

TAXATION: Taxpayers engaged in the military service exempt
from the payment of penalties on delinquent state
SERVICEMEN: and county real estate and personal taxes.

October 18, 1945



Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Attention: Mr. B. E. Ragland, Chief Clerk

Dear Sir:

We are in receipt of your request for an official opinion from this department under date of October 18, 1945, which reads as follows:

"We have had several inquiries regarding penalties on unpaid state and county real estate and personal taxes of persons in the military service, we would appreciate an official opinion on the following:

"What period is a person in the armed services exempted from paying penalties on unpaid state and county real estate and personal taxes that have become delinquent?"

The provisions for the various county collectors to charge a penalty upon delinquent taxes are set out in Section 11124, R. S. Mo. 1939, which provides as follows:

"Between the first of January and the first of July in the year 1934 and annually thereafter, and immediately upon the effective date of this act, the county collector

shall make out and record, in a book to be provided for that purpose, a list of lands and lots, returned and remaining delinquent for taxes, including therein the delinquent taxes of all cities and incorporated towns having authority to levy and collect taxes under their respective charters or under any law of this state returned delinquent to the county collector, separately stated, describing such lands or lots as the same are described in the tax books and said delinquent returns, as corrected under sections 11110 and 11114, and charging them with the amount of delinquent tax and naming the years delinquent, separately stated, and in addition thereto a penalty of ten per centum on such tax delinquent for the preceding year and an additional annual ten per centum on taxes for each year prior to the preceding year, and shall certify to the correctness thereof, with the date when the same was recorded, and sign the same by himself, or deputy, officially: Provided, however, if taxes are paid on land or lots delinquent for the preceding year at any time prior to sale thereof as in this law provided, the per centum of penalty added shall not exceed one per centum per month or fractional part thereof or ten per centum annually. * * * *"

The provisions for the collectors to collect the penalty on delinquent taxes of the state and county are set forth in Section 11085, R. S. Mo. 1939, which provides as follows:

"If any taxpayer shall fail or neglect to pay such collector his taxes at the time and place required by such notices, then it shall be the duty of the col-

lector after the first day of January then next ensuing, to collect and account for, as other taxes, an additional tax, as penalty, the amount provided for in section 11124. Collectors shall, on the day of their annual settlement with the county court, file with said court a statement, under oath, of the amount so received, and from whom received, and settle with the court therefor: Provided, however, that said interest shall not be chargeable against persons who are absent from their homes, and engaged in the military service of this state or of the United States, or against any taxpayer who shall pay his taxes to the collector at any time before the first day of January in each year: * *"

(Emphasis ours.)

The above section expressly provides that no interest penalty shall be charged against persons who are absent from their homes and engaged in the military service of this state or of the United States.

Under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, under Title 50, Appendix Sec. 511, U.S.C.A., we find the following definitions:

"(1) The term 'persons in military service' and the term 'persons in the military service of the United States', as used in this Act, shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. * *"

Although the above quoted definition was enacted by the Congress of the United States in 1940 and the language

October 18, 1945

"engaged in the military service of this state or of the United States" as used in Section 11085, supra, was originally used in Missouri in the Laws of 1872, page 106, we believe that the definition as set forth above in the Soldiers' and Sailors' Civil Relief Act of 1940 fairly defines the intention of the Legislature in the military service required as a condition for the exemption of the penalty on delinquent state and county taxes as set forth in Section 11085.

The provision in Section 11085, supra, which provides that interest shall not be charged against persons who are absent from their homes, and engaged in the military service of the United States, would indicate that the period of exemption from penalties would be from the time of the persons' induction or enlistment into the armed services and continue until the persons' discharge or release from the armed services.

CONCLUSION

Therefore, it is the opinion of this department that the collector of state and county taxes should not charge any penalty, as provided in Section 11124 R. S. Mo. 1939, against any taxpayer during the period that the taxpayer is absent from his home and engaged in the military service of this state or of the United States.

Respectfully submitted,

A. V. OWSLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

AVO:CP