

TAXATION - EXEMPTIONS:
LIENS:
ASSESSMENTS:
LEVY:
UNITED STATES PROPERTY:

If state taxes have become a lien on Missouri real property during the time of private ownership, this lien continues to be an encumbrance on the property after acquisition by the Small Business Administration, but the lien is not enforceable as long as the Federal Government holds title. Also, the property is not subject to new levy and assessment for taxes while title is in the Federal Government.

OPINION NO. 5 (1965)
OPINION NO. 91 (1964)

May 24, 1965

Honorable James T. Riley
Prosecuting Attorney
Cole County
Jefferson City, Missouri



Dear Mr. Riley:

This is in answer to your request for an opinion of this office, as follows:

"We request your opinion as to whether or not real estate situate in the State of Missouri and acquired by the Small Business Administration through foreclosure is subject to state and county general real estate taxes.

"Real estate situate in Jefferson City was owned by Rite-Way Poultry, Inc., a Missouri corporation. The 1963 general real estate taxes were assessed against the property as of January 1, 1963.

"On August 8, 1963, a deed of trust executed by Rite-Way Poultry, Inc. in favor of the Small Business Administration was foreclosed. The Trustee's Deed conveyed the property to the Small Business Administration.

"I am attaching copies of two letters received from that government agency.

"The 1963 taxes were levied and assessed at the time the property was owned by the private Missouri corporation. Do these taxes remain a lien on the property?

"Is the property now subject to levy and assessment for 1964 general taxes?"

The deed of trust and foreclosure were made under the provisions of the Small Business Act, 15 U.S.C.A., Chapter 14A. In U.S. v. Christensen, D.C. Mont. 1963, 218 F.Supp. 722, 729, the court says: "The Small Business Administration is an agency of the United States. 15 U.S.C.A. Section 633." 15 U.S.C.A. Section 634(b) states that the Administrator may acquire real property when "necessary or appropriate to the conduct of the activities authorized in sections 636(a) and 636(b) of this title." 15 U.S.C.A. Section 636 empowers the Administrator to make loans and subsection (a) (7) says that: "All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment." Thus, when the Administrator foreclosed the deed of trust title was in the United States and not subject to state taxes unless Congress so allows. Rohr Aircraft Corp. v. San Diego County, 362 U.S. 628, 4 L.Ed.2d 1002, 80 S.Ct. 1050.

There is no provision allowing state taxation of property held under Chapter 14A. However, Section 646 of the Small Business Act does declare a policy as to lien priority with state taxes. Section 646 reads:

"Any interest held by the Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States."

In U.S. v. Christensen, supra, at page 723, the court speaks of the purpose of Section 646, saying:

"The parties agree that the obvious purpose of this statute was to place the SBA in the position of a private party with respect to the relative priority of its mortgage liens. By the statute itself state law is made determinative."

Missouri provides for a lien for real property taxes which shall accrue and be an encumbrance as soon as the amount of the taxes is determined by assessment and levy. This lien shall continue to be enforced as provided for by law until all taxes are fully paid or the land sold. Section 137.085, RSMo 1959. The Missouri Supreme Court holds that a state tax lien for real property taxes "takes

precedence over and is superior to all other liens whether prior or subsequent", Lucas v. Murphy, 348 Mo. 1078, 156 S.W.2d 686, 689.

Thus by putting the Small Business Administration in the position of a private party in Missouri, the tax lien for 1963 takes precedence to the trust deed.

The question then is whether this superior tax lien remains as an encumbrance on the property after the foreclosure sale. In Missouri, if the property is purchased by a private party, the property is still encumbered. State, to Use of Hoffman, v. Stelbrink, 58 Mo. App. 662; Fleckenstein v. Baxter, 114 Mo. 493, 21 S.W. 852; Evans v. Brussel, Mo., 330 S.W.2d 788, certiorari denied 361 U.S. 919, 4 L.Ed.2d 740, 80 S.Ct. 673. The Supreme Court of the United States met this question when the Federal Government was the purchaser of encumbered property, United States v. State of Alabama, 313 U.S. 274, 85 L.Ed. 1327, 61 S.Ct. 1011. The Court at page 1014 said:

"The Government brings this suit in the view that it is entitled to have a marketable title and it seeks to remove the liens in question as clouds upon that title which would interfere with the disposition of the lands in the future. From that standpoint the Government asks a decree declaring the invalidity of the liens and enjoining the State from asserting any claim in the lands either adverse to the United States or to its successors in title. We think that the United States is not entitled to that relief. The United States took the conveyances with knowledge of the state law fixing the lien as of October 1st. That law in creating such liens for the taxes subsequently assessed in due course and making them effective as against subsequent purchasers did not contravene the Constitution of the United States, albeit protected with respect to proceedings against it without its consent, should stand, so far as the existence of the liens is concerned, in any different position from that of other purchasers of lands in Alabama who take conveyances on and after the specified tax date."

The taxes, then, remain as a lien on the property unless Missouri provides for an exemption. Article 3, Section 43, of the Missouri Constitution says that "No tax shall be imposed on lands the property of the United States;"

In a Condemnation Case, Collector of Revenue Within and For the City of St. Louis, Mo. v. Ford Motor Co., 158 F.2d 354, 355, the Court said:

"When the United States appropriated the land in question under the power of eminent domain, the lien for taxes could not thereafter be specifically enforced against the property taken, but the effect of the condemnation proceeding was to transfer the lien from the land to the award in the registry of the court."

In United States v. Certain Land Situated in City of St. Louis, Mo., 51 F.Supp. 80, another Condemnation Case, the Court refers to Article 3, Section 43, when turning to the question of whether property taxes in Missouri are to be paid after the property has been acquired by the United States. The Court at page 83 says: "In Missouri, property becomes immune from taxation when appropriated to public use." The Court cites Bannon v. Burnes, C.C.W.D. Mo., 39 F. 892, and State ex rel. v. Baumann, 348 Mo. 164, 153 S.W.2d 31, which hold that government property is immune from previous taxes in that such taxes may not be collected. The Court also cites United States v. Alabama, supra, as holding that such a tax lien cannot be enforced against the property when owned by the United States but that the title is encumbered by the lien.

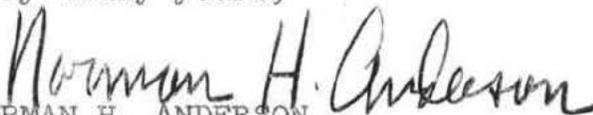
Thus, United States property in Missouri is immune from property taxes being "imposed" in that no tax can be levied and assessed once the United States takes title, nor can prior liens be enforced against the property. But it is our opinion that taxes are not being "imposed" on the property when a lien continues to be an encumbrance on the title.

CONCLUSION

It is the opinion of this office that if state taxes have become a lien on Missouri real property during the time of private ownership, this lien continues to be an encumbrance on the property after acquisition by the Small Business Administration, but that the lien is not enforceable as long as the Federal Government holds title. Also, the property is not subject to new levy and assessment for taxes while title is in the Federal Government.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Walter W. Nowotny, Jr.

Very truly yours,


NORMAN H. ANDERSON
Attorney General