

December 18, 1968

Opinion No. 2
Answered by Letter (Wood)



Honorable Hubert L. Davidson
Prosecuting Attorney
Thayer, Missouri

Dear Mr. Davidson:

You have requested an opinion from this office as to whether real property not assessed by the county assessor after the United States Forest Service took an option on such property can be there- after assessed so that the taxes during the period of the option, and thus prior to acquisition of title by the United States, can be collected.

There is a statute providing for the assessment of real property by the assessor which has been omitted "by any means" from assessment in prior years:

"Procedure of assessing real estate omitted from tax books. -- If by any means any tract of land or town lot shall be omitted in the assessment of any year or series of years, and not put upon the assessor's book, the same, when discovered, shall be assessed by the assessor for the time being, and placed upon his book before the same is returned to the court, with all arrearages of tax which ought to have been assessed and paid in former years charged thereon." (Section 137.165, RSMo. 1959.)

In light of this section, it is our opinion that the property in question can be placed on the tax books by the assessor.

We are enclosing opinion No. 76 rendered June 25, 1945, to Horace T. Robinson which holds that assessment of omitted real property may be made by the assessor, the county board of equalization or the State Tax Commission.

Honorable Hubert L. Davidson

However, since the land is now owned by the Federal Government the means of collecting the tax are considerably reduced. There are two methods of enforcing payment of real property taxes in this State,

- (1) by sale of the real property, and
- (2) through seizure and sale of personal property of the land owner. (State ex rel Greene County v. City of Springfield, 375 SW2d 84 (Banc, 1964)).

Obviously the land cannot be sold since it is now owned by the Federal Government (27 Am. Jur. 2d Eminent Domain, Section 256, p. 32; State ex rel City of St. Louis v. Baumann, 153 SW2d 31 (Banc, 1941). The lien attaches to the land and survives such ownership should the United States dispose of the property. It simply cannot be enforced through sale of the land while so owned (United States v. Alabama, 313 U.S. 274, 85 L.Ed. 1327, 61 S.Ct. 1011 (1941); 158 A.L.R. 563). Therefore, collection of the tax can only be effected through distraint of personal property of the person or persons who owned the land prior to the date of acquisition of title by the United States, as provided in Section 139.-120 RSMo. 1959. (See St. Louis Provident Association v. Gruner, 199 SW2d 409 (Div. 1, 1947)).

For your information we are enclosing a copy of an earlier opinion rendered by this office to Roy W. McGhee, Jr., dated November 20, 1956, which states the foregoing principles in more detail.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

Enclosure: Opinion 59, McGhee, 11-20-56
Opinion 76, Robinson, 6-25-45