

ACCOUNTS, STATE BOARD OF: Taxation, lien of personal property tax on real estate; lien of real estate tax on personal property; tax sale, whether both personal and real property tax may be collected by sale of realty.

March 3, 1937.

Hon. William P. Cosgrove,
State Examiner,
State Board of Accounts,
Indianapolis, Indiana.

Dear Sir:

I have before me your request for an official opinion in answer to the following questions:

1. If a taxpayer has both personal and real estate, and sells the real estate, and fails to pay the personal property tax, does the personal property tax become a lien on the real estate or is it a lien at the time the real estate is sold?
2. Is real estate tax a lien on personal property, and if so, to what extent?
3. Can delinquent personal property tax under the same name be advertised for sale with real estate taxes?

In answering your first question, I think I need only to refer to section 64-2001 of Burns Indiana Statutes Annotated, 1933, which provides as follows:

"All property liable for tax: All the property, both real and personal, situated in any county, shall be liable for the payment of all taxes, penalties, interest and costs charged to the owner thereof in such county, and no partial payment of such taxes, penalties, interest or costs shall discharge or release any part or portion of such property until the whole is paid; which lien shall in nowise be affected or destroyed by any sale or transfer of any such personal property, and shall attach on the first day of March, annually, for the taxes of such year. (Acts 1919, Ch. 59, Sec. 246, p. 198)." (Our italics.)

In considering the above statute, the Indiana Appellate Court in the case of Robinson v. Youngblood, 54 Ind. App. 669, at page 672, used the following language:

“Under this statute, it is clear that all property of the person against whom taxes are assessed is covered by the lien of such taxes regardless of whether the title is acquired before or after the lien attaches. Such lien is in nowise affected by the sale or transfer of such property and the purchaser takes it subject to the lien; but the lien attaches only to the property transferred and does not attach to any other property of the purchaser whether acquired before or after such transfer.”

In my opinion, the tax on personal property becomes a lien on the real estate in the county of the taxpayer and that the transfer, after the lien attaches, does not divest the lien.

Your first question is answered in the affirmative.

Your second question is also answered in the affirmative upon the basis of the above statute and the opinion of the court in the above case.

I think your third question should also be answered in the affirmative. Section 64-2202 of Burns Indiana Statutes, Annotated, 1933, provides for the posting by the auditor of notice of sale of real estate for delinquent taxes. The auditor is required to state in the notice the aggregate amount of delinquent taxes, penalty, interest and costs due on the property, to which list

“shall be attached and in like manner so posted a notice that so much of said lands and lots as may be necessary to discharge the delinquent taxes, interest and charges which may be due thereon, *or due from the owner thereof, at the time of sale, will be sold at public auction,*” etc. (Our italics.)

The language of section 64-1511 seems to indicate the same thing. Note the following language:

“After the first Monday in November of each year hereafter, the treasurer in each county shall make one (1) demand by registered United States mail or by call, either in person or by deputy, upon every person named in the tax duplicate who resides in the county, and who has not paid the taxes charged against him upon such duplicate, for the amount of

such delinquent taxes, interest and the penalty thereon, together with the costs of such demand, and if the taxes, penalty, interest and costs are not paid within thirty (30) days from such demand, *and if such person shall not have sufficient real estate located in such county from the sale of which such delinquent taxes may be collected by sale therefor as provided by law*, he shall proceed forthwith to levy upon sufficient personal property of such delinquent to pay said taxes, penalty, interest, and all costs attached thereto, and to sell the same in the manner and at the place provided by law." (Our italics.)

Nor would chapter 262 of the Acts of 1935 change the foregoing conclusion. The provision of the above Act of 1935. . . .

"That in no event shall any liability for delinquent taxes on any tract or lot be chargeable to or be a lien against any other tract or lot belonging to the same owner."

does not divest the lien of personal property taxes, but simply provides that so far as the taxes on any particular parcel of real estate is concerned, that it shall not be a charge against some other tract.

There is nothing in the Act of 1935, however, that alters other provisions heretofore referred to, which fixes the lien of taxes on personal property upon *all* the property of the owner located in the county.

Burns Indiana Statutes, Annotated, 1933, Section 64-2001.

CLEMENCY, STATE COMMISSION ON: Powers and effect of rules adopted by Commission.

March 4, 1937.

State Commission on Clemency,
Executive Department,
Indianapolis, Indiana.

Dear Mrs. Headdy:

Your letter of February 26th asking my opinion as to the effect of section 3, chapter 156 of the Acts of the General