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Opinion Committee

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The Honorable Dan Morales
Attorney General
Opinions Committee
P.O. Box 12548
Austin, Texas 78711

RQ970

FILE # ML-39714 -97
I.D. # 39714

Dear General Morales,

Tax Assessor-Collector Buddy Winn has asked for an opinion (*formal or letter*) on the following questions:

- When does the penalty allowed pursuant to 33.07 become effective on taxes paid under sections 31.03, 31.031, 31.032, and 31.04 of the tax code, since they are not delinquent until or after July 1?
- When should the 33.07 (d) notice be sent by the Tax Collector to invoke 33.07 (a) penalty?

SECTION 33.07 STATES IN PART:

(a) A taxing unit or Appraisal District may provide, in the manner required by law for official action by the body, that taxes that "Remain Delinquent on July 1st." of the year in which they become delinquent incur an additional penalty to defray costs of collection, if the unit or district or another unit that collects taxes for the unit has contracted with an attorney pursuant to Section 6.30 of the Property Tax Code.

Section 31.03 provides that the governing body of a taxing unit may provide that a person who pays one-half of the units taxes before December 1 may pay the remaining taxes without penalty or interest before July 1 of the following year.

Section 31.03 (b) provides that the second payment incurs a penalty of 12 percent if delinquent on July 1 and interest of 1 percent.

Section 31.031 allows quarterly payments of individuals who are disabled or at least 65 years of age and are qualified for an exemption under Section 11.13 (c).

Section 31.031 (b) states, "If the individual fails to make a payment before the applicable date provided by subsection (a), the unpaid amount is delinquent and incurs a penalty of 12 percent and interest as provided by Section 33 .01 (c)".

Section 31.032 provides the same penalty delinquent & interest as sections 31.03 and 31.031. However, Section 31.04 allows a tax to incur six percent penalty the first month of delinquency plus one percent per month thereafter that the tax remains unpaid prior to July 1. Interest accrues at one percent per month while the tax remains unpaid.

DM-235 recently addressed 33.07 penalty on installment contracts allowed pursuant to 33.02 . However, it did not address taxes paid pursuant to Sections 31.03, 31.031, 31.032, or 31.04.

Since the second half taxes were not delinquent until July 1, and absent proper notice required by 33.07(d); surely the penalty allowed by 33.07 could not be invoked and imposed on the taxpayer on July 1, See City of Houston vs. First City, 827 SW2d 462 (Tex. App. - Houston [1st. dist.] 1992, writ. den).

Therefore, we would respectfully request an opinion on when Section 33.07 applies to the above Sections of the Tax Code.

Thank you in advance for your cooperation, I remain.

Respectfully


James M. Kuboviak
County Attorney
Brazos County , Texas