

Seed Grain Loans—Penalty for Delinquent Taxes.

Money loaned under Chapter 19 of the Laws of the Extraordinary Session of 1918 for seed grain and extended as taxes becomes delinquent as such, and the penalty applies in the same manner as to other delinquent taxes.

If, however, the loan was extended and the amount not extended as a tax, it would merely be subject to the interest charge of 7 per cent.

W. C. Husband, Esq.,
County Attorney,
Harlowton, Montana.

My dear Mr. Husband:

You have submitted to this office the following inquiry:

Are amounts due to Wheatland County for loans made under Chapter 19 of the Laws of the Extraordinary Session of 1918, known as the Seed Grain Law, which amounts have been extended as delinquent taxes by the County Assessor, subject to the penalty for delinquent taxes in the same manner as other delinquent taxes, or are said amounts limited to the interest charge of 7 per cent per annum, provided for in the law and inserted in the contract under which the loan was made?

Section 25 of Chapter 19 of the Laws of the Extraordinary Session of 1918 reads as follows:

“If the amount specified in said contract with the interest thereon is not paid by the twentieth day of October of the year in which the crop grown from said seed grain is harvested, it shall be the duty of the county treasurer of such county to enter the amount of such indebtedness upon the tax rolls of such county for that year as a tax upon all property, real and personal, which is described in said contract as being subject to the lien thereof, which tax shall be collected at the time and in the same manner as other taxes are collected, and if such tax becomes delinquent said property shall be sold for delinquent taxes at the same time and in the same manner that property is sold for delinquent taxes.”

The contract, under which the loans were made, reads in part as follows:

“To pay to Wheatland County, Montana, at the office of the County Treasurer of said Wheatland County, Montana, the sum of.....Dollars, on or before October 15th, 1920, the amount of the cost of said grain, (and or), together with interest thereon from the date of this contract until said amount is fully paid at the rate of seven (7) per cent per annum.

"And I further agree that said amount shall become due and payable at the office of the County Treasurer of said Wheatland County, Montana, on the fifteenth day of October, 1920, and that if the same is not paid by the 20th day of October, 1920, the same shall be levied as a tax upon all property owned by me and above described, and collected at the same time and in the same manner as other taxes are collected."

There is nothing in Section 25, supra, to indicate that the penalty, attaching to delinquent taxes generally, should not apply to the seed loan when extended as a tax. The contract under which the loan was made specifically provides that in case of non-payment of loan and interest, the amount of the loan should be extended as a tax and "collected at the same time and in the same manner as other taxes are collected." All other taxes, when they become delinquent, are collected with the penalty added, and while the contract under which the loan was made provides that interest shall be paid at the rate of 7 per cent per annum, this is superseded by the provision in the agreement for the extension of the amount as a tax to be collected as other taxes are collected upon the non-payment of the amount and interest. The amount when extended as a tax is subject to the same conditions when it becomes delinquent as other taxes, and the penalty should be added at the time of such delinquency, and collected in the same manner as penalties added to other delinquent taxes.

If there were any doubt of the intention of the Legislature in connection with Section 25, supra, it would be resolved by reference to Chapter 53 of the Laws of 1919.

Section 3 of said Chapter 53 provides as follows:

"That any farmer, the payment of whose indebtedness to the county on account of such seed grain loan has been extended by the Board of County Commissioners, may pay and discharge his indebtedness to the county by paying the principal of such indebtedness together with interest thereon at the rate of seven percent (7%) per annum from the date of such seed grain contract to the date of payment; provided, however, that such payment be made within the time so extended, and if such payment is not made within the period of time as extended, the County Treasurer shall enter the same as delinquent taxes, adding the usual statutory penalty, and the property shall be sold for delinquent taxes at the same time and in the same manner that property is sold for delinquent taxes."

Here provision is specifically made for "adding the usual statutory penalty." It could scarcely be said that the penalty should only apply to loans that had been extended under the foregoing provision.

It is, therefore, my opinion that when amounts loaned under Chapter 19 of the Laws of the Extraordinary Session of 1918 are extended as taxes and become delinquent as such, the penalty applies in the same manner as to other delinquent taxes.

I desire to draw your attention, however, to the situation suggested by your letter and by the dates in the contract. The contract set out provides for payment of the loans in October, 1920. Your letter inquires if one per cent per month should be collected after "December 30th." The date December 30th would not enter into the matter unless your County Commissioners had extended the time of payment under the provisions of Chapter 53, Laws of 1919, supra. The Board has discretion to extend the time of payment on loans made in 1920 to December 31, 1921, the "year following the year in which the loan was made." (Sec. 1.)

I cannot be certain from your letter of the facts as to extension, but if extensions were made, they would fix a new date of payment which would become the new date of delinquency. (Sec. 3, Chap. 53, Laws of 1919, supra.)

The above opinion must, therefore, be held to be applicable only to loans whose payment date, whether extended or not, has been passed and the amount properly extended as taxes, which taxes have become delinquent. It follows that any loan extended by the Commissioners, beyond the time when payment is tendered, would be subject only to the interest charge of 7 per cent.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.