

**OPINION
42-114**

August 28, 1942(OPINION)

TAXES

RE: Penalty and Interest

I have your letter of August 24th inquiring as to whether the amount of penalty and interest to be collected on delinquent personal property taxes which became delinquent prior to the effective date of chapter 269 of the 1941 Session Laws should be governed by the provisions of chapter 279 of the Laws of 1931, which provides for a penalty of five percent when the taxes became delinquent, and three-quarters of one percent per month thereafter, or whether the penalty provision in chapter 269 of the 1941 Session Laws should apply to such delinquency.

When interest is charged on a delinquent tax by statute, it is not regarded as interest in the sense that it is a consideration for the forbearance of money, but is deemed to be a penalty, and the statutes imposing interest do not make interest a part of the tax but pertain to the remedy employed to compel payment of the tax.

See section 2220, page 1516 of volume 61, Corpus Juris.

It is a well settled rule that statute providing for the payment of interest on delinquent taxes are prospective, and not retroactive in operation, unless the legislative intent that they shall operate retrospectively is clearly manifest. See 61 Corpus Juris page 1516. Chapter 269 of the 1941 Session Laws contains no clause showing any intent on the part of the Legislative Assembly that its provisions should be retrospective. It is, therefor, my opinion that the provisions of chapter 279 of the 1931 Session Laws as to penalty and interest on delinquent personal property taxes applies to all delinquent taxes up to the time of the effective date of chapter 269 of the 1941 Session Laws.

As to the penalty and interest to be charged on delinquent personal property taxes after the effective date of said chapter 269 of the 1941 Session Laws, it is our opinion that this Act fails to eliminate the penalty provided for by the earlier 1931 statute.

It is, therefor, my opinion that on all delinquent personal property taxes prior to the effective date of chapter 269 of the 1941 Session Laws, the penalty and interest provision of chapter 279 of the 1931 Session Laws apply. After the effective date of the 1941 Act, penalty and interest is no longer computed on the basis of the 1931 Act and the penalty and interest provision under the 1941 Act becomes effective. However, penalty and interest which had accrued under the 1931 Act prior to the effective date of chapter 269 of the 1941 Act, remains as a part of the tax due on tax charges delinquent at the time the 1941 Act went into effect.

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