

**Opinion No. 41-3902**

September 17, 1941

**BY:** EDWARD P. CHASE, Attorney General

**TO:** Mr. H. L. Andrews Auditor, Succession Tax Division Bureau of Revenue Santa Fe, New Mexico

{\*99} In your letter of September 15, you state that it has heretofore been the contention of your department that where an extension of time is granted in accordance with the provisions of Section 141-1111, 1929 Compilation, that such an extension constitutes a wavier of payment of penalty only, and that interest is to be charged as provided by Section 141-1102, 1929 Compilation.

On May 17, 1939, in Opinion No. 3136, Mr. A. M. Fernandez, former Assistant Attorney General ruled that the interest as provided for by Section 141-1102, 1929 Compilation, should be charged from the time the tax was payable under the statute, that is, from twelve months after the qualification of the executor or administrator, and should not be remitted by reason of the extension of time pursuant to the provisions of Section 141-1111, 1929 Compilation. In making this ruling, however, Mr. Fernandez recognized that a different interpretation of the law might be applied in construing said section of the law when he used the following language:

"It may be that a different interpretation may be given to the statute because of the fact that the statute makes the interest chargeable only from the time that the tax becomes payable, and the payment of the tax may be extended by the probate judge."

After careful reconsideration of this question and conferring with Mr. Fernandez, it may be that the {\*100} courts would sustain Opinion No. 3136, but we are now of the opinion that the benefit of the doubt should be resolved in favor of the taxpayer. Therefore, we now conclude that interest is only payable subsequent to the expiration of any extension of time granted by the probate court pursuant to the provisions of Section 141-1111, 1929 Compilation, and the former Opinion No. 3136 is amended to this extent.

By HOWARD F. HOUK,

Asst. Atty. General