

Opinion No. 61-103

October 9, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Thomas A. Donnelly, Assistant Attorney General

TO: Mrs. Nellie E. Floyd, Chaves County Assessor, Roswell, New Mexico

QUESTION

QUESTION

May a property owner in whose name real property is assessed from January 1 of the year, and who subsequently sells such property to a city obtain relief from liability for ad valorem taxes upon such property after a sale to a municipality?

CONCLUSION

See analysis.

OPINION

ANALYSIS

This opinion is issued to further supplement our prior Opinion No. 61-89 dated September 21, 1961, as it applies to your second question posed by your letter dated September 1, 1961.

As stated in our Opinion No. 61-89, the real property of any municipality within the State is exempt from taxation under the express provisions of Art. VIII, Sec. 3 of the State Constitution, and a county assessor may not subject such real property, the title to which has passed to a municipality, with further liability for the payment of taxes.

Although the tax lien upon such property is unenforceable against the real property so acquired by a municipality, the former owner in whose name the property was assessed on January 1 of such year remains personally responsible for the taxes upon the property for the remainder of the year. However, it should be noted that in any suit brought against such taxpayer to recover delinquent taxes upon such property, it is possible for an individual under the express provision of Section 72-7-26, N.M.S.A., 1953 Comp., as amended, to obtain relief from the District Court, from the payment of taxes assessed against the property, for such portion of the remainder of the year after title to the property has passed to a municipality.

This section similarly applies in instances wherein the private owner has sold realty to the State or any institution or political subdivision thereof, and has application, except in cases of sales involving delinquent taxes.

Therefore, it is our opinion that a District Court may, in proper cases, afford relief to a property owner who has sold realty to a municipality, by prorating taxes for the year as of the date of the sale to the municipality, and order the release of the taxpayer from liability for that portion of the taxes pro-rated to that portion of the year after the sale. It is important to note, however, that such authority is granted only to the District Court in cases wherein there have been filed suits for the collection of delinquent taxes against such property.

This opinion is issued to supplement our prior Opinion No. 61-89, September 21, 1961, and nothing contained herein is intended to supersede or to overrule such prior opinion.