

Taxation, of Mortgaged Property. Mortgaged Property, Taxation of. Chapter 91, Session Laws of 1915, Interpretation of.

The privileges granted by Chapter 91, Session Laws of 1915, allowing them to have taxes segregated and prorated, applies to the owners of real estate and to the holders of mortgages, or other liens against the same. It is the duty of the county treasurer under this Act to compute and apportion the tax due upon real estate upon various tracts as though each tract were being assessed separately. Likewise any personal tax which may be a lien must be also segregated and distributed.

December 2, 1915.

Hon. R. G. Wiggenhorn,
County Attorney,
Red Lodge, Montana.

Dear Sir:

I am in receipt of your communication under date the 27th ultimo, requesting my interpretation of Chapter 91, Session Laws of the Fourteenth Legislative Assembly. The first question put by you is, "whether the word "own," as used in the fourth line of the first section refers to persons owning a mortgage, or persons owning the real estate?"

I think the plain meaning of the language is that this privilege is to be extended to the owners of real estate, or to the holders of mortgages or other liens against the same. The punctuation is not all that it might be, but this gives effect to the purpose of the law as stated in its title.

The second question presented is whether personal taxes which are liens against real estate shall be divided proportionally to the real estate sought to be redeemed, or whether the taxes upon the particular tract of land sought to be redeemed shall be apportioned in accordance with its assessed valuation as compared with the remainder of the real estate or personal property, and this tax segregated from the remainder of the real estate tax or personal tax?

By this Act it is made the duty of the county treasurer to compute and apportion the tax that should have properly been assessed against any real estate "if the same had been separately assessed." In other words, the duty is put upon the county treasurer to distribute the real estate tax payable upon various tracts as though each tract were being assessed by itself in order that persons wishing to redeem from a tax sale, or that pay the tax on a particular tract, may do so without paying the taxes upon all of the real property included in that particular assessment. The Act then proceeds:

"Any personal tax which is a lien upon said real estate shall be likewise computed and apportioned."

This, I think, shows a clear intention on the part of the legislature to make each particular tract in case of a redemption by the owner, mortgagee or a lienholder, bear its tax as real estate, and in addition its proper proportion of personal property tax which may be a lien upon it. This is the result reached by you, and I think the correct one.

This interpretation is strengthened when we note that:

“Upon payment of the amount so ascertained by computation and apportionment * * * such real estate shall be discharged from the lien of *all* taxes levied and assessed against the same.”

It is true there might be a question raised upon the proper meaning to be given to the words “all taxes levied and assessed against the same,” since this might refer merely to taxes levied and assessed against real estate, and not to taxes levied and assessed against personal property. In this connection it is to be noted that provision is made in lines 9 and 10 of Section 1, that in case the tax “assessed against any other property shall be a lien thereon,” it shall be likewise computed and apportioned. The only taxes against other property becoming a lien upon real property are taxes assessed against personal property. I am of the opinion, therefore, that this law makes it the duty of the county treasurer to apportion both the real estate tax and personal property tax appearing as a lien on such real estate to any particular tract sought to be redeemed, and that the person so redeeming must pay such portion of the personal property tax in order to relieve it of the lien.

Yours very truly,
J. B. POINDEXTER,
Attorney General.