TAXATION: DATE TAX LIEN BECOMES EFFECTIVE: Lien for taxes is created on assessment date. Such lien is not extinguished by passing title to tax exempt body.

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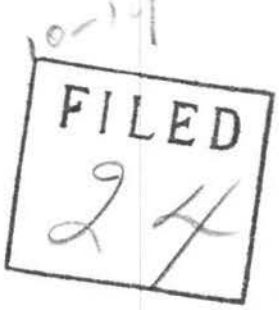
October 12, 1942



Hon. Herbert H. Douglas
Prosecuting Attorney
Neosho, Missouri

Dear Mr. Douglas:

This is in reply to yours of recent date wherein you submit the following set of facts and request:

> "In the fall of 1941 several thousands of acres of land were condemned in Newton County for the site of Camp Crowder. The government at the time of the appraisement took the position that the 1942 State and County Taxes would have to be paid, but since that time I have been informed that they are willing to release the 1942 State and County Taxes to the land owners if the State will give them the permission to do so. Are these taxes, both County and State, payable for the year 1942?"

In searching through the opinion files of this department I find that this department on June 19, 1935, by an opinion to Hon. William H. Tandy, Attorney for the United States Department of Agriculture, Rolla, Missouri, held that the tax lien for state and county taxes is fixed on June first and that a subsequent purchase in the name of the United States does not exempt the land from that lien; also opinion dated February 14, 1939, to A. W. Landes, legal title attorney, St. Louis, Missouri,

holding the same. From an examination of these two opinions, however, I find that the case of McAnnally v. Little River Drainage District, 28 S. W. (2d) 650, which is an opinion of the Supreme Court of Missouri en banc, dated May 15, 1930, was not considered.

In January, 1942, this department wrote another opinion on this question in which opinion the ruling of the Court in the Little River Drainage District case, supra, and the ruling of the Federal Court for the Western District of Missouri entitled U. S. v. Certain Lands in the City of St. Louis, Missouri, 29 F. 92, dated September 7, 1939, was considered. In that opinion this department held that the lien was not established until the levy was made. Since the Supreme Court of the United States in the case of United States v. Alabama by an opinion dated May 26, 1941, 313 U. S. 275, 61 S. Ct. 1011, has ruled on this question and has adopted like views expressed in the first two decisions referred to herein we deem it necessary to give this question further consideration.

In considering this question the following statutes and constitutional provisions are applicable:

Section 1, Article 14 of the Constitution of Missouri, provides in part as follows:

> " * * * * * * No tax shall be imposed on lands the property of the United States; * * * * * * "

Section 10937 R. S. Mo., 1939, provides in

part as follows:

> "The following subjects are exempt from taxation: * * * * * second, lands and lots, public buildings and structures with their furniture and equipments, belonging to the United States; * * * * *"

Section 10940 R. S. Mo., 1939, provides as follows:

> "Every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year."

As stated in your letter the government through condemnation proceedings came into possession of this land after the assessment but before the levy for the taxes was made. On June 30, 1941, the Supreme Court of Missouri en banc, in the case of State ex rel City of St. Louis v. Baumann, 153 S. W. (2d) 31, 34, held:

> "Even though taxes have been levied and assessed against a tract of land while under private ownership, if it be afterwards acquired by a governmental agency such taxes may not be collected. Bannon v. Burnes, C. C. W. D. Mo., 39 F. 892. And see cases cited in the notes in 30 A. L. R. 413 and 2 A. L. R. 1535. Since the City is seeking to purchase the land in its public governmental capacity and not as a mere fiduciary, the land becomes immune from taxation as

> soon as the City becomes the owner of it and such immunity would extend to taxes previously assessed and levied."

This was a case in which the City of St. Louis had bought in certain lots at a delinquent tax sale and refused to pay other taxes than the delinquent taxes for which the lots were sold. Under the law as it existed at that time the collector was not authorized to execute a deed on a tax certificate until the holder of the certificate had paid all outstanding taxes on the property described in the certificate. The Court in the Baumann case, in speaking of the liability of the city for these taxes held that the city was not liable because it was a tax exempt body. In that case the assessment and levy had been made. However, the Court did not say that the purchase by a tax exempt body would destroy the tax lien which existed at the time of the purchase. The lien-holder may not have a right to proceed to enforce his lien, yet his lien is not extinguished because of that fact. This principle is announced in U. S. v. Pierce County et al, 193 F. 529, l. c. 531, wherein the Court said:

> "In the case of lands acquired by the United States for needful public buildings, with the consent of the state Legislature, as is the situation here, the national Constitution withdraws such 'places' entirely from the jurisdiction of the state immediately upon their purchase by the general government. The determinative question in the present controversy, therefore, is whether the taxes in question were imposed before or after the acquisition of the property by the United

> States. If they were imposed before, they would continue to constitute a valid lien on the premises, though even in such case the acquisition of the property by the general government would withdraw it from the jurisdiction of all state officers, and resort for the enforcement of any lien thereon would have to be had to the tribunals of the United States. A subsequent tax sale by state officers, even for a valid tax, would be void."

This case is in the annotations of Volume 2 A. L. R. 1538, which is cited by the Supreme Court in the Baumann case as authority for the above statement that property is exempt when purchased by a tax exempt body.

In the case which you submit it seems that the assessment had been made but the levy had not been made. In our opinion dated January 16, 1942, we followed the statement of the Supreme Court en banc in the McAnnally v. Little River Drainage District, 28 S. W. (2d) 650, 651, wherein the Court said:

> "The lien of the state for taxes is established by an assessment of all land for that purpose. Section 12757. However, said lien does not accrue and become a fixed encumbrance until the amount of the tax is determined by an annual assessment of the land and annual levy of the tax. Likewise, the lien of a drainage district annually accrues and becomes a fixed incumbrance at the time the board of super-

> visors 'determine, order and levy the amount of the annual installment of the total taxes levied under' section 4395. The intention of the Legislature could not have been otherwise, for, as argued by respondents: 'Can a lien exist until the amount of the charge has been determined? Can a charge be cancelled until it has been created? Can a sale of land in 1926 destroy a tax not to be determined and levied until in 1928? Can anything be destroyed prior to its creation? A landowher cannot pay the annual tax until after it has been determined, ordered and levied and certified to the Collector. How can it be contended that it is a lien until the owner of the property charged had an opportunity to discharge the so-called lien?'"

Judge Collet in the Federal District Court of Missouri in the case of U. S. v. Certain Lands in City of St. Louis, Missouri, 29 F. 92, also followed this opinion and held that the tax lien did not come into being until the levy was made.

However, in an opinion by the Supreme Court of Missouri in State ex rel Hayes v. Snyder, 139 Mo. 549, dated June 8, 1897, Division 2 of the Supreme Court had before it the question of the tax on property which had been sold to the United States. This land was sold after the assessment but before the levy. The tax was assessed June 1, 1891. The government acquired title on July 1, 1891. The tax was levied on April 1, 1892, and was not payable until September 1, 1892. In speaking of the liability for these taxes by the owner of the land on assessment date, the Court said at l.c. 552:

> "The first question presented by this record for our consideration is as to whether or not the assessment of taxes against the real estate owned by defendants at that time, created a personal liability against them for the taxes? It is insisted by plaintiff that it did, both by reason of section 7569, Revised Statutes 1889, which provides that 'every person owning or holding property on the first day of June, including all such property purchased on that day, shall be liable for taxes thereon for the ensuing year,' and irrespective of the statute. We quite agree with plaintiff with respect to the meaning of the statute and that by its provisions a personal liability exists against defendants for the amount of the taxes levied upon the land which they owned on the first day of June, 1891. * * * * * "

By this opinion the Court has held that the state has an inchoate lien upon the lands as of the date of assessment.

Section 10941 R. S. Mo., 1939, provides as follows:

> "Government lands entered or located on prior to the first day of June shall be taxable for that year and every year thereafter; school and swamp lands and lots shall become taxable whenever the county sells, conveys or agrees to con-

> vey its title; 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 be enforced as hereinafter provided in this chapter; said lien shall continue and be in force until all taxes, forfeitures, back taxes and costs shall be fully paid or the land sold or released, as provided in this chapter."

This Section clearly indicates that the lien is created on assessment date. We think that the Supreme Court of the United States in the case of U. S. v. State of Ala., 61 S. Ct. 1011, 313 U. S. 275, has adopted the same views. In that case the Court ruled that the lien for taxes existing at the time the property comes into possession of a tax exempt body is not extinguished by such acquisition, but that the holder of the lien cannot proceed to enforce it while the property is so held. However, such a lien is a cloud on the title which, with the consent of the governmental owner for the enforcement of the same, could be prosecuted.

The Alabama case, supra, was decided May 26, 1941. In that case the evidence showed that the assessment date was October 1. The government acquired some of the land in question after the assessment date, some of it before the date of the levy and other parts of it after the date of the levy. These lands were sold by the State of Alabama for delinquent taxes and that suit was brought to clear the title for the lands. The government took the position that since it acquired the lands before the levy then the taxes were not imposed, therefore, no lien upon which a sale could be pre-

dicated existed; and therefore, the sale for delinquent taxes was void. The Alabama Statute (Section 372, Act 194 General Acts of Alabama, 1935, page 566) provides in part as follows:

> "From and after the first day of October of each year, when property becomes assessable the State shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property real or personal assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; * * * * * * "

The Supreme Court of the United States in construing that statute at l.c. 1013 said:

> " * * * * * * There is no question that the State thus undertakes to create an inchoate lien upon the lands as of the tax day, a lien which is to be effective for the amount of the taxes for the ensuing year as these are fixed by the defined statutory method. This lien by the state law is made effective not only as against the owners on the tax day but also as against subsequent mortgagees and purchasers. * * * * * * * We find nothing in the Federal Constitution which invalidates such a statutory scheme. Subsequent lienors and purchasers have due notice of the tax

> liability imposed as of the tax day and of the process of assessment, and that liability, when its amount is definitely ascertained, relates back to the day specified. * * * * * "

The language of the Alabama statute with reference to the creation of the lien is quite similar to the language of the Missouri statute, Section 10941, with reference to the creation of this lien and we think the same construction of the Missouri section would be adopted by the Supreme Court of the United States that was adopted on the Alabama statute.

While the Supreme Court in the St. Louis v. Baumann case, supra, held that the City was not liable for outstanding taxes which had been levied and assessed before it came into possession of such lands, and even though it would apply to such lands purchased by a tax exempt body, still we have the question of whether or not tax liens existing at the time of such purchase are extinguished. If the lien is not extinguished then, of course, it is a cloud on the title regardless of whether the owner of the land may be proceeded against in the enforcement of such lien. U. S. v. Pierce County, 193 Fed. 529, supra. This was the view taken by the Supreme Court in the Alabama case. The government in that case took the position that even though it could not be sued without its consent still it was entitled to have a marketable title so that if it desired to dispose of the property there would be no cloud on the title by reason of the tax lien. At. l.c. 1014 (61 S. Ct.) the Court in discussing this question said:

> " * * * * * The United States took the conveyances with knowledge of the state law fixing the lien as of October 1st. That law in creating such liens for the taxes subsequently assessed in due course and making them effective as against subsequent purchasers did not contravene the Constitution of the United States and we perceive no reason why the United States, albeit protected with respect to proceedings against it without its consent, should stand, so far as the existence of the liens is concerned, in any different position from that of other purchasers of lands in Alabama who take conveyances on and after the specified tax date. It is familiar practice for grantees who take title in such circumstances to see that provision is made for the payment of taxes and the Government could easily have protected itself in like manner. * * * * * * * "

In our opinion dated January, 1942, we quoted Judge Collet in the case of U. S. v. Certain Lands in City of St. Louis, Missouri, 29 F. 92, dated September, 1939. As stated above that opinion followed the opinion of the Supreme Court in the Little River Drainage District case. In the federal opinion, Judge Collet referred to two Missouri cases, namely, Blossom v. Van Court, 34 Mo. 390, and McLean v. Shelbe, 45 Mo. 130, which, under an old statute, the Court held that the lien for taxes was created on assessment date. Judge Collet held that since the present statute is different from the statutes in force when those opinions where written, then they would not apply now. Of course, that is the rule. From an examination of the federal opin-

ion and the Little River Drainage District opinion, we find that the case of State ex rel v. Snyder, supra, was not considered. The Snyder opinion was written under the statutes, namely, 7569 and 7570 R. S., 1889. These statutes are precisely like our present statutes, Sections 10940 and 10941, supra.

Therefore, we think the rule of the Court in the Snyder case would be controlling. In State ex rel Waddell v. Johnson, 316 Mo. 21, 296 S. W. 806, Judge Gantt, author of the opinion for the Court en banc, held that the taxes became a lien on June first, the assessment date; but Judge Collet in the St. Louis opinion, supra, said that was dictum.

Again referring to the statement of the Court in the Little River Drainage District case, it will be seen that by the first two sentences of the opinion the Court said:

> "The lien of the state for taxes is established by an assessment of all land for that purpose. Section 12757. However, said lien does not accrue and become a fixed encumbrance until the amount of the tax is determined by an annual assessment of the land and annual levy of the tax. * * * * * * "

The remainder of the statement quoted above to some degree contradicts these two sentences. It will be noted, however, that the case under consideration there pertained to drainage district taxes and

for that reason such a statement might have been appropriate, but under the previous rulings of the Supreme Court this department takes the view that the lien for the tax was established by the assessment.

We also call your attention to the statement of the Court in the case of State ex rel v. Snyder at l.c. 555 wherein the Court said:

> "There are therefore two different methods provided by statute for the collection of taxes against real estate, viz., one by suit to enforce the State's lien against the land, the other to distrain personal property for 'all taxes.' In re Life Association of America, 12 Mo. App. 40, it was said: 'The right thus given to distrain personal property for "all taxes," as well before as after they have become delinquent, shows that all taxes are personal charges against the owner of the property in respect of which they are levied. * * * * * "

So if a person owns lands upon which the inchoate lien for taxes exists, then even though such lands pass to a tax exempt body before the taxes are paid, the taxing authorities may proceed by distress warrant to collect the taxes.

CONCLUSION

From the foregoing it is the opinion of this department that the inchoate lien for taxes exists on the date of assessment and that the transfer of the property tax to a tax exempt body does not extinguish the lien and it remains a cloud on the title regardless of the ownership thereafter. Following these rules the taxes, both county and state, on the lands referred to in your letter are payable for the year of 1942.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

TWB:FS