

Opinion No. 337.**Taxation—Segregation—Mortgages.**

HELD: Section 2153 R. C. M. 1935 offers to owners of mortgages two distinct remedies of segregation of real property taxes from personal property taxes, rather than only one remedy.

August 7, 1936.

Mr. E. P. Conwell
County Attorney
Red Lodge, Montana

You ask for an interpretation of Section 2153 R. C. M. 1935, and as to the rights of the owner of a mortgage in relation to segregation of real estate from personal property taxes and payment of taxes on real estate by mortgagee without payment of personal property taxes, and the duties of the county treasurer and assessor in relation thereto.

This statute was amended in 1935. Prior to that time a method of segregation of taxes upon real estate mortgaged under certain conditions was authorized. This statute provided that where the owner of real estate and personal property has failed to pay his taxes for more than one year that the owner of a real estate mortgage might have the real estate and personal property taxes separated and that thereafter the personal taxes should not be a lien upon the real estate. This permitted the holder of the mortgage to pay subsequent real estate taxes without being obligated to pay personal property taxes. This procedure was not expressly amended when the statute was changed. The new statute contained the same provision, and, in addition thereto, another remedy. Such second remedy, which was found for the first time in the 1935 statute, consisted of the following:

At any time prior to the time when a lien for personal property taxes attaches to real estate, the holder of a mortgage might have the taxes upon real estate, plus the taxes upon \$1,000 worth of personal property, segregated, in which event the real estate upon which a mortgage existed would not be liable for personal property taxes in excess of \$1,000. This privilege was accorded to the owner of a mortgage without the condition that the owner should have failed to pay his taxes for one year or more. It seems impossible to reconcile these provisions as one distinct privilege. The only way to apparently reconcile such provisions is to hold that they constitute two distinct privileges in the holder of the mortgage and it is so held. Both of the provisions are

operative and either may be claimed by the holder of a mortgage.

You ask four specific questions, submitted by your county assessor:

"1. If any party holds a mortgage upon any real estate of which personal property is a lien, do we have to make the segregation of personal property from real estate at assessment time if taxes are not delinquent for one or more years?"

Answer: In such event the owner of a mortgage may not have personal property taxes segregated but may have personal property taxes in excess of a tax upon \$1,000 worth of personal property taxes segregated.

"2. In the event that the taxes have not been delinquent for one or more years and the owner of personal property wishes such personal property taxes to be a lien on real estate on which there is a mortgage, are we compelled to segregate?"

In answer to his question No. 2, we believe same is answered by our answer to No. 1 above.

"3. Where the personal property is under \$1,000.00 taxable value, can the mortgagee of real property force a segregation where the taxes have not been delinquent for one or more years?"

Answer: No.

"4. In the event that real property on which the Federal Land Bank or anyone else has a mortgage and the taxes are not delinquent for one year, is it my duty as County Assessor to check through the Treasurer's books to determine just who has paid the taxes on the aforesaid property?"

Answer: No.

It is realized that this opinion is somewhat involved and the methods described are cumbersome. This cannot be avoided under the terms of this involved statute.