

Opinion No. 481.

**Bankruptcy—Taxation—Taxes—Lien
of—Priority of.**

HELD: Section 2153, R. C. M., 1921,
as amended, makes every tax a prior

lien upon the personal property taxed as well as a lien on the real property of the owner, and such lien takes precedence over a valid mortgage.

Bankruptcy will not defeat a tax lien.

Therefore, since the tax lien takes precedence over a mortgage lien in this state, the county may not refund to the referee in bankruptcy the money paid to the county for taxes due from, and paid by, the bankrupt.

March 2, 1934.

We acknowledge receipt of yours of the 27th ult., in which you advise that the referee in bankruptcy asks for the return of the money paid to Cascade County on a claim for taxes due from the estate of Theodore Dullum, bankrupt. The referee requests the return of the money on the ground that certain labor claims against the estate are entitled under the bankrupt law to priority over the claim of Cascade County for taxes.

No doubt the referee construes Section 64a and b of the Bankrupt Act relating to priorities as supporting his request. We question the correctness of such construction. The priorities referred to in Section 64a and b apply only in the absence of valid liens.

Section 2153 R. C. M. 1921, as amended by Chapter 182, Laws of 1933, makes every tax a prior lien upon the personal property taxed as well as a lien on the real property of the owner. Such lien attaches to the land and takes precedence over a valid mortgage. Certainly no one will contend that the bankruptcy court can exercise any such control over the bankrupt estate that will defeat the mortgage lien. The tax lien is superior to the mortgage lien.

In states where taxes are not made a lien on the property assessed then the priorities for certain wages provided for in the Bankrupt Act referred to appear to take precedence over claims for taxes, but not otherwise. (See *Little v. Peyton*, 54 Fed. (2) 678 and *City of Tampa v. Commercial Building Co.*, 54 Fed. (2) 1057 and other cases under Key Number 346, Bankruptcy.)

It seems to us that the obvious position for you to take is to deny the request and let the referee or trustee bring an action if they desire to test the matter.