

Opinion No. 208.**Taxes—Personal Property Taxes—
Mortgages—Liens—County Assessor.**

Held: County assessor must keep separate tax lists for personal property of mortgagor on personal property making up first \$1,000.00 of taxable valuation and all personal property making up an excess valuation, if mortgagee complies with Subsections (b) and (c) of Chapter 97, Laws of 1937. Subsection (b) and (d) of Chapter 97, Laws of 1937 are separate and distinct remedies of the mortgagee. Assessor may use his own judgment in listing the personal property making up the first \$1,000.00 worth of taxable valuation under the provisions of Subsection (b) of Chapter 97, Laws of 1937, as long as he does not act arbitrarily.

May 10, 1944.

Mr. J. J. McIntosh
County Attorney
Rosebud County
Forsyth, Montana

Dear Mr. McIntosh:

You have requested an opinion of this office relative to the construction of certain portions of Chapter 97, Laws of 1937, which chapter amends Section 2153, Revised Codes of Montana, 1935.

Your particular questions are as follows:

"1. Whether or not under Subsection (b) he (the assessor) is required to keep a separate assessment list of the personal property of the owner having a taxable value up to \$1,000.00 and the personalty having a taxable value in excess thereof.

"2. Whether such a mortgage holder, to get the benefits of Subsection (b) must also file the written request provided for in Subsection (d), or if

"3. Subsection (d) is an entirely separate and independent provision giving additional rights to a mortgage holder, having no connection with Subsection (b).

"4. How must the assessor proceed in listing the personal property having a taxable value up to \$1,000.00 and that having a taxable value in excess of \$1,000.00, he having called my attention to the fact that in arriving at the taxable value of personal property in some classes of property you take 7% of the full value, and in other classes of personal property it is 20%, 30% and 33 $\frac{1}{3}$ % of the full value, and he desires to know how he is to decide which classes of property shall be included in the list having a taxable value up to \$1,000.00, and that in excess of \$1,000.00 taxable value."

Section 2153, as amended by Chapter 182, Laws of 1933, contains only the provision for making personal property taxes a lien on the particular property assessed and makes all personal property a lien on the real estate of the owner, with the proviso that in the event personal property taxes were delinquent for a year or more, mortgage holders of record of the real estate on which the same was a lien, might give a notice ten days before the 1st day of March to the assessor to separately assess the personal property, in which event the personal property would not thereafter become a lien on the real estate. Section 2153 was amended by Chapter 119, Laws of 1935, placing that portion of said Chapter 119, to the proviso, in Subsection (a) of said Chapter 119, added Subsection (b) providing that mortgagee might request, prior to a delinquency, that all personal taxes of the mortgagor on an assessed valuation in excess of \$1,000.00, be separately assessed, Subsection (c) providing the type of notice to be given to reap the

benefits of Subsection (b) and placed the proviso provided in the said Chapter 182, Laws of 1933, in Subsection (d). Thus said Section 2153 appears in the Revised Codes of Montana, 1935.

It is to be noted that Chapter 97, Laws of 1937, only changes Subsection (a) of Section 2153, Revised Codes of Montana, 1935, and is not material to the inquiries you make.

Subsection (a) of Section 2153, Revised Codes of Montana, 1935, as amended by Chapter 97, Laws of 1937, merely states the general rule regarding the lien of personal property taxes. Subsection (b) provides that a record mortgagee of real estate may, before personal property taxes have become a lien on the real estate, mortgaged, file a notice as provided in Subsection (c) with the county assessor, in which instance personal property taxes thereafter assessed on personal property of the mortgagor in excess of the taxable valuation of \$1,000.00 shall not be a lien on the mortgaged real property and that the tax on the personal property of a taxable valuation of less than \$1,000.00 may be paid separately from the tax on the personal property in excess of \$1,000.00. Further, it is provided that the mortgagee may demand a statement of the personal property tax due upon the taxable value up to and including \$1,000.00.

Subsection (d), as heretofore pointed out, is the old proviso contained in Section 2153, Revised Codes of Montana, 1921, prior to the 1935 enactment, and pertains only to instances where personal taxes of the mortgagor have been delinquent for a year or more and have become a lien against the mortgaged premises, and in that instance the mortgagee may give the ten day notice prior to the next assessment and keep all personal taxes from thereafter becoming a lien against the mortgaged premises.

In view of the history of said Section 2153, as amended by Chapter 97, Laws of 1937, and the wording thereof, my answers to your questions are as follows:

1. If the mortgagee of record of real property, gives the notice in accordance with the provisions of Subsection (c) of said Chapter 97, then thereafter the assessor must keep separate assessment lists for the mortgagee's personal property if the same has a taxable value of over \$1,000.00,

during the life of the mortgage and for so many years thereafter as such notices are filed, one list being for such portion of the said mortgagor's personal property as makes up the first \$1,000.00 of taxable valuation, the second for all personal property in excess of the first \$1,000.00 in taxable valuation. The first list is to become a lien on the mortgaged real estate and the second list is to be collected as the law provides for the collection of other personal property taxes.

2. and 3. Subsections (b) and (d) are separate and distinct remedies of the mortgagee. One is not dependent upon the other. Under Subsection (b) the mortgagee may see that no more than the tax on \$1,000.00 worth of personal property is made a lien on the real estate, and the statute specifically providing that advantage of this portion of the act may be taken advantage of after one or more years of personal tax assessments have become a lien on the real property. Under Subsection (d) one or more years personal taxes must be delinquent and be a lien on the real property. It is possible that both subsections might be used over a two year period, in that the first year the mortgagee might act under Subsection (b), then the tax on the first \$1,000.00 might become a lien; when that tax is one year or more past due the mortgagee might give the notice under Subsection (d) and thereafter no new personal taxes would become a lien on the mortgaged premises.

4. It seems to me that the assessor may use his own judgment in listing the personal property making up the first \$1,000.00 worth of taxable valuation, just so he arranged his assessment to arrive at that figure. There is no statutory regulation. The person paying the tax may in accordance with Subsection (b) direct as to how it is to be applied, but I do not believe very many will be concerned with the specific application of the tax money if the assessor has not abused the discretion placed in him in determining the first \$1,000.00 taxable valuation.

See Volume 16, Report and Official Opinions of Attorney General, pages 334 and 335, Opinion No. 337, for an opinion on Section 2153, Revised Codes of Montana, 1935, covering practically the same questions as you ask and

holding in general in accordance with this opinion.

Sincerely yours,
R. V. BOTTOMLY
Attorney General