percent

interest should be charged if the personal property taxes involved are taxes for 1959 or later years.

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