

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 95

LIENS - Delinquent taxes, mobile homes;
PROPERTY, PERSONAL - Delinquent taxes, mobile homes;
PROPERTY, REAL - Delinquent taxes, mobile homes;
REVENUE, DEPARTMENT OF - Delinquent taxes, mobile homes;
TAXATION AND REVENUE - Delinquent taxes, mobile homes;
MONTANA CODE ANNOTATED - Sections 15-1-101(1)(g),
15-1-101(1)(k), 15-6-134, 15-16-102, 15-16-111,
15-16-113, 15-16-401 to 15-16-403, 15-17-911, 15-24-202
to 15-24-204, 15-24-208, 70-1-105, 70-1-108;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No.
80 (1984), 36 Op. Att'y Gen. No. 69 (1976).

- HELD: 1. A lienholder must pay the delinquent real property taxes on a mobile home classified as an improvement before repossessing and moving the mobile home.
2. A lienholder must pay the delinquent personal property taxes on a mobile home which is not classified as an improvement before repossessing and moving the mobile home.
3. If the owner of a mobile home which is not classified as an improvement fails to make the first-half payment of personal property taxes and the first-half taxes become delinquent, the penalty and interest provisions of section 15-16-102, MCA, apply and the mobile home may be seized and sold for delinquent taxes pursuant to sections 15-17-911 and/or 15-16-113, MCA.

12 July 1988

Harold F. Hanser
Yellowstone County Attorney
Yellowstone County Courthouse
Billings MT 59101

Dear Mr. Hanser:

You have requested my opinion on three questions I have phrased as follows:

1. When a mobile home is classified as an improvement to real property, may a lienholder repossess the mobile home and move it off the land without paying the delinquent taxes owed on the mobile home?

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2. When a mobile home which is not classified as an improvement is repossessed by a lienholder, may the lienholder repossess and move the mobile home without paying the delinquent property taxes owed on the mobile home?
3. If the owner of a mobile home which is not classified as an improvement fails to make the first-half payment of personal property taxes and the first-half taxes become delinquent, may penalty and interest be assessed pursuant to section 15-16-102, MCA, and may the county treasurer levy upon and take into possession the mobile home and proceed to sell it as provided in section 15-16-113, MCA?

Your first question concerns mobile homes classified as improvements to real property. Pursuant to section 15-1-101(1)(g), MCA, when the Department of Revenue or its agent determines that the permanency of location of a mobile home has been established, the mobile home is presumed to be an improvement to real property. "A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed." § 15-1-101(1)(g), MCA. Under the state's property classification system, improvements which are not "classified otherwise" are taxed as class four property. § 15-6-134, MCA. A mobile home considered an improvement is not "classified otherwise" and is therefore class four property.

Section 15-16-403, MCA, provides:

Every tax due upon real property is a lien against the property assessed, and every tax due upon improvements upon real estate assessed to other than the owner of the real estate is a lien upon the land and improvements, which several liens attach as of January 1 in each year.

A tax lien on personal or real property is superior to other liens. United States v. Christensen, 218 F. Supp. 722 (D. Mont. 1963); 40 Op. Att'y Gen. No. 80 at 320 (1984).

The statutory sections which specifically concern taxation of mobile homes, Title 15, chapter 24, part 2, MCA, include provisions concerning payment of personal

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property taxes on mobile homes not taxed as improvements, and the display of tax-paid stickers on such homes. § 15-24-202, MCA. Section 15-24-202, MCA, also provides in part:

(4) The tax-paid sticker and receipt are not required for mobile homes which are classified as improvements to land, but payment of the assessed property taxes and display of a mobile home movement declaration of destination are required before moving the mobile home.

The statutes also provide that moving a mobile home on which property taxes are unpaid is a misdemeanor. § 15-24-208, MCA.

The statutes requiring payment of property taxes prior to moving a mobile home classified as an improvement provide no exception for lienholders. It is therefore my opinion that a lienholder who wishes to repossess and move a mobile home classified as an improvement to real property must pay the delinquent property taxes owed on the mobile home prior to moving it. As stated above, the tax lien is superior to other liens.

Your second question concerns whether a lienholder must pay personal property taxes due on a mobile home which is not classified as an improvement before repossessing it. Personal property includes a mobile home which is not classified as an improvement. §§ 15-1-101(1)(k), 70-1-105, 70-1-108, MCA. § 15-16-113, MCA. Pursuant to section 15-16-401, MCA, 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. "The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof." § 15-16-401, MCA. See also Ford Motor Company v. Linnane, 102 Mont. 325, 335, 57 P.2d 803, 806 (1936).

Section 15-16-402, MCA, provides in part:

(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 on and after January 1 of each year.

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The lien on personal property provided for in section 15-16-402, MCA, is not extinguished when the property against which the tax was assessed is transferred to a third party. 36 Op. Att'y Gen. No. 69 at 456 (1976).

Additionally, as I noted in my response to your first question, the statutes that specifically concern taxation of mobile homes provide for issuance of tax-paid stickers to the owners of mobile homes which are not improvements when the personal property taxes and any interest and penalty owed are paid in full. § 15-24-202(3), MCA. No mobile home is to be moved unless the taxes have been paid in full to the county treasurer. §§ 15-24-202(3), 15-24-203, 15-24-204, 15-24-208, MCA. Again, there is no exception provided for lienholders.

It is my opinion that a lienholder who wishes to repossess and move a mobile home which is not classified as an improvement must pay off the prior lien, i.e., the personal property taxes on the mobile home, before moving it.

Your third question concerns whether the penalty and interest provisions in section 15-16-102, MCA, or the seizure and sale provisions in section 15-16-113, MCA, apply in a situation where the owner of a mobile home fails to make the first-half payment of personal property taxes and those taxes become delinquent.

Section 15-24-202, MCA, provides in part:

(1) (a) The owner of a mobile home or house-trailer which is not taxed as an improvement, as improvements are defined in 15-1-101, shall pay the personal property tax in two payments ...

(b) The first payment is due within 30 days from the date of the notice of taxes due.

(c) The second payment is due no later than September 30 of the year in which the property is assessed.

(d) If not paid on or before the date due, the tax is considered delinquent and subject to the penalty and interest provisions in 15-16-102 applicable to other delinquent property taxes. The penalty must be assessed and interest begins to accrue on the first day of delinquency.

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This section was amended in 1987 in order to clarify that penalty and interest should be assessed if a mobile home owner fails to pay the first-half taxes within 30 days from the date of the notice of taxes due. Minutes and Exhibits of the Senate Taxation Comm. Hrg. on S.B. 145, Jan. 28, 1987. Clearly, when the payment of the first half of personal property taxes becomes delinquent as set forth above, the interest and penalty provisions of section 15-16-102, MCA, apply. The penalty is assessed and interest begins to accrue on the first day of delinquency. § 15-24-202(1)(d), MCA.

The seizure and sale provisions of sections 15-16-113 and 15-17-911, MCA, may also apply when the first-half payment of taxes is delinquent. Section 15-16-113, MCA, is applicable if the delinquent personal property taxes are not a lien upon real property sufficient to secure the payment of the taxes. §§ 15-16-111, 15-16-113, MCA. Section 15-17-911, MCA, provides that seizure and sale of personal property are authorized at any time after the date the personal property taxes become delinquent. That section also authorizes institution of a civil action for collection of the taxes. If first-half taxes are not paid in a timely fashion, they are, pursuant to section 15-24-202(1), MCA, delinquent, and the procedure set forth in section 15-17-911, MCA, may be followed by the county treasurer.

THEREFORE, IT IS MY OPINION:

1. A lienholder must pay the delinquent real property taxes on a mobile home classified as an improvement before repossessing and moving the mobile home.
2. A lienholder must pay the delinquent personal property taxes on a mobile home which is not classified as an improvement before repossessing and moving the mobile home.
3. If the owner of a mobile home which is not classified as an improvement fails to make the first-half payment of personal property taxes and the first-half taxes become delinquent, the penalty and interest provisions of section 15-16-102, MCA, apply and the mobile home may be seized and sold for delinquent taxes pursuant to sections 15-17-911 and/or 15-16-113, MCA.

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Very truly yours,

MIKE GREELY
Attorney General