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July 31, 1990

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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Idaho Code § 63-1102A -- Receipt Of Deposits To Be Later
Applied To Payment Of Taxes

Dear Ms. Reed and Ms. Nickel:

This is in response to your questions regarding deposits made toward the payment of property taxes. In particular, you asked if partial payments of taxes reduce penalty and interest charges for late payment of taxes.

The pertinent statutes involved are Idaho Code §§ 63-1102 and 63-1102A. Idaho Code § 63-1102 provides that taxes are payable to the tax collector without penalty on or before December 20 of the year in which the taxes are extended on the roll and provides that taxes may be paid in two equal installments, the first on or before December 20 and the second on or before June 20 of the following year. The statute goes on to provide, in pertinent part:

(b) If the first installment is not paid on or before December 20, that installment becomes delinquent and a

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penalty of two percent (2%) shall be added. Interest on the amount of the first installment plus penalty, at the rate of one percent (1%) per month, shall be calculated from January 1 of the following year. No tax, penalty or interest may be receipted by the tax collector between December 21 and the first Monday of January to allow the tax roll to be balanced and audited. Payments received by the tax collector during the audit period shall be held in a tax custodial account but not receipted until the first Monday in January, as provided in § 63-1102A, Idaho Code.

The statute includes at subsection (c) a similar provision with respect to the second half of the property tax which is due on or before June 20. Thus, if the tax is not paid by the due date, the statute imposes "interest on the amount of the first [or second] installment plus penalty."

Section 63-1102A establishes a procedure for receipt of deposits to be later applied to payment of taxes. Such deposits are accumulated until sufficient to satisfy the tax due, including penalty and interest. Such deposits are not applied against taxes due until the accumulations are sufficient to pay the tax due, penalty and interest. This is made clear from several provisions of § 63-1102A. For example, subsection (a) of the section provides, in pertinent part:

Any person, upon application to the tax collector, may establish a payment schedule to allow payments of at least twenty five dollars (\$25.00) or the balance owing, to be accumulated toward the payment of real or personal property taxes, including penalty, interest and costs, beginning with the oldest delinquency.

(Emphasis added.)

Thus, the subsection does not provide that the amounts paid are tax payments. Rather, payments are "accumulated toward" the payment of the taxes. Subsection (e) makes this conclusion even more clear by providing in pertinent part:

The tax collector shall post the payment to the tax roll charge when the sufficient payment is received to

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satisfy the tax lien, including penalty, interest and costs, . . .

In other words, the amounts are merely accumulated toward payment of the tax charges, but are not posted against the tax due until amounts received are sufficient to pay in full or "satisfy" the tax lien, including penalty, interest and costs.

Also, Idaho Code § 63-1102A(c) provides that the county shall pay no interest on the tax custodial receipts. Again, this is consistent with the conclusion that payments accumulated do not affect interest calculations.

In summary, Idaho Code § 63-1102A permits the taxpayer to make deposits toward the payment of property taxes. However, the deposits accumulated are not applied against taxes due until they are sufficient to pay the full amount of the tax due, together with penalty, interest and costs. Thus, they do not affect penalty and interest calculations.

Sincerely,



DAVID G. HIGH
Deputy Attorney General
Chief, Business Regulation
and State Finance Division

DGH/mkf

cc: Dan Chadwick, Idaho Association of Counties
Lila Jordan, Bonneville County Treasurer