

Opinion No. 350**Taxation—Personal Property—Delinquent Taxes—Collection—Receivers—County Treasurer.**

HELD: Where taxes are delinquent upon property in the hands of a receiver, the county treasurer should petition the court for an order directing the receiver to pay the taxes or, in the event there is not enough money on hand to do so, that he be permitted to seize and sell so much of the personal property as will suffice to satisfy the same.

September 26, 1933.

You state that the Sunburst Oil & Refining Company, whose assets are now and for almost two years have been in the possession of a receiver appointed by the federal court, has failed to pay the taxes levied upon its personal property in Liberty County and that, as a consequence, the county treasurer is desirous of seizing and selling enough of such property to satisfy the amount of such delinquent taxes. As the receiver contends that the personal property of the corporation cannot be seized or sold without leave

of the court in which the receivership proceedings are pending, you have asked us for an opinion on the question of law involved and as to the best way to proceed in making collection of the taxes due.

It is a rule of universal application that property in the hands of a receiver is not withdrawn from taxation. It remains subject to assessment and to the payment of taxes thereon while in custodia legis to the same extent as when it was in the possession of the owner. (In re Tyler, 149 U. S. 164, 37 Law. Ed. 689; Coy v. Title Guarantee & Trust Co., 220 Fed. 90; 53 C. J. 243; 61 C. J. 217; 2 Cooley on Taxation, Section 606; 2 Tardy's Smith on Receivers, Section 678; Alderson on Receivers, §169a.)

It is also the rule, however, that the possession of the receiver is the possession of the court, for the benefit of the parties to the suit and all concerned, and cannot be disturbed without the leave of the court, and that if any person without leave intentionally interferes with such possession, he necessarily commits a contempt of court and is liable to punishment therefor. (In re Tyler, supra; Dayton v. Standard, 241 U. S. 588, 60 Laws. Ed. 1190; State v. District Court, 21 Mont. 155; Britson Mfg. Co. v. Close, 25 Fed. (2d) 794; 2 Tardy's Smith on Receivers, §687; High on Receivers, §140a; Alderson on Receivers, §169a.)

Under the circumstances, we believe it would be proper for the county treasurer to petition the federal court for an order directing the receiver to pay the taxes, or, in the event there is not enough money on hand to do so, that he be permitted to seize and sell so much of the personal property as will suffice to satisfy the same. (See authorities cited in last paragraph.)