

TAXATION: The tax lien for State and County taxes, in Missouri, is fixed on June 1st on all land in the State not exempt on that date, and subsequent purchase in the name of the United States does not exempt the land from the lien, by reason of the Missouri Constitution exempting property of the United States from taxation.

June 19, 1935.

Supplemental opinion 2-14-38. A. H. Ladd # 51

Honorable William H. Tandy
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Dear Sir:

We acknowledge your request for an opinion dated May 25, 1935, which is as follows:

"In connection with the purchase of lands by the United States for forestry purposes in Missouri, this department has been with-holding taxes for the year 1935 which became a lien by statute June 1, 1934. On and after June 1, 1935 additional taxes will be with-held for the year 1936 if the same procedure is followed. This will result after June 1, 1935 in the with-holding of amounts sufficient to pay the 1935 and 1936 taxes which under the statute cannot be paid until after final adjustments have been made and the books turned over to the Collector.

"I would appreciate your decision as to the date of liability for taxation when land is sold to the government. In this connection your attention is respectfully directed to the following cases:

United States vs. City of
Buffalo 54 Fed. 2nd 471

United States vs. Pierce County,
et al 193 Fed. 529

Bannon vs. Burns, 39 Fed. 892.

"Your attention is respectfully called to the urgent need of this opinion inasmuch as it affects numerous vendors who have optioned their lands and are now conveying to the United States and those whose cases are now pending."

House Bill No. 19 authorizing the United States to purchase reforestation land in Missouri, which was passed with an emergency clause by the 58th General Assembly of the 1935 Missouri Legislature, and was signed by the Governor, provides in Section 11702 as follows:

"The consent of the State of Missouri is hereby given in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States to the acquisition by the United States by purchase or grant of any land in this State which has been or may hereafter be acquired, for the the purpose of establishing and maintaining postoffices, internal revenue and other government offices, hospitals, sanatoriums, fish hatcheries, game and bird preserves and land for reforestation, recreational and agricultural uses."

In case of *United States v. City of Buffalo* 54 Fed. 2d, 471, l. c. 473, the majority of the Court said:

"No time need be spent to show that property purchased by the United States with the consent of the state in which it is located is beyond the reach of state or municipal taxation unless the United States consents. U. S. Const. art. 1, Sec. 8. No claim is made that it is. Moreover, property of the United States is expressly made exempt in New York by section 4 of the Tax Law of that state."

Article XIV, Section 1, Missouri Constitution, exempts land in Missouri, the property of the United States, from taxation, and provides in part:

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"No tax shall be imposed on lands the property of the United States; * * * *"

Pursuant to the above Missouri Constitution exemption, Section 9743 R. S. Mo. 1929, provides in part as follows:

"The following subjects are exempt from taxation: * * * * second, lands and ~~loss~~, public buildings and structures with their furniture and equipments, belonging to the United States; * * * *"

The Supreme Court said in *Deickhart v. Rutgers*, 45 Mo. 130 at l. c. 132:

"This equitable rule is recognized in *Blossom v. Van Court*, and that case, as already observed decides that the tax lien takes effect and becomes an encumbrance from the inception of the assessment."

Under the Constitution of Missouri, Article X, Section 4, all land in Missouri must be assessed according to its true value and said section provides in part:

"All property subject to taxation shall be taxed in proportion to its value: * * * *"

Under the tax statutes of Missouri all taxes on real estate which became delinquent on January 1, 1935 were upon lands which were assessed June 1, 1933, and the *Rutgers* case holds that State and County lien for taxes which became delinquent on January 1, 1935 attached on assessment. Your statement in your request for an opinion is true, that is, State and County tax cannot be paid until the tax books have been turned over to the County Collector, but that does not mean that the lien for said tax does not precede the Collector receiving the tax books, nor does it mean that the tax lien does not become fixed at true value at assessment.

In order to determine when the lien for taxes establishes itself in Missouri, we have but to look to the tax scheme which the Legislature has provided in Missouri as

the same relates to the establishment of the tax lien.

Section 9756 R. S. Mo. 1929, provides the time and manner that the Assessor must follow in making land assessments in Missouri. Said Section reads in part:

"The assessor or his deputy or deputies shall between the first days of June and January, and after being furnished with the necessary books and blanks by the county clerk at the expense of the county, proceed to take a list of the taxable personal property in his county, town or district, and assess the value thereof, in the manner following towit: He shall call at the office, place of doing business or residence of each person required by this chapter to list property, and shall require such persons to make a correct statement of all taxable property owned by such person, or under the care, charge or management of such person, except merchandise which may be required to pay a license tax, being in any county of this state in accordance with the provisions of this chapter, and the person listing the property shall enter a true and correct statement of such property in a printed or written blank prepared for that purpose; which statement after being filled out, shall be signed and sworn to, to the extent required by this chapter by the person listing the property and delivered to the assessor. Such lists shall contain; first, a list of all the real estate and its value, to be listed and assessed on the first of June, 1893, and every year thereafter, anything in this or any other section to the contrary, * * * *."

Section 9759 R. S. Mo. 1929 provides in part as follows:

"The oath to be signed and sworn to by each person making the statement of property required by this chapter shall be as follows:

"I _____, do solemnly swear, or affirm, that the foregoing list contains a true and correct statement of all the property made taxable by the laws of the State of Missouri, * * * * and all other property, and its value which I owned on the first day of June, 19____, * * * *."

Section 9746 R. S. Mo. 1929, provides:

"Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

Section 9747 R. S. Mo. 1929, provides:

"Government lands entered or located on prior to the first day of June shall be taxable for that year and every year thereafter; school and swamp lands and lots shall become taxable whenever the county sells, conveys or agrees to convey its title; real property shall in all cases be liable for the taxes thereon, and a lien is hereby vested in favor of the state in all real property for all taxes thereon, which lien shall be enforced as hereinafter provided in this chapter; said lien shall continue and be in force until all taxes, forfeitures, back taxes and costs shall be fully paid or the land sold or released, as provided in this chapter."

Section 9779 R. S. Mo. 1929, provides:

"Real estate shall be assessed at the assessment which shall commence on the first day of June, 1893, and shall be required to be assessed every year thereafter."

Section 9793 R. S. Mo. 1929, provides:

"Each tract of land or lot shall be chargeable with its own taxes, no matter who is the owner, nor in whose name it is or was assessed. The assessment of land or lots in numerical order, or by plats and a 'land list' in alphabetical order, as provided by sections 9780 and 9781, shall be deemed and taken in all courts and places to impart notice to the owner or owners thereof, whoever or whatever they may be, that it is assessed and liable to be sold for taxes, interest and costs chargeable thereon; and no error or omission in regard to the name of any person with reference to any tract of land or lot, shall in anywise impair the validity of the assessment thereof for taxes."

All of the above sections establish that the assessment for taxation in Missouri begins June 1st and is on property owned by taxable persons on that date, as per its true value. The last four quoted sections establish that the fiscal year for purposes of taxation begins June 1st, in each calendar year, and that the tax lien based on true value establishes itself on the first day of the fiscal years, that is to say, on June 1st of calendar years. The last quoted section establishes that the tracts of land assessed are chargeable with the tax lien. Construing Section 9793, supra, the Supreme Court said in *State ex rel. McKee v. Clements*, 219 S. W. 900; 281 Mo. 195, at l. c. 200:

"By said Section 11385 each tract of land is chargeable with its own taxes no matter who the owner is or in whose name assessed. The assessment of land or lots in numerical order, or by plats

and a 'land list' in alphabetical order, as provided by preceding sections, imparts notice to the owner that it is assessed and liable to be sold for the taxes chargeable thereon. This and related sections make the taxes a charge on the land under all circumstances, regardless of who the owner or prior lienors may be, regardless of the name or names in which it is assessed, and regardless of any error or omission in that respect."

In the Missouri case of DeGiverville v. Legg, 48 Mo. App. 573, the Appellate Court, in passing on statutes similar to the ones now in force, and heretofore quoted, said at l. c. 576:

"There is such a thing in this state as a taxable year, about which there can be no controversy, when the statutes concerning the assessment and collection of the public revenue are considered. Section 7569, Revised Statutes of 1889, reads: 'Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year.' Section 7552. 'Real estate shall be assessed at the assessment, which shall commence on the first day of June, 1881, and shall only be required to be assessed every two years thereafter. Each assessment of real estate so made shall be the basis of taxation on the same for two year next succeeding.' These sections clearly establish what may be designated as a taxable or fiscal year, beginning on the first day of June in each year. The supreme court of the state has recognized this in several decisions."

State and County taxes in Missouri become delinquent on January 1st, at a subsequent time in the tax scheme when the State's lien has become fixed, and Section 9936.

R. S. Mo. 1929 provides:

"All real estate upon which the taxes remain unpaid on the first day of January, annually, shall be deemed delinquent, and the said county collector shall proceed to enforce the lien of the state thereon, as required by this chapter; and any failure to properly return the delinquent list, as required by this chapter, shall in no way affect the validity of the assessment and levy of taxes, nor of the judgment and sale by which the collection of the same may be enforced, nor in any manner to affect the lien of the state on such delinquent real estate for the taxes unpaid thereon."

The State tax lien on delinquent taxes must be foreclosed upon the first Monday in November, following the January delinquency, under the provisions of the Jones Munger Tax Law, and at the sale a successful bidder may interpose a cloud upon the title in favor of holders of tax certificates to land which the United States Department of Forestry has contracted to purchase.

The Jones Munger Tax Law appears in the Missouri Laws of 1933. Without quoting the whole act we call you attention to the provisions of Section 9952a appearing at page 430:

"All lands and lots on which taxes are delinquent and unpaid shall be subject to sale to discharge the lien for said delinquent and unpaid taxes as provided for in this act on the first Monday of November of each year, and it shall not be necessary to include the name of the owner, mortgagee, occupant or any other person or corporation owning or claiming an interest in or to any of said lands or lots in the notice of such sale; provided, however, delinquent taxes, with penalty, interest and costs, may be paid to the county collector at any time before the property is sold therefor.

"The entry of record by the county collector listing the delinquent lands and lots as provided for in this act shall be and become a levy upon such delinquent lands and lots for the purpose of enforcing the lien of delinquent and unpaid taxes, together with penalty, interest and costs."

CONCLUSION.

Notwithstanding contracts of purchase now held by the United States Department of Forestry, referred to in your request, this department is of the opinion that the State and County tax lien in favor of the State of Missouri becomes fixed on June 1st, of each year, which date is the first date of the fiscal tax year. On June 1st, of any year, real property, the title to which was at that time vested in any person, natural or artificial, where that person is not exempted under the provisions of the Constitution and exemption statutes pursuant thereto, on the first minute of that day become subject to the State and County tax lien and it is then attached and becomes final, and the fact that the United States Department of Forestry thereafter purchases the land in the name of the United States of America, pursuant to a contract of purchase entered into prior to June 1st, does not preclude existence of the tax lien which came into force during the pendency of said purchase contract, although the amount of the lien, which became fixed on true value, cannot be computed until other State taxing agencies act.

It is true that the Constitution and Statutes of Missouri exempt land purchased by the United States for reforestation, but this exemption does not extend to United States' lands which are subject to a fixed tax lien at the date the title passes to the United States Government, and valid tax certificates issued or outstanding pursuant to the statutory enforcement of State and County tax liens should be given sanction by the Courts even against federal ownership of the land. We admit that the United States cannot be sued except with its consent, but that fact does not mean that the obligation to pay the State's lien does not exist against the United States when they purchase reforestation land.

None of the cases cited in the request for an opinion can be taken for authority for the legal proposition that the lien for State and County taxes in Missouri, which the Legislature has established to take effect on June 1st, of each fiscal year, the date of the annual assessment on property, is not final as a charge against property acquired by the United States or any other person on or after June 1st, of said fiscal year.

The statutory liens which the Federal Court construed in the three Federal cases cited in the request for an opinion were given a retrospective operation because the lien statutes under consideration, by their terms, required a retrospective construction. The Missouri Statutes establishing a tax lien on real estate owned on June 1st, are clearly prospective, not possible of retrospective construction applied in the Federal cases cited. In Missouri the State's tax lien falls within the enforceable liens described in the concurring opinion of Judge Hand in *United States v. City of Buffalo*, 54 Fed. 2d, 471, where at l. c. 474, the Judge said:

"I agree in the result but for other reasons than my brothers. The question appears to me wholly one of state law, with which the sovereignty of the United States has nothing to do, although of course I agree that no state may tax property of the United States. On the other hand I do not understand it to be disputed that when the United States takes over property, it takes it subject to whatever liens are upon it, tax liens like the rest. If the law of a state were that all taxes should be liens as of March first, the time of the assessment, but might be computed, levied and extended on the rolls before July first, I see no reason why they should not be a lien upon land conveyed to the United States on March second. The act of liquidating and formally imposing the tax would not in my judgment be in defeasance of the sovereignty of the United States. I cannot agree with the contrary ruling in *U. S. v. Pierce County* (D. C.) 193 F. 529.

Bannon v. Burnes (C. C.) 39 F. 892, contains a dictum in accord, but it was altogether unnecessary to the result. The levy and extension on the rolls are not adversary proceedings against the United States, like an arrest or seizure of its property; they do no more than fix the amount of a charge already imposed, and the liquidation does not depend upon questions in which the United States is interested except as all other owners of property. They are not directed against it individually, as is a suit, or a condemnation."

The above concurring opinion, we believe, properly classifies the propositions of law accredited to the Pierce and Burns cases, cited in the request for an opinion as dictum. This holding in the concurring opinion has been quoted and followed in later Federal cases. None of the later cases overrule outright the majority opinion in the Buffalo case, but on the other hand all late Federal and all United States cases citing the Buffalo case as authority use the logic of Judge Hand in his concurring opinion, some even quoting him, in coming to their conclusion, that immunity of the United States from local taxation includes freedom from all taxes not final as charged against property at the time the United States acquired it.

We are of the opinion that since in Missouri the Supreme Court has held that the tax lien is final on June 1st, of each year, as the Statutes provide, the fact that the assessment, computation, levy and extension on the tax books follow later in the tax scheme does not change the effective statutory date of this fixed statutory lien to some other date, merely because the United States is the purchaser with prospective constitutional tax exemptions on said land. The sovereignty of the State of Missouri to make and enforce its fixed statutory tax lien as of the date fixed should be respected in the Federal Courts, and the three cases cited do not indicate that the tax lien for State taxes will not be respected when the Missouri Tax scheme be under consideration.

There can be no doubt but that the United States is authorized to purchase reforestation land in Missouri,

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and that under the Missouri Constitution reforestation land purchased by the United States in Missouri is exempt from taxation, and this is constitutionally true, any act of the Missouri Legislature taxing lands of the United States to the contrary notwithstanding. The fact that the United States Government, in the exercise of its powers to carry out its functions finds it necessary and convenient to contract the purchase of reforestation land in Missouri from owners, is no legal justification for holding that the owner, during the contractual period and prior to the transfer of title, can give a deed to the United States, thereby defeating a fixed tax lien then existing against the real estate. The United States Government purchasing real estate, purchases the same subject to valid existing tax liens the same as a private owner, and the constitutional tax exemption in favor of the United States Government is not retroactive in its operation, extinguishing tax liens against the land that became fixed prior to United States ownership. In Missouri taxes are properly assessed against all lands, except where at the time of the accrual of statutory lien, (June 1st, of the year the Assessor lists the land) the land be legally exempt because the real owner appears to be one of those privileged few named in the Constitution whose land holdings on June 1st, are exempt. The United States Government, with contractual right to buy land in Missouri, is not the legal owner until it receives the title, and the fixed tax liens existing against the land which it gets title to are not reasonably to be defeated by subsequent government ownership exempting the land from taxation under the Missouri Constitution. We do not understand that the Government option, referred to in the request, is any more than a contract to purchase. We do not understand that the Government considers itself a vendee in possession, under the option which it holds, or that the United States took title to the land at the time of entering into the option.

Respectfully submitted

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APPROVED:

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