

Opinion No. 22-3429

May 13, 1922

BY: A. M. EDWARDS, Assistant Attorney General

TO: Mr. William J. Eaton, Attorney at Law, Socorro, New Mexico.

Delinquent Taxes Cannot Be Remitted by Act of Legislature.

OPINION

{*151} We have your letter of May 10th, asking if this office has any authority to support the opinion rendered by Mr. Bowman to the effect that Section 474, Chapter 133, Laws 1921, and Section 9 of Chapter 102 of the Laws of 1919 are in conflict with Section 32, Article IV of the New Mexico Constitution.

Under the section of the Constitution just cited the question arises whether a tax imposed by the state and the county is an obligation or a liability of a person to the state. It might be contended that because the taxes upon real property are a lien upon the land that such taxes are not an obligation or a liability of the person from whom the taxes are payable. Under the laws of the Territory and of the State of New Mexico, regarding the collection of delinquent taxes, ever since 1882, the attorney general or the district attorney has had a statutory right to bring a suit at law for the recovery of taxes which may be due from any person or upon any property where the amount exceeds \$ 100.00. The provisions of Section 5509 of the 1915 Codification which were enacted in 1882, and amended in 1889, provided that the judgment rendered in such a tax suit shall have the effect of a general judgment against the person. The legislature has, therefore, recognized and it has been the continuous practice in this state that the liability to pay taxes on both real and personal property is a personal obligation of the taxpayer.

Taxes have been defined as "obligations imposed upon citizens to pay the expenses of the government." 20 R.C.L. 26.

They are a **personal liability**. 20 R.C.L. 339.

Even where the statute does not specifically permit such suits to be brought against the taxpayer and other remedies for the collection of taxes are provided, such as distraintment in the case of personal property and the enforcement of a lien in the case of real property, the courts have held that such remedies are not exclusive. *Meredth vs. United States*, 13 Pac. 486. *Savings Bank vs. United States*, 19 Wall. 229.

The Supreme Court of the United States has repeatedly held that {*152} under the tariff laws, where duty is levied on the importation of goods and no statutory authority for a suit against an importer is given, yet the United States may maintain a suit for the

recovery of import duties. A complete discussion of the right of the government to sue the taxpayer personally, from the days of the common law down to the present time, is found in the opinion of Justice Hughes in the case of United States vs. Chamberlain, 219 U.S. 250.

Many states have held that payment of taxes is a personal obligation. Mercier's Succession, 42 L. A. Ann. 1135, 11 L.R.A. 817, with footnote. See also note on page 730, 41 L.R.A., N.S.

In the case of Board of Commissioners of Custer County, vs. Story, the Supreme Court of Montana, 69 Pac., page 56, construes a constitutional provision which is almost identical, word for word, with ours. In this case the court asks in its opinion, "Is the obligation to pay a tax demand, levied and assessed by the proper authorities and in accordance with the legislative direction, a liability created by statute?" The court in answer to this question, says:

"That it is such a liability is well supported by reason and is almost without exception, the view adopted by courts of last resort. The state, as an incident of its sovereignty, possesses the power to impose upon the persons and estates within its jurisdiction their just and proportionate share of the expenses and burdens of maintaining its existence and effecting its objects."

In view of the fact that the opinion of the Montana Supreme Court above cited was rendered prior to the adoption by our constitutional convention of the article in question, under the familiar rule of statutory construction, it will be presumed that in framing this section of our constitution, our constitutional convention had in mind this judicial interpretation of its meaning and effect.

In the district court of Santa Fe County, where this question was raised in a tax suit, Judge Holloman has held that Section 474 of Chapter 133 of the 1921 Laws, is unconstitutional. No appeal was taken from this decision.

It would seem that the only effect which might be given to this section would be to raise the presumption that the taxes for years prior to 1910 have been paid, which presumption could be overcome by proof that the taxes were not paid.

We hope that you will be successful in the lower court in maintaining the position above outlined and whatever the decision of the lower court may be, we should be glad to have the matter carried to the Supreme Court and there finally determined.