

Tax Sale Certificates, Redemption Of—Tax Deed, On Issuance Of, Tax Certificate Not Redeemed.

When time for redemption expires, county takes tax deed without redeeming from prior sale to individual.

May 19, 1920.

Mr. J. W. Buford,
County Treasurer,
Missoula, Montana.

Dear Sir:

I am in receipt of your letter of the 12th inst., making inquiry whether tax sale certificates issued to individuals must be redeemed by the county when it takes a tax deed on a taxable certificate issued on a sale for delinquent taxes for a subsequent year.

Section 2655, Revised Codes, is as follows:

“The deed conveys to the grantee the absolute title to the lands described therein as of the date of the expiration of the period for redemption, free of all incumbrances, except the lien for taxes which may have attached subsequent to the sale, etc.”

It will be seen that the only incumbrance or lien excepted, is a lien for taxes attaching subsequently, that is, taxes which have been assessed and levied against the property after date of the tax sale for which the deed is given, all other incumbrances and liens being wiped out by the tax deed.

The general rule is states as follows:

“A sale of land for taxes for each year discharges the land from the lien for the taxes delinquent thereon for the years prior to the one for which the sale was made of the land, for each year's tax is paramount to all previous liens.”

27 A. & Eng. Enc. pg. 745.

“It follows from the principle that a tax sale conveys a new and paramount title free from all estates and incumbrances, that when the taxes are unpaid on a piece of property for a number of successive years, and it is sold in due course for the taxes for each of said years, the purchaser at the sale for the tax for the latest year takes the land free from any lien for delinquent taxes for the prior years.”

26 R. C. Law, Taxation, Par. 361.

While one who purchases at a delinquent tax sale acquires a lien on the property sold, it is a lien which may be lost and wiped out by the creation of a tax lien for taxes for a subsequent year. The purchaser can always protect the lien acquired by him, either by paying the taxes subsequently assessed and levied against the property or by permitting such subsequent taxes to become delinquent and again purchasing the property at the sale for such subsequent delinquent taxes. If such a purchaser does not protect his lien by such payment or purchase he is guilty of laches, and loses his lien when the lien for the subsequent taxes is merged in the title acquired by the issuance of a tax deed on the last sale.

Therefore, when property has been sold to an individual for delinquent taxes, and thereafter subsequent taxes are not paid and the prior purchaser does not pay the taxes or bid in the property, and the county is forced to purchase the property at the tax sale for the subsequent taxes, the lien of the county is prior and superior to that of the individual purchaser, and the county may, when the time for redemption has expired, apply for and take a tax deed to the property, without redeeming from the prior sale, or paying to the holder of the certificate of sale the amount due thereon, and when such deed is issued to the county, under Section 2655 the county's title is absolute and all prior tax liens are extinguished.

Truly yours,

S. C. FORD,

Attorney General.