

Taxes—Interest—Penalty—Delinquent Taxes.

Interest should be computed on the penalty as well as on the delinquent taxes and should be computed from the date of delinquency.

March 26, 1928.

R. N. Hawkins, Esq.,
First Assistant State Examiner,
Helena, Montana.

My dear Mr. Hawkins:

You have requested my opinion on the following question:

“1. In computing the interest on delinquent taxes, should interest be charged upon the penalty together with the original amount of the tax, or should such interest be computed upon the original amount of the tax only?”

In 37 Cyc. 1547 it is said:

“Interest on the amount of an accrued penalty is recoverable if the statute expressly authorizes it, but not otherwise.”

The answer to your question depends therefore upon the statutory provisions relating to the payment of interest on delinquent taxes. Chapter 96, laws of 1923, authorizes the payment of taxes in semi-annual installments and provides for the payment on all delinquent taxes of interest at the rate of one per cent per month. It then provides: “A penalty of five per cent shall be added to all delinquent taxes.”

Under similar statutory provisions the supreme court of Kansas has held that the penalty required by law to be added to taxes in case of failure to pay within the time required by law became, when added a part of the taxes due. (*Kansas Pac. Ry. Co. vs. Amrine*, 10 Kan. 318.)

It is therefore my opinion that the five per cent penalty provided by chapter 96 for the non-payment of taxes when imposed becomes a part of the tax and the whole thereof draws interest as therein provided.

You have also asked:

“2. Should interest be charged on delinquent taxes from the date of delinquency to the date of sale, or from the date of sale only?”

Chapter 96 of the laws of 1923 provides in part:

“All delinquent taxes shall draw interest at the rate of one per cent per month from the time they are first delinquent until paid.”

It seems to me clear that interest must be computed from the date of delinquency rather than from the date of sale. Former Attorney

General Kelly reached a different conclusion in an opinion appearing in volume 6, Opinions of Attorney General, page 102. That opinion seems to be based upon the view that section 2221 relates to personal property taxes which are not a lien upon real estate. If that opinion is correct the rule has been changed by chapter 96 which has to do with real property taxes.

You have also asked:

“3. If interest is charged from the date of delinquency to the date of sale, is said interest included in the amount of the tax sale certificate?”

It is my opinion that under section 2194 R. C. M. 1921 the interest should be included in the amount of the tax sale certificate.

Your fourth question is as follows:

“4. If this interest is so charged and included in the certificate, and interest is then charged upon the full amount of the certificate or the purchase price of said certificate from the date of sale to the date of redemption it would result in the charge of interest upon interest. Is this legal and is it fair to the owner or the redemptioner?”

It is my opinion that since chapter 96 is of a later date than section 2207 R. C. M. 1921 that it requires interest at the rate of one per cent per month on the tax and penalty from the date of delinquency and to that extent supersedes section 2207 which requires this rate of interest on the amount for which the property was sold.

In other words, after the issuance of a tax sale certificate interest should be computed not on the amount for which the property was sold but on the amount of the original tax plus the penalty which should be stated separately in the tax sale certificate.

The answer to this question necessarily disposes of the fifth question. Your sixth question is as follows:

“6. Is there any distinction between a tax sale certificate issued to the county and one issued to an individual, in regard to the application of the interest charge, either at the time of sale or at the time of redemption?”

There is no difference as to interest charges between a tax sale certificate issued to an individual as against one issued to the county.

Very truly yours,

L. A. FOOT,
Attorney General.