



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

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June 9, 1954

Hon. Ramie Griffin
Criminal District Attorney
Jefferson County
Beaumont, Texas

Letter Opinion No. MS-136

Re: The liability of the Reconstruction Finance Corporation for penalties and interest on delinquent taxes under Article 7336.

Dear Mr. Griffin:

The question presented by you may be thus stated: Is the Reconstruction Finance Corporation liable for penalties and interest on delinquent ad valorem taxes on real property owned by it in this State, as provided in Article 7336, Vernon's Civil Statutes, under the Constitution and statutes of this State?

The Reconstruction Finance Corporation is a Federal agency incorporated by Congress (15 U.S.C.A. Sec. 601-619). The Federal Government owns all its stock. Its powers are extensive and cover a wide range of financial operations. Reconstruction Finance Corporation v. J. G. Menihan Corporation, 314 U.S. 81 (1941). The United States Supreme Court in this case said:

" . . . While it acts as a governmental agency in performing its functions (see Pittman v. Home Owners' Loan Corp. 308 U.S. 21, 32, 33, 84 L. Ed. 11,16, 17, 60 S. Ct. 15, 124, ALR 1263), still its transactions are akin to those of private enterprises and the mere fact it is an agency of the government does not extend to it the immunity of the sovereign. Sloan Shipyards Corp. v. United States Shipping Bd. Emergency Fleet Corp. 258 U.S. 549, 566, 567, 66 L. Ed. 762, 767, 768, 42 S. Ct. 386, 48 Am. Bankr. Rep. 249. Congress has expressly provided that the Reconstruction Finance Corporation shall have power to 'sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal.'" (Emphasis supplied throughout by the writer).

We assume that Reconstruction Finance Corporation does not contest the right of the State to assess and collect the tax upon the real property involved or the regularity of the assessment by the tax assessor of Jefferson County, but challenges only the right to collect penalties and interest on the delinquent taxes under the laws of this State. The right of the State to collect the taxes is no longer a debatable question in view of the holding in the case of Reconstruction Finance Corporation v. Beaver County, Pa., 328 U.S. 204, (1946). We are, therefore, here concerned only with

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the right of the State to collect the statutory penalties and interest.

Section 15 of Article VIII, Constitution of this State, is as follows:

"The annual assessment made upon landed property shall be a special lien thereon; and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all taxes and penalties due by such delinquent, under such regulations as the Legislature may provide."

Article 7172, Vernon's Civil Statutes, provides in part as follows:

"All taxes upon real property shall be a lien upon such property until the same shall have been paid."

Article 7320, Vernon's Civil Statutes, provides in part as follows:

"The land may sold under the judgment of the court for all taxes, interest, penalties and cost shown to be due by such assessment for any preceding year."

There is, therefore, Constitutional and statutory authority under the laws of this State enacted pursuant to the Constitution of this State to assess a penalty and interest on delinquent taxes and to sell the same to enforce the payment of not only the taxes but the penalties and interest which have accrued thereon. It is observed that by the express terms of Section 15 of Article VIII of the Constitution quoted above that the property of the delinquent taxpayer may be sold under such regulations as the Legislature may prescribe.

The Legislature has enacted comprehensive statutory regulations pursuant to the authority granted under the Constitution for the collection of delinquent taxes and also for the collection of penalties and interest. (Art. 7172, 7320, 7328a, 7336, 7345b, Vernon's Civil Statutes). Under these various statutory provisions, a suit for the collection of delinquent ad valorem taxes is brought as an ordinary foreclosure for such taxes, interest, penalties and costs and for foreclosure of the State's statutory and Constitutional lien on the property.

Congress has expressly waived immunity, and by explicit language has permitted real property of the Reconstruction Finance Corporation to be taxes in this State as other real property is taxed under the laws of this State. Section 607 of Title 15, Chapter 14, U.S.C.A., insofar as pertinent, provides in part as follows:

" . . . except that any real property of the Corporation . . . shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed."

There is nothing in this language to justify the construction that Congress has limited tax immunity strictly to the taxes. We think that Congress intended to make available to the State all the local machinery prescribed by law for the collection of the tax unless timely paid, and we can perceive of no logical reason why all Constitutional and statutory provisions of this State designed to hasten payment should not apply to Reconstruction Finance Corporation. Our Supreme Court has held that the purpose of the right to sell real property foreclosing the State's Constitutional and statutory lien is to hasten the right of the State to collect the tax. The Court in the case of Duncan v. Gabler, 147 Tex. 229, 215 S.W. 2d 155 (1948), used this language:

"The primary purpose of those parts of the Constitution which require or authorize the sale of land for the collection of taxes is that prompt payment of taxes may be enforced."

The predominant purpose is not to punish the delinquent taxpayer, but to hasten the collection of the State's revenue within the time prescribed by law.

It is significant to note that Congress has not provided any method of its own, as it might have, if it was not content to let the State law apply to the fullest extent as to all delinquent taxes, penalties and interest applicable to other taxpayers under State law.

We do not think this question turns upon whether the penalties and interest are a part of the tax, and is not to be governed by the case of Jones v. Williams, 121 Tex. 94, 45 S.W. 2d 130 (1931). In this case, the Court was concerned only with the question of the Constitutionality of an Act of the Legislature releasing penalties and interest on delinquent taxes. This statute was a temporary measure and was of short duration, expiring under its own terms. The Court held the Act constitutional and, of course during its application, no liability arose against the delinquent taxpayer for penalties and interest. But upon the expiration of this and similar Acts, the full force of all statutory provisions for the collection and enforcement of payment of penalties and interest on delinquent real property were restored with full force and effect and have continued to remain in force.

The case of Jones v. Williams, supra, merely holds that the penalty and interest is not a part of the tax but it does not hold that the statutory machinery set up by the Legislature to hasten the collection of delinquent taxes may not be enforced in the courts of this State to the fullest extent as the Legislature intended.

We are aware of the case of United States v. Nelson, et al., 91 F. Supp. 557 (N.D. Ill. 1949), which seems to hold that under the laws of that State penalties and interest may not be collected from Reconstruction Finance Corporation on real property owned by it in that State because the penalties and interest do not constitute a part of the original assessment. But we prefer to follow the reasoning of the Circuit Court of Appeals, a superior court, in the case of United States v. Hester, 137 Fed. 2d 145 (1943), wherein it said:

"A necessary incident to the power to tax property is the power to uniformly enforce the collection of the tax by any constitutional means deemed appropriate to that end. It is therefore plain that the lands in question are subject to all the laws which relate to the taxing scheme of the State of Oklahoma, and this necessarily includes the power to sell the lands, as other lands, for delinquent ad valorem taxes legally assessed thereon."

We think what was said by the Supreme Court of the State of Pennsylvania in the case of Borough of Homestead v. Defense Plant Corporation, et al., 52 Atl. 2d 581 (1947), is appropriate here. In this case the Court said:

"We have already considered whether the Plant's property was 'property owned by the . . . United States' and concluded that it was not. But, beyond that, we now hold as a matter of statutory construction that the phrase 'property owned by the . . . United States,' as employed in the cited section of the Pennsylvania Municipal Lien Act, was meant to embrace only such property of the United States as has not been laid open by the sovereign to local taxation; and we accordingly conclude that the Plant's property (being expressly subjected by the sovereign to local taxation) was not within the intent of the exception in the Lien Act."

Under our Constitution and statutes, there is no exception as to any real property which is subject to State and local taxation as to the imposition of penalties and interest on delinquent payments.

In the case of Borough of Homestead v. Defense Plant Corporation, supra, the Court went on to say:

"The construction, otherwise, for which the appellants contend would lead to an anomalous situation. Thus, a tax lawfully levied and assessed against a taxable governmental instrumentality would not be lienable while like assessments against all other taxables of the same tax district would be lienable."

The Court rejected the construction contended for by appellants in this case saying that to adopt such construction would imply that the Legislature intended to effect an assured result, whereas the proper rule of construction would be to the contrary. That is to say, that the Legislature did not intend that the property of one class of taxpayers owing taxes on similar property would be lienable, but the property of other taxpayers would not.

The Supreme Court of the State of New Jersey in the case of Byram Holding Co. v. Bogren, et al, 63 Atl. 2d 822(1949), pronounced the rule which we believe is applicable here.

In disposing of the question presented, the Court said:

"Congress has in several sections of the National Housing Act, 12 U.S.C.A. §§ 1706b, 1714, 1722 and 1741, provided that 'Nothing in this subchapter shall be construed to exempt any real property acquired and held by the Administrator . . . under this subchapter from taxation by any State or political subdivision thereof, to the same extent, according to its value, as other real property is taxed.' Similar provisions are to be found in the statutes regulating other governmental agencies and instrumentalities; for example, 15 U.S.C.A. § 607, Reconstruction Finance Corporation,-- 'Any real property of the Corporation shall be subject to special assessment for local improvements and shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.' Title 12 U.S.C.A. § 1433, Federal Home Loan Bank Act, contains the identical provision.

"It is well settled law that the Federal government by its law-making power may waive wholly, or with such limitations and qualifications as may be deemed proper, the exemption of its instrumentalities from state taxation, 51 Am. Jur. (Taxation), Sec. 222, Page 283. The foregoing pertinent provisions of the National Housing Act demonstrate quite clearly that the Congress intended that real property owned by the Federal Housing Commissioner should be subject to municipal taxation. A

mortgage being an interest in land, if held by the Commissioner, is subject to the same municipal lien. It necessarily follows that if an interest of the Federal Housing Commissioner is subject to the lien of a tax, he is accordingly subject to any proceedings to enforce payment of the tax. In R. F. C. v. Beaver County, Pa., 328 U.S. 204, 66 S. Ct. 992, 995, 90 L. Ed. 1172, Mr. Justice Black speaking for the United States Supreme Court said "To permit the states to tax, and yet to require them to alter their long-standing practice of assessments and collections, would create the kind of confusion and resultant hampering of local tax machinery which we are certain Congress did not intend. The fact that Congress subjected Defense Plant Corporation's property to local taxes "to the same extent according to its value as other real property is taxed" indicated an intent to integrate Congressional permission to tax with established local tax assessment and collection machinery."

This case construes the language used by the Supreme Court in the case of Reconstruction Finance Corporation v. Beaver County, supra, as we think it should be construed. The Court did not confine its comments merely to the assessment of taxes under local law but made it equally applicable to the collection of taxes under local law. To paraphrase what the Court said in the Beaver County case, to hold that the Reconstruction Finance Corporation is not subject to penalties and interest on delinquent taxes would require the State of Texas to alter its long-standing practice of exacting penalties and interest for delayed payments on delinquent taxes, the purpose of which is to hasten the collection of taxes and would nullify the provisions of our Constitution and statutes as to the method of enforcing the payment of taxes lawfully assessed against the Reconstruction Finance Corporation, notwithstanding Congress has permitted its real property in this State to be taxed as all other real property is taxed under the laws of this State.

A different rate would apply if the penalty and interest were imposed directly upon the United States or the sovereign, as distinguished from a Federal instrumentality such as the Reconstruction Finance Corporation. The cases all recognize this distinction, for as said by the Court in the case of Reconstruction Finance Corporation v. J. G. Menihan Corporation, supra, "the mere fact that it is an agency of the government does not extend to it the immunity of the sovereign."

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It follows from the foregoing that we are of the opinion that the Reconstruction Finance Corporation is liable for and obligated to pay the statutory penalties and interest provided in Article 7336, Vernon's Civil Statutes, on taxes owing by it not timely paid to the same extent and in the same manner applicable to all other real property and taxpayers in this State, and you are accordingly so advised.

Yours very truly,

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