

Taxes — Personal Property — Liens — Conditional Sales Contracts.

Where personal property is sold on a conditional sales contract and assessed to the purchaser, together with the purchaser's other personal property, when such personal property so sold is re-possessed it is not subject to a lien of all the personal property tax so assessed.

Mr. Harry L. Burns,
County Attorney,
Chinook, Montana.

September 29, 1932.

My dear Mr. Burns:

I have your request for an opinion, in which you state that the owner of personal property was assessed therewith in the years 1931 and 1932 and the owner thereof owned no real estate. Among the personal property was an engine and plows purchased from a machinery company under a conditional sales contract by which the title to the property remained in the machinery company until the purchase price was paid, the contract note being filed in the office of the county clerk and recorder of Blaine county. Neither the 1931 nor 1932 taxes have been paid and in June of this year the machine company re-possessed the tractor and plows and the other personal property has been dissipated and scattered. You state that the treasurer has seized the engine and plows and you inquire if the lien of all of the personal property taxes attached to the engine and plows and, if not, whether the county can make the taxes which were levied against the engine and plows out of them, they having been assessed as the property of the purchaser rather than the machinery company.

There is no doubt concerning the liability of the engine and plows for the taxes assessed against them. It is immaterial that they were assessed in the name of the purchaser rather than the machinery company for under section 2002 R. C. M. 1921, the property could be assessed to the person by whom it was owned or claimed or in whose possession or control it was at 12:00 o'clock noon on the first Monday in March. The engine and plows were in the possession of the person in whose name they were assessed and consequently the assessment is valid under the statute.

However, I do not believe that the engine and plows are liable for the taxes levied against the other personal property. While the law gives a lien upon all of the personal property assessed for all of the personal property taxes, yet, nevertheless, in my opinion, this means the personal property which is owned by the person assessed with the personal property. A person buying property under a conditional sales contract does not, in my opinion, acquire title until the purchase price has been paid. In that respect the purchaser is in a different position than the person who owns the property and gives a mortgage upon it, the mortgagee having a mere lien. A mortgage lien, of course, is inferior to the lien

for taxes. In this case if the machinery company had sold the property outright and taken a mortgage for the purchase price, then, in my opinion, the lien for all of the personal property taxes would extend to the engine and plows, but inasmuch as the property was sold under a conditional sales contract by which the purchaser could not obtain the title until he had paid the full purchase price, it is my opinion that the engine and plows are not subject to the lien for the other personal property taxes.

Our supreme court has held that the purchaser of personal property under a conditional sales contract has a mortgageable interest in the property but the mortgage on this interest is subject to being defeated by the default of the purchaser in the terms of the conditional sales contract. (Hoeller vs. Moog, 60 Mont. 74, 198 Pac. 367). It would seem that at most the lien for the other personal property taxes would extend only to whatever interest the purchaser had in the property under the terms of the contract and inasmuch as that interest has now been forfeited by the default of the purchaser and the re-possession of the property, the purchaser has no present interest in the engine and plows which could be impressed with the lien for the other personal property taxes.

It is therefore my opinion that the engine and plows are liable for the taxes assessed against them but they are not subject to a lien for the other personal property taxes.

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