

VOLUME NO. 36**Opinion No. 69****LIENS — Tax, personal property; TAXATION — Liens, personal property; Sections 84-3807 and 84-3808, Revised Codes of Montana 1947.****HELD: The lien on personal property authorized by section 84-3808 is not extinguished when the property against which the tax was assessed is transferred to a third party.**

April 9, 1976

Mr. J. Fred Bourdeau
Cascade County Attorney
Great Falls, Montana 59401

Dear Mr. Bourdeau:

You have requested my opinion concerning the following question:

Where personal property taxes have been assessed against property in the possession of an individual and that individual subsequently transfers the property to a third party, does the lien created by authority of section 84-3808 follow that property into the hands of the third party?

Section 84-3808(a) provides that "[e]very tax due upon personal property is a prior lien upon any or all of such property...." Section 84-3807 provides:

Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person

assessed from and after the date the assessment is made.... The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

In an opinion issued by then Attorney General Harrison J. Freebourn, it was held that this lien did follow the personal property into the hands of a subsequent purchaser.

HELD:

The lien of personal property taxes is not lost through a sale of the personal property. 18 Opinions of the Attorney General, No. 256.

I am in concurrence with this holding.

There is substantial authority in other jurisdictions for the proposition that if a tax has become a lien on the personal property of a tax debtor, one who purchases the property after the lien attaches, whether he knows of it or not, takes subject to it. (See. Annot., 41 ALR 187 (1926)). The applicability of this rule depends on the particular statutes of the state. In this regard it should be noted that certain other states have provided in clear language that the lien in issue does follow the property upon sale. For example, the State of Washington's counterpart to section 84-3807 provides:

...and no sale or transfer of such personal property shall in any way affect the lien for such taxes upon such property. 84.60.020 RCWA.

While not as definite as the above provision, Montana law does state the same position. Section 84-3807 provides that the lien created by the property assessment

has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made.... The judgment is not satisfied **nor the lien removed until the taxes are paid or the property sold for the payment thereof.** (Emphasis supplied)

The legislature has thus provided that where a lien has attached to property for the payment of taxes, that lien will be removed only when the taxes are paid or the property is sold at a tax sale. It follows therefrom that the transfer of the property to a third party will not release the lien.

Walsh v. Croft, 27 Mont. 407, 71 Pac. 409 (1903) dealt with a factual situation applicable to your question. In that case the third party vendee was seeking to enjoin the county from selling personal property on which the taxes owed by the vendor had not been paid. The District Court held that there was a lien on the property and that the county could seize the property in the hands of an innocent purchaser.

This decision was reversed by the Supreme Court but apparently only because at that time the statutes provided that a lien could exist for unpaid personal property taxes only if the taxpayer owned real property to which the lien could attach. The proposition that a lien, once established would follow personal property into the hands of a subsequent purchaser did not appear to be questioned.

THEREFORE, IT IS MY OPINION :

The lien on personal property authorized by section 84-3808 is not extinguished when the property against which the tax was assessed is transferred to a third party.

Very truly yours,
ROBERT L. WOODAHL
Attorney General