

Taxes, Lien of Personal Property on Real Estate. Lien of Personal Property Tax on Real Estate, When Ceases. Mortgaged Land, When not Subject to Lien of Mortgagor's Personalty.

A lien of personal property tax attaches to the real estate owned by the owners of the personal property, and it continues so to attach until the owner of the real estate has been divested of title to the real property.

In case of mortgage foreclosure and sale of real estate, title of the mortgagor is divested at the time of the sale of the real estate, and no lien for taxes on the personalty of the mortgagor attaches to the real estate after that time unless there is redemption, but the lien already attached continues until the taxes are paid, or the land sold.

October 15, 1914.

Hon. J. A. Slatery,
County Attorney,
Glendive, Montana.

Dear Sir:

I am in receipt of your letter of the 6th instant, submitting a question involving the proposition:

When does the tax on personal property cease to attach as a lien to real estate owned and mortgaged by the owner of the personal property?

Section 2601 of the Revised Codes provides that taxes due upon personal property "is a lien upon real property of the owner thereof." The only lien for taxes is that which fastens itself to the real property, for "no tax lien attaches to assessed personalty."

Welsh v. Croft, 27 Mont. 407.

Real estate, of course, is assessed to the owner thereof, and continues to be assessed to him until he is divested of title. A mortgage in this state does not convey title.

Section 5731, et seq.

Hence, the giving of the mortgage does not divest the owner of title to the land, neither does the judgment entered on foreclosure, for it only determines the amount due, and constitutes the foundation for the order of sale, subjecting the property to the payment of such amount. Hence, the sale, and after the property is sold, under the provisions of our law, the party then may redeem. The word "redeem," would seem of itself to indicate that the owner had been divested of title, for redeeming means the act of purchasing or buying back, under authority of a right reserved either by the parties or for them by the law. Hence the time at which the title passes from the mortgagor must be at the time of the sale of the property.

"The effect of a valid foreclosure is to vest in the mortgagee or purchaser at the foreclosure sale, a complete, legal title to the premises, the same as he would have taken by deed directly from the mortgagor."

27 Cyc. 1791, and cases.

"The sale under the foreclosure, of course conveyed the whole title subject to redemption."

Merz v. Mehener (Wash.), 120 Pac. 893.

To the same effect:

Horr v. Harrington (Okla.), 98 Pac. 443.

Hence, the time at which the personal property tax of the mortgagor ceases to attach as a lien on the real estate mortgaged is at the time of the actual sale of the property mortgaged, but all liens that have attached prior to that time, continue liens upon the real estate.

Yours very truly,

D. M. KELLY,
Attorney General.