



**THE ATTORNEY GENERAL
OF TEXAS**

July 28, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Allen Ross Hightower
Chairman
Committee on Corrections
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78769

LO-89-60

Dear Representative Hightower:

You ask whether penalties and interest may be imposed for failure to tender ad valorem taxes in a timely fashion, in an instance in which the tax assessor has failed since 1985 to send to the taxpayer a tax bill, current or delinquent, as required by the Tax Code. We answer your question in the negative.

Section 31.04 of the Tax Code specifically provides that the date that taxes become delinquent is postponed to the first day of the next month after a tax bill is mailed that will provide a period of at least 21 days after the date of mailing for payment of taxes. That section also provides that, in the event that the delinquency date is postponed, the date on which penalties and interest begin to accrue is also postponed to that same date. Thus, if no tax bill is mailed to the taxpayer, the delinquency date is postponed until after a tax bill is mailed. Concomitantly, the date upon which penalties and interest begin to accrue is likewise postponed. If no tax bill is sent, it necessarily follows that, penalties and interest may not accrue.

Your question is prompted by a situation regarding a taxpayer who owns a parcel of real property in San Jacinto County. You inform us that, prior to 1985, a tax statement properly had been sent to the address of the lender who then possessed a lien on that property. However, after the note on the property had been paid and the lien removed, the tax assessor failed to send a tax statement to the owner of the now unencumbered property. The appraisal records indicate that the name of the owner was known, but that no address was listed. Since 1985, the real property parcel has been listed and valued on the appraisal rolls, but no tax bill

has been sent, current or delinquent. When the owner realized that no bill had been sent, she contacted the tax collector's office and tendered all of the taxes, penalties, and interest that she was told were due. She does not contest the fact that she owes ad valorem taxes for those years when no tax bill was sent, but she does contest whether penalties and interest should have accrued. She is now seeking a refund of the penalties and interest that she tendered.

Prior to the 1979 enactment of Title 1 of the Tax Code (i.e., the Property Tax Code), only school districts were required to send tax bills to taxpayers. See Educ. Code § 20.03 (repealed by Acts 1979, 66th Leg., ch. 841, § 6(a)(2), at 2329-30). But with the enactment of the code, every taxing unit now is required to send tax bills. Tax Code §§ 31.01, 33.04.

Section 33.011 of the Tax Code permits, but does not require, the governing body of a taxing unit to provide for the waiver of penalty and interest on a delinquent tax "if an act or omission of an officer, employee, or agent of the taxing unit caused the taxpayer's failure to pay the tax before delinquency and if the tax is paid within 21 days after the taxpayer knows or should know of the delinquency." You do not indicate whether the taxing unit in question has so provided, but on the basis of the information that you have submitted to us, it appears that the situation you describe would have fallen squarely within the ambit of section 33.011, if the taxing unit had adopted a resolution or ordinance pursuant to the section. However, in this instance, the taxpayer tendered the penalties and interest before she knew that section 33.011 authorizes taxing units to waive penalty and interest. Therefore, the taxing unit claims that because the taxpayer had already tendered the amount in dispute, no waiver would be effective, and the issue would then focus on the applicability of any refund provisions of the code. Section 33.011 of the code does not govern refunds of amounts tendered, but section 31.11 of the Tax Code does.

Section 31.11 of the Tax Code provides for refunds of overpayments or erroneous payments of taxes. On its face, it does not appear to include refunds of penalties and interest, in addition to taxes. The 71st Legislature amended section 31.11 of the code to specifically include the refund of penalties and interest, along with the taxes upon which such exactions are calculated. H.B. 432, Acts 1989, 71st Leg., ch. ____, at ____ (effective on June 15, 1989).

You do not indicate whether the taxpayer tendered the penalties and interest before or after the effective date of the amendment. You do, though, ask whether the construction by the staff of the State Property Tax Board of section 31.04 of the Tax Code is correct. In your letter requesting an opinion, you state that one of the staff of the Office of General Counsel of that board stated:

If a tax office never mailed a tax bill, a delinquency date has not been established, and penalties and interest should not be added to the tax due. A delinquency date is established only when a tax office mails an original tax bill.

We conclude that this statement is necessarily implied from a reading of section 31.04 of the code.

Section 31.04 of the Tax Code governs the postponement of the delinquency date and provides the following:

(a) If a tax bill is mailed after January 10, the delinquency date provided by Section 31.02 of this code is postponed to the first day of the next month that will provide a period of at least 21 days after the date of mailing for payment of taxes before delinquent unless the taxing unit has adopted the discounts provided by Section 31.05(c) of this code, in which case the delinquency date is determined by Subsection (d) of this section.

(b) If the delinquency date is postponed as provided by this section, the assessor who mails the bills shall notify the governing body of each taxing unit whose taxes are included in the bills of the postponement.

(c) A payment option provided by Section 31.03 of this code or a discount adopted under section 31.05(b) of this code does not apply to taxes that are calculated too late for it to be available.

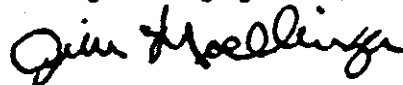
(d) If a taxing unit mails its tax bills after September 30 and adopts the discounts provided by Section 31.05(c) of this code, the delinquency date is postponed to the

first of the next month following the fourth full calendar month following the date the tax bills were mailed.

(e) If the delinquency date for a tax is postponed under Subsection (a) of this section, that postponed delinquency date is the date on which penalties and interest begin to be incurred on the tax as provided by Section 33.01 of this code. (Emphasis added.)

It is clear from a reading of the underscored language of subsection (e) that in the event that the delinquency date is postponed, the date on which penalties and interest begin to accrue is the new delinquency date. And it is also clear that in the event that no tax bill was ever sent, no delinquency date has been established. Therefore, no penalties and interest properly have been accrued in the instance that you describe. Because no penalties and interest rightly have accrued, in this instance, the taxpayer's tender of "penalties and interest" is simply an overpayment of taxes, a refund of which is governed by Tax Code section 31.11.

Very truly yours,



Jim Moellinger
Assistant Attorney General
Opinion Committee

APPROVED: Rick Gilpin, Chairman
Opinion Committee

JM/er

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