

License Taxes—Taxation—Liens—Ownership.

A license tax may be made a lien upon all property used in the business belonging to the person subject to the tax.

A license tax may be a lien upon property regardless of ownership when the owner has contracted with reference to his property after the passage of the act.

State Board of Equalization.

January 19, 1925.

Helena, Montana,

Gentlemen:

You have requested my opinion whether a license tax may be made a lien upon all property, both real and personal, used in the business or occupation subject to the tax, whether the taxpayer is the owner of such property or not.

There is no doubt that the legislature has authority to make a license tax a lien upon the property of the person subject to the tax.

McMillen vs. Anderson, 24 L. Ed. 335;

Blackrock Copper Mining Co. vs. Tingey, 98 Pac. 180; 17

R. C. L. p. 557; Section 70 under Licenses.

The more difficult question is whether such a lien may be imposed upon all the property used in the business, whether owned by the person subject to the tax or not.

In *State vs. Frame*, 39 Ohio St. 399, the court in speaking of such a tax, on page 416, said:

“We think, however, that to subject the freehold to the payment of these assessments when made against a tenant for carrying on the business upon premises leased prior to the passage of the statute, would be an unwarrantable interference with

private property—in other words, in effect, it is subjecting one man's property to the payment of another's debts. If this infirmity, however, can be taken out of the statute by applying it only to cases arising under leases executed after the passage of the statute, it is our duty to so construe it. Every presumption must be taken in favor of the validity of statutes. It will be presumed that the legislative intent was to apply the statute to subsequent leases only, if necessary to preserve it from constitutional objection. It will never be presumed that the legislature intended to pass an unconstitutional law."

The same court in *Anderson vs. Brewster*, 44 Ohio St. 576; 9 N. E. 683, held that such a lien may be created when applied to leases made after its passage. Other cases reaching the same conclusion are annotated in the note appearing in 20 L. R. A. (N. S.) 42.

It is, therefore, my opinion that the legislature has ample authority to make a license tax a lien upon property owned by the person subject to the tax. As to property not belonging to the person subject to the tax a lien may be created in such cases only where the owner contracted with reference to his property after the passage of the law subjecting the property to a lien.

Very truly yours,

L. A. FOOT,
Attorney General.