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Unpaid Taxes—Recovery of Simple Interest on Same in Absence of Statute—State Rule: Except as to Contract, No Interest Without Statute—Federal Rule: Interest in All Cases Where Equitably Due Unless Forbidden by Statute—Missouri Rule: Special Statute Provides for Interest

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carried to any length, would ultimately lead to a stiffing of trade and a superficial inflation of market prices of commodities.

Judgment was accordingly rendered for the plaintiff.

UNPAID TAXES—RECOVERY OF SIMPLE INTEREST ON SAME IN ABSENCE OF STATUTE—STATE RULE: EXCEPT AS TO CONTRACT, NO INTEREST WITHOUT STATUTE—FEDERAL RULE: INTEREST IN ALL CASES WHERE EQUITABLY DUE UNLESS FORBIDDEN BY STATUTE—MISSOURI RULE: SPECIAL STATUTE PROVIDES FOR INTEREST.

Can simple interest, in the absence of any statute, be recovered on a tax not paid when due? "No," say the State courts most unanimously. "Yes," says the United States District Court for the Southern District of Texas, March 8, 1923, in handing down a decision, reversing itself, in the rehearing in the case of *United States v. Proctor*, 286 Fed. 272.

This case arose on a suit by the United States against the defendant Proctor to recover the amount of an income tax due since 1914 and unpaid. The defendant bona fide failed to make a return of the part of his income on which the tax in question arose, believing the same to be untaxable. The United States had failed to comply with a section of the act providing as penalty interest for overdue taxes but the Government contended it was entitled to simple interest, as upon any debt, even if the penalty was not recoverable.

In allowing simple interest on the rehearing, the Court relied almost solely on the case of *Billings v. United States*, 232 U. S. 261, a suit to recover a tax with interest on a foreign built pleasure boat. In referring to the difference in the Federal and State rules, the Court there says: "The conflict between the systems is pronounced and fundamental. In the one the State rule, except as to contract, no interest without statute; in the United States rule, interest in all cases where equitably due unless forbidden by statute. In one, no suit for taxes as a debt without express statutory authority; in the other, the right to sue for taxes as for a debt in every case where not prohibited by statute."

Practically all the State decisions, texts, encyclopedias, etc., hold to the "State rule." The court, in *Sargent v. Tuttle*, 67 Conn. 162, 32 L. R. A. 822, says: "At best a tax is a burden, a necessary one it is true, but none the less a burden imposed on the taxpayer without his consent and it seems reasonable to hold that any increase in that burden by way of penalty or otherwise should be expressly made by the power which imposes it, and that, until the legislative will to increase the burden by the addition of interest, has been clearly expressed, interest should not be allowed." Among the hundreds of authorities in accord with this statement it is only necessary to mention a few such as 37 Cyc. 1165, 42 L. R. A. (N. S.) 266; *State v. Mutual Life Assoc.*, 175 Ind. 59; *Rochester v. Bloss*, 185 N. Y. 42.

That a tax is not a debt is the unanimous decision of the "State rule" authorities and therefore a general statute providing interest on a debt does not apply to a tax. To provide interest on a tax, a specific statute is necessary. In most States, as in Missouri, special statutes exist which provide for interest, generally of a high rate, on overdue taxes. As a general rule, no demand is necessary to start the running of interest. If the tax is not paid by a certain day, interest begins to run. However, the various statutory provisions are so various that recourse to the statutes of the specific jurisdiction is necessary. These statutes do not affect in the least the fundamental difference between the State and Federal systems and wherever interest is allowed on a State tax, a statute will be found to be relied on.

As in the *Billings* and *Proctor* cases the Federal courts allow the Government simple interest and the fact that there is a Federal statute permitting penalty interest is held to be no bar to the recovery of simple interest as on a debt. Of course, the Government cannot recover both, but it has its option unless forbidden by statute. True it is that taxes are compulsory, but it is also true that the citizen receives a thousand benefits in return for his tax. Without government society could not exist and it would seem, therefore, that in return for the benefits received, an implied promise should arise on the part of the taxpayer to pay his taxes. This implied promise ought to result in a debt which, if not paid when due, should be recoverable, with interest, like any other obligation of such a nature.