

Taxation—County Treasurer—Tax Sales—Personal Property—Liens.

The lien for personal property taxes extends to all of the personal property assessed, and where said taxes are not also a lien upon real estate the county treasurer may seize any of the assessed personal property and sell sufficient thereof to make all of the personal property taxes levied against said property together with costs, even though the property has been transferred to a third person subsequent to the first Monday in March.

C. P. Conwell, Esq.,
County Attorney,
Red Lodge, Montana.

February 25, 1930.

My dear Mr. Conwell:

You have requested an opinion upon the following question:

“A taxpayer assessed with personal property, the taxes upon which are not a lien on real estate, sold the personal property without paying the taxes thereon. Can the county treasurer seize any part of this property and hold it for the whole amount of the said personal property taxes?”

Prior to the amendment of Section 2153, R.C.M. 1921, by Chapter 113, Laws of 1927, there was no lien upon personal property for the taxes due thereon. The only lien that was required for personal property taxes was upon the real property of the owner which was impressed with a lien for both the real estate and personal property taxes. (*Walsh vs. Croft*, 27 Mont. 406). As to personal property, the taxes upon which were not a lien against real estate, the county could only acquire a lien thereon by actual seizure of the property as provided by law.

The legislature in 1927, evidently for the purpose of granting relief to the owners of mortgages upon real property whose mortgage liens became inferior to the lien that was imposed upon mortgaged lands for the owners' personal property taxes, amended said Section 2153 so that in those cases where the owner of real and personal property has failed to pay the taxes due thereon for one or more years, the mortgagee can, by filing a request in writing with the county assessor, require a separate assessment of the real and personal property of the owner, in which event the personal property taxes do not become a lien upon the real estate of the owner and the mortgage lien is not affected by the personal property taxes assessed against the owner of the land. Had no other provision been made the exercise of this privilege by the mortgagee would have deprived the county of its lien upon the real estate for the personal property taxes and left the county without any lien whatever.

To somewhat meet this newly created situation the legislature

further enacted that "every tax due upon personal property is a prior lien upon such personal property assessed, which lien shall have precedence over any other lien, claim, or demand * * * ". The undoubted intention of the legislature was by this provision to create a lien upon the personal property itself in all cases for the personal property taxes due thereon, as well as upon the real property of the owner, if any he owns, so that in the event any mortgagee should exercise his privilege of requiring a separate assessment of the owner's personalty and real estate and thereby sever the lien of the personal property taxes from the realty the county would not be left totally without a lien for said personal property taxes, but would have one upon the personal property assessed.

In those cases where the personal property taxes are a lien against the real estate of the owner the lien is for the total amount of the personal property taxes and, in my opinion, the added lien created upon the personal property is co-extensive therewith and extends to all of the personal property for the whole of the taxes. "Every" means "all", "taken one by one," so that each separate tax upon the property within the class of personal property, and the aggregate of them, is a lien upon all of the owner's personal property that has been assessed, as distinguished from that which has not been assessed.

The taxation laws of many of the other states provide that personal property taxes are a lien upon all of the personal property of the owner whether assessed or not. In my opinion, the legislature did not intend to make the lien for personal property taxes in Montana as broad as has been done in other states, and that by the enactment of the law in question any personal property of the owner subject to assessment but which has escaped assessment, or any personal property which the owner has acquired after the first Monday in March, but before the seizure by the county treasurer, is not impressed with the lien for the taxes due upon the personalty that has been assessed.

Prior to the amendment of Section 2239, R.C.M. 1921, by Chapter 102, Laws of 1923, when personal property was assessed for taxes and the taxes were not a lien upon sufficient real estate to secure the payment thereof, it was the duty of the county treasurer to seize any personal property of the owner, whether assessed or not, and sell so much of it as was necessary to discharge the taxes and costs. By the amendment last mentioned the county treasurer is required and permitted to seize only the personal property which is described in the report made to the treasurer by the assessor as having been assessed, and the taxes upon which are, in the opinion of the assessor, not a lien upon real estate sufficient to secure the payment thereof.

The direction in said section as amended is that the treasurer shall "levy upon and take into his possession such personal property against which a tax is assessed and proceed to sell the same * * * ." The description of the property authorized to be seized as "such personal property against which a tax is assessed" has reference to that described in the report of the assessor, which is all of the personal property

assessed, and it is all of this property that is subject to levy and sale for the payment of the taxes due from the owner.

The description has reference to the assessed personal property as a class as distinguished from personal property that may not have been assessed.

It is therefore my opinion that the lien for all the personal property taxes due extends to all of the assessed personalty, and this being a prior lien the county treasurer in the case mentioned by you is authorized to seize all or any part of the property though the same has been transferred to other parties subsequent to the first Monday in March, and sell sufficient thereof to discharge all the taxes due on the whole of the personal property assessed, together with statutory costs.

Very truly yours,
L. A. FOOT,
Attorney General.