



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-3657
Re: Whether any penalty may be charged a taxpayer who pays all of his delinquent ad valorem taxes, in view of House Bill 76, Forty-Seventh Legislature.

In your letter of June 10, 1941, you direct our attention to House Bill No. 76, Forty-Seventh Legislature, and request our opinion as to whether a man owing delinquent taxes on several pieces of property and who pays all of such delinquent taxes on or before November 1, 1941, will be required to pay a 6% penalty, or whether the 6% penalty would be due only in case the taxpayer should single out a part of such property and pay the delinquent taxes on it without paying on the other.

Sections 1 and 3 of said House Bill 76, read as follows:

*Section 1. That all interest and penalties that have accrued on all ad valorem and poll taxes that were delinquent on or before July 1, 1940, due the State, and county, common school district, road district, levee improvement district, water improvement district, and water control and improvement district, irrigation district, and other defined subdivisions of the State (and, subject to the provisions hereinbefore and hereinafter contained, such interest and penalties on delinquent ad valorem and poll taxes due cities, towns and villages, and special school districts, and independent school districts,) shall be and the same are hereby released, provided said ad valorem and poll taxes are paid on or before November 1, 1941. It is provided that the

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provisions hereof shall not apply to cities, towns, and villages and special school districts, and independent school districts, unless and until the governing body of any such city, town, or village, or special school district, or independent school district finds that unusual or excessive default in the payment of ad valorem and poll taxes has occurred, and that an extension of time for the payment of such delinquent ad valorem and poll taxes will promote and accelerate the collection thereof, whereupon such governing body shall adopt a resolution or ordinance evidencing such finding, and upon the recording of such findings of fact the provisions of this Act shall be in full force and effect as to any such city, town, or village, or special school district, or independent school district. It is hereby expressly and specifically provided that penalties and interest herein released are released only on delinquent ad valorem and poll taxes and on no other taxes.

"Section 3. Anyone desiring to pay at one time all the delinquent taxes for only one year wherein such taxes are delinquent for more than one year shall have the right to pay the same but without remission of penalties and interest; provided, however, that any persons availing themselves of the benefits of this Act shall be required to pay all delinquent ad valorem taxes due the State and county on any specific piece of property on which such taxes are delinquent before the penalties and interest may be released as herein provided; conditioned that a six per cent (6%) penalty on the total amount delinquent be paid on such property."

It is noted that in Section 1 there is a general release of all penalties and interest, if payment is made on or before November 1, 1941. As we view the last clause in Section 3 it does not preserve any part of the penalty and interest theretofore accumulated. Its levy of a penalty is

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afresh. While the language used is perhaps not as clear as might have been used, we believe that Section 3 was meant to have this effect: (1) if more than one year's taxes are delinquent, the taxpayer may not have the benefit of the release if he pays for one year only, or if he pays for any number of years less than all; and (2) if he owes taxes delinquent on several pieces of property he may single out one piece and pay the delinquent taxes assessed against it, without paying other delinquent ad valorem and poll taxes owing by him, but in such a case of thus paying only a part of the delinquent taxes owing by him he will have to pay a 6% penalty. It does not appear to us that any intention is manifest in Section 3 to levy the 6% penalty where all the delinquent taxes owing by a man are paid. Rather it seems to us that the penalty is limited to those cases where the property owner chooses to segregate a part of his property and pay on it alone.

Our opinion is that under the Act no penalty on delinquent taxes will be chargeable by the State and County, or by other political subdivisions adopting the Act, where a person pays all the delinquent ad valorem and poll taxes owing by him. If he pays all the delinquent taxes due on a part of his property only, thus leaving a part of his delinquent taxes unpaid he must pay a 6% penalty on that paid.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Glenn R. Lewis*
Glenn R. Lewis
Assistant

GRL:ej

APPROVED JUN 26, 1941

Robert E. Keane
acting ATTORNEY GENERAL OF TEXAS

