

Opinion No. 62-08

January 18, 1962

BY: OPINION OF EARL E. HARTLEY, Attorney General Marvin Baggett, Jr., Assistant Attorney General

TO: Mrs. Margie Alexandre, County Treasurer, County Court House Carlsbad, New Mexico, Mrs. Juanita Grube, County Assessor, County Court House, Carlsbad, New Mexico

QUESTION

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1. May the vendee of a portion of a tract of land assessed for tax purposes pay the taxes on that portion which he purchases?
2. If so, if taxes are unpaid on the remainder of the tract, would a lien for delinquent taxes apply to his portion?

CONCLUSIONS

1. Yes, if the assessed value of the portion purchased can be determined from the tax rolls.
2. No.

OPINION

ANALYSIS

Section 72-5-11, N.M.S.A., 1953 Comp., states that:

". . . Any person from whom taxes are payable may pay the taxes due on any part of the property taxed, without paying on the whole, when the value of the part can be definitely ascertained from the tax role."

Our Supreme Court, in **Haden v. Eaves**, 55 N.M. 40, 226 P. 2d. 457, held this provision to mean that the taxpayer may pay "all of the tax due on a particular acreage or footage."

It is true that a vendee would not be the "person from whom taxes are payable". However, the rule is stated thusly in 51 Am. Jur. 833:

"It is elementary that any person other than the owner can pay a tax on a particular piece of property where his rights would be injuriously affected by a sale of the property for taxes. The law, in carrying out its policy of prompt payment of taxes, encourages payment thereof by anyone whose property may be ultimately liable for the tax, . . ."

In **Richey v. Moor**, 112 Texas 493, 499, the Court concluded:

"It is elementary that persons other than the owner can pay the tax on a particular piece of property where his rights would be injuriously affected by a [tax] sale. Cooley on Taxation, 3d Ed., Vol. 2, P. 802. A vendee, mortgagee, or remainderman may pay taxes on land in order to protect his interests."

And in **Tibbals v. Board of County Commissioners**, 74 Wyo. 232, 286 P. 2d 598, it was said:

". . . any person who has any rights of ownership in property stands in a position to require the acceptance by the public taxing and collecting officials of the taxes on the property and a lien of the government for taxes may not issue against the property to the detriment of a person offering to pay such taxes."

Thus, if the owner shown on the assessment rolls can pay taxes on a part of the property, and we conclude that he can, the vendee may also make payments on the parcel which he had purchased.

As we understand the assessment procedure used in the various counties, real property assessments are based upon:

(1) acreage of each type of land. Grazing acreage, timber acreage, farm acreage, etc., are legally described and a value per acre assigned to each category.

(2) improvements on each type of land.

Under our system we can see no reason why a vendee, who purchases property after January 1 of a given year, cannot compute the taxes due on the particular acreage which he purchases. As the Court said in **U.S. Trust Company of New York et al. v. The Territory of New Mexico**, 10 N.M. 416, at page 427:

"It will be observed that the assessment is at the rate of \$ 6,500 per mile; consequently there is not the least trouble in ascertaining the amount of the assessment."

Thus, if an owner of 160 acres, consisting of 80 acres assessed at \$ 35.00 per acre and 80 acres, assessed at \$ 15.00 per acre, with improvements of \$ 5,000 on the \$ 35.00 per acre land, should sell 20 acres of the \$ 15.00 land and 20 acres of the \$ 35.00 land, it would be simple to determine the assessed value of the land sold; if improvements went with the sale, such a value need only be added to the value of the land conveyed.

In answer to your second question, although not specifically ruling upon the question, the Court clearly indicated in the **Haden** case, supra, that where taxes are paid upon particular acreage of a tract, such acreage is not includable in any tax deed of the remainder of the property for non-payment of taxes.

Certainly, if the Legislature allows taxes to be paid on a portion of the total property, it could be only for the purpose of preserving such a portion from the consequences of a tax deed. Accordingly, we conclude that payment of all the taxes due on a parcel operates to remove it from inclusion in any tax deed which might subsequently issue because of non-payment of taxes on the remainder of the tract.

Neither the State nor local governments suffer by such a procedure. Each acre and all the improvements have been assigned a value for tax purposes by the assessor, and the State can sell, if necessary, the land for which the taxes have not been paid and has the same protection on such a fraction, proportionally speaking, as it had on the whole.

Section 72-4-6, provides in part, that upon delivery of the tax roll to the county treasurer, "the amounts to be paid as taxes as shown by said assessment roll shall not be altered, reduced, or in any manner changed . . ." It is important to note that payment of taxes on part of the acreage does not in any alter, reduce, or change the amounts to be paid in taxes on any particular acreage. There is still due and payable a given amount of tax upon the remaining acreage, such tax being computed against the assessed valuation of the acreage.

The procedures which we hold must be followed will not, we think, result in any significant changes in the tax rolls. Where the regular ledger-type tax roll is furnished the treasurer, no particular entries need be made by the assessor. The treasurer, after ascertaining what the valuation per acre or other unit of the entire tract amounts to, will simply make an appropriate entry in her ledger that the taxes have been paid on the property which the vendee's deed describes.

If the unit tax system is actually used, the assessor may, in accordance with Sec. 72-3-5, make the necessary revisions to reflect the fact that, for example, the NW 1/4 of Section 10 is now owned by vendee, and the original card, showing ownership of all of Section 10 to be in vendor, may be changed to reflect his present ownership of the S 1/2 and the NE 1/4 of Section 10.

The treasurer may either receive two cards from the assessor and make the appropriate notation of payments on the respective cards, or she may simply make the notation on the original card that taxes have been paid on a particular portion of that acreage.

We repeat our observation that such a procedure in no way really changes the tax roll because the same total amount of property is still assessed at the same value with the same total amount of taxes still due. In any event, whatever procedural steps are required would eventually have to be done away after the vendee rendered his purchase the following January 1.

Where the value of the property sold cannot be ascertained, Section 72-5-11 naturally cannot apply and the vendee will not be entitled to claim that his proposed payments are total payments for his parcel.

In some instances the vendee-taxpayer may, with special assistance from the assessor, be able to ascertain the proper valuation where it would not otherwise be possible. This would usually, as we understand it, occur where the property consists of a mixture of two or more of the categories of farm, grazing or timber lands, and is not broken down properly on the tax rolls, or where the improvements are sold with such parcels. In such an instance, we believe it is the duty of the assessor to ascribe to the property covered by the vendee's legal description the valuation which it should have, based upon the improvements and the number of acres, and the assessed value per acre, which the vendee received of the various categories of land.

The same concepts as to segregation of acreage would apply where property is assessed on a front footage, number of lots, etc., as long as the assessment of the whole is really based upon some given value per unit.

There is no statutory basis for any appeal from such a determination of the assessor or the treasurer. Of course, if the assessor should assign the same valuation on the next year's tax roll, the vendee who would have by then rendered his property for taxation, would be entitled to the statutory appeals procedure.

In any event, and particularly where the treasurer must depend upon a field check by the assessor to verify the proper valuation, all these problems require the cooperation of the vendee, the treasurer and the assessor. We believe that assessors and treasurers throughout the State will assure that these problems will be solved and that no undue burden will be placed upon the free transfer of interests in real property.