

collecting delinquent personal property taxes. Pursuant to these statutes, if taxes remain unpaid after notice and an opportunity for remittance, the county treasurer is to issue a warrant directing the sheriff to levy the amount of unpaid taxes upon any personal property of the person to whom such taxes were assessed. If the warrant is returned showing that the taxes have not been collected, the treasurer is to file with the clerk of the appropriate district court an abstract of the total amount of unpaid taxes plus interest, penalties and costs. This amount then becomes a judgment and a lien on the taxpayer's real estate.

Both K.S.A. 1987 Supp. 79-2017 and 79-2101 contain the following statement:

"None of the exemptions provided for in the code of civil procedure shall apply to any such judgment but no such judgment secured for taxes on personal property shall be levied against a homestead."
K.S.A. 1987 Supp. 79-2017, 79-2101.

This language appears to conflict with the statutory exemption for homesteads from foreclosure proceedings:

"A homestead to the extent of one hundred and sixty acres of farming land, or of one acre within the limits of an incorporated town or city, or a mobile home, occupied as a residence by the owner or by the family of the owner, or by both the owner and family thereof, together with all the improvements on the same, shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon. The provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife, when that relation exists."
K.S.A. 60-2301 (emphasis added). See also, Kan. Const., Art. 15, §9.

K.S.A. 60-2301 was discussed by the United States Court of Appeals for the Tenth Circuit:

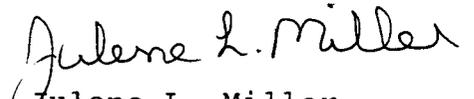
"The Kansas Supreme Court has emphasized that homestead property will be subject to tax foreclosure if the taxpayer fails to pay his taxes on the homestead property. In Re Estate of Dahn, 204 Kan. 535, 464 P.2d 238 (1970). There appears to be no case law, however, answering the question of whether a homestead can be sold to pay taxes not directly related to the homestead property. When the state law appears to be unsettled, the Court of Appeals will give great weight and credence to the federal district court's interpretation. (Citations omitted). The trail court in the instant case stated: 'The taxes covered by the Kansas exception must relate only to taxes arising against the property involved. At the time the term was used in the Kansas Constitution there was no such thing as income, sales, etc. type of tax by the Federal Government or the State Government. Not only that, but in addition, the tax on the homestead property was not severable against any individual homesteader.' United States v. Hershberger, 338 F. Supp. 804, 808 (D.C. Kan. 1972). . . . Upon analyzing the reasons for the provision granting property as a homestead, it can be determined that exceptions in the homestead law are the result of unjust enrichment to the homesteaders or voluntary alienation by the homesteaders. Logically, this philosophy would carry over into payment of taxes. Only when the homestead property does not pay its share for state protection should the court hold the homesteaders to have waived their right to constitutional protection." United States v. Hershberger, 475 F.2d 677, 680, 681 (10th Cir. 1973). Cited in McDaniel v. Jones, 235 Kan. 93, 111, 112 (1984).

K.S.A. 60-2301 therefore appears to allow execution of a levy against a homestead for taxes arising against that homestead. You have asked us to reconcile this conclusion with the provisions of K.S.A. 1987 Supp. 79-2017 and 79-2101 which preclude execution against homestead property when attempting to collect personal property taxes.

Generally, taxes assessed on a homestead are real estate taxes and thus the only way a homestead would be liable for personal property taxes would be pursuant to the procedures set forth in K.S.A. 1987 Supp. 79-2017 or 79-2101. This is specifically prohibited by those statutes. In the case of mobile homes, however, the taxes assessed against the mobile home are treated as personal property taxes. K.S.A. 1987 Supp. 79-2017 and 79-2101 discuss the levy of delinquent personal property tax judgment liens against real estate and except homesteads from this levy. A mobile home unless it meets the criteria stated in K.S.A. 79-340 to be considered real estate, would not be the subject of a lien against real estate. Thus, when read in context (and with regard to K.S.A. 60-2301), K.S.A. 1987 Supp. 79-2017 and 79-2101 do not seem to preclude levying execution against a mobile home (personal property) used as a homestead for personal property taxes assessed against the mobile home. In other words, a mobile home, as a homestead, may be exempt from liens arising from nonpayment of taxes on other personal property, but does not escape liens resulting from failure to pay property tax on the mobile home itself.

Very truly yours,


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