

Improvements on Homestead Claims, Taxes, Levied Upon. Lien, Taxes Levied Upon Improvements Do Not Become When. Homestead Claims, Lien on. Personal Property, Cannot Be Re-Assessed When.

Taxes levied against the improvements upon homestead claims to which patent has not been issued do not become a lien upon such land after final proof and issuance of patent if the taxes are allowed to become delinquent.

Personal property when once lawfully assessed to the owner or claimant or person lawfully in possession of the same on the first day of March in each year, at 12 o'clock, noon, can not, upon the transfer of such property thereafter being made, be re-assessed to the new owner or claimant or person in possession.

Hon. G. M. Houtz,

May 28th, 1913.

State Tax Commissioner,
Helena, Montana.

Dear Sir:

On the 26th instant you addressed the following communication to this office:

"I have been asked several times by county officials if personal property taxes, levied against the improvements upon homesteads to which patent has not been issued, becomes a lien upon such land, if the taxes are allowed to become delinquent and if the lien is binding after final proof has been made upon the land.

Another query is: Can personal property be re-assessed by the assessor to the new owner if a transfer or sale is made after it has been assessed to the first owner, and this knowledge of the sale comes to the assessor before the tax roll is made up."

I have carefully examined into the two propositions propounded in your letter, and beg leave to advise you that both must be answered in the negative. As bearing upon the first proposition, Sec. 2502 of the Revised Codes of Montana, 1907, provides that land and improvements thereon must be separately assessed. Sec. 2600 of the Revised Codes of Montana of 1907 provides that every tax has the effect of a judgment against the person, and every lien created has the force and effect of an execution levied against all personal property of the delinquent, and that the judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the judgment thereof. Sec. 2601 provides that every tax due upon personal property (i. e. improvements) is a lien upon the real property of the owner thereof from and after 12 o'clock M. of the first Monday in March in each year. Sec. 2602 provides that every tax due upon real property is a lien against the property assessed and every tax due upon improvements upon real estate assessed to others than the owner of the real estate is a lien upon the land and improvements, which several liens attach thereof the first Monday of March in each year. The statutory provisions here referred to have more or less bearing upon the proposition under discussion and have been subjected to judicial construction a number of times. Sec. 2 of Art. XII of the Constitution expressly provides that the property of the United States shall be exempt from taxation. It is a well established principle of law that prior to the issuance of patent, the occupant of government lands has a possessory right only and that any improvements made thereon are in the nature of personal property. This possessory right may be defeated by any one or more of a number of contingencies. Hence it has been held that tax liens cannot be extended so as to attach to lands, the fee simple of which is still in the federal government, though such lands be occupied and improved by actual settlers. To this rule there may be the possible exception that

such lands become subject to taxation when the occupant has fully complied with all requirements exacted by the federal government as a condition precedent to the passing of title, and where nothing remains save the formality of issuing patent. (See Opinions Attorney General, 1910-12, p. 444.) The improvements, however, become the subject of taxation, and the constitutional exemption of public property from taxation does not extend to improvements on the public lands made by pre-emptor's homestead and other claimants or occupants at their own expense, and these are taxable by the state. (37 Cyc. 869 and cases cited under note 72.)

It follows, therefore, that a tax levied against improvements upon homestead claims to which patent has not issued cannot under the law become a lien upon such land and that if the tax on such improvements is allowed to become delinquent, it can only be collected pursuant to the provisions of our code, relative to the collection of personal property taxes. It would appear that taxes on personal property do not constitute a lien upon it unless expressly so declared by statute.

37 Cyc. 1141.

In our state the rule appears to be that unless the person assessed is the owner of both real and personal property, both proper subjects for taxation, that no lien attaches as to any personal property of which he may be possessed.

Walsh et al. v. Croft, 227 Mont. 407.

It would appear, therefore, that where a personal property tax has been assessed and levied that no lien attaches until actual seizure thereof by the proper officers for the collection of the tax, and the manner in which collection is to be made in such cases, is pointed out in Chap. 9 of part 3, Title 12, Revised Codes of Montana of 1907 (Secs. 2683 to 2691).

As to the second question contained in your letter, you are advised that the law contemplates but one assessment annually. Under the express provisions of Sec. 2686 of the Revised Codes of Montana, 1907, personal property which was in the state and subject to taxation on the first Monday in March of any year, shall be taxable wherever and whenever found in any county in the state, whether the same be owned, claimed or possessed by the person owning or claiming or possessing it on the first day of March or not, with the proviso that in case the same property is assessed in more than one county, the county first making the assessment shall be entitled to collect the taxes. It will be observed that the statute is silent as to whom such property shall be assessed. We think, however, that it was the purpose of the Legislature in enacting this section to overcome some of the difficulties which theretofore had confronted the officials charged with the duty of collecting taxes. However, we are unable to discover any statutory provision permitting the assessor to re-assess property to another when once it has been assessed to the owner, claimant, or person lawfully in possession thereof. The assessor undoubtedly would have the right to correct any mistake made by him before the

tax roll is made up, but, as indicated, is not clothed with any direct authority to re-assess personal property.

Very truly yours,

D. M. KELLY,

Attorney General.