

**OPINION
69-384**

August 18, 1969 (OPINION)

Mr. William W. Eichhorst

State's Attorney

Billings County

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

on Delinquent Installments

This is in reply to your letter of July 23, 1969, with regard to the interpretation of Section 57-20-01 of the 1969 Supplement to the North Dakota Century Code. Your question is stated as follows:

* * * Does the County Treasurer collect the 7 percent penalty on all taxes that were due on or before January 1, 1969? For instance a fellow owed taxes for the years 1966, 1967 and 1968. If this fellow paid all these taxes for the above years on the 1st of August, 1969, my opinion is that he would pay 7 percent simple interest for the years 1966 and 1967 to date of payment, and for the year 1968 he would pay 6 percent."

The statute as now constituted provides:

57-20-01. REAL AND PERSONAL PROPERTY TAXES - WHEN DUE AND DELINQUENT - PENALTIES. All real and personal property taxes, hail insurance taxes, and yearly installments of special assessment taxes shall become due on the first day of January following the year for which such taxes were levied. The first installment of real estate taxes, all personal property taxes, hail insurance taxes, and yearly installments of special taxes shall become delinquent on the first day of March following and, if not paid on or before said date, shall be subject to a penalty of two percent, and on May first following an additional penalty of two percent, and on July first following an additional two percent, and an additional penalty of two percent on October fifteenth following. 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 seven 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. The second installment of real estate taxes shall become delinquent on October fifteenth, and if not paid on or before that date shall become subject to a penalty of two percent."

From the scope of your question, we must also consider Section 57-20-01 of the North Dakota Century Code, as it existed prior to the 1969 amendments. Such statute then provided as follows:

"57-20-01. REAL AND PERSONAL PROPERTY TAXES - WHEN DUE AND

DELINQUENT - PENALTIES. - All real and personal property taxes, hail insurance taxes, and yearly installments of special assessment taxes shall become due on the first day of January following the year for which such taxes were levied. The first installment of real estate taxes, all personal property taxes, hail insurance taxes, and yearly installments of special taxes shall become delinquent on the first day of March following and, if not paid on or before said date, shall be subject to a penalty of one percent, and on May first following an additional penalty of one percent, and on July first following an additional penalty of one percent, and an additional penalty of two per cent on October fifteenth following. 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. The second installment of real estate taxes shall become delinquent on October fifteenth, and, if not paid on or before that date shall become subject to a penalty of two percent."

In a prior opinion dated May 287, 1969 (Xerox copy attached hereto), this office has held that the amendment is to be given effect prospectively only and is not to be construed as a retrospective statute.

In the example you give, the taxpayer owed taxes for the years 1966, 1967 and 1968. Insofar as both the old and the new statute prescribe a different treatment for real and personal property taxes, we will complete your example by assuming that the taxpayer owes both real and personal property taxes for each of the years you mention. On the basis of this completed example, limiting our answers to the effect of the old and new Section 57-20-01, as quoted above, our answers would be as follows:

As to taxes levied in 1968, due on January 1, 1969:

1. Total real and personal property taxes, penalties and interest for the year 1969 would be:

First installment of real estate taxes (generally construed as 1/2 of real estate tax) and all personal property taxes would be subject to a penalty of 1 percent as of March 1, 1969, and a further penalty of 1 percent as of May 1, 1969 (as the new Act was not yet in effect), and would be further subject to a penalty of 2 percent as of July 1, 1969 (when the new Act was first in effect). There would be no interest until January 1, 1970, as interest under both Acts applies only to personal property taxes and only from and after January first of the year following the year in which the taxes become due and payable.

As to taxes levied in 1967, due on January 1, 1968:

1. Total real and personal property taxes, penalties and interest for the year 1968, would be:

First installment of real estate taxes (generally construed as 1/2 of real estate tax) and all personal property taxes would be subject to a penalty of 1 percent as of March 1st, a penalty of 1 percent as of May 1st, a penalty of 1 percent as of July 1st, and a penalty of 2 percent as of October 25th, or a total penalty on all personal property taxes and the first installment of real estate taxes of 5 percent for the year 1968. In addition, there would be a 2 percent penalty on the second installment of real estate taxes as of October 15, 1968. There would, of course, be no interest on taxes levied in 1967, due January 1, 1968, for the year 1968.

2. Total real and personal property taxes, penalties and interest for the year 1969 would be:

No penalties for this year, but there would be interest at the rate of 6 percent for the first half of 1969 (since this was prior to the effective date of the 1969 amendment) on the personal property taxes, and interest at the rate of 7 percent for the second half of 1969 (after the effective date of the 1969 amendment) on the personal property taxes and interest at the rate of 7 percent for the second half of 1969 (after the effective date of the 1969 amendment) on the personal property taxes. There would be no interest or penalties under this section, 57-20-01, on the real estate taxes levied in 1967 during the year 1969.

As to taxes levied in 1966, due on January 1, 1967:

1. Total real and personal property taxes, penalties and interest for the year 1968 would be:

First installment of real estate taxes (generally construed as 1/2 of real estate tax), and all personal property taxes would be subject to a penalty of 1 percent as of March 1, 1967, a penalty of 1 percent as of May 1, 1967, a penalty of 1 percent as of July 1, and a penalty of 2 percent as of October 15, or a total penalty on all personal property taxes and on the first installment of real estate taxes of 5 percent for the year 1967. In addition, there would be a 2 percent penalty on the second installment of real estate taxes as of October 15, 1967. There would, of course, be no interest on taxes levied in 1966, due January 1, 1967, for the year 1967.

2. Total real and personal property taxes, penalties and interest for the year 1968 would be:

No penalties for this year, but there would be interest at the rate of 6 percent for the first half of 1969 (since this was prior to the effective date of the 1969 amendment) on the personal property taxes, and interest at the rate of 7 percent for the second half of 1969 (after the effective date of the 1969 amendment) on the personal property taxes. There would be no interest or penalties under this section,

57-20-01, on the real estate taxes levied in 1966, during the year 1968.

3. Total real and personal property taxes, penalties and interest for the year 1969 would be:

No penalties for this year, but there would be interest at the rate of 6 percent for the first half of 1969 (since this was prior to the effective date of the 1969 amendment) on the personal property taxes, and interest at the rate of 7 percent for the second half of 1969 (after the effective date of the 1969 amendment) on the personal property taxes. There would be no interest or penalties under this section, 57-20-01, on the real estate taxes levied in 1966, during the year 1969.

We trust the within and foregoing will sufficiently explain the solution to the example your letter cites.

In specific answer to your specific question, the 7 percent interest provided for in the 1969 amendment to the statute will be collected by your treasurer only for the time after the effective date of the statute, July 1, 1969. Interest for non-payment of taxes for the period of time prior to July 1, 1969 will be collected by your treasurer at the rate of 6 percent per annum.

HELGI JOHANNESON

Attorney General