

TAXATION: AND REVENUE:
SOLDIERS AND SAILORS
DELINQUENT TAXES:

Penalty and interest on delinquent
taxes of persons in Military
Services.

April 23, 1942

5-1

Mr. W. A. Holloway
Chief Clerk
State Auditors Department
Jefferson City, Missouri



Dear Sir:

This is in reply to your letter of recent date where-
in you request an opinion from this Department on the following
statement of facts:

"I would like an opinion on Section
11085 R. S. 1939. Collectors shall
Collect Penalties. * * * Provided,
however, that said interest shall not
be chargeable against persons who are
absent from their homes, and engaged
in the military service of this state
or of the United States, * * *.

"Does the above apply to delinquent
taxes as well as current taxes?"

Section 11085 R. S. Mo., 1939, provides in part as fol-
lows:

"If any taxpayer shall fail or neglect
to pay such collector his taxes at
the time and place required by such
notices, then it shall be the duty of
the collector after the first day of
January then next ensuing, to collect
and account for, as other taxes, an
additional tax, as penalty, the amount
provided for in section 11124. Collectors
shall, on the day of their annual settle-

ment with the county court, file with said court a statement, under oath, of the amount so received, and from whom received, and settle with the court therefor: Provided, however, that said interest shall not be chargeable against persons who are absent from their homes, and engaged in the military service of this state or of the United States, or against any taxpayer who shall pay his taxes to the collector at any time before the first day of January in each year: * * * * *

Section 11124 R. S. Mo., 1939, provides in part as follows:

"Between the first of January and the first of July in the year 1934 and annually thereafter, and immediately upon the effective date of this act, the county collector shall make out and record, in a book to be provided for that purpose, a list of lands and lots, returned and remaining delinquent for taxes, including therein the delinquent taxes of all cities and incorporated towns having authority to levy and collect taxes under their respective charters or under any law of this state returned delinquent to the county collector, separately stated, describing such lands or lots as the same are described in the tax books and said delinquent returns, as corrected under sections 11110 and 11114, and charging them with the amount of delinquent tax and naming the years delinquent, separately stated, and in addition thereto a penalty of ten per centum on such tax delinquent for the preceding year, and an additional annual ten per centum on taxes for each

year prior to the preceding year, and shall certify to the correctness thereof, with the date when the same was recorded, and sign the same by himself, or deputy, officially: Provided, however, if taxes are paid on land or lots delinquent for the preceding year at any time prior to sale thereof as in this law provided, the per centum of penalty added shall not exceed one per centum per month or fractional part thereof or ten per centum annually. * * * * *

By the provisions of said Section 11124 supra, the collector is required to make out what is designated as a delinquent tax book and to calculate penalty and interest on delinquent taxes as is therein prescribed.

On the question of whether or not the proviso clause in said section 11085 supra, that is the clause which provides that no interest shall be charged against persons who are in military service and absent from their homes, refers only to current taxes. We think the following rules would be applicable here. In *Willhite v. Rathburn* 61 S. W. (2d) 708, 711, the court makes the following statement:

"* * * A law must not give to something already done a different effect from that which it had when it transpired. *Squaw Creek Drainage District v. Turney*, 235 Mo. 80, 138 S. W. 12. * * * * *"

And, in *Drainage District v. Turney* 235 Mo. 80, 92, the court said:

"A retrospective law is one which creates a new obligation, imposes a new duty, or attaches a new disability with respect to transactions or considerations already past. It must give to something already done a different effect from that which it had when it transpired."

To give the said proviso clause of section 11085 supra, a construction that it applies to taxes which became delinquent prior to the time the taxpayer enters military service would be in violation of the foregoing rule. In other words, we think the proviso clause of said section 11085 supra, would not relieve the taxpayer from taxes together with penalty and interest which accrued before he entered the service.

As to the interest or penalty on such taxes after the taxpayer enters military service, we refer to the Soldiers and Sailors Civil Relief Act of 1940. (This Act is set out in 130 A.L.R. 794.)

Subsections 1, 2, 3 and 4 of section 500 of Article 5, l.c.800 of this Act are as follows:

"(1) The provisions of this section shall apply when any taxes or assessments, whether general or special, falling due during the period of military service in respect of real property owned and occupied for dwelling, agricultural, or business purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.

"(2) When any person in military service, or any person in his behalf shall file with the collector of taxes, or other officer whose duty it is to enforce the collection of taxes or assessments, an affidavit showing (a) that a tax or assessment has been assessed upon property which is the subject of this section, (b) that such tax or assessment is unpaid, and (c) that by reason of such military service the ability of such person to pay such tax or assessment is materially affected, no sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except

upon leave of court granted upon an application made therefor by such collector or other officer. The court thereupon may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the period of military service of such person.

"(3) When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service but in no case later than six months after the date when this Act ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption.

"(4) Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon."

It will be noted by subsection 4 supra, that such taxes shall bear interest at the rate of six per centum per annum. This is in lieu of the penalties and interest which may have been charged under statutes. It will also be noted by this subsection that Congress has provided that the delinquent tax shall bear interest at six per centum per annum and that no other interest or penalty shall be incurred by reason of the nonpayment of the tax. We think this section is a limitation on the Legislature as to the maximum amount of penalty or interest which may be imposed but it does not prohibit that body

April 28, 1942

from relieving the taxpayer who is in military service from any penalty and interest as has been done by the proviso clause in said section 11085 R.S. Mo. 1939.

The rule of construction of legislation for relief of soldiers and sailors is well stated in volume 130 A.L.R. page 776 as follows:

"It has been held that it was not the legislative intent that the remedial purpose of the Soldiers' and Sailors' Civil Relief Act should be defeated by a narrow or technical construction of the language used. Thus, in *Clark v. Mechanics' American Nat. Bank* (1922; CCA 8th) 282 F. 589, it was held that a statute of this nature should be liberally construed in favor of the rights of the man engaged in military service, absorbed by the exacting duties required of him, and unable to give attention to matters of private business. * * * * *

It might be contended that interest or penalty on the current and delinquent taxes should be calculated at six per centum per annum after the taxpayer enters military service as is provided by subsection 4 supra. However, we think the purpose of the proviso clause in said section 11085 supra, was to relieve the person in military service from penalty or interest on taxes, both current and delinquent. We arrive at this conclusion by the application of the construction suggested in the A.L.R. citation supra: that is, that such a statute should be liberally construed in favor of the rights of the man engaged in military service.

In your request you also ask for a suggested form of affidavit which may be used by the taxpayer, or someone for him, in order that he may obtain the benefits of the Act. We suggest that there may be various forms of affidavits used, however, we refer you to subsection (2) of section 500 of article 5 of the Act, which is copied herein and if the affidavit follows the requirements stated therein, it should be sufficient to authorize the court to relieve the collector from proceeding to enforce the collection of the delinquent tax or from charging the statutory rate of interest or penalty.

Mr. W. A. Holloway

-7-

April 28, 1942

CONCLUSION

It is, therefore, the opinion of this Department, that the person who is absent from his or her home and engaged in military service should not be charged penalty and interest on current taxes. We are further of the opinion that he should be charged penalty and interest on taxes which became delinquent prior to the time he entered such service.

It is further our opinion, that no penalty or interest on current or delinquent taxes for prior years, which accrue after he enters military service, should be charged against such person.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
Attorney General

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