

**Opinion No. 53-5751**

May 13, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. Ethan K. Stevens Assistant District Attorney Clayton, New Mexico

{\*152} In your letter dated May 7, 1953, you refer to § 76-603 of the 1941 Compilation and inquire whether interest on delinquent taxes remains unchanged throughout the month or whether it should be computed as in ordinary commercial business transaction from day to day.

Section 76-603 of the 1941 Compilation provides, in part, as follows:

"On December first of each year, if taxes levied in that year shall not have been paid, one-half thereof shall become delinquent and on May first, following, if not paid, the remaining one-half of said taxes shall become delinquent and such taxes, from the respective dates of delinquency, shall bear interest at the rate of one (1) per cent per month until paid."

Interest on state taxes is only authorized by virtue of statute and taxes are not considered debts in the sense of contractual obligations and, therefore, are not within the meaning of general interest laws. The interest on delinquent taxes is more in the nature of a penalty for nonpayment. 51 Am. Jur. Sec. 971; 61 C. J. Sec. 2220, p. 1516.

Since the legislature provides that interest at more than the commercial rate shall be collected upon delinquent taxes and provides that such interest accrues on the first day of December if the first half of that year's taxes remains unpaid, it is our opinion that the one per cent interest, which, in effect, is a penalty, should be charged for the entire month if the taxes are unpaid on the first day of such month. In other words, the statute should be construed as requiring the payment of one per cent of the amount delinquent for each month's delinquency or any portion thereof.

Trusting this answers your question,

By: C. C. McCulloh

Assist. Attorney General