

OPINION
65-343

May 14, 1965 (OPINION)

The Honorable Emil E. Kautzmann

State Senator

Mandan, ND

RE: Taxation - Delinquent Personal Property Tax - Lien

This is in response to your letter in which you ask for an opinion on section 57-22-03 and section 57-22-19 of the North Dakota Century Code concerning levy for delinquent personal property taxes on property other than that transferred from seller to buyer in the Bulk Sales Act. Section 57-22-03 of the North Dakota Century Code provides as follows:

LIST TO BE DELIVERED TO SHERIFF - DUTIES OF SHERIFF. The county treasurer on the fifteenth day of October, shall deliver the list of unpaid delinquent personal property taxes to the sheriff of his county, who immediately shall proceed to collect all such taxes, and if they are not paid upon demand, he shall distraint sufficient goods and chattels belonging to the person charged with such taxes to pay the same with penalties and costs. The list given to the sheriff shall show the information contained in the original tax list and shall include the name and post-office address of the taxpayer, the taxing district and school district in which the taxpayer resides, the valuation, the amount of consolidated taxes, the amount of school per capita or other taxes, and the total tax."

To resolve the question at hand it is also necessary to consider the provisions of section 57-22-13 of the North Dakota Century Code, which provides as follows:

WHEN TAX BECOMES LIEN. Personal property taxes, for the purpose of distraint, shall be a lien upon all the personal property in possession of the person assessed from and after the date when the assessment is made."

and section 57-22-19 of the North Dakota Century code, which is as follows:

LIEN OF TAX FOLLOWS SALE IN BULK. Taxes upon a stock of goods or merchandise of any nature, and upon furniture and fixtures in any type of business or industry, shall continue to constitute a lien thereon when sold in bulk, and may be collected from the owner or purchaser, who shall be liable personally therefor."

Section 57-22-19 of the North Dakota Century Code came into being by the enactment of Chapter 279 of the 1931 Session Laws. This same

chapter also amended section 57-22-13 and section 57-22-03, as well as other sections of Chapter 57-22.

The general rule of law as found in 84 C.J.S., TAXATION, Section 644, page 1326, is "* * * * that property of one person cannot be seized and sold for taxes due from another person, * * * *." This rule, however, is subject to exemptions, "* * * * Where a personal tax is regarded as a specific and perfected lien against all personal property of the person assessed without regard to whether it continues in the hands of the tax debtor, the property may be distrained although found in the hands of a bona fide purchaser, * * * *." This exception is largely the result of statute. The rule of law without the statute appears to be that " personal property which by virtue of a tax lien is subject to seizure and sale under the distraint proceedings, can be seized only while it belongs to the tax debtor, and the property cannot be seized after it has been sold to a bona fide purchaser, but a purchaser of goods on which a tax lien rests cannot complain of the seizure of other like goods on which there was no lien, where he has so intermingled the two lots that the collector cannot distinguish between them. * * * *

The annotations found in 41 A.L.R., beginning on page 187, more specifically on pages 192 and 193, support the general rule of law. In this respect it is significant to note that the North Dakota Supreme Court followed the general rule of law in Baird v. Belcher, 231 N.W. 548, in which the Court, in substance, held the lien upon specific chattels for personal property taxes of owner is a lien for purpose of distraint, and does not follow property into hands of innocent purchaser.

Significantly this case was decided in 1931 prior to the enactment of section 57-22-19, (Chapter 279, S.L. 1931).

It would appear that the Legislature specifically wished to modify the rule of law as announced by the Supreme Court in Baird v. Belcher. However, in 1938 a North Dakota Supreme Court in Lyman County v. Scott in 281 N.W. 902, reaffirmed the general rule of law stated in Baird v. Belcher. This becomes important only for observation that the courts are reluctant to adopt any rule of law which imposes a liability on a person which is normally not founded in common law and will do so only where the statutes specifically so provide. Section 57-22-19 appears to be a statute which permits the lien to continue with the property transferred. It, in effect, tends to reverse the decision of Baird v. Belcher. This statute, while not being unconstitutional, is an an oppressive type statute and must be strictly construed.

In examining the provisions of section 57-22-19 it becomes clear, particularly in view of the previous decision of the Supreme Court, that the Legislature merely intended that the lien on the property as a result of assessment for personal property taxes remains with the property and said property can be subject to distraint even though it is in the hands of an innocent purchaser. It also makes the purchaser personally liable to the extent of the lien involved. It does not appear that any new or additional liability is imposed upon the purchaser. The statute when paraphrased reads that "* * * * taxes shall continue to constitute a lien on the property

and may be collected from the purchaser who shall be liable personally therefor." The liability incurred by the purchaser is only to the extent of the taxes assessed against the property transferred. The lien is against the property.

We are assuming that the transaction you refer to was in compliance with the Bulk Sales Act. Thus, in direct response to your question, it is our opinion that the buyer becomes liable for the personal property tax only to the extent of the lien that existed against the property that be purchased. It is our further opinion that if the property on which a lien exists is so intermingled with other like property so that it cannot be distinguished, then all of said like property becomes subject to the lien. It is our further opinion that section 57-22-19 does not impose any new or additional liability upon the purchaser but merely continues the lien on the property sold and transferred.

HELGI JOHANNESON

Attorney General