

Taxation—Delinquent Taxes—Penalty—Redemption.

Chapter 63, Laws of 1923, construed as permitting the redemption of all property sold for delinquent taxes where the county holds the certificate of sale, upon payment of the original tax, with interest at seven per cent and without the publication charge. The Act was not intended to apply to sales of property for delinquent taxes made after the approval of the Act.

Raymond Sheldon, Esq.,
County Attorney,
Ekalaka, Montana.

My dear Mr. Sheldon:

You, as well as a number of other County Attorneys, have requested my opinion on the following questions based on Chapter 63 (House Bill No. 335) Session Laws 1923:

1. Does the Act mean that on all delinquent taxes for 1921, and prior years, the ten per cent penalty, publication charge and 12% interest are remitted, so that the property may be redeemed by the payment of the tax originally assessed against the property with interest at 7%?

2. Where real property is sold for personal property taxes can it be redeemed by the payment of the tax originally assessed, with 7% interest, and without payment of the 10% penalty, publication charge or 12% interest?

3. Can a redemption be made by payment of the amount of taxes originally assessed and for which the property was sold, with interest thereon at 7%, and without the person redeeming from such sale being compelled to pay, at the time of such redemption, all subsequent taxes against the property which have become delinquent?

4. If, when a redemption is made from a tax sale all subsequent delinquent taxes are required to be paid, are the penalties, publication charges and 12% interest on such subsequent delinquent taxes remitted so that only the amount of such taxes originally assessed against the property, with 7% interest thereon, are required to be paid on such redemption?

5. Do the provisions of the Act apply where the property was purchased on the tax sale by an individual or corporation, or where the certificate of sale has been assigned by the county to an individual or corporation, or do they only apply to sales made to a county and for which the county still holds the certificates of sale?

6. Do the provisions of the Act apply to sales which may hereafter be made for delinquent taxes, or only to sales made before the date of the taking effect of such Act?

Section 1 of the Act in question is as follows:

"That from and after the passage and approval of this Act, any person having an interest in real estate heretofore sold for taxes to any county, or which has been struck off to such county when the property was offered for sale, and no assignment of the certificate of such tax sale has been made by the county making such sale, shall be permitted to redeem the same by paying the original tax plus seven per cent interest from the date of sale."

With reference to the first question it is apparent, on reading Section 1 of the Act, that the answer thereto depends entirely on the meaning to be given to the word "original" as used in such section.

A number of definitions of the word "original" may be found, but they are of little assistance in determining the meaning intended by the Legislature to be given such word as used in such Act. Perhaps the definition most helpful for such purpose is that given by the Supreme Court of Washington in the case of Fidelity & Deposit Co. v. Faben, 98 Pac. 764, where it was said:

"Under Const. Art. 4, Sec. 4, Ballinger's Ann. Codes & St. Sec. 4650, providing that the appellate jurisdiction of the Supreme Court shall not extend to civil actions at law for the recovery of money where the 'original' amount in controversy does not exceed \$200, the amount in controversy to which the appellate jurisdiction of the Supreme Court extends is that which was in actual dispute before the action was brought, and does not include attorney's fees which are merely incidental to the suit; the word 'original' meaning 'pertaining to the origin or beginning; preceding all others; first in order; primitive; pristine'."

Examining our laws relating to the taxation of property we find that it is made the duty of the County Assessor to ascertain and list the names of all inhabitants and all property in his county subject to taxation, and to assess the same, that is, to place a value thereon for taxation purposes (Secs. 2002 and 2048); this must be done before the second Monday in July each year, at which time the Assessor must deliver the assessment books over to the County Clerk (Secs. 2050 and 2052.) After the assessment books have been examined by the County Board of Equalization and the property listed therein has been equalized, it then becomes the duty of the County Clerk to compute the taxes on each piece or parcel of property listed and to extend such taxes on the assessment books (Sec. 2160) and deliver such assessment books with the taxes computed and extended thereon, to the County Treasurer (Sec. 2161) and the County Treasurer then proceeds to collect the taxes as the same appear on such assessment books. If payment be made before 5 o'clock p. m. of November 30th of the amount of taxes assessed against any piece or parcel of property the amount of such taxes required to be paid is the bare amount appearing on the assessment books, but if such taxes are not paid by 5 o'clock p. m. of November 30th, they become delinquent and a penalty of ten per cent is added thereto (Sec. 2175) and if such delinquent taxes are published an additional sum of fifty cents is added (Sec. 2188), and interest is charged on such delinquent taxes at the rate of 12% per annum (Sec. 2221.)

From these statutory provisions it is apparent that the "original" tax must be the tax as the same was computed by the County Clerk and extended on the assessment books, the 10% penalty, publication

charge and interest being merely incidental thereto, being added, not as a tax, but as additional amounts to be paid because of a failure to pay the tax, as originally computed and entered, within the time required by the statute.

If the Legislature had intended that the penalty and the cost of publication should be paid on a redemption, it would have been very easy to have used appropriate words to make clear such intention. Section 2210 provides generally for the redemption of property sold for delinquent taxes, and in such section the Legislature made its intention perfectly clear by using the words "the amount for which such land was sold" and "the amount of such sale," and so with the Act in question, if the Legislature had intended that the penalty should be paid it would unquestionably have used the same words as are used in Section 2210, so that the latter part of Section 1 of such Act would have read "shall be permitted to redeem the same by paying the amount for which such land was sold plus seven per cent interest from the date of sale."

It is, therefore, my opinion that the first question must be answered in the affirmative.

With reference to the second question we find the following provisions of the statutes applicable:

"2152. Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof."

"2153. Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after 12 o'clock m. of the first Monday of March in each year."

In the case of *California Loan & Trust Co. v. Weis, et al*, 50 Pac. 697, the Court held that, under the Political Code of California, Section 3717, declaring a tax upon personal property a lien on real property of the owner thereof, and Section 3788 providing that in case of sale of one's real property for his delinquent taxes, the deed conveys to the grantee the absolute title to the land free of all encumbrances, except the lien for taxes which may have attached subsequent to the sale; that one's personal property tax, as well as his real estate tax, is a lien upon his real property superior to that of a prior mortgage. The Court, in the course of its decision, said:

"No distinction is made by these laws between the lien which exists upon the land for the tax on personalty and the lien which exists for the tax upon the land itself. 'Every lien' created by this title remains until the taxes are paid or the property sold. The title which the purchaser gets under the enforcement of any tax lien by sale is free from all encumbrances."

I am unable to see any distinction as to the character of the lien created by Section 2153 making every tax due upon personal property a lien upon the real property of the owner thereof, and the lien created by Section 2154 making the tax upon real property a lien upon the property assessed. The law apparently contemplates the same character of lien in each instance, and I am unable to see how any distinction can be made in favor of one as to the remission of interest and penalty, while imposing it as to the other.

It is, therefore, my opinion that the second question must be answered in the affirmative.

With reference to the third question, it is my opinion that it must be answered in the negative. Section 2233 requires, in the case of property sold to the county for delinquent taxes and which is subsequently assessed as provided by Section 2231, that no redemption from such tax sale may be permitted unless the subsequent taxes be paid, and I cannot believe that it was the intention of the Legislature to repeal or amend this provision contained in Section 2233.

With reference to the fourth question, it seems apparent from a mere reading of Section 1 of the Act that the Legislature had but one object in view, to relieve the owners of property, upon which taxes had become delinquent, from the payment of the penalties and publication charges which had been added to such taxes because of such delinquency, and the high rate of interest charged on such delinquent taxes, thereby offering an inducement to such owners to redeem the property from such tax sales and to pay up all subsequent taxes assessed against the property. If this was the object, then it certainly could not be accomplished by remitting the penalty added on the taxes for which the property was sold, but retaining such penalty added to all subsequent taxes which had become delinquent. It is, therefore, my opinion that the fourth question must be answered in the affirmative.

With reference to the fifth question it seems to me that the language used in Section 1 of the Act is so clear and plain that it can have but one meaning. Such section says, in practically so many words, that when property has been sold for taxes to any county and the county has not assigned the certificate but still continues the owner thereof, the property may be redeemed by payment of the original tax, etc. No provision is made for redemption when the certificate is held by any individual or corporation, whether the certificate was originally issued to such individual or corporation or received by way of assignment from the county, but only when the sale was made to the county and the certificate is still held by the county.

It is, therefore, my opinion that the provisions of such Act only apply when the county was the purchaser at the tax sale and still holds the certificate of sale, and has no application when the county was not the purchaser at the tax sale, or when the county was such purchaser but has assigned the certificate of sale to some individual or corporation.

With reference to the sixth question attention is directed to the first part of Section 1 of such Act which reads as follows:

“That from and after the passage and approval of this Act, any person having an interest in real estate heretofore sold for taxes to any county,” etc.

The use of the word “heretofore” indicates very clearly that it was the intention of the Legislature that the provisions of the Act should only apply to tax sales for which certificates were outstanding, and taxes which had become delinquent prior to the passage and approval of such law; in other words, that it was to be retrospective in effect only. It is, therefore, my opinion that the Act has no application whatever to tax sales made, or taxes becoming delinquent, after the approval of said Act.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.