

**Taxation—Personal Property Tax—County Treasurer—
Apportionment—Lands.**

Where a taxpayer owns two tracts of land and personal property and one of the tracts was sold for the delinquent real estate taxes against it, together with the personal property taxes, a mortgagee holding a mortgage on the tract so sold cannot require an apportionment of the personal property taxes between the two tracts of land.

Apportionment of real estate taxes must be permitted before there can be an apportionment of personal property taxes. County treasurer acted within his authority when he sold the one tract for the real estate taxes against it and all the personal property taxes and he was not required to sell both tracts of land for a pro rata share of the personal property taxes.

Mr. Denzil R. Young,
County Attorney,
Baker, Montana.

February 25, 1932.

My dear Mr. Young:

I have your request for an opinion in which you state that a taxpayer owned two separate tracts of land and also personal property and

that the taxes on both tracts of land, together with the personal property taxes became delinquent; that one tract, "the home place," was sold for the delinquent real estate taxes against it, together with the personal property taxes of the taxpayer, and that the other tract was sold for the real estate taxes against it; that a mortgagee holding a mortgage upon "the home place" wishes to redeem from the tax sale as to that tract and requests that the personal property tax be apportioned between that tract and the other tract. You inquire if this may be done.

The statute permitting a redemptioner to require segregation of real estate and personal property taxes is section 2211, R.C.M. 1921, as amended by section 1 of chapter 48, laws of 1923, and the privilege of requiring segregation is confined to those cases where real estate has been assessed or sold together with other real estate or where the tax assessed against any other property is a lien on the real estate sought to be redeemed, in either of which cases it is the duty of the county treasurer to compute and apportion the tax that should have properly been assessed against the real estate sought to be redeemed and upon which the taxes are sought to be paid the same as if said property had been separately assessed.

It is plain that this is not a case where the real estate sought to be redeemed had been assessed or sold with other real estate as the two tracts of land were separately assessed and sold. The case is not one where under the provisions of the statute the mortgagee can require segregation because the land was assessed or sold with other real estate because in respect to the real estate sought to be redeemed there are no taxes against other real estate to be segregated therefrom.

The question remains if the mortgagee in this case can require segregation of the personal property tax from the real estate or require it to be apportioned between the two tracts of land by virtue of the provision found in the statute that segregation and apportionment may be required "in case the tax assessed against any other property shall be a lien thereon." The personal property taxes in this case are a lien upon the real estate sought to be redeemed. Was it the intention of the legislature by the use of the above quoted words to permit segregation of personal property taxes from the real estate when the personal property taxes are a lien against the real estate irrespective of the fact that this action might leave the personal property taxes so segregated standing alone and unsecured by a lien upon real property? I hardly think so. If this was permitted by the law it would completely destroy the lien of the personal property taxes on real estate at the instance of a mortgagee seeking to redeem which would render nugatory the lien against the real estate created by section 2153, R.C.M. 1921, as amended by chapter 113, laws of 1927.

In those cases where the owner of personal property is also the owner of a single piece of real estate if the personal property taxes were segregated from the real estate the personal property taxes would stand alone, and inasmuch as at least three years are allowed for redemption it is apparent that in many cases this would have the effect of destroying the personal property taxes because the personal property out of which the taxes could be made would have disappeared in the interim

between the date of the sale and the request for segregation and the personal property taxes would thus be reduced to the status of a mere book entry wholly incapable of being realized by the county treasurer.

Section 2153, R.C.M. 1921, as amended by chapter 113 of the laws of 1927, is highly indicative of the fact that personal property taxes cannot be segregated from the real estate so as to leave them standing alone without being a lien upon real estate for it specifically provides that a mortgagee may keep the personal property taxes of the land owner from becoming a lien upon the mortgaged real estate by pursuing the method mentioned therein. This law was enacted subsequent to section 2211 and its amendments relating to the right to require segregation.

If a mortgagee could, prior to the enactment of said chapter 113 of the laws of 1927, relieve the mortgaged land from the lien of the personal property taxes altogether it would seem that the subsequent legislation permitting a mortgagee to keep the lien of the personal property taxes from attaching to the mortgaged land was of no substantial benefit to the mortgagee, nor would he be confined to its provisions in seeking relief from the lien of the personal property taxes for he could ignore it and resort to the alleged right of segregation and thus remove the lien of the personal property taxes from the land.

Furthermore, a reading of section 2211 as amended discloses that when segregation is permitted it is the duty of the county treasurer to compute and apportion the taxes that should have properly been assessed against the real estate sought to be redeemed and upon which the taxes are sought to be paid "the same as if said property had been separately assessed." Under our law in all cases where land is separately assessed as in this case it is impressed with a lien for the personal property taxes of the owner so that if the mortgagee could require segregation of the personal property taxes from the land he would achieve a greater measure of relief than the segregation statute affords in that he would relieve his land of the burden of the personal property taxes whereas under the statute he cannot, by segregation, relieve it of any burden the land bears when it is separately assessed, and this burden includes that of the lien of the personal property taxes.

May the mortgagor require any part of the personal property taxes to be apportioned between the mortgaged tract and the other tract where they were separately assessed and sold, and the mortgaged tract alone was sold for the personal property taxes of the owner as well as the real estate taxes levied against it? The other tract was sold only for the real estate taxes levied against it. Under our law when land is sold for taxes and a private person becomes the purchaser thereof he is entitled to receive a tax deed, in case no redemption is made, in consideration of the sum paid at the sale. He cannot be required to pay an additional sum in order to procure his deed.

If segregation of these personal property taxes was permitted so as to charge the land which he purchased with a part of these personal property taxes he would have to be charged with these taxes which cannot be done, or his deed would destroy the lien of the county for them as a tax deed conveys the property free of all taxes except those levied subsequent to the sale. These personal property taxes having been levied

prior to the sale would be destroyed by the tax deed. If the county should become the purchaser of the tract it could not collect these personal property taxes out of the land because the sale price did not include it and any person can require the county treasurer to assign the certificate to him upon payment of the amount for which the land was sold with interest and subsequent taxes, penalties, interest and costs. The county treasurer would not be permitted to add thereto a part of the personal property taxes.

Also, in case of redemption from the county the redemptioner is entitled to redeem upon paying the amount for which the land was sold plus interest and the amount of any subsequent delinquent taxes. These personal property taxes are not subsequent taxes and therefore could not be included in the amount required for redemption. In the case of a private purchaser a redemptioner may redeem by paying the amount for which the land was sold plus interest and any subsequent taxes paid by the owner of the certificate of sale with penalties, interest, costs, etc. The redemptioner would not be required to tender any part of these personal property taxes. It would be impossible by segregation or apportionment to tack on to the other tract a part of these personal property taxes after that tract had been sold. That the law did not contemplate any such thing is further evidenced by that provision of said section 2211, R.C.M. 1921 as amended, which reads as follows:

“Any personal property tax which is a lien upon said real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned.”

This section clearly implies that there must be an apportionment of real estate taxes between the mortgaged premises and another tract of land before there can be an apportionment of personal property taxes for the basis of the apportionment of the real estate taxes is the basis of the apportionment of the personal property taxes. It also implies that the personal property taxes must be a lien upon other real estate as well as the mortgaged real estate and that the two or more tracts were assessed or sold as one tract as otherwise there could be no apportionment of real estate taxes. It also negatives the idea that personal property taxes which are a lien upon the mortgaged real estate can be segregated from the real estate where the only taxes involved are the real estate taxes upon the mortgaged real estate and the personal property taxes which are a lien upon it. There must also be involved real estate taxes upon other real estate, a segregation of which would carry with it a proper share of the personal property taxes.

In the case mentioned by you there is no occasion for apportioning the real estate taxes between the other tract of land and the mortgaged tract because they were separately assessed and sold. Therefore, the personal property tax cannot be segregated or apportioned because the statute makes no provision for segregation or apportionment in such a case and there is an entire lack of the statutory basis for computation and apportionment.

You also inquire if the county treasurer acted within his authority

when he sold the mortgaged tract for the real estate taxes against it and all the personal property taxes, or whether he should have sold each tract for the real estate taxes against it and a proportion of the personal property taxes. The lien of the personal property taxes extended to both tracts not pro rata but each tract was separately liable for the entire amount of the personal property tax, In some states, for instance, Washington, there are statutes which direct the treasurer to select a particular tract when the taxpayer owns more than one tract and to make the personal property taxes out of that tract. We have no statute on the subject. However, it is my opinion that this lien has the same force and effect as a lien of a judgment.

In such cases the lien may exist against several tracts but it is within the discretion of the judgment creditor to determine which tract or tracts he will proceed to seize and sell under execution. The treasurer was required to collect this personal property tax and inasmuch as the lien therefor was not a pro rata lien but each tract was separately liable for the whole of the personal property tax, it is my opinion he acted within his legal authority in subjecting one of the tracts to sale for the entire personal property tax instead of ratably against both.

Very truly yours,

L. A. FOOT,
Attorney General.