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September 11, 1987

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ATTORNEY GENERAL OPINION NO. 87- 135

William B. Elliott
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Re: Taxation--Listing Property for Taxation--Oil and Gas Property as Personality; Property Held by Federal Land Bank Exempt from Taxation

Collection and Cancellation of Taxes--Transfer of Personal Property Before Tax Paid; Collection

Synopsis: If a person who is not insolvent transfers to a federal land bank (by voluntary conveyance or foreclosure) oil and gas producing interests after assessment but before the payment of personal property taxes, a lien attaches against the property for the unpaid taxes in accordance with K.S.A. 1986 Supp. 79-2020. (We note the question presented does not involve assessing personal property taxes against the federal land bank [see Attorney General Opinion No. 86-16]. The question presented involves determining the priority of claims against the personal property transferred.) Under this statute the federal land bank takes subject to the lien, is liable for the tax, and has a civil cause of action against the transferor for the amount paid. However, insolvency of the debtor and subsequent transfer of property by the debtor for the benefit of creditors will make the priority issue a question of federal law triggering 31 U.S.C. §3713 (formerly 31 U.S.C. §191), priority of government claims.

The procedure for obtaining an exemption from the payment of ad valorem property taxes is found in K.S.A. 1986 Supp. 79-213. While a federal land bank is exempt from the assessment of ad valorem taxes, as a property owner requesting an exemption it is not exempt from the procedure of filing for an exemption. Cited herein: K.S.A. 1986 Supp. 79-213; K.S.A. 79-329; 79-2109; 79-2110; 79-2111; K.S.A. 1986 Supp. 79-2020; 31 U.S.C. §3713, formerly 31 U.S.C. §191.

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Dear Mr. Elliott:

As Graham County Attorney, you request our opinion concerning personal property taxes on a royalty interest in an oil and gas lease transferred to the federal land bank through either voluntary conveyance or foreclosure.

Initially we note that the circumstances presented do not involve the assessment of personal property taxes against the federal land bank. (See Attorney General Opinion No. 86-16. The federal land bank is exempt from the payment of state personal property taxes.) Your inquiry is whether, in spite of the exemption from the assessment and payment of personal property taxes, any type of in rem lien can exist for personal property taxes assessed and due when the federal land bank obtains ownership of the royalty interest in an oil and gas lease (considered personal property, K.S.A. 79-329). Thus, the question you pose is whether the federal land bank takes the personal property subject to any lien created by state statute for unpaid personal property taxes.

The Kansas statutes that create liens against an owner's personal property for nonpayment of taxes are K.S.A. 79-2109, 79-2110 and K.S.A. 1986 Supp. 79-2020. Both K.S.A. 79-2109 and 79-2110 involve the sale of the personal property and are therefore inapplicable.

K.S.A. 1986 Supp. 79-2020 states:

"If an owner of personal property surrenders or transfers such property to another after the date such property is assessed and before the tax thereon is paid, whether by voluntary repossession or

any other voluntary act in reduction or satisfaction of indebtedness, then the taxes on the personal property of such taxpayer shall fall due immediately, and a lien shall attach to the property so surrendered or transferred, and shall become due and payable immediately. Such lien shall be in preference to all other claims against such property. The county treasurer, after receiving knowledge of any such surrender or transfer, shall issue immediately a tax warrant for the collection thereof and the sheriff shall collect it as in other cases. The lien shall remain on the property and any person taking possession of the property does so subject to the lien. The one owing such tax shall be liable civilly to any person taking possession of such property for any taxes owing thereon, but the property shall be liable in the hands of the person taking possession thereof for such tax. If the property is sold in the ordinary course of retail trade it shall not be liable in the hands of the purchasers. No personal property which has been transferred in any manner after it has been assessed shall be liable for the tax in the hands of the transferee after the expiration of three years from the time such tax originally became due and payable." (Emphasis added.)

This statute creates a lien against the personal property voluntarily transferred and gives this lien preference against all other claims. The question before us therefore involves determining priority of claims against the transferred property, where the state statute gives the state lien preference.

It is helpful to note at this point that the question presented does not involve insolvency proceedings that may trigger the federal statute giving priority to federal government claims found at 31 U.S.C. §3713 (formerly 31 U.S.C. §191). See Conrad v. Atlantic Ins. Co., 26 U.S. 386, 7 L.Ed. 189 (1828), Nesbitt v. U.S., 445 F.Supp. 824 (N.D. Cal., 1978), 78-1 U.S.T.C. ¶9239, aff'd 622 F.2d 433 (Ca. 9, Cal. 1980), cert. den. 451 U.S. 984, 101 S.Ct.

2315, 68 L.Ed.2d 840 (1981), (mere inability of a debtor to meet his obligations did not constitute insolvency within the meaning of the predecessor to 31 U.S.C. §3713). The question of priority of claims would then become a question of federal law. Under the supremacy clause, the federal statute would give the federal claim first preference if the circumstances meet the criteria for its applicability. See U.S. v. Kimbell Foods Inc., 440 U.S. 715, 99 S.Ct. 1448, 59 L.Ed.2d 711 (1979), United States v. Burczyk, 556 F.2d 394 (Ca. 7, Wis. 1977).

Given no insolvency, the state statute, K.S.A. 1986 Supp. 79-2020, controls and provides that upon voluntary transfer of property in satisfaction of a debt a lien attaches for personal property taxes assessed and unpaid. The person taking possession of the property takes subject to this lien and is liable for the tax. However the statute has two exceptions; when the property is sold in the ordinary course of retail business, and when there has been the expiration of 3 years from the time such tax became originally due, there is no liability in the hands of the purchaser/transferee. Since neither of the exceptions exist, it is our opinion that the federal land bank as transferee takes subject to the lien imposed by K.S.A. 1986 Supp. 79-2020 and accordingly has a civil action against the transferor for the amount of the tax paid.

We note in passing that K.S.A. 79-2111 involving seizure by legal process is not applicable here. We have assumed for purposes of your question that foreclosure in this instance was carried out wholly outside of court. "We believe the term legal process cannot include proceedings 'carried on wholly outside of court . . . without the aid of its process or decree.'" Robbins-Leavenworth Floor Covering, Inc. v. Leavenworth Nat'l Bank & Trust Co., 229 Kan. 511, 516 (1981).

Your next inquiry involves the federal land bank's tax-exempt status from the payment of personal property taxes. Specifically you inquire what steps the County Treasurer must take to show that taxes assessed on oil and gas interests owned by federal land bank are exempt from taxation and collection.

The procedure to be followed for exemption from taxes is outlined in K.S.A. 1986 Supp. 79-213 which requires any property owner requesting an exemption to file an initial request for exemption from the payment of ad valorem property

taxes assessed or to be assessed on forms approved by the board of tax appeals and provided by the county appraiser. (Emphasis added.) It is our opinion that the tax exempt status of a federal land bank does not relieve it from the procedures outlined in K.S.A. 1986 Supp. 79-213. See also Tri-County Public Airport Authority v. Board of Morris County Commissioners, 233 Kan. 960, 962 (1983) (the tax-exemption procedure prescribed by K.S.A. 79-213 and K.S.A. 79-210 reflects legislative intent to provide exclusive remedy before the Board of Tax Appeals in all cases involving a claim of tax exemption by a property owner, including political subdivisions of the state.)

In conclusion, if a person who is not insolvent transfers to a federal land bank (by voluntary conveyance or foreclosure) oil and gas producing interests after assessment but before the payment of personal property taxes, it is our opinion that a lien exists against the property for the unpaid taxes in accordance with K.S.A. 1986 Supp. 79-2020 and the federal land bank takes subject to the lien. The federal land bank in accordance with this statute then has a civil action against the transferor for the amount paid. However, priority given to debts due the U.S. government or its instrumentalities under 31 U.S.C. §3713, formerly 31 U.S.C. §191, may be triggered by the insolvency of the debtor, making the priority of claims a question of federal law.

The procedure to be followed for obtaining exemption from the payment of ad valorem property taxes is found in K.S.A. 1986 Supp. 79-213. While a federal land bank is exempt from the assessment of personal property taxes against its oil and gas interest, it is our opinion that as a property owner requesting an exemption, it is not relieved from the procedure of filing for an exemption.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


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