



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

January 27, 1978

ATTORNEY GENERAL OPINION NO. 78- 45

Richard E. Samson
Stevens County Attorney
P. O. Box 759
Hugoton, Kansas 67951

RE: Taxation - Personal Property - Oil and Gas
Production - Sale of Real Estate Including
Production Lease. K.S.A. 79-329 - 79-344;
79-2110; 58-2223.

Synopsis: The lease of oil and gas being produced, and all property, equipment and material being used in such production, are listed, valued and assessed for Kansas ad valorem taxation as personal property. When land, together with all rights under an oil lease producing on said land, are sold during a tax year, the purchaser buys both the land and the oil property, but the personal property character of the oil property and lease is unchanged. When personal property is sold during the tax year, the sale does not affect the in rem tax lien, and such personal property remains liable for such taxes in the hands of the purchaser or purchasers if the seller fails to pay the taxes, excepting only where the personal property is sold in the ordinary course of retail trade, and where the enforcement of the tax liability in the hands of a transferee takes place after the expiration of three years from the time such tax became originally due and payable.

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Dear Mr. Samson:

You present a situation where a landowner of a half section of

Richard E. Samson
January 27, 1978
Page Two

land leased the same for oil. A well was drilled and production obtained. The method used in your county to collect taxes on mineral interests under production has been to notify the producing company that the taxes are not paid and that company then places the royalty payments in suspense until payment is made.

In 1975 the taxes on the subject mineral interests were paid, but the landowner died, and his estate was put in administration. During 1975 the estate negotiated a sale of the land, including the mineral interests under lease, and a deed was executed to the purchaser, but such deed was not delivered and recorded until January 5, 1976. The 1976 tax rolls, reflecting the record title situation as of January 1, 1976, generated a tax statement on November 1, 1976 to the original landowner. By then the estate was settled and closed. Your sheriff then issued tax warrants to the production company and since then royalty payments due under the lease have been suspended.

The purchaser complains that while the deed was executed in 1975, it was not delivered and recorded until January 5, 1976; that the taxes were properly billed to the original landowner, and the county can collect only from his estate; that the 1976 taxes are actually a taxation of the 1975 production and since the original landowner or his estate got the royalty payments for the full year of 1975, this purchaser should not be billed; that personal property taxes do not become a lien on land until after the personal property taxes are unpaid and reduced to judgment; and that the warrants suspending payment of royalties to the purchaser should be rescinded. You ask our opinion on these questions.

It does appear to be a fact that the purchaser claims entitlement to all royalty payments from and after January 1, 1976, not from January 5, 1976. Besides, it is not a hard and fast rule that, for a deed to be effective and valid, there must be a recording. As between the parties thereto, this rule has no effect. K.S.A. 58-2223. Even the manual delivery of the deed is unnecessary where the words or conduct of the grantor, evidencing his intention to render his deed presently operative and effectual so as to vest the estate in the grantee, and to surrender control over the title, constitute a valid delivery. 26 C.J.S. 673-683. DEEDS Sec. 41, citing many Kansas cases in the text and in the 1977 supplement. We do not have before us the deed, date of its acknowledgement, or any of the details of the transaction in 1975.

But the date of the effectiveness of the deed here involved is not crucial, because any sale of personal property cannot destroy a tax lien in that property. K.S.A. 79-309. While it is true that a deed to land without restriction grants title to the whole bundle of rights in the land, including leases, yet in this case the oil and gas lease, where there is production, is by law declared to be personal property for ad valorem tax purposes. K.S.A. 79-329 to 334. So, here, the purchaser received title to both land and personal property, certainly by January 5, 1976.

To protect the in rem lien for taxation of personal property in Kansas, the legislature enacted K.S.A. 79-2110 which provides that if personal property is sold after it has been assessed on January 1 and before the taxes are paid, an in rem tax lien follows the property into the hands of the purchaser or purchasers. The buyer must pay the tax, and may sue the seller for the taxes paid. There are two circumstances when the tax lien on personal property can be lost: one, when the property is sold in the ordinary course of retail trade; and, second, attempt to enforce the lien is not made until after three years from the time such tax became originally due and payable. But neither of these two exceptions are applicable in this case.

Here, the estate sold all of its interest in the oil and gas lease, and in the reserves from which production was being taken. These rights were all sold along with the land itself. There would be no question if the sale was made on January 1, 1976 or prior but what the buyer would be liable for all 1976 taxes on the mineral interests. Assuming, arguendo, that the sale did not take place until January 5, 1976, it is our opinion that under K.S.A. 79-2110 the 1976 taxes followed the lease into the hands of the buyer and that tax warrants were properly issued to collect the tax and should not be withdrawn.

K.S.A. 79-319 is another statute demonstrating the intention of the Kansas Legislature that the in rem tax lien against personal property attaches immediately after January 1.

A second misconception in this matter is the contention that the 1976 personal property taxes on an oil and gas lease for the year 1976 is in fact a tax on the 1975 production. Although the oil and gas manual, under which mineral interests are valued for taxation as personal property where there is production, does consider, as one of the criteria production obtained in the previous year, it is not a tax on that production.

Richard E. Samson
January 27, 1978
Page Four

This point was definitely settled by the Kansas Supreme Court:

"We think this argument mistakes the incidence of the tax. What is assessed is the lease, not the oil produced. Production is merely one gauge by which the value of the reservoir, and in turn the lease, is measured." Angle v. Bd. of Co. Comm'rs., 314 Kan. 708, 713, 522 P.2d 847 (1974).

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:CJM:gw