

Opinion No. 61-89

September 21, 1961

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

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

QUESTION

QUESTIONS

1. If one owns property which is subject to being taxed as of the first of the year, then in May of that same year the improvements thereon and inventory are completely destroyed by fire, are we allowed to pro rate down to the number of months that the person actually owned the building and inventory? Or, should the individual pay taxes on the full amount for the full year under protest?
2. Would the same law apply to property that has been purchased by the City during the middle of the year and rendered the first of the year by the original owner?

CONCLUSIONS

1. See analysis.
2. No.

OPINION

ANALYSIS

In arriving at the answer to your first question, it is to be noted that our statutes as they are now in effect do not refer specifically to a situation wherein taxable property is destroyed after being assessed for the tax year. Provision is expressly made in Section 72-2-17, N.M.S.A., 1953 Compilation for a re-evaluation of real property due to destruction or removal of property on such premises during the preceding year. However, this section relates to the quadrennial assessment law and is presently inoperative under the provisions of Chapter 126, of the Laws of 1959.

No other express statute deals specifically with this issue and we must refer to the provisions of several different sections.

First, it is apparent that January 1, of each year is the date which determines the condition or status of the taxability of all property whether real, personal or intangible. Section 72-2-1, N.M.S.A., 1953 Compilation, provides in part:

"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. . . ."

Similarly, under the applicable portion of Section 72-2-3, N.M.S.A., 1953 Compilation it is provided that:

"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. Such declaration shall be made of all property as it exists on the first day of January of each year. . . ."

Section 72-2-10.1, N.M.S.A., 1953 Compilation provides that:

"The person whose legal duty it is to make declaration of property which is required by law to be valued by the assessor shall annually, between January 1, and March 1, declare all property owned by him or under his control subject to valuation in the county."

Section 72-5-12, N.M.S.A., 1953 Compilation, specifies that:

"All taxes levied upon real estate shall be a lien thereon from the first day of January of the year in which the levy is made and continue as such until paid or foreclosed by sale."

The general rule in regard to the question posed by you in your first inquiry, is dealt with in 84 C.J.S., "Taxation," Section 634 at page 1274 wherein it is stated that:

"The fact that events occurring after the tax has been paid, change the amount on which the tax should be computed will not entitle a taxpayer to recover the claimed excess paid. So also, the fact that property is destroyed by fire after the taxes thereon are spread on the assessment roll is no ground for recovery of the taxes paid under such assessment; but it is otherwise where property is destroyed before the assessment, and the taxpayer is entitled to recover taxes paid on such property."

In a discussion by the Supreme Court of Michigan in **Case v. City of Detroit**, Mich. 129, 298, 88 NW 626, 627, it was held in a similar situation that where property is destroyed by fire after the taxes are spread on an assessment roll, the owner is not entitled to a rebate.

The converse of the question posed by you was recently answered in our Attorney General Opinion No. 61-22 dated March 15, 1961, where we stated that when the first

day of each year has been designated as the tax date for that year and improvements are added to that property at a later time during the year, such increase in evaluation is not subject to declaration and assessment at the new value until January 1, of the following year.

An examination of the provisions of Section 72-5-4, N.M.S.A., 1953 Compilation, relating to the refund of ad valorem taxes paid under protest and which are voluntarily paid or which are alleged to be erroneously and illegally charged indicates that no relief is available to a taxpayer under such statute where there has been a subsequent destruction of property following the date of assessment of the property on January 1, since the holding of the New Mexico Supreme Court in the case of **In re Blatt**, 41, N.M. 269 67 P 2d 293, relief is available to a taxpayer under such statutory provision only in situations where the assessment complained of was originally erroneously and illegally assessed and charged.

Section 72-4-6, N.M.S.A., 1953 Compilation authorized the county treasurer to correct obvious clerical errors in name, description of property and computation of amount of taxes; however, this authority does not extend the right of the county assessor or treasurer to make refund of taxes erroneously paid, or to pro rate taxes originally lawfully and properly assessed, because of a subsequent destruction of property. As held in **Morris v. State ex rel. State Tax Commission**, 41 N.M. 385, 69 P. 2d 924, the provisions of this statute were designed to allow correction in errors and amount of taxes, but such statute provides no authority to hold tax assessments invalid on equitable grounds, to reassess property or to cancel assessments.

In view of the above authorities and from a construction of the above statutes, it is our opinion that the liability for the payment of taxes which are properly and validly assessed in conformity with law, attaches as of January 1, of each year, and such tax liability continues under the same assessment for the duration of such tax year, despite subsequent destruction or damage to the property during the year. An express provision by the legislature would be necessary to afford relief in the form of a reassessment, the recovery of taxes paid under protest, or proration of taxes to a taxpayer in such situation, and in the absence of such provision the tax liability continues in the amount of the original assessment without reduction and without allowance of proration to such taxpayer for the tax due.

The answer to your second question is in part controlled by the provisions of Article 8, Section 3, of the New Mexico State Constitution, and by Section 72-5-12, N.M.S.A., 1953 Compilation.

Under the applicable portion of Article 8, Section 3 of the State Constitution it is provided in part that:

"The property of the United States, the state and all counties, towns, cities and school districts, and other municipal corporations, public libraries, community ditches and all laterals thereof, all church property, all property used for educational or charitable

purposes, all cemeteries not used or held for private or corporate profit, and all bonds of the state of New Mexico, and of the counties, municipalities and districts thereof shall be exempt from taxation."

Section 72-5-12, N.M.S.A., 1953 Compilation provides that:

"All taxes levied upon real estate shall be a lien thereon from the first day of January of the year in which the levy is made and continue as such until paid or foreclosed by sale. Taxes levied on all property shall be a personal obligation of the owner thereof, and a personal judgment may be rendered against him therefor. . . ."

Section 72-5-12, N.M.S.A., 1953 Compilation set out in part above, contemplates that the taxable status of real property is fixed on the tax day of January 1 of each year and that the taxes levied upon real property shall be a lien on such property until the taxes are paid or the property is sold for the delinquent taxes.

It is apparent under the language of Article 8, Section 3, of the State Constitution that real property acquired by a municipality is exempt from taxation. However, construing this constitutional provision together with the wording contained in Section 72-5-12, N.M.S.A., 1953 Compilation, it is apparent that in addition to a tax lien falling upon realty the obligation for the payment of such taxes is also a "personal obligation of the owner thereof." Thus the second question posed by you necessitates a determination of whether the constitutional exemption excluding the real property of municipalities for taxation absolves the individual in whose name the property was assessed on January 1, from a personal liability for the payment of such taxes even though a municipality and its real property is exempt from the payment of such taxes. In 84 C.J.S., "Taxation," Section 237 at page 455-456 it is stated that:

"Whether or not property is exempt from taxes for a year is to be determined as of its taxable status date, which ordinarily is when the assessment is levied and the tax is due or becomes a lien on the property. Where the property is taxable on that date, its subsequent change to an exempt status does not affect its taxability for the year. . . ."

In the case of **State v. Locke**, 29 N.M. 148, 219 P. 2d 90, 30 A.L.R. 409, the New Mexico Supreme Court dealt with a question somewhat similar to the problem posed by your second inquiry. In this case the Court cited the language of **Laurel v. Weems**, Miss. 100, 335 So. 451. In the latter case a city had purchased property from private owners and the taxing officials sought to subject such property to a tax lien. The court held that after the municipality purchased the lot the property was freed and absolved from further liability for tax previously assessed against it. In the **Locke** case, supra, the Court cited also with approval the case of **Foster v. City of Duluth**, Minn. 120, 484, 140 NW 129, wherein it was held that once real property has become public property by virtue of the ownership having passed to a municipality all proceedings taken subsequently against such property by tax officials are void, "notwithstanding that the taxes for the year may have been a lien on the property before its transfer." Similar

cases are **Davis et al. v. City of Biloxi**, Miss. 178, 340 So. 76, and **City of Harlan v. Blair**, Ky. 251, 51, 64 SW 2d 434.

Consonant with the reasoning of the Locke case, and after a careful consideration of the above constitutional provision and Section 72-5-12, N.M.S.A., 1953 Compilation, we conclude that a county assessor may not subject real property, the title to which has passed to a municipality, with further liability for the payment of taxes. The property itself is cleared from further liability for the taxes previously assessed against it under the name of former owners from the time of the acquisition of the realty by the municipality.

However, as a necessary corollary to the language of Section 72-5-12, N.M.S.A., 1953 Compilation and the holding of the Locke case, *supra*, it is our opinion that the person in whose name the property was assessed on January 1, of the year in which the property is subsequently transferred is personally responsible for the payment of the taxes on such property for the entire year regardless of the fact that the property may have been transferred to a municipality at any time during such year. The language of Section 72-5-12, N.M.S.A., 1953 Compilation is clear in this respect, stating that "taxes levied on all property shall be a personal obligation of the owner thereof, and personal judgment may be rendered against him therefor."

It is therefore our opinion that although the tax lien is unenforceable against such real property because of its new ownership by a tax exempt municipality, nevertheless the former owner in whose name the property was assessed on January 1, of that year remains personally responsible for the taxes upon the property for the remainder of such year. It would be possible under such situation, however, for the vendor to collect as a part of the sale price the amount of such taxes.