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FILE NO. S-494

**TAXATION:
Delinquent Taxes**

Honorable Don Johnson
State's Attorney
Perry County
Courthouse
Pinckneyville, Illinois 62274

Dear Mr. Johnson:

I have your recent letter wherein you state:

"At the request of William C. Heisner, Perry County Collector, we are requesting your opinion concerning the date upon which real estate taxes for 1971 due and payable in 1972 will become delinquent. In addition, we are wondering the effect of possible delinquency dates on the annual tax sale.

Section 224 of the Revenue Act provides that the first installment of real estate taxes are delinquent on July 1st and that the second installment is delinquent on September 1st. Section 194 provides that current taxes on real estate property should be payable in two equal installments. Section 190 provides that a tax bill is to be mailed at least

thirty days prior to the date upon which the real estate taxes became delinquent.

Because of delays in several adjoining counties to Perry County in determination of their assessed valuation and certification of the tax rates for several overlaying districts, Perry County has not as yet been able to prepare and mail its tax bills for the 1971 taxes. It is not expected that the tax bills can be mailed prior to July 1 and in all likelihood not before August 1st.

Because of the conflict between the statutory provisions and the actual facts concerning this years tax bills, I would appreciate at your earliest opportunity your opinion as to the following questions:

1. Under the above circumstances, would the personal property taxes and the first installment of real estate taxes not be due until thirty days after they were mailed?

2. If this meant that the first installment was due on September 1st, would the second installment likewise be due on September 1st or could a different delinquency date be set?

3. Must, in these circumstances, the taxpayer be given an opportunity to pay his real estate taxes in two separate installments on different dates?

4. If the taxpayer must be allowed two different dates for the installment payment of his real estate taxes, how much time must intervene between the installment dates?

5. Since Section 225 and 229 of the Revenue Act, relative to the advertisement and application for judgment for sale on delinquent taxes, relate to the September 1st delinquency date, would your answers to the foregoing questions indicate that a tax sale could or should be held later than the month of October?"

In your first question you have asked, considering the facts stated in your letter, whether the personal property taxes and the first installment of real estate taxes would not be due until thirty days after they were mailed. This office has previously had occasion to consider this question in Opinion No. 4, issued on May 27, 1959, and found at page 93 of the 1959 Illinois Attorney General's Opinions. A copy of this opinion is enclosed for your information. Your attention is called to Section 190 of the "Revenue Act of 1939," (Ill. Rev. Stats., 1971, ch. 120, par. 671) which provides, in part, as follows:

'Every town collector and every county collector, in cases where there is no town collector, upon receiving the tax book or tax books, shall proceed to collect the taxes mentioned herein. It shall be the duty of every county collector to prepare tax receipts in triplicate for personal property taxes and each installment of real property taxes assessed, which shall be filled out in accordance with the requirements of section 196 of this Act, one copy of which shall be mailed by such collector at least thirty days prior to the date upon which unpaid real estate taxes become delinquent, to the owner of the property taxed, or to the person in whose name such property is taxed.***'

Under the provisions of the foregoing statute it is clear that the collector is required to mail a copy of the taxpayer's bill to him at least 30 days prior to the date upon which unpaid taxes became delinquent. Construing the statutory provision, I am of the opinion that tax delinquency subjecting the taxpayer to a penalty does not commence until 30 days after the date the collector mailed the tax bills to the taxpayer.

Secondly, you have asked that if pursuant to the above, the first installment of real estate taxes was due on September 1, whether the second installment would also be due on September 1. In answer to this question I am of the opinion that as long as the tax bills were mailed to the taxpayer at least 30 days prior to September 1, the second installment would also be due on September 1. The taxpayer has therefore not necessarily been given the opportunity to pay his real estate taxes in two separate installments on different dates.

Lastly, you have asked since Section 225 and 229 of the "Revenue Act of 1939," (Ill. Rev. Stats., 1971, ch. 120,

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pars. 706 and 710), relative to the advertisement and application for judgment for sale on delinquent taxes, relate to the September 1 delinquency date, whether my answers to the foregoing questions indicate that a tax sale could or should be held later than the month of October. In this connection your attention is called to Section 229 which provides, in part:

If for any cause the collector is prevented from advertising and obtaining judgment during the month of October it shall be held to be legal to obtain judgment at any time thereafter;

It seems clear that the foregoing statutory provision authorizes advertising and obtaining judgment later than the date set by statute if the collector is prevented from doing so at the specified times. Whether or not the tax sale should be held later than the month of October would have to be determined from the facts in the particular case.

Very truly yours,

A T T O R N E Y G E N E R A L