

OPINION 23

OFFICIAL OPINION NO. 23

April 20, 1953.

R. R. Wickersham, State Examiner,  
State Board of Accounts,  
Room 304, State House,  
Indianapolis 4, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

"We have had numerous questions submitted to this Department dealing with the payment of delinquent taxes by men in the military service, which taxes became delinquent while they were in such military service. Under the provisions of the Soldiers and Sailors Civil Relief Act (a copy of excerpts from the Act is enclosed) provision is made as follows:

"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 annum and no other penalty or interest shall be incurred by reason of such non-payment. Any lien for such unpaid taxes or assessment shall also include such interest thereon."

"In a question which arose in 1937, we submitted a request to the Attorney General at that time on the matter of whether a charge for interest could be made in the case of a bankrupt. Since the Indiana statute carries no provision for the collection of interest on delinquent taxes, but does provide for the collection of a penalty. The opinion can be found on page 529 of the 1937 opinions and in conclusion the Attorney General held "This conclusion is upon the theory that the Federal Statute does not prohibit the allowance of interest and that these penalties should be treated in lieu of interest."

"We request your official opinion on the following question:

“After a person has been separated from military service, and if he offers to pay the taxes that became delinquent during his military services, is a County Treasurer authorized to waive all penalties that have accrued on such delinquent taxes, or, is the County Treasurer authorized to collect a penalty not in excess of the interest which the Soldiers and Sailors Civil Relief Act authorizes?”

The pertinent portions of the Soldiers' and Sailors' Civil Relief Act which is 54 Stat. 1186 found in 50 App. U. S. C. A. 560, reads as follows:

“(1) The provisions of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural 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.

\* \* \*

“(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.”

Penalties for delinquency in paying taxes in Indiana are provided by Section 1 of Chapter 65 of the Acts of 1932 which is found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 64-1508 which provides in part as follows:

“\* \* \* If any instalment of taxes shall not be paid when the same shall be due such instalment shall be returned delinquent, and a penalty of three (3) per cent on the amount of such instalment shall be added thereto. In addition to the penalty of three (3) per cent herein provided, *interest at the rate of eight (8)*

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*per cent* per annum on the amount of such instalment from the date of such delinquency to the time of payment, shall be charged and paid or collected with such delinquent instalment and penalty in the manner provided by law for the collection of delinquent taxes; provided any taxpayer may at any time, pay any such instalment in two (2) payments, the first of which shall not be less than one-half ( $\frac{1}{2}$ ) of the full amount of such instalment, and the second payment shall be the entire balance, with the penalty and interest due on such instalment, if any; and if by reason of a partial payment of any such instalment of taxes, a balance only shall become delinquent, the penalty and interest herein provided shall be imposed only on such delinquent balance; \* \* \*.”

and by: Section 1 of Chapter 166 of the Acts of 1935 which is found in Burns' Indiana Statutes Annotated (1951 Repl.), Section 64-1542, which provides:

“The taxes for the year 1934 and each year thereafter charged against any taxpayer on the tax duplicate in the hands of a county treasurer in the State of Indiana shall be due and payable in two (2) equal instalments on or before the first Monday in May and the first Monday in November, respectively. If any instalment of taxes shall not be paid when the same shall be due such instalment shall be returned delinquent, and a penalty of eight (8) per cent on the amount of such instalment shall be added thereto. Provided, any taxpayer may at any time, pay any such instalment in two (2) payments, the first of which shall not be less than one half ( $\frac{1}{2}$ ) of the full amount of such instalment, and the second payment shall be the entire balance, with the penalty due on such instalment, if any; and if by reason of a partial payment of any such instalment of taxes, a balance only shall become delinquent, the penalty herein provided shall be imposed only on such delinquent balance.”

1937 O. A. G. 529, to which you refer, deals with a substantially similar question. I find no decision of any court which casts any question on the validity of the provisions of the

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“Soldiers’ and Sailors’ Civil Relief Act” heretofore quoted. The wording of that act is particularly unambiguous, and in my opinion is sufficient to require substitution of six (6%) per cent interest for interest and penalty otherwise provided by law in this state.

To specifically answer your question, it is my opinion that as to taxes which come within the scope of the provisions of the “Soldiers’ and Sailors’ Civil Relief Act” quoted herein the County Treasurer is required to accept, in lieu of the penalties and interest normally otherwise charged, interest of six (6%) per cent per annum.

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OFFICIAL OPINION NO. 24

April 21, 1953.

John A. Cartwright, Director,  
Division of Public Works and Supply,  
404 State House,  
Indianapolis, Indiana.

Dear Sir:

I have your request for an official opinion which reads as follows:

“In a great many instances in requesting bids on various items, quotations are received from both In-State and Out-State vendors. In some cases bids are so close that the State Gross Income Tax paid by the In-State bidder, if considered, would establish the low bid, therefore will you please render an official opinion, upon the following, to-wit:

“Whether or not the Gross Income Tax that is paid by vendors located in the State of Indiana in bidding on purchases by the State, can be considered in bidding against vendors from outside State of Indiana.

“I also would like your official opinion as to what discretion I may have in determining the lowest and best bidder in case of purchases by the State of Indiana, and the highest responsible