TAXATION: Tax liens on property acquired by county at school fund foreclosure are extinguished.

May 2, 1941

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Mr. George O. Dalton
Collector
Marion County
Hannibal, Missouri

Dear Sir:

This will acknowledge receipt of your letter of March 8, 1941, which is as follows:

> "The Marion County Court of this county has foreclosed on the school mortgages which they held, and there are several years of delinquent taxes due on these properties.
>
> "Will you please advise if the county is liable for these delinquent taxes up to the date of conveyance to the county, or do they have authority by court order to declare these taxes void?"

Under Sections 10385 and 10387, R. S. Missouri, 1939, county courts are authorized to foreclose school fund mortgages. Section 10389, R. S. Missouri, 1939, authorizes the county court "on behalf of the county," by agent, to bid on the property offered at such foreclosure sales. If the bid of the county court's agent be the highest, this same statute then provides that the county court may:

> "* * * * take, hold and manage for said county, to the use of the township out of the school fund of which such loan was made, or in its own name where such loan has been made out of the general school

> funds, the property it may acquire at such sale. * * * * * "

Under this latter statute it is to be seen that the title to property bid in by the agent of the county court is taken either in the name of the county, to the use of a particular township, or in the name of the county alone, depending upon the source of the funds that were invested in the property foreclosed and bid in by the court's agent.

Section 6 of Article 10 of the Missouri Constitution provides in part:

> "The property, real and personal, of the state, counties and other municipal corporations * * * * shall be exempt from taxation."

The Legislature has reiterated this constitutional provision in Section 10937, R. S. Missouri, 1939, wherein it is provided:

> "The following subjects are exempt from taxation: * * * * fourth, lands and other property belonging to any city, county or other municipal corporation in this state, * * * * * * * * * * * * * "

It makes no practical difference here whether the funds involved in the foreclosure are those of the township school fund or the general school fund. In either event, the title is in the county and under Section 10937, supra, said property is exempt from taxation.

The question you present is one upon which there exists no express constitutional provision, but it has been before the courts of the land many times.

In City of Harlan v. Blair, 64 S. W. (2d) 434, (Ky) the point involved was whether a city was liable for taxes accruing prior to the time the property was acquired by the city. This opinion reviews the authorities at length holding the lien to be merged in the non-taxable ownership and therefore non-existent. The court said, l. c. 435:

> "We have been unable to find any case wherein this question has been decided by this court. In volume 26, R.C.L. 400, sec. 358, it is in part stated: 'It sometimes happens * * * * that land in the hands of private persons and subject to taxation when it is assessed is before the tax is paid acquired by a corporation the property of which is exempt from taxation, and the question then arises whether the lien can be enforced and the land sold for nonpayment of the tax. When the corporation which acquired the property is a religious, charitable, or educational institution, the exemption of the property of which depends upon the express provisions of statute, the exemption does not go to the extent of exonerating the property of the corporation from existing tax liens. In the case of state or a municipal corporation, the exemption of which is based upon the futility of collecting a tax from a body corporate which would levy another tax to pay it, land acquired by such a body corporate cannot be sold for nonpayment of taxes assessed prior to such acquisition.'
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> "Also in 61 C. J. 418, Sec. 450, it is stated: 'On the other hand, taxes levied on private property and are not paid are not a charge on the property subsequent to its acquisition by the state or city, the public property exemption operating to exempt property acquired by the state from any further liability for taxes assessed prior to the acquisition, although there are decisions to the contrary.'
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> "And in support of the text cites in footnotes 48 and 49 thereunder the cases of State v. Minidoka County, 50 Idaho, 419, 298 P. 366; State v. Locke, 29 N. M. 148, 219 P. 790, 30 A.L.R. 407; City of Wichita v. Anderson, 119 Kan. 241, 237 P. 1024; Gasaway v. City

of Seattle, 52 Wash. 444, 100 P. 991, 21 L.R.A. (N.S.) 68.

"In 2 A.L.R. 1535, the learned annotator in note annotation to the case of Triange Land Co. v. City of Detroit, 204 Mich. 442, 170 N.W. 549, 2 A. L.R. 1526, discusses this question of tax sale of land acquired by a municipal corporation after levy and before sale, and cites as 'a well-considered case on this point.' Gachet v. New Orleans, 52 La. Ann. 813, 27 So. 348, and comments thereon as follows:

"'In this case the city acquired property and took the same, subject to the state taxes for a designated year. These taxes had been assessed, but were not due and exigible at the time title was acquired by the city, nor did such taxes become delinquent until after this time. In holding that the subsequent sale of the property for these taxes, and the acquirement of the title by a third person, did not affect the title of the city, the court said: "The moment public ownership of the lot attached, the moment it passed from the hands of * * * * to the city, developing liability to taxation was arrested, and in point of fact and law the state taxes for 1885 on the lot, under the assessment made in the name of the * * * * vendor, never reached the point of maturity. * * * * It follows that the tax collector was without authority to proceed as he did in the attempt to enforce payment of taxes claimed to be due the state for 1885, and that his action in the premises was void. * * * * 'The tax law of a state' says Desty, in his work on Taxation, vol 1, p. 48, 'applies to persons only, and not at all to political bodies like municipal corporations, which exercise in different degrees the sovereignty of the state.' Hence it is that, when property upon which state taxes are assessed is acquired by a political subdivision of the state, * * * * which property is acquired for purposes of public utility coming within the scope of the powers so delegated, and is immediately dedicated or applied to such purposes of public utility, the taxes so assessed in favor of the state upon the same cease

to be exigible. It pertains to the public policy of the state not to exact taxation on property so held and used. Within the scope of the powers delegated to it the city stands for the state, and property acquired by the city in the due execution of its mandate from the state stands in consimili casu with property owned by the state itself, and taxes assessed in favor of the state upon such property must be held abated. * * * *."

"'This distinction is also clearly made in Foster v. Duluth (1913) 120 Minn. 484, 48 L. R. A. (N.S.) 707, 140 N. W. 129, in holding that property of the city could not be sold for taxes which were a lien upon the land at the time the city acquired it. The court said: "After its purchase by the city in July, 1905, the property was devoted to public uses, and became public property. It was not thereafter subject to taxation. * * * * It is technically inaccurate to say that it was exempt from taxation, for the term 'exemption' rather presupposes a liability removed by some constitutional or statutory provision. The property is 'exempt,' not because of any such provision declaring it exempt, but because of its character as public property devoted to a public use. The property of the state and of its political subdivisions, arms, or agencies, such as cities within its borders, when used exclusively for public purposes, is not subject to taxation, in the absence of constitutional or statutory provisons making public property subject to the tax laws of the state. This is the undisputed rule; but it is no better established than is the proposition that proceedings for the assessment of taxes against public property, or for their collection by judgment and sale, are absolubely void. * * * * A reason for the rule is that a sale of the property to enforce collection of taxes assessed against it would destroy its character as public property, to the public injury."'

"To the same effect is State v. Snohomish County, 71 Wash. 320, 128 P. 667, and Smith v. Santa Monica,

162 Cal. 221, 121 P. 920, 921. In the last-named case the court said: 'The state does not tax the property of a municipality for state and county purposes, because this would be a taxation of its own property. For the same reason, when the property has come into the ownership of a municipal corporation, it will not attempt to enforce the tax by the sale of the property.' See, also, Laurel v. Weems, 100 Miss. 335, 56 So. 451, Ann. Cas. 1914A 159; Independent School Dist. v. Hewitt, 105 Iowa, 663, 75 N. W. 497.

"The doctrine of exemption from tax is thus in Foster v. Duluth, 120 Minn. 484, 140 N. W. 129, 131, 48 L.R.A. (N.S.) 707, stated: 'We think * * * * that it must be held that all proceedings taken after the property became public property were void, notwithstanding that the taxes for the current year may have been a lien on the property before its transfer. It by no means follows * * * * that because there was a valid lien, the proceedings to enforce that lien were valid. Nor is it important here what becomes of the lien. * * * * All that is necessary to decide * * * * is that all proceedings to assess the land for taxes, taken after it became public property, and all proceedings in attempting to enforce and collect the tax, were void.'

"Numerous other cases holding to like effect may be found in 2 A.L.R. 1538. Also see State v. Locke, 29 N. M. 148, 219 P. 790, 30 A.L.R. 407, cited supra, wherein many cases are quoted and considered, and in which it is held that property acquired by the state or one of its municipal subdivisions, in its public capacity, is thereby absolved from further liability for taxes previously assessed against it, and that a subsequent sale thereof for such taxes is void. The learned annotator states in 30 A.L.R. 413, that:

"'This annotation supplements an annotation upon this same subject in 2 A.L.R. 1535.

"'As shown in the annotation referred to, with the exception of the supreme court of Michigan, the cases are agreed that where property, subject to the lien

of a tax, is acquired by the state or any of its agencies for a public purpose, it thereby becomes freed from such lien, and further steps to enforce it are without effect.'

"Our examination of the decisions of other sister states upon this question shows that, with the exception of some two or three states holding contra, the generally announced rule is one of exemption as above announced.

"In view of the applicable rule announced in these cited cases, and the reasoning supporting it, we are of the opinion that the appellant's water plant was, upon its purchase or acquisition by the city, a public property, operated for its municipal use; that it then became tax exempt, and the city was thereby relieved from liability for the payment of such prior lien tax, * * * * * * * * * * *. "

In Davis v. City of Biloxi, 184 So. 76 (Miss), the same question was presented as in the Kentucky Case. The court, in holding the assessment extinguished, said l. c. 77:

"The city relies upon the case of the City of Laurel v. Weems, 100 Miss. 335, 56 So. 451, Ann. Cas. 1914A, 159, in which the Court held that although the taxes had been assessed to, and accrued on, the property in the hands of the private owner before the city acquired title, when the city acquired title, prior to the sale of the land for taxes, the tax lien was discharged by reason of the acquisition of title by the city; that the property being exempt from taxes when owned by the city, the exemption in favor of the city being made because of the public use of the property and in furtherance of the public policy, displaced the tax lien which had accrued against the private owner and the property in the hands of such owner. In the course of this opinion the Court said (page 452): 'The exemption of the property of a municipality is founded on the fact that the municipality is a governmental agency of the state, vested by the state with a part of its

sovereignty, and employed in aiding the state in matters of government and the execution of its laws. It is undisputed law that the general rule is that statutes granting exemptions from taxation must be strictly construed, and must not be extended beyond what the terms clearly express; but this rule of construction has no application to the property of the state, county, or municipality when it is sought to collect a tax on the property of either, or to take away their property because of a failure to pay the tax claimed, followed by a sale of same on account of the delinquency. The rule of strict construction of the statute may apply to religious and charitable institutions, and to all subjects of exemption save those belonging to a governmental agency of the state.' The Court ruled that there was a distinction between the case then before it and the case of McHenry Baptist Church v. McNeal, 86 Miss. 22, 88 So. 195, and held that a tax sale, made after the city had acquired title, was void, and that the purchaser at the tax sale secured no title.

"In the case of Alvis et al. v. Hicks, 150 Miss. 306, 116 So. 612, where the title of the municipality arose through its tax sale which had matured when the property was sold by the sheriff and tax collector for county and state taxes, the Court reaffirmed the doctrine that when the city had acquired title before the sale for taxes was made, the acquirement of the title by the city extinguished the assessment, and the purchaser at such tax sale secured no title as against the city. It was held in that case that it made no difference whether the property was acquired by the city for governmental purposes, or in its proprietary capacity -- that the property of the city was exempt from taxation under the law; and reapproved the case of City of Laurel v. Weems, supra.

"The city also relied upon the case of City of Meridian v. Phillips, 65 Miss. 362, 4 So. 119, where the city had purchased a tract of land and erected thereon a pesthouse, the land was assessed to the city, and approved by the board of supervisors without objection, and the land sold to the state for taxes claimed to be

> due thereon. The Court held in favor of the city, and in the course of its opinion said: 'The judgment of the court below cannot be maintained. It is not disputed that the property in controversy belonged to appellant when it was attempted to be sold for taxes. Section 468 of the Code exempts from taxation, among other things, property belonging to the United States, or to the state, or to any county, or to any incorporated city or town in the state. Liability of property to taxation is the basis of the power to sell it for taxes; and, where property is exempt by law from taxation, it cannot be subjected thereto by any action of the board of supervisors, or the officers charged with the assessment and collection of taxes, and a sale of it for taxes under such circumstances is void.'"

Another case directly on this point is State v. Locke, 219 P. 790, 30 A.L.R. 407 (N.M). In this case the point was whether a tax lien on property could be enforced where the State of New Mexico had acquired the property after the lien had attached. The court held that said property was absolved and freed of further liability for the taxes previously assessed against it, citing and reviewing many of the cases cited in the Kentucky Case. In the A.L.R. annotation appended to this case, the authorities are collected on this subject. There is also an annotation on the same subject in 2 A.L.R. 1535. The cases collected in these annotations clearly demonstrate the correctness of the rule announced in the Kentucky Case previously quoted from. Further, it appears that there has been only one court in America that has reached a different conclusion, that being the Supreme Court of Michigan in the case of Triangle Land Co. v. Detroit, 170 N. W. 549. We are inclined to the view supported by the cases heretofore cited.

CONCLUSION

Therefore, it is our opinion that a tax lien on land acquired by the county at a foreclosure sale under a school

fund mortgage loan is merged into the exemption enjoyed by the county and extinguished by such purchase, and the county is not liable for or authorized to pay said delinquent tax.

Respectfully submitted,

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APPROVED:

VANE C. THURLO
(Acting) Attorney General

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