

## **Opinion No. 57-92**

May 9, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,  
Assistant Attorney General

**TO:** Mr. Robert H. Sprecher, Assistant District Attorney, Fifth Judicial District, Roswell,  
New Mexico

### **QUESTIONS**

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1. If personal property is sold while there are delinquent taxes against it, who is responsible for the taxes?
2. Does a delinquent personal property tax follow such property into the hands of a purchaser?
3. In the event the tax is due from the original owner, can a warrant be issued against the owner, and can his property other than that on which the tax is due be seized to satisfy the tax
4. In case there are several owners of the same personal property during one year, who is responsible for the tax for that year?

#### CONCLUSIONS

1. The original owner.
2. No.
3. See opinion.
4. The person who owned the property on the first day of January of the taxable year.

### **OPINION**

#### ANALYSIS

Before answering the specific questions propounded, we believe it is worth while to briefly point out the authority wherein district attorneys in the various districts can effect the collection of delinquent personal property taxes. As indicated in Attorney General Opinion No. 6140, dated April 18, 1955, the county treasurers have full power to collect, receive and issue receipts for delinquent taxes on both real and personal property. The

jurisdiction, however, to govern and control the collection of delinquent taxes is vested in the State Tax Commission under § 72-7-1, N.M.S.A., 1953 Comp. The above mentioned opinion stated that the Tax Commission by resolution could designate the county treasurers as ex-officio tax collectors and as agents of the Tax Commission. Thereafter, on July 30, 1956 by a State Tax Commission resolution, the various county treasurers were designated and appointed as ex-officio tax collectors and agents of the State Tax Commission. The district attorneys in the various districts, as the legal representative of the county treasurers, are thereby authorized to represent and institute actions on behalf of the county treasurers to enforce the collection of delinquent personal property taxes.

Turning specifically to the questions propounded, it is assumed that a personal property tax has been legally assessed and levied against the property at issue, and that the property has been sold to persons other than the owner against whom the tax is shown on the tax rolls.

In answer to question 1, we are of the opinion that only the owner of personal property against whom the tax was originally assessed would be liable for the tax.

A similar conclusion to the above was arrived at in New Mexico Attorney General's Opinion No. 5876, dated December 18, 1953, where the following question was propounded:

"Taxes were assessed against personal property and a distraint warrant was subsequently issued by the County Treasurer to collect such personal property tax. Prior to the issuance of the distraint warrant, the owner had transferred personal property by bill of sale to another owner and you inquire whether the County had a lien upon the personal property prior to the bill of sale."

Among other things, that opinion states:

"It is thus apparent that no lien attaches upon personal property for the taxes assessed against such property until a distraint warrant is issued and served and possession taken of the property. If the owner sells personal property prior to the issuance of the distraint warrant, then it is our opinion that the distraint warrant may not be executed upon the property of a person other than the one owning the taxes."

The above opinion is in accord with the general rule stating that no lien attaches upon personal property for taxes assessed against such property in lieu of expressed statutory authority and as laid down in 41 ALR p. 188:

"Ordinarily there is no liability incurred by the purchase of personal property to pay a tax assessed against the former owner, and if no lien for it exists by statute against the property purchased at the time of sale, it is not subject to seizure in the hands of the buyer."

Inasmuch as we have found no statutory authority creating a lien by assessment and levy on personal property, if personal property is sold while there are delinquent taxes against it, the original owner is liable for the tax instead of the purchaser.

We answer question 2 in the negative for the reasons given in question 1. It is obvious that the tax does not follow the property, and if collectable it is to be collected from the original owner.

In answer to question 3, § 72-5-12, N.M.S.A., 1953 Comp., provides that taxes levied on all property shall be a personal obligation on the owner thereof, and a personal judgment may be rendered against such owner. As indicated previously, we have no statute which creates per se a lien against any personal property of a tax payer for a personal property tax. It was held in **State, ex. rel. Hall v Ballow**, 26 NM 16, that a lien for taxes does not exist unless expressly created by statute, and intention to create a lien must be clearly manifested in the statute, inasmuch as a lien will neither be created by implication nor enlarged by construction. The above case also points out that a tax on personal property does not become a lien upon the real property of the owner unless so provided by statute. The court stated at that time that no lien had been created by statute against real estate for delinquent personal property taxes, and we find no such statutory authority.

Inasmuch as no lien is created by the levy and assessment of personal property tax against other personal property owned by the delinquent tax payer, we think it is doubtful that collection of delinquent taxes owned by an owner on specific personal property should be attempted out of other personalty owned by him but not covered by a delinquent tax prior to the taking of a judgment. Section 72-5-12, supra, not only makes taxes levied on all property a personal obligation of the owner, but permits a personal judgment to be rendered against him for such taxes. Section 72-7-22, N.M.S.A., 1953 Comp., is as follows:

"The State, through the State Tax Commission, in addition to the remedies now provided by law through distraint or otherwise, shall have authority to institute suits in the District Court against taxpayers for delinquent taxes on personal or real estate property and to enforce judgments obtained therein by the same method available for the enforcement of other judgment debts."

In view of the foregoing, in cases where personal property has been sold and the taxes thereon have not been paid, we recommend that tax suits be instituted against the taxpayer liable therefor, judgment taken and then, of course, such judgment can be enforced as in any civil case.

In answer to question 4, it is our opinion that the person who owned the property on the first day of January of the taxable year is liable for said taxes. We quote § 72-2-1, N.M.S.A., 1953, Compilation:

"All property, real, personal and intangible, not otherwise assessed and valued for purposes of taxation, shall be declared, listed, assessed and taxed in the county where it is situated on the first day of January of each year and shall be included in assessment lists to be declared to the tax assessor on or before the first business day of March."

And Section 72-2-3, N.M.S.A., 1953 Comp., provides:

"Every person, firm, association or corporation shall, in each year, make a declaration of all property subject to taxation, of which he is the owner or has the control or management, but in no case is he to fix the value of such property or any portion thereof, except as hereinafter provided. But it shall be the duty of the County Assessor to fix the valuation for the purposes of taxation of all property contained in such declaration, or of which he may otherwise obtain knowledge at the full actual value thereof. **Such declaration shall be made of all property as it exists on the first day of January of each year** and it shall show all the the property belonging to, claimed by, or in the possession or under the control or management of the person making the declaration or of any firm of which he is a member or of any corporation of which he is an officer together with a statement of the County in which the property is situated or which it is liable to taxation and a description of all real estate such as would be sufficient in a deed to identify it so that title thereto would pass **and a detailed statement of all personal property, including the average value of the merchandise for the year ending January 1.**" (Emphasis added.)

See also 51 Am. Jur. Taxation, Section 442:

"While a state cannot fix a taxable situs for property which has never come into the State and over which it has no power or control, it does have power to fix the time at which property within its jurisdiction may acquire a taxable situs. In most jurisdictions, the actual assessment of property is made as of some fixed day and **the situs of such property is determined as of that day, even if it has been outside the State the greater part of the year or is removed from the State before the tax is due or even has been actually assessed. San Gabriel Valley Land and Water Company vs. Whittmer Bros. Company**, 96 Cal. 623, 29 P. 500, 31 P. 588, 18 LRA 465, Anno. 38 LRA, (NS) 857. . . . ." (Emphasis added.)

'A State may make the ownership of property subject to taxation relate to any day or days or period of the year they think proper. Thus, a State may base its tax upon the average amount of property within the State owned by the taxpayer during the year, and where the taxable situs relates to a day certain in each year, no taxes can legally be assessed and levied for a particular year unless the conditions requisite to liability exist on the day fixed."

A person owning the taxable property on the first day of January of the tax year is liable for the tax regardless of changes of ownership during the year. See **Dobbins vs. Erie County**, 16 Pettigrew, U.S. 435, 10 L. Ed. 1022:

"In many jurisdictions, often by virtue of express statutory declaration, a property tax is considered a tax on the person of the owner of the property, assessed on him on account of his ownership, and although the tax is measured by the amount and value of the property and can be collected out of the property, it is nonetheless a tax on the owner and not on the property and it becomes a personal obligation of the owner. **A personal obligation, when fixed, does not depend upon the the continued ownership of the property assessed until levy of the tax or until time for payment arrives.**" (Emphasis added.)

When personal property against which there is a delinquent tax, is sold prior to payment of such tax, the person who owned the property on January 1st of the tax year is liable for the taxes. We recommend prosecuting a personal tax suit against such owner through to judgment. Once judgment has been entered, then we recommend enforcement of such judgment by any and all means available.