

Dear Mr. Conrad:

You have submitted the following set of facts for my opinion:

An estate was probated in 1931, and inheritance taxes upon it determined to be due and payable in a certain amount. A portion of the taxes were paid, but the remaining portion remains unpaid to this date.

Based on these facts you have asked my opinion upon the following questions:

1. Is that portion of Section 91-4415, R.C.M., 1947, providing that unpaid inheritance taxes shall remain a lien upon the property for ten (10) years from the time of the death of the decedent unless sooner paid, valid and constitutional?
2. Is the lien upon the property in question still in existence?

Section 91-4415, R.C.M., 1947, so far as it is pertinent here, reads:

“When Payment Due—Lien Of Tax—Liability For Payment—Place Of Payment—Receipts—Receipt Or Bond Required Before Final Accounting Allowed. All taxes imposed by this act shall be due and payable at the time of the death of the decedent, except as hereinafter provided; and every such tax shall be and remain a lien upon the property transferred for a period of ten years from the time of the death of the decedent unless sooner paid, and the person to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred shall be personally liable for such tax until its payment . . .” (Emphasis supplied)

Prior to its amendment in 1951, (by Chapter 16, Laws of 1951) the section provided that the unpaid tax remained a lien upon the property until paid. It provided then, in part:

“When Payment Due—Lien Of Tax—Liability For Payment—Place Of Payment—Receipts—Receipt Or Bond Required Before Final Accounting Allowed. All

Opinion No. 28

**Taxation — Inheritance Tax Liens,
Constitutionality of**

HELD: The lien provided for by Section 91-4415, R.C.M., 1947, as amended by Chapter 16, Laws of 1951, is valid and constitutional.

Liens for unpaid inheritance taxes which were in existence at the time of passage of Chapter 16, Laws of 1951, were not cut off by the passage of that act, and they remain in existence until paid.

July 19, 1955.

Mr. H. W. Conrad, Jr.
County Attorney
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Conrad, Montana

taxes imposed by this act shall be due and payable at the time of the death of the decedent, except as hereinafter provided; and every such tax shall be and remain a lien upon the property transferred until paid, and the person to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred shall be personally liable for such tax until its payment . . ." (Emphasis supplied)

This particular provision of the statute has not been before our Supreme Court since its amendment, but it had been considered in a number of cases prior to 1951. (See, In Re. Powell's Estate, 110 Mont. 213, 101 Pac. (2d) 54; In Re. Clark's Estate, 105 Mont. 401, 74 Pac. (2d) 401.) Although the question of the constitutionality of the statute was not directly raised, the Supreme Court appeared to have had no doubt of its constitutionality. Since the 1951 amendment lessened its stringency, any objection to the present ten year lien would have applied with greater force to the previous lien, which was unlimited in time.

There is no general constitutional objection to tax liens, including those which remain in existence until paid. Almost every American jurisdiction has a provision similar to Section 91-4415, supra, in its inheritance tax act. A diligent search reveals no case in which any such lien provision was held unconstitutional, or in which its constitutionality was even seriously questioned. This is undoubtedly due to the general and long-understood policy of the law, that taxes and tax liens, being absolutely essential to the operation of the government, are never extinguished except by payment, unless fundamental law dictates otherwise. This principle was stated very clearly in the case of *Commonwealth v. Central Realty Co.*, 338 Penn. 172, 12 Atl. (2d) 312:

"State taxes stand on a different basis from local levies; the former are essential to the very 'preservation' of the state itself (citing cases) . . . So far as general principles enter into the matter, the basic interest of the sover-

eign authority requires the direct revenues of the commonwealth to be so guarded that no lien for state taxes shall be disturbed except by payment, unless some constitutional or statutory rule dictates otherwise."

We have no constitutional or statutory provisions which reduce the scope of tax liens except those contained in the lien provisions themselves. On the contrary, Section 39, Article V of the Montana Constitution, provides that:

"No obligation or liability of any person, association or corporation, held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished except by the payment thereof into the proper treasury."

It is therefore my opinion that the lien provided for by Section 91-4415, R.C.M., 1947, as amended by Chapter 16, Laws of 1951, is valid and constitutional.

The answer to your second question depends upon whether or not the 1951 amendment (Chapter 16, Laws of 1951, supra) was intended to cut off existing liens at ten years. No such intention is expressed in the amending act, either expressly or by implication.

The 1951 act would have to be given retroactive application if it were to cut off the previously accrued lien of the state, as any act which takes away or impairs vested rights acquired under existing laws is retroactive. (*Butte and Superior Mining Co., v. McIntyre*, 71 Mont. 254, 229 Pac. 730.)

Section 12-201, R.C.M., 1947, provides that:

"Laws, When Retroactive. No law contained in any of the codes or other statutes of Montana is retroactive unless expressly so declared."

Under this statute, the intent of the legislature that the act is to be

retroactive must be clearly expressed, and must be gathered **from the language of the act itself, and from no other source.** (Mills v. State Board of Equalization, 97 Mont. 13, 33 Pac. (2d) 563.)

Since no intention to make the 1951 amendment retroactive was expressed in that act by the legislature, it is not necessary to discuss the possible objections that would arise under Article V, Section 39, supra. It is clear from the words of the statute that the ten year lien requirement applies only to liabilities accruing after the passage of the act, and not to liens in existence at that time.

It is therefore my opinion that liens for unpaid inheritance taxes, which were in existence at the time of passage of Chapter 16, Laws of 1951, were not cut off by the passage of that act, and they remain in existence until paid.

Very truly yours,
ARNOLD H. OLSEN
Attorney General