

OPINION
56-208

November 19, 1956 (OPINION)

TAXATION

RE: Real Property - Liability Between Owner and Seller

This is in reply to your letter of November seventh in which you state that the United States became the owner of certain real property in Grand Forks County on December 7, 1955, and that prior to that date the property was owned by individuals and subject to the 1955 taxes.

You ask whether April first or January first is the date on which the use and ownership of real property is considered for the purpose of determining whether or not it is exempt from taxation.

In *Gaar, Scott & Co. v. Sorum*, 11 N.D. 164, 169, 90 N.W. 799, 801, our Supreme Court said:

"The language of the above sections . . . expresses the legislative purpose to fix upon April first as a point of time for determining the taxability, ownership, and value of both real and personal property for the purpose of taxation."

The statutes involved in that case are substantially the same as our present statutes. It is therefore my opinion that whether real property is exempt from or subject to assessment for general property taxes depends on whether the statutory conditions for exemption are present on each April first.

However, whether or not payment of a real estate tax resulting from a valid April first assessment can be enforced depends upon events occurring after that date. If the real estate was validly assessed to a non-exempt owner on April first and if after April first it was transferred to the United States, then it is the understanding of this office that the collection of the tax cannot be enforced, either against the one owning the real estate at the time of the assessment or against the real estate itself. This is because:

- (1) Real estate taxes assessed and levied are not a personal charge against the owner but are a charge only against the particular real property assessed. See *Hertzler v. Freeman*, 12 N.D. 187, 189, 96 N.W. 294, 295, and *Cavalier County v. Gestson*, 75 N.D. 657, 662, 31 N.W. 2d. 787, 790.
- (2) Subsection 1 of section 57-0240, N.D.R.C. 1943, provides that "Taxes upon real property are a perpetual paramount lien thereon against all persons except the United States and this State."
- (3) "Even where there is a valid tax lien on lands acquired by the United States, a state court is, in the absence of the consent of the United States, without jurisdiction to

entertain proceedings for the sale of the lands." 51 Am. Jur. 895, section 1024, citing United States v. Alabama, 313 U.S. 274, 85 L. Ed. 1327, 61 S. Ct. 1011.

It does not appear from your letter whether the real property in question was acquired by the United States by eminent domain proceedings or by purchase. While, unless Congress has provided otherwise, a valid tax lien existing at the time of acquisition by the United States cannot be enforced through tax sale proceedings against the property after ownership has passed to the United States, yet if the property was acquired through eminent domain proceedings, then such a lien could be asserted under Title 40, U.S.C.A., section 258a, against the fund deposited in the court by the United States as estimated compensation for the property condemned. See United States v. 909.30 Acres of Land, etc., 114 F. Supp. 756, and cases cited on page 758. Similarly, as to real property purchased by the United States, presumably it would be agreed as part of the purchase transaction that existing encumbrances, including tax liens, would be paid out of the purchase price in order that the usual covenant against encumbrances to satisfied. See Opinion Attorney General of the United States 353, cited in Note 5 to 40 U.S.C.A. section 255. See also United States v. Alabama, 313 U.S. 274, 282, 85 L. Ed. 1327, 61 S. Ct. 1011.

In view of the foregoing it is essential to determine when the lien for taxes assessed and levied against real estate attaches under North Dakota law. In United States v. 909.30. Acres of Land, etc., 114 F. Supp. 756, 758, the United States District Court said:

"Ordinarily, under North Dakota law, taxes assessed in any year do not become liens upon the land until January first of the following year. N.D.R.C. 1943, section 57-2001."

In Murray Bros. v. Buttles, 32 N.D. 565, 572, 156 N.W. 207, 211, in an action between vendor and vendee involving drainage special assessments, the court said:

"The general taxes become a lien upon real property upon the first day of December of each year."

and on page 574 of the North Dakota Report is said further:

"We think that few can doubt that it has been the purpose of the Legislature that the lien of taxes shall be as uniform as possible. Section 2186, Comp. Laws 1913, provides that the lien of general taxes shall attach on the first day of December of each year. This statute, and those providing for the liens of special assessments both for urban and country improvements, are, we believe, all pari materia, and must be construed together, and as promotive of and declaratory of a common and harmonious purpose."

The date of December first has now been changed to January first in the statutes (see section 57-0241 and also section 57-2001, N.D.R.C. 1943).

In State v. Divide County, 68 N.D. 708, 718, 283 N.W. 184, 190, in an

action to determine priority between general property taxes on real estate and a mortgage on the same real estate executed to the state to secure a loan made from the permanent school fund, the court said:

"Taxes levied and not due are not liens upon the real estate, and after the state acquires title to the land, no tax lien can attach so long as the state holds it. It is not subject to taxation, and the taxes that ordinarily thereafter would have become due cannot exist. Therefore, such taxes must be cancelled and abated of record."

Section 57-2001, N.D.R.C. 1943, provides that real estate taxes shall become due on the first day of January following the year for which levied.

Based on the foregoing cited statutes and cases, it is my opinion that the lien for general property taxes on real property does not attach until the first day of January following the year for which the taxes were levied. In a case where real property was owned on April first by a non-exempt owner and validly assessed as of that date and legal title to it was thereafter transferred to the United States prior to the following January first, it is my opinion that there is no way to enforce collection of the taxes assessed and levied with respect to the April first assessment because no lien had attached prior to the time the title was transferred. In such a case the problem is one of determining whether collection of a tax validly assessed and levied can be enforced rather than that of determining whether the property is exempt from taxation.

The only method of enforcing collection of delinquent real estate taxes other than by collection of rents in certain cases as provided by Chapter 57-21, N.D.R.C. 1943, is through tax sale proceedings under Chapter 57-24, N.D.R.C. 1943. As stated in *State v. Burleigh County*, 55 N.D. 1, 7, 212 N.W. 217, 219:

"The tax sale has the effect of foreclosing the lien for the taxes."

Also see *Conlin v. Metzger*, 77 N.D. 620, 627, 44 N.W. 2d. 617, 621, wherein the court speaks of "The foreclosure of that lien by the tax sale. . ." If real property passes to the United States prior to the date the taxes become due, then no lien for the taxes attached and no method for enforcing collection of the taxes is available.

ATTORNEY GENERAL

Leslie R. Burgum