

## Opinion No. 17-1934

February 20, 1917

**BY:** HARRY L. PATTON, Attorney General

**TO:** Hon. Whit Wright, County Treasurer, Carlsbad, New Mexico.

Taxpayer May Pay Taxes on Real Estate Without Paying Taxes on Personal Property.

### OPINION

I am in receipt of your letter of the 11th instant in which you make inquiry as to the legality of segregating the taxes upon real estate and personal property, thereby permitting the tax payer to pay on his real estate and leave his personal property unpaid. Under the provisions of Section 19, Chapter 22, Laws of 1899, taxes levied and assessed against real estate were a lien thereon, and taxes levied and assessed against personal property were a lien thereon. This chapter was repealed by Chapter 84, Laws of 1913. The act last referred to, with slight amendments, now constitutes our taxation law in this state. Our present law is not so clear with respect to declaring upon what property taxes are a lien. Section 5482, Code 1915, which is Section 29 of the Act of 1913, declares that all taxes levied upon real estate shall be a lien thereon from the first day of January of the year for which they are assessed, but nothing is said with reference to the lien for taxes upon personal property. Section 5484, Code 1915, has a proviso as follows:

"Provided, that any person to whom real or personal property may have been assessed and placed on said roll, or any person for him, may pay the taxes due on any subdivision, lot or parcel of land, or personal property, without paying the whole of the taxes due from such person, when the value of such subdivision, lot or parcel of land, or personal property can be ascertained from said tax roll, or from the schedule returned to the assessor."

Our Supreme Court has never passed upon this question, but the weight of authority as expressed by the courts of other states is to the effect that, in the absence of a statute, taxes are a lien only upon the property against which they are assessed. From all this I am of the opinion that taxes upon personal property are not a lien upon the real estate of the owner.

Section 5493, Code 1915, which is Section 33 of the Act of 1913, is as follows:

"Whenever taxes levied upon real estate or personal property shall become delinquent, it shall be lawful for the county treasurer to collect the same by distraint and sale of the personal property of the person owing such tax; and the assessment book and the fact of the delinquency shall be a sufficient warrant for such distraint and sale, unless the treasurer be restrained by order of court from making such distraint and sale."

While, as I have stated, I do not think that taxes levied against personal property are a lien upon the real estate, I am of the opinion that taxes upon real estate are a lien upon the personal property of the owner, and that they may be collected by distraint and sale of the personal property as provided in the section last quoted. Sections 5489, 5490, 5491 and 5492, as well as 5493, provide for the collection of taxes upon personal property by distraint.

Section 5509, Code 1915, authorizes District Attorneys to institute suits to recover delinquent taxes, and authorizes the sale of real estate in satisfaction of the taxes. In case of such judgement based upon personal service the same shall be a lien upon all real estate of the judgment debtor.

From the expression of my views you may see that I am of the opinion that a taxpayer may pay upon his real estate and leave the taxes upon his personal property unpaid, and that the enforcement of the collection of taxes upon his personal property must be by the distraint proceedings pointed out, or by a suit instituted by the District Attorney. I will further state that my views upon this subject are in accord with those of my predecessor, Hon. F. W. Clancy, as expressed in an opinion of this office on November 16, 1914, numbered 1386 and an opinion bearing date of June 5, 1915; being numbered 1544. I am sending you under separate cover, a volume of the Opinions of the Attorney General embracing the one last referred to.