

1976 S.C. Op. Atty. Gen. 396 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4533, 1976 WL 23150

Office of the Attorney General

State of South Carolina

Opinion No. 4533

November 29, 1976

***1 The proceeds from personal property sold subject to a lien for county taxes may be distrained. There is authority that the lien on the property sold will, under certain circumstances, attach to the proceeds from the sale.**

Charleston County Treasurer

You have presented the following question:

When personal property on which county taxes have not been paid is sold by the delinquent taxpayer, what right does the county have in the proceeds from the sale?

Sections 65–2701 and 65–2702 make county property taxes a first lien upon the property taxed, however, a tax execution is issued against the defaulting taxpayer, not against the property taxed. The assessed taxes are a debt due to the county by the defaulting taxpayer. *Vallentine v. Robinson*, 188 S. C. 194, 198 S. E. 197. This office has previously stated that all property of a defaulting taxpayer is subject to execution and sale for nonpayment of ad valorem real and personal property taxes. 1971–1972 OAG No. 3239, page 20.

Section 65–2704 of the Code provides that the county treasurer may distain property for the payment of a chattel tax. Section 65–2702.1 provides that the lien for unpaid taxes on personal property shall attach to any personal property subsequently acquired by the delinquent taxpayer. It therefore appears that the sales proceeds held by the delinquent may be seized for payment of unpaid county property taxes.

The question of what priority a tax lien has in the sale proceeds from the property taxed is a novel one. The case law in South Carolina before the adoption of the Uniform Commercial Code recognized that a chattel mortgage could be collected from the proceeds generated by sale of the chattel. See *Cudd v. Rogers*, 111 S. C. 507, 98 S. E. 796 (1918), where the sale was made in the ordinary course of business so as to free the chattel from the mortgage. Section 9–306(3) of the Uniform Commercial Code specifically recognizes a security interest in proceeds under certain circumstances. See Section 10–9, 306 of the Code of Laws.

Equitable principles have been invoked in other jurisdictions to hold that a lien attaches to the proceeds received by the debtor from the sale of the encumbered property. See 53 C.J.S., *Liens*, Sections 7 and 12. Certain cases have held that the proceeds must be traced to the encumbered property for the equitable lien to attach. It was so held in *Marshall Savings and Loan Association v. Chicago*, 56 Ill. App. 2d 372, 206 N. E. 117, and in *Sandy Hook Bank's Trustee v. Bear*, 252 Ky. 609, 67 S. W. 2d 972. Other cases have held that a lien on the property encumbered will attach to the proceeds when the property is sold free from the lien. Two Alabama cases so hold: *C. E. Morton v. National Bank of Boaz*, 75 So. 2d 500, and *Morgan Plan Co. v. Bruce*, 97 So. 2d 805. These cases are cited at 51 Am. Jur. 2d, *Liens*, Section 60.

The county treasurer or other appropriate officer should distrain or otherwise take action against proceeds held by a delinquent taxpayer who has sold property subject to the lien for county taxes. There is authority holding that the lien on the property sold will attach to the proceeds received from the sale of the encumbered property.

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