

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 122

LIENS - Duration of tax lien;
PROPERTY, PERSONAL - Duration of tax lien against;
PROPERTY, REAL - Duration of tax lien against;
TAXATION AND REVENUE - Duration of tax lien;
MONTANA CODE ANNOTATED - Sections 15-16-401,
15-16-402(1), 15-16-403;
OPINIONS OF THE ATTORNEY GENERAL - 36 Op. Att'y Gen. No.
69 (1976).

HELD: Under section 15-16-401, MCA, a tax lien created under Title 15, MCA, is valid and enforceable until the taxes are paid or the property sold for the payment of the delinquent tax, regardless of whether that lien is upon real property or personal property.

9 November 1988

J. Allen Bradshaw
Granite County Attorney
P.O. Box 490
Philipsburg MT 59858

Dear Mr. Bradshaw:

You have requested my opinion concerning the following questions:

1. Since a tax lien is given the effect of a judgment lien under section 15-16-401, MCA, is that lien valid for only six years, the same as a judgment lien under section 25-9-301, MCA?
2. Is your conclusion affected by whether the lien in question is a personal property tax lien or a lien against real property?

Section 15-16-401, MCA, provides in pertinent part:

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 The judgment is not satisfied nor the lien

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removed until the taxes are paid or the property sold for the payment thereof.

The threshold rule of statutory construction is that where statutory language is clear and unambiguous, the statute speaks for itself and there is no need to engage in further construction. Matter of Blake v. State, 44 St. Rptr. 580, 584, 735 P.2d 262, 265 (1987); Yearout v. Rainbow Painting, ___ Mont. ___, 719 P.2d 1258, 1259 (1987).

The plain and unambiguous language of section 15-16-401, MCA, indicates that a lien created by Title 15, MCA, endures either until "the taxes are paid or the property is sold at a tax sale." 36 Op. Att'y Gen. No. 69 at 457 (1976). This interpretation comports with the general rule that:

[T]he continued existence and duration of the lien are fixed by statute, which, of course, governs and controls. Under some statutes, the lien for taxes is made perpetual ... until the taxes are paid or the property of the delinquent taxpayer is sold for the payment

84 C.J.S. Taxation § 595 (1954), citing State ex rel. Tillman v. District Court, 101 Mont. 176, 53 P.2d 107 (1936), and Swingley v. Riechoff, 112 Mont. 59, 112 P.2d 1075 (1941).

In Tillman, the Montana Supreme Court construed the language of the predecessor to section 15-16-401, MCA, as follows:

It is therefore clear that [Fergus County's] lien, akin to a judgment, will hold until the taxes are paid or a deed to the property is secured

Tillman, 101 Mont. at 183, 53 P.2d at 110.

The Court amplified this holding in Swingley, stating that:

The government's lien for taxes is based upon express statutory provision, and is a perpetual lien against which no statute of limitations can successfully be interposed. (Secs. 2152 and 2154, Rev. Codes.) Section 2152 provides: "Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect

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of an execution duly levied against all personal property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof." A perpetual lien, of course, presupposes a continuance of the obligation of a property owner to pay the tax or otherwise satisfy the lien without reference to the lapse of time.

Swingley, 112 Mont. at 68, 112 P.2d at 1079.

It is therefore my conclusion that under section 15-16-401, MCA, a tax lien created pursuant to Title 15, MCA, is valid and enforceable until the delinquent taxes are paid or until the property is sold for the payment of the delinquent taxes, regardless of lapse of time.

With regard to your second question, tax liens can be created against both personal property, by operation of section 15-16-402(1), MCA, and real property, by operation of section 15-16-403, MCA. Section 15-16-402(1), MCA, also provides that tax liens upon personal property may have effect as liens on the real property "of the owner thereof." Because tax liens against both real and personal property are created under Title 15, MCA, section 15-16-401, MCA, applies equally to both kinds of liens, since that statute provides that "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." (Emphasis added.) See State ex rel. Tillman v. District Court, 101 Mont. at 182, 53 P.2d at 110.

THEREFORE, IT IS MY OPINION:

Under section 15-16-401, MCA, a tax lien created under Title 15, MCA, is valid and enforceable until the taxes are paid or the property sold for the payment of the delinquent tax, regardless of whether that lien is upon real property or personal property.

Very truly yours,

MIKE GREELY
Attorney General