

EXEMPTIONS - State not bound by exemption provision protecting property from sale for judgment unless State specifically named;

PROPERTY, PERSONAL - Personal property taxes attach to all personal property held by owner of taxed property;

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PROPERTY, REAL - State not bound by exemption provision protecting property from sale for judgment unless State specifically named;

TAXATION AND REVENUE - Personal property taxes attach to all personal property held by owner of taxed property;

TAXATION AND REVENUE - State not bound by exemption provision protecting property from sale for judgment unless State specifically named;

MONTANA CODE ANNOTATED - Sections 15-16-113, 15-16-401, 15-16-402, 25-13-601 to 25-13-617.

HELD: 1. The word "such" in section 15-16-402(1), MCA, refers to any personal property in the possession of the owner of property which has been assessed.

2. The exemption provisions of sections 25-13-601 to 617, MCA, do not apply when personal property is seized and sold for payment of delinquent personal property taxes.

5 November 1986

David G. Rice
Hill County Attorney
Hill County Courthouse
Havre MT 59501

Dear Mr. Rice:

You have requested my opinion on the following questions:

1. Does the word "such" in the above statute refer only to the property assessed or all personal property, i.e., a motor vehicle upon which taxes have been paid at the time of its registration?
2. Do the exemption provisions of sections 25-13-601 to 617, MCA, have any application when personal property is seized and sold for payment of delinquent personal property taxes?

Title 15, chapter 16, part 4, MCA, provides that taxes are due as judgments or liens, and also provides limitations where those taxes do not have precedence over any other lien. Section 15-16-401, MCA, specifically provides that every tax has the effect of a judgment against the person and every lien created by Title 15 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. Your questions relate specifically to section 15-16-402, MCA. That statute provides:

(1) Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim, or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof from and after 12 midnight of January 1 in each year. [Emphasis added.]

The Montana Supreme Court has on several occasions examined the statutes dealing with property taxes on personal property. In Stensvad v. Musselshell County,

180 Mont. 489, 496-97, 591 P.2d 225, 229-30 (1979), the Court held that a tax upon personal property is a lien upon the real property of the owner of the personal property. The Court specifically examined sections 15-16-401 and 15-16-402, MCA, in O'Brien v. Ross, 144 Mont. 115, 120, 394 P.2d 1013, 1015 (1964). In that case, the Court specifically held that a lien arising from a taxpayer's failure to pay a tax assessed on all his cattle was not limited to the lien upon the cattle but extended to all of his personal property. That analysis was based upon section 84-4202, R.C.M. 1947. That statute is now codified as section 15-16-113, MCA. It provides:

The county treasurer shall ... levy upon and take into his possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer and proceed to sell the same in the same manner as property is sold on execution by the sheriff. [Emphasis added.]

The language of sections 15-16-113 and 15-16-402, MCA, is identical to the statutes examined by the Montana Supreme Court in O'Brien v. Ross. That decision controls. A tax lien attaches to the taxpayer's property which has been assessed and to any other personal property in his possession.

Your second question is whether the exemptions provided in sections 25-13-601 to 617, MCA, have any application when personal property is seized and sold for payment of delinquent property taxes. The general rule is that a state is not to be bound by an exemption provision unless the state is expressly named in the statute. Therefore, in the absence of an express provision to that effect, exemption laws do not apply against the State. See Morrison v. Barham, 7 Cal. Rptr. 442, 445-46 (1960). See generally 31 Am. Jur. 2d Exemptions §§ 130, 131; Annot., 159 A.L.R. 458; Hedden's Succession, 146 So. 732, 733 (La. Ct. App. 1932); White v. Martin, 23 So. 289, 290 (Miss. 1898); Christgau v. Woodlawn Cemetery Assoc., Winona, 293 N.W. 619, 626 (Minn. 1940). Cf. State ex rel. Harry v. District Court, 38 St. Rptr. 818, 628 P.2d 657 (1981) (workers' compensation benefits specifically exempted); see also 16 McQuillin, Municipal Corporations: Taxation § 44.142; Faust v. Louisville Trust Company, 232 S.W. 58, 59-60 (Ky. Ct. App. 1921);

Highland Park Independent School District v. Thomas, 139 S.W.2d 299, 301 (Tex. Civ. App. 1940).

Since the exemptions in sections 25-13-601 to 617, MCA, do not specifically pertain to executions by the State, they do not apply to personal property seized and sold for payment of delinquent property taxes. A taxpayer may not protect his personal property from being executed against to satisfy tax liens in the absence of a specific statutory exemption.

THEREFORE, IT IS MY OPINION:

1. The word "such" in section 15-16-402(1), MCA, refers to any personal property in the possession of the owner of property which has been assessed.
2. The exemption provisions of sections 25-13-601 to 617, MCA, do not apply when personal property is seized and sold for payment of delinquent personal property taxes.

Very truly yours,

MIKE GREELY
Attorney General