



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER
Attorney General

June 12, 1975

Opinion No. 75- 244

Theodore H. Hill
Assistant County Counselor
County Courthouse
Wichita, Kansas 67203

RE: Bankruptcy and tax liens

Dear Sir:

Your letter of May 15, 1975 states that the Clerk of the District Court will not accept from a Trustee in Bankruptcy less than full satisfaction of the county's tax lien for personal property taxes owed by the bankrupt. You ask if the Clerk should have accepted the offer from the trustee.

Our answer is "yes".

Taxes are not "debts" within the invalidating provision of Bankruptcy Act Sec. 67, 11 U.S.C.A. 107(b) and (c), as amended July 5, 1966, even though arising and perfected while the debtor is insolvent and within four months prior to the filing of the petition in bankruptcy. Upon final discharge, a bankrupt's tax obligations to a state or its subdivisions, which became due and owing within three years preceding the bankruptcy, are nondischargeable. Collier Bankruptcy Manual, 2nd Ed. Vol. 3, Sec. 9.008, 15.006(5), 15.009(10); 8A C.J.S. Sec. 243(4) Bankruptcy.

A statutory tax lien on real estate is generally not affected by subsequent bankruptcy. However, with regard to personal property, there are several rules. If the local taxing authority has taken "possession" of personal property, a tax lien is valid as against the trustee.

But, if the trustee takes possession of personal property, and there are no pending proceedings to sell the property to satisfy the local tax lien, the trustee shall list the personal property among the assets of the bankrupt and proceed to liquidate it. Under Bankruptcy Act Sec. 67(c), 11 U.S.C.A. Sec. 107(c)(3) the tax lien on the personal property then becomes subordinated to the costs of the sale in liquidation, administrative costs, and wages, as provided in that act,

Theodore H. Hill

Page 2

June 12, 1975

but still retaining its priority as to the remaining portion of the proceeds from the sale.

In such a situation, another rule exists. The trustee must make his own valuation of the assets of the bankrupt, and he is not bound by the valuation placed on the personal property by the assessor. It is very possible that a bankruptcy sale will not produce the whole amount of the tax lien after the above items are deducted.

Furthermore, the Referee in Bankruptcy has the right to determine if the tax lien has been properly perfected as provided by statute. An adverse ruling would relegate the tax obligation to that of a general creditor, and final distribution accordingly.

Your letter does not give any details about the tax lien, the bankruptcy sale, etc. But it is clear that the trustee is undertaking to tender or deliver some amount out of the bankrupt estate, and in the absence of any showing to the contrary, we must presume he has followed the Bankruptcy Act in doing so.

Where the confusion exists is that the Clerk seems to be claiming that the trustee made an "offer" to pay less than the full amount of tax in return for a total discharge of the tax debt owed by the bankrupt. The trustee has made no such offer. He may need a receipt for the exact amount delivered, but that is all.

The Clerk is right that by law no officer of any county "shall have power to release, discharge, remit or commute any portion of the taxes assessed or levied against any person or property within their respective jurisdictions for any reason whatever." K.S.A. 79-1703. To do so would involve personal liability.

K.S.A. 1974 Supp. 79-2017 specifies that the county treasurer accept payment of taxes, penalties and interest, only when made "in full". This statute further provides that the treasurer file the abstract of taxes, interest, penalties and costs and the last tax warrant with the clerk of the district court, and at the same time serve notice, in writing, upon the county counselor, whose duty it is to collect such judgment. This obviously means the whole judg-

Theodore H. Hill
Page 3
June 12, 1975

ment, not part of it.

Ever since the decision in 1882 of Julien, Sheriff v. Ainsworth, 27 Kan. 446, which construed what is now K.S.A. 79-2002, it has been the law in this state that "A taxpayer has no right to tender to the county treasurer a portion of his taxes, and compel a receipt therefor." Syl. #1. He must pay the whole amount, or penalty and interest continue to run on the delinquent taxes in full.

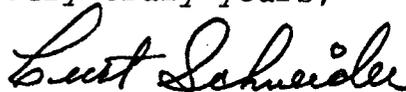
But we do not have a taxpayer here offering only a portion of his taxes. We have here an officer of the Federal Court, who has conducted effectively a tax foreclosure sale and he is merely trying to account to the proper county official for the proceeds of that sale as provided in the bankruptcy manual. He himself has not discharged the tax debt, nor does he ask that the receiving county official mark the tax debt paid in full.

Is there really any alternative to accepting the money from the trustee? He cannot, by virtue of a proviso of the Act, make payment of a tax assessed against specific property of a bankrupt in excess of the value of the interest of the bankrupt estate in such property, as determined by the Court. The Act of Congress under which he proceeds requires him to make certain prior deductions before making the remittance.

When real estate is sold for taxes, and the sale does not produce the full amount of the taxes charged, a special statute provides how the deficient amount shall be apportioned among the several funds. K.S.A. 79-2914.

In our opinion, the Clerk of the District Court, who already has a judgment against this now bankrupt debtor, should accept from the Trustee in Bankruptcy the proceeds from the sale of the personal property upon which the judgment lien attached, and credit that judgment accordingly, leaving of record a balance on an unpaid judgment. The amount received should be transmitted to the County Treasurer for apportionment, similar to that done with real estate under K.S.A. 79-2914.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw