

TAXATION } Estate of decedent not liable for taxes on property devised
for charitable use, where lien had not accrued at death.

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Honorable Craig Hiller
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Kahoka, Missouri

Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"I am writing to request that your office please give me your opinion as to the exemption from taxes under the following facts.

"At the time of making the 1949 tax assessment, which was January 1st, 1949 under the provisions of Section 10970 of the Statutes, as amended at page 1774 of the 1945 Session Acts; one Dr. W. F. Pauly owned and operated a Hospital here;

"He died in April, 1949 and by his Last Will and Testament devised the Hospital Building to the City of Kahoka for charitable use;

Thus the property was privately owned at the time the 1949 assessment was made, but transferred to charitable use before the 1949 taxes were payable.

"Query: Is the Estate of W. F. Pauly liable for the payment of the 1949 taxes?"

Section 4 of an act found in Laws of Missouri, 1945, page 1799, provides:

"Every person owning or holding real property or tangible personal property on the first day of January including all such property purchased on that day, shall be liable for taxes thereon during the same calendar year."

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Section 7 of said act contains the following provision:

" * * * 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 accrue and become a fixed encumbrance as soon as the amount of the taxes is determined by assessment and levy, and said lien shall be enforced as hereafter provided in this chapter; * * *"

(Underscoring ours.)

The third class of demands against the estate of a deceased person is defined by Section 181, R. S. Missouri, 1939, as follows:

"III. All debts, including taxes due the state or any county or incorporated city or town; and it shall be the duty of the executor or administrator to pay all such taxes without any demand therefor being presented to the court for allowance: Provided, that no executor or administrator shall pay any taxes on the real estate of the deceased that are not a charge against the same at the death of the deceased, except where he is in possession of the realty under an order of the court."

(Underscoring ours.)

Under the provisions of Section 7 of the 1945 act, quoted above, taxes do not now become a lien until the amount of taxes is determined by assessment and levy. In the present case the death of the owner occurred in April 1949, and the 1949 taxes would not have become a lien at that time, the assessor's book not being required to be corrected and adjusted until September 1st. (Laws of 1945, page 1958). Therefore, inasmuch as 1949 taxes did not constitute a charge against the property at the death of the owner, we are of the opinion that under Section 181, referred to above, the executor is not permitted to pay taxes on such property for the year 1949.

There have been cases which hold that the lien for taxes is effective from the assessment date, although the amount of the tax had not been definitely determined by assessment and levy. See Collector of Revenue v. Ford Motor Company, 158 Fed. (2d) 354. That

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case was, however, decided under the provisions of Section 10941, R. S. Missouri, 1939, now repealed, which contained no provision that the lien should become a fixed encumbrance as soon as the amount of taxes had been determined. Therefore, we feel that the holding in that and similar cases is no longer applicable.

Section 4 of the 1945 act, quoted above, does provide that the person owning real property on January 1st shall be liable for taxes thereon during the same calendar year. However, courts of this state have held that liability for taxes on realty is not an obligation in the nature of a debt which may be enforced in an action for personal judgment against the owner of the property. (State ex rel. Hayes v. Snyder, 139 Mo. 549, 41 S.W. 216.)

Furthermore, the law is well settled that taxes may be recovered only in the manner provided by law. (State ex rel. Western Union Telegraph Company v. Markway, 341 Mo. 976, 110 S.W. (2d) 1018.) Inasmuch as liability for real taxes is not in the nature of a personal debt, and in view of the fact that the statute providing for allowance of claims against an estate provides only that such taxes which constituted a charge upon the land at the date of the death of the decedent should be paid by the executor, we perceive no method by which the taxes in question may be held to be a liability of the estate of the decedent.

CONCLUSION

Therefore, it is the opinion of this department that where a person owning property on January 1, 1949, dies in April 1949 and devises property owned by him to a municipal corporation for charitable use, the estate of the decedent is not liable for the payment of real property taxes for the year 1949 on said realty so devised to the city for charitable use.

Respectfully submitted,

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APPROVED:

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