

Opinion No. 109**Taxation—Liens—Personal Property.**

Held: Where a tax lien exists on several items of personal property, the tax lien is against each individual item for the whole amount of the lien, and foreclosure may be had on one item to satisfy the tax lien against the whole.

May 17th, 1950

Mr. M. L. Parcels
County Attorney
Stillwater County
Columbus, Montana

Dear Mr. Parcels:

This will acknowledge your inquiry of the 10th, ultimo, with reference to enforcement of the tax lien upon those certain fifteen houses assessed as personal property; and with reference to the word "other" in my opinion Number 102, dated March 28, 1950.

You quote from said opinion, and your letter in part is as follows:

1. "'(1) The tax lien is upon the particular property assessed for the tax of that particular year; and if the tax is not paid the lien for that tax does not attach to other or after-acquired property.'

2. "With this word 'other' in the opinion, are we to understand that the Treasurer must levy upon and take into his possession all or each and every item of such personal property, or can he levy upon any individual item thereof under the theory or provision of Section 84-3807 of the 1947 R.C.M. to the effect that the lien of taxes created by that section extends to each item of personal property for the full amount of the taxes and is not satisfied nor the lien thereof removed until the taxes are paid or the property sold for the payment thereof?

3. "We have a proposition where fifteen houses were assessed (personal property) and would like to enforce the lien of the taxes on the fifteen houses against one of the number if the statute mentioned will so permit.

4. "The question has also arisen as to the taxes on livestock and whether or not the levy can be made on only sufficient amount of the several items to cover the taxes on the whole number."

As stated in the quoted portion of my opinion, paragraph numbered 1, supra, the **lien** is upon the particular property assessed for that particular year, and therefore, the lien cannot extend to any other property. It is limited to the property so assessed.

But the tax lien is not only upon the whole of the personal property, but it is a lien against each single item thereof for the entire

amount of the tax. In that respect it is similar to a chattel mortgage on several items of personal property to secure a specified sum of money. Upon foreclosure sale only so much thereof as is required to produce the amount due with costs is to be sold. Just so with the lien on personal property to secure the amount of the tax due. Though the lien extends to all the property assessed for the particular year, only one item of property need be seized and sold if it be adequate to produce the amount of the tax due with costs allowed by law for collection thereof. The law appears to be quite clear thereon. To the same effect, see opinion of Hon. Harrison J. Freebourn, 18th volume, page 256, Opinions of the Attorney General.

With reference to the fifteen houses in question, while your letter does not state whether they were fixtures or located upon real property, public or private, at time of assessment, we understand you supplied the information by telephone that said houses were all in transit at the time, that is, they were removed from their former location and were on the way to their present location when assessed. It appears, therefore, that they were personal property at that time, and were neither fixtures nor improvements upon real property. As such they would come under the general rule above stated, and if owned and assessed to one individual, distraint and sale may be had of any of such houses to satisfy the tax as against all of them.

This opinion assumes that the owner of the houses in question has no real estate, or sufficient real estate, in the opinion of the County Assessor to secure payment of such taxes as provided by Section 84-4201, Revised Codes of Montana, 1947, within your County.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.