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ATTORNEY GENERAL OPINION NO. 87- 21

Douglas F. Martin  
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Shawnee County Courthouse, Room 203  
200 E. 7th  
Topeka, Kansas 66603-3922

Re: Taxation--Correction of Irregularities--Collection  
of Judgments Subsequent to Taxpayer's Discharge in  
Bankruptcy

Synopsis: Valid liens which are not otherwise avoidable  
survive a discharge in bankruptcy and may be  
executed as provided by law after the proceedings  
in bankruptcy have come to an end. Judgments which  
are not liens upon property of the estate may not  
be enforced against the debtor subsequent to a  
discharge in bankruptcy. Penalties and interest  
owed on delinquent taxes are to be treated in the  
same manner as the tax itself, unless punitive in  
nature. Cited herein: K.S.A. 79-1703; 11 U.S.C.  
§§101, 301, 302, 303, 362, 507, 523, 524, 944, 1328.

\* \* \*

Dear Mr. Martin:

As County Counselor for Shawnee County, Kansas, you request  
our opinion regarding the effect of certain bankruptcy  
proceedings on property tax judgments and liens.  
Specifically, you ask what steps, if any, should be taken by  
Shawnee County officials upon a final discharge in  
bankruptcy with respect to property taxes, interest, penalties  
and court costs that have been reduced to judgments.

We note initially that certain property taxes of individual debtors are not dischargeable in bankruptcy. 11 U.S.C. §§523(a)(1)(A) and 507(a)(7)(B). Additionally, under a Chapter 9 bankruptcy, a debtor is not discharged from any debt that is excepted from discharge by the plan or by the court order confirming the plan, 11 U.S.C. §944(c), and, generally speaking, the debts discharged by the court in a Chapter 13 bankruptcy have already been paid according to the plan, 11 U.S.C. §1328(a). This opinion will speak only to property taxes which are properly dischargeable. Tax claims which have become statutory or judicial liens, as those terms are defined in 11 U.S.C. §101(30) and (45), are secured interests to be disposed of by the bankruptcy court according to the Bankruptcy Code, 11 U.S.C. §§101 through 151326, and state law. See 9A Am. Jur. 2d Bankruptcy §§716, 717 (1980); Palmer v. First National Bank of Kingman, 10 Kan. App. 2d 84, 88 (1984).

You question what, if any, actions should be taken by county officials with respect to taxes which, for one reason or another, have been discharged in bankruptcy. Section 524 of the Bankruptcy Code, 11 U.S.C. §524, provides in part as follows:

"(a) A discharge in a case under this title--

"(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, or 1328 of this title, whether or not discharge of such debt is waived;

"(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived. . . ."

This language is similar to that of the automatic stay of 11 U.S.C. §362(a) which prohibits any action to collect a debt after a petition is filed under §§301, 302 or 303 of the Bankruptcy Code. See 11 U.S.C. §362(c) for termination of stay.

Sections 771 et seq. of 9A Am. Jur. 2d Bankruptcy discuss the purpose and effect of a discharge in bankruptcy:

"The power of Congress to prescribe regulations concerning discharge in bankruptcy, so long as they were not so grossly unreasonable as to be incompatible with fundamental law, was established early. In interpreting the statutes thus enacted by Congress, it was uniformly held that the right to discharge should be liberally construed; that it was not to be construed against the bankrupt; that it must be liberally construed in favor of the bankrupt at least where there was not intent to violate former 11 USCS §32; that, conversely, it must be construed strictly against one objecting to discharge; and that it must be liberally applied to achieve its primary purpose of giving debtors a new chance in life. [page 505].

. . . . .

"According to the legislative history, 11 USCS §524(a) is intended to insure that once a debt is discharged, the debtor will not be pressured in any way to repay it. In effect, the discharge extinguishes the debt, and creditors may not attempt to avoid that. [page 511].

. . . . .

"Case law under the 1898 Act indicated that despite the discharge in bankruptcy, the debt remained in existence after the discharge, although it was divested of its character as a personal obligation which was legally enforceable by a creditor. Thus, discharge neither destroyed the debt nor supplanted the moral obligation of the debtor to pay it. Rather, discharge merely served as a bar to the enforcement of a discharged debt by a legal proceeding. This included supplementary proceedings against the income of the

debtor. On the other hand, recent 1898 Act case authority is to the contrary, and this recent view seems more consistent with the 1978 Act's legislative history, discussed above. [pages 511, 512]."  
(Footnotes omitted.)

However, it is also stated in this publication that:

"Whatever else may happen to liens in a bankruptcy case, it was established under the 1898 Act that a lien is not affected by a discharge. It was held that a lien should be given effect after a bankrupt was discharged so as to give a judgment creditor a lien upon the proceeds from the sale of real estate to which the lien attached. (sic) and it was held that where tax liabilities secured by a tax lien were nondischargeable and, therefore, enforceable against the debtor individually and against his after-acquired assets despite his discharge, the Internal Revenue Service was entitled to retain its tax lien." 9A Am. Jur. 2d Bankruptcy §779 (1980).

In support of this proposition, the United States District Court, W.D. Wisconsin, has stated:

"It would be rather odd to bestow upon a docketed judgment the quality of a lien against real estate, but then to strip it of this quality whenever the judgment debtor petitions in bankruptcy, whether more or less than four months subsequent to the docketing of the judgment. Because bankrupts are frequently discharged in the bankruptcy proceedings at a time prior to the trustee's sale of the real estate and prior to the distribution of the proceeds of the sale, this oddity would arise with equal frequency unless the lien is given effect in the bankruptcy proceeding following the entry of the order discharging the bankrupt. This persuades me that the more reasonable course is to give the lien effect after the discharge

if the Wisconsin statutes permit it." In re Tillman Produce Co., Inc., 396 Fed. Supp. 500, 502 (W.D. Wis. 1975), aff'd, 538 F.2d 763 (7th Cir. 1976).

Also, the comment to §524 of the Bankruptcy Code states that "[s]ection 524(a)(2) clarifies that valid liens survive the discharge." 11 U.S.C. §524, comment.

In bankruptcy, existence and effect of liens on real estate are to be determined by state law. Kansas taxation statutes prohibit county officials from releasing, discharging, remitting or commuting any portion of taxes assessed or levied within their respective jurisdictions. K.S.A. 79-1703(a). Though this statute states in subsection (b) the procedure to be followed in cases involving a railroad in bankruptcy, it is silent as to the procedure to be followed when any other taxpayer files a bankruptcy petition. Attorney General Opinion No. 85-100 sheds some light on what can be done to collect taxes from a company that is in bankruptcy, though it is not dispositive of the issue currently before us, i.e. what is the effect of a discharge. Also of assistance is the Court of Appeals decision in Palmer v. First National Bank of Kingman, 10 Kan. App. 2d 84 (1984), though the case speaks primarily to taxes which were not discharged in the bankruptcy proceedings.

To bring these seemingly contradictory authorities into unison, it is our opinion that valid liens, which are not otherwise avoidable, survive a discharge in bankruptcy and may be executed as provided by law after the proceedings in bankruptcy have come to an end. Conversely, mere judgments which are not liens upon property of the estate may not be enforced subsequent to a discharge in bankruptcy. Other states have provisions by which a person discharged in bankruptcy may obtain a satisfaction of such a judgment from the court which entered it, thereby extinguishing the judgment. See Wis. Stat. §270.79 (1975). Kansas does not have such a provision. Thus, there appears to be no way in which to remove judgments from the records even though they cannot be legally enforced. Finally, the discharge of a debt of the debtor does not affect the liability of any other entity for such debt, except with regard to certain community claims. 9A Am. Jur. 2d Bankruptcy §782 (1980).


In conclusion, valid liens which are not otherwise avoidable survive a discharge in bankruptcy and may be executed as

to an end. Judgments which are not liens upon property of the estate may not be enforced against the debtor subsequent to a discharge in bankruptcy. Penalties and interest owed on delinquent taxes are to be treated in the same manner as the tax itself, unless punitive in nature.

Very truly yours,



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Julene L. Miller  
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RTS:JLM:jm