

Tax, Collection Of On Mortgage.

Where the only property owned or possessed by an individual is a recorded mortgage, the mortgage should be assessed to the owner thereof, and if the taxes are not paid thereon and become delinquent, difficulty would be encountered in collecting the same by summary process, and the proper procedure would be to bring a civil action to collect the amount thereof.

Helena, Montana, August 31, 1905.

J. F. Wegner, Esq., Chairman, Board of County Commissioners, Helena, Montana.

Dear Sir:—Your letter, requesting an opinion as to the method of collecting the tax on a mortgage assessed to a person who owns no other property than such mortgage, received.

Under the definitions of property, for the purposes of taxation, as given in Section 3680, Political Code, mortgages are personal property. If the owner of the mortgage was also the owner of real property there would be no difficulty, as the tax on the mortgage would be a lien on his real estate, but where the person assessed has no other property than the mortgage for which he is taxed, then the collection of the tax, where the person does not voluntarily pay it, is very uncertain under our statutes.

The mortgage should be assessed to the party owning it at noon on the first Monday of March, as is provided by Section 3701, Division 5, and Section 3786, Political Code, and in all respects treated as any other personal property that is subject to assessment.

If the taxes are not paid on such mortgage and become delinquent, then the county treasurer should advertise the delinquent tax the same as other delinquent personal taxes are advertised under Section 3873, as

amended by the laws of 1901, page 142. If the delinquent personal tax so advertised is not paid prior thereto, it is the duty of the treasurer, after the first Monday of February, to collect the same "by seizure and sale of any personal property owned by the delinquent," as is provided by Sections 3901 to 3905, Political Code.

Here is where the difficulty arises. When the delinquent owns no other property than the mortgage the treasurer cannot seize the note for which the mortgage is security, as it is held or deposited where it cannot be found and seized. Furthermore, since the assessment of the mortgage the note may have been assigned by the person owning it at noon on the first Monday of March and the treasurer would have no means of knowing who the assignee is.

Section 3825, Civil Code, provides that "the assignment of a debt secured by a mortgage carries with it the security." So if the note had been assigned since the assessment the person assessed would not be the owner of either the note or mortgage at the time the treasurer would be authorized to collect the tax "by seizure and sale of any personal property owned by the delinquent." There is no method provided by law whereby the treasurer could seize the recorded mortgage and sell it as personal property, and if there was no person would purchase it, for they would have no means of knowing but what the note had been assigned, which carries with it the mortgage, and if it had been assigned the person assessed with the mortgage would not then be the owner of it, and the purchaser could get better title to the mortgage than the person liable for the tax had in the mortgage at the time of such sale.

Until there is some law enacted which makes the tax on a mortgage a lien upon the property covered by such mortgage, there is no way for the treasurer to collect the tax on a mortgage owned by a person having no other property by any of the usual and summary methods provided by statute for the seizure and sale of personal property for taxes.

However, after the assessor has legally assessed the mortgage, and the county treasurer has duly advertised the same as delinquent in the manner provided by law, and the tax has not been paid, I am of opinion that the amount of such tax is, in the nature of a personal debt against the person assessed. Section 3827, Political Code, provides that "every tax has the effect of a judgment against the person * * *."

The person assessed with the mortgage, being personally liable for the amount of the tax, it would seem that the county could begin a civil action against such person for the amount of such tax, and by getting personal service of summons could have a personal judgment entered against him for the amount of the tax and costs. Then it could proceed by supplemental proceedings to bring him into court and examine him under oath as to what, if any, property he owned and could have an execution issued on such judgment against any property they might find belonging to the judgment debtor, or could garnishee any party holding property of, or owing money to, the judgment debtor.

As to whether a tax duly levied is a personal debt against the party assessed has never been passed upon by the courts of this State, but

under our statutes and authorities from other state I am of opinion that such is the law and that under our present statutes it is the only method of procedure that could be followed in collecting the tax on a mortgage where the person assessed with the mortgage owns no other property, and even under this procedure the collection of the judgment, when taken, would always be very uncertain against such a person.

Yours very truly,

ALBERT J. GALEN,

Attorney General.