

**OPINION**  
**55-127**

July 21, 1955 (OPINION)

TAXATION

RE: Priority of Liens

We have your letter of July 18, 1955, pertaining to the question of priorities of state tax liens and federal government mortgages on personal property purchased by farmers through loans from the Farmers Home Administration.

Your letter reads, in part, as follows:

“During the years that these borrowers from the Farmers Home Administration have been in the act of farming operations, personal property taxes have been assessed and levied against such property and in some instances these taxes have become delinquent and the difficulty that has been encountered by this county is to the effect that the Federal Government feels that they have the first lien on this property and that the personal property tax lien as specified in 57—2220 of the N.D.R.C. of 1943 that the Federal Government feels that such state statute does not necessarily apply to bind the United States.”

“Thus the question presents itself, is the individual borrowers who purchased such property in the first instance and who become delinquent in the payment to the Federal Agency to become exempt from the payment of any delinquent personal property taxes by reason of the fact that the Federal Government claims that this property is theirs. The Federal Government of course is going on the assumption that the first in time is the first in right as they feel that they have the first mortgage on such property and therefore they are the first in time and have the first right to the property without the payment of any personal property taxes. Now if we go according to the Federal understanding in this matter then of course our sheriff would have no right to distraint any property taxes.”

We are now speaking strictly in terms of a tax lien against personal property rather than personal property taxes made a lien on real estate pursuant to section 57—2221.

While it is true that property of the United States is not subject to taxation by the state after it has acquired title to such property in question, such acquisition of title does not wipe out tax liens which were in existence and valid as against such property prior to such acquisition.

Section 57—2213 of the N.D.R.C. of 1943 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.”

We do not believe that the lien thus created is extinguished through acquisition of title by the United States to such property by foreclosure of a mortgage thereon, even though such mortgage was executed upon such property prior to the time of attachment of the tax lien. We are of the opinion that the United States is in exactly the same position as a private person who takes a mortgage upon such property and, although the mortgage upon the property in question was executed prior to the time when the tax lien attached, nevertheless, the tax lien is superior and prior to any interest acquired under and by virtue of a mortgage.

However, we note here that mortgages on personal property belonging to one class are superior to liens

on distraint for taxes assessed against a valuation of other classes of personal property. See Regional Agricultural Credit Corporation v. Griggs County, 73 N.D. 1, 10 N.W. 2d. 861.

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