

Opinion No. [29-112]

November 1, 1929

TO: Office of the Attorney General of New Mexico

TAXATION -- Penalty for non-rendition.

OPINION

Before me is your letter of the 20th ult. in which you request an opinion from this office as to whether or not a penalty of 25 per cent. for non-rendition should be added to an assessment of omitted property where the owner of the property requests such assessment to be made, or as you otherwise stated, "assuming that John Doe is the owner of property which has not been assessed for several years and he now comes in and requests that his property be assessed for each of the several years in which it was omitted from assessment and taxation, should the assessing official add 25 per cent, penalty for nonrendition?"

Although you do not say so, I assume that your question has to do with the assessment of real estate rather than personal property and shall so consider it.

As suggested by you, I have considered the opinion rendered in Territory vs. Perea, 10 N.M., 362. That case, however, does not seem to have bearing on the question inasmuch as the penalties therein considered were penalties imposed on delinquent taxes after assessment and after the date on which payment should have been made. Your question, however, above quoted, has to do only with the penalty imposed for failure to make required return for assessment and taxation.

I think the answer to your question may be reached by consideration of Section 203 of Chapter 133, Laws of 1921 as amended by Section 6 of Chapter 102, Laws of 1925, and sections 213, 217 and 233 of Chapter 133, Laws of 1921. These sections being easily available to you, I shall not quote them in full.

By section 203 it is made the duty of owners or those having control and management of property subject to taxation to make lists of such property. By section 213 it is required that such lists must be made and returned to the County Assessor at any time after the first day of January but not later than the first business day in the month of February (with certain exceptions not including real estate) and by this same section it is provided that "failure on the part of any person to make and return such list within the time aforesaid, shall subject him to the penalty for such failure."

By section 217 provision is made for the Assessor to make such list in the event of failure on the part of the person who should have made the same and such person "shall be liable to a penalty of 25 per cent. Upon all of the tax levied against all of his

property to be collected the same as any other portion of the taxes." This I understand to be a penalty imposed on the owner for his failing to make return as required.

By section 233 it is made the duty of the Assessor, at any time before the delivery of the assessment roll to the County Treasurer, if he shall discover real estate which has been omitted in the assessment of any previous year or years, **"to list the same as hereinbefore provided in this article in cases where the owner of property has failed to make return thereof"** and place the same property and his valuation thereof for every year but no more than five years during which said property was omitted upon the **assessment roll for the year in which such property is discovered**. If such discovery is made after the delivery of the assessment roll to the Treasurer it becomes the Treasurer's duty to put the same upon the assessment roll in his possession under the head of Additional Assessments.

The expression, "list the same as hereinbefore provided in this article in cases where the owner of property has failed to make return thereof" would seem to refer back to the duty imposed by section 217 in which is provided the penalty of 25 per cent upon all of the tax levied against all the property of such owner and which is the penalty referred to in section 213, to be imposed upon the owner for failure in the making of returns within the prescribed time.

In such case as that upon which your question is based it is our opinion that if the property has been omitted from the assessment rolls by reason of the failure of the person who should have made return to do so, the 25 per cent penalty provided in section 217 should be added just the same as if the omission had been discovered and the property placed on the assessment roll by the assessor each year of such failure on the part of the person who should have made the return.

If the owner or person whose duty it was to make return did actually make return of his property within the required time and such property has been omitted from the assessment roll because of oversight, error, or failure of any kind on the part of the Assessor, the penalty for non-rendition, of course, could not be imposed.