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Robert E. Corbin

April 15, 1987

The Honorable Jack B. Jewett
Arizona State Representative
State Capitol - House Wing
Phoenix, Arizona 85007

Re: I87-052 (R87-033)

Dear Representative Jewett:

In your letter to the Attorney General dated February 4, 1987, you asked what items are included in the term "delinquent taxes" for the purpose of computing the penalty provided by A.R.S. § 42-389(D). A.R.S. § 42-389(D) imposes a penalty to be added to delinquent taxes and collected pursuant to a sale for satisfaction of a tax lien. A tax lien is sold for satisfaction of taxes, penalties, interest and charges. A.R.S. § 42-387(B). You have asked whether the 5% penalty imposed by § 42-389(D) is computed on the total amount for which the tax lien is being sold or instead, just on the part that is the amount of unpaid taxes. We conclude that the 5% penalty is computed just on the amount of unpaid taxes.

A.R.S. § 42-389(D) provides:

A penalty of five dollars or five per cent of the delinquent taxes for which the tax lien is being sold, whichever is greater, shall be added to the amount of taxes delinquent on each parcel of real property separately assessed and described in the list and notice. This penalty shall be imposed and due on January 1 after the printing of the list pursuant to § 42-387 and shall be collected by the county treasurer.

A.R.S. § 42-387(B) authorizes a county treasurer to sell at auction for satisfaction of a tax lien all real

The Honorable Jack B. Jewett
April 15, 1987
I87-052
Page 2

property upon which taxes are unpaid and delinquent. The sale of the tax lien is sold for satisfaction of "the taxes, penalties, interest and charges thereon, and taxes, penalties, interest and charges assessed against the owner [of the real property] for personal property." A.R.S. § 42-387(B). You have asked whether the term "delinquent taxes" as used in A.R.S. § 42-389(D) means the total amount for which the tax lien is being sold or just the part that is the amount of unpaid taxes.

A.R.S. § 42-381(A) establishes when an unpaid tax becomes delinquent.

If the taxes due on real property are in an amount of ten dollars or less and unpaid, the entire amount is delinquent after November 1 at 5:00 p.m. If the taxes due on real property are in an amount greater than ten dollars and unpaid, one-half of the amount is delinquent after November 1 at 5:00 p.m., and the remaining one-half is delinquent, if unpaid, after the following May 1 at 5:00 p.m. If the delinquency date is a Saturday, Sunday or legal holiday, the time of delinquency is 5:00 p.m. on the next business day.

Under A.R.S. § 42-381(A), any taxes that are unpaid after the delinquency date are "delinquent taxes." As the term delinquent taxes is used in A.R.S. § 42-389(D), however, the penalty only applies to the delinquent taxes for which the tax lien is being sold. Although delinquent taxes for which a property tax lien is sold are not limited to any particular year or years, no sale for an unpaid tax shall be commenced later than five years after delinquency unless advertised within the five-year period except when a failure to advertise within five years of delinquency is due to a restraining order or injunction issued by a court of competent jurisdiction. A.R.S. § 42-386. Accordingly, delinquent taxes for which a tax lien is being sold may be different and lower than all delinquent taxes because of limitations on the authority to sell for unpaid taxes.

"All taxes shall bear interest from the time of delinquency at the rate of sixteen per cent per year simple

The Honorable Jack B. Jewett
April 15, 1987
I87-052
Page 3

until paid," A.R.S. § 42-384(B). You have asked whether the term "delinquent taxes" includes interest. The Arizona Supreme Court has decided that interest or any other additional payment required after a tax has become delinquent is not part of the tax itself. Biles v. Robey, 43 Ariz. 276, 30 P.2d 841 (1934). In Biles v. Robey, the court held that the legislature must specifically use these terms in addition to the word tax if it intends to include them. Id.

So far as we know, there are few, if any, places in our laws where the word "taxes," with no additions or qualifying language, appears to be meant to include any interest, penalty, or charges. Whenever the legislature has intended such items should be considered included for any purpose, it has almost invariably used language specifically mentioning them.

Biles v. Robey, 43 Ariz. at 283, 30 P.2d at 844. The court also said:

We think it is obvious that the various impositions made by legislative authority for failure to pay taxes when due, whether they are called interest, penalties, costs or anything else, are in reality penalties and not debts. . . . [I]n the absence of a statute authorizing it, . . . any additional payment required by the legislative authority after a tax has become delinquent, is not part of the tax itself, . . . but is a penalty which is merely a part of the procedure used by the state for the purpose of collecting the tax.

Biles v. Robey, 43 Ariz. at 287, 30 P.2d at 845.

Thus, under Biles v. Robey, neither interest, penalties, costs or any other charges in connection with delinquent taxes are a part of the "delinquent taxes" for the purpose of calculating the penalty provided by A.R.S. § 42-389(D) because none of these other items are specifically mentioned in the statute imposing the penalty.

The Honorable Jack B. Jewett
April 15, 1987
I87-052
Page 4

The term "delinquent taxes," as that term is used in A.R.S. § 42-389(D) for the purpose of calculating the penalty on delinquent taxes, only includes those delinquent taxes for which the tax lien is being sold in accordance with the limitations of A.R.S. § 42-386 and does not include penalties, interest and other charges imposed as a result of the delinquency in the payment of taxes.

Sincerely,



BOB CORBIN
Attorney General

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