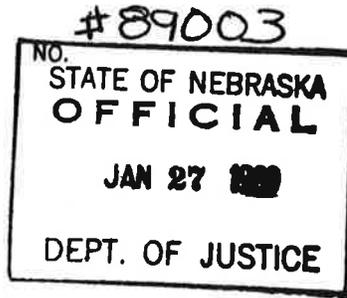


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: January 23, 1989

SUBJECT: Constitutionality of Neb.Rev.Stat. §57-234 (Reissue 1988) - Taxation of Fractional Interests in Oil, Gas, or Hydrocarbon Wells or Fields.

REQUESTED BY: Robert G. Simmons, Jr.
Banner County Attorney

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding the constitutionality of a portion of Neb.Rev.Stat. §57-234 (Reissue 1988) concerning the taxation of fractional interests in oil, gas, or other hydrocarbon wells or fields. Specifically, you raise several issues regarding the constitutionality of a portion of subsection (4) of §57-234, which contains provisions relating to collection and enforcement in the event a unit operator fails to remit the tax due. This subsection provides:

Failure of the unit operator to collect and remit the tax as provided in this section shall not preclude the county treasurer from utilizing lawful collection and enforcement remedies and procedures against the owner of any fractional interest to collect the tax owed by such owner; but a nonoperating owner shall not be subject to penalty or interest upon the tax owed unless he fails to remit such tax within twenty days after notification to him by the county treasurer of the default of the operator. (Emphasis added).

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The constitutional questions you have raised concerning this provision all relate to the portion of the statute relieving a nonoperating owner of liability for penalty or interest on the tax unless he or she fails to pay the tax within twenty days after being notified by the county treasurer of the unit operator's failure to remit the tax.

Initially, you raise the question of whether the release of liability for penalty or interest on taxes paid by nonoperating owners under this provision violates the uniformity requirement in Article VIII, Section 1, of the Nebraska Constitution, providing that "[t]axes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises,"

On several occasions, the Nebraska Supreme Court has stated that interest and penalties imposed for nonpayment of taxes do not constitute a part of the tax. In Steinacher v. Swanson, 131 Neb. 439, 268 N.W. 317 (1936), the court, while finding that a statute permitting delinquent real property taxes to be paid in ten equal annual installments contravened the constitutional provision prohibiting commutation of taxes in any form, stated that interest, penalties, and costs imposed for nonpayment of taxes are no part of the tax, and thus may be remitted by the Legislature without violating the proscription contained in Article VIII, Section 4. Subsequently, in Tukey v. Douglas County, 133 Neb. 732, 277 N.W. 57 (1938), the court reaffirmed its position that the various impositions made for the failure to pay taxes, whether designated as interest, penalties, or costs, are all in the nature of penalties, and are not part of the tax. Furthermore, holding that penalties for nonpayment of taxes are punitive in nature, and that their remission by the Legislature was not forbidden as arbitrary class legislation, the court in Tukey, supra, stated:

We necessarily conclude that interest charged against a delinquent taxpayer is in fact a penalty, that it is not a part of or incident to the tax and exists only by legislative pronouncement, that the legislature authorizing it has the power to remit or waive the penalties on unpaid and unsold taxes by a repeal of the original law or a new statute expressly doing so, and that a statute purporting to waive or remit a penalty is one of grace and not subject to the uniformity provisions of section 18, art. III of the Constitution.

133 Neb. at 738-39, 277 N.W. at 60.

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On the basis of the foregoing, we conclude that the provision in §57-234(4) removing liability for interest or penalty on nonoperating owners who remit tax payments within twenty days after notification of nonpayment by the unit operator does not violate Article VIII, Section 1, as the requirement of uniformity relates only to the tax itself, and does not encompass matters involving the imposition of penalties or interest on unpaid taxes.

Your second question concerns whether §57-234(4) is unconstitutional as violative of Article III, Section 14, of the Nebraska Constitution, on the basis that the title of the legislative bill creating the statute fails to comply with the requirements of this constitutional provision that "[n]o bill shall contain more than one subject" and "[n]o law shall be amended unless the new act contain the section or sections as amended and the section or sections so amended shall be repealed."

The Nebraska Supreme Court has adopted a liberal construction with respect to the subject requirement contained in Article III, Section 14. In Midwest Popcorn Co., v. Johnson, 152 Neb. 867, 872, 43 N.W.2d 174, 178 (1950), the court stated:

An act, no matter how comprehensive, is valid as containing but one subject if a single main purpose is within its preview and nothing is included within it except that which is naturally connected with and incidental to that main purpose.

The title to 1971 Neb.Laws., LB 636, is as follows:

AN ACT relating to taxation; to provide for the taxation of fractional interests in oil, gas, or other hydrocarbon units or fields as prescribed; to provide penalties; to repeal sections 57-232 and 57-233, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

LB 636 relates to the broad subject of provision for the taxation of fractional interests in oil, gas, or other hydrocarbon units or fields, and penalties relating thereto. The provision contained in the bill pertaining to the conditions under which nonoperating owners will be liable for penalties or interest is related to and naturally connected with the subject of the legislation as stated in the title. Accordingly, we conclude the act does not violate the "one subject" requirement in Article III, Section 14.

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Furthermore, we believe it is clear that the title to LB 636 complies with the requirement that the section or sections repealed by enactment of the bill be set forth in the title. Specific reference is made in the title to LB 636 to the repeal of §§57-232 and 57-233, the prior statutes governing taxation of oil, gas, or other mineral interests. Accordingly, we conclude the act does not violate Article III, Section 14, in any respect.

Finally, you question whether the provision relieving nonoperating owners of liability for penalties or interest under the conditions specified in §57-234(4) establishes an unreasonable classification in violation of the prohibition against special legislation contained in Article III, Section 18, of the Nebraska Constitution. In construing the restriction on legislative action imposed pursuant to this provision, the Nebraska Supreme Court has stated:

'The Legislature may make a reasonable classification of persons, corporations, and property for purposes of legislation concerning them, but the classification must rest upon real differences of situation and circumstances surrounding the members of the class relative to the subject of legislation which render appropriate its enactment.'

* * *

'While it is competent for the Legislature to classify for purposes of legislation, the classification, to be valid, must rest on some reason of public policy, some substantial difference of situation or circumstance, that would naturally suggest the justice or expediency of diverse legislation with respect to the objects to the classified.'

Taylor v. Karrer, 196 Neb. 581, 585, 244 N.W.2d 201, 204 (1976)
(Citations omitted).

Applying these principles, it is our conclusion that the classification and treatment of nonoperating owners under §57-234(4) is reasonable and rationally based. It seems entirely reasonable to relieve nonoperating owners from penalties and interest on taxes in situations where the unit operator has failed to fulfill his or her statutory obligation to remit taxes until such time as the nonoperating owner has received notice of such failure on the part of the unit operator. The waiver of penalty or interest under these circumstances does not, in our view, represent any unreasonable or arbitrary classification.

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In conclusion, it is our opinion that §57-234(4) is valid and constitutional.

Very truly yours,

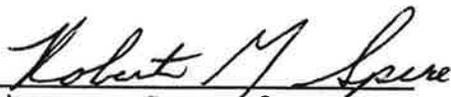
ROBERT M. SPIRE
Attorney General



L. Jay Bartel
Assistant Attorney General

7-71-13

APPROVED:


Robert M. Spire
Attorney General