

STATE OF MICHIGAN



JAMES J. BLANCHARD, Governor

DEPARTMENT OF TREASURY

ROBERT A. BOWMAN, State Treasurer

STATE TAX COMMISSION

4th Floor Treasury Building
Lansing, Michigan 48922 Telephone 517 373-0500

COMMISSION MEMBERS

THEODORE P. MANSOUR
LEROY J. NELSON
ROBERT O. VANDERMARK

TO: Assessing Officers
FROM: Property Tax Division
Department of Treasury
RE: Attorney General's Opinion 6528
Payment of Taxes - Small Business Administration

Attached is a copy of Attorney General's Opinion Number 6528 dated June 29, 1988.

Our understanding of this Opinion is as follows:

- A. If the Small Business Administration holds fee title to property on tax day, December 31, such property is exempt from assessment and taxation for the subsequent year.

Example:

The Small Business Administration acquires fee title to property on December 15, 1987. On tax day, December 31, 1987, the property is listed on the assessment roll as tax exempt federal property.

- B. (1) A tax lien attaches to property on the statutory or charter tax billing date, generally July 1 and December 1. If the Small Business Administration acquires a security interest in property prior to a lien date the Small Business Administration responsibility is limited to the amount of the tax not including accrued interest, fees, and penalties.

(2) If the Small Business Administration acquires a security interest in property subsequent to a lien date (tax billing date) the Small Business Administration is responsible for the payment of the taxes plus accrued interest, fees, and penalties.

Example:

The Small Business Administration acquires a security interest in property on September 1, 1986 and on December 15, 1987 acquires fee title to the property through foreclosure proceedings. Assume that taxes due on July 1, 1986, December 1, 1986, July 1, 1987, and December 1, 1987, have not been paid.

The Small Business Administration removes the tax liens by paying as follows:

July 1, 1986 tax liens: Payment of the tax and all accrued interest, penalties and fees.

December 1, 1986, July 1, 1987, and December 1, 1987 tax liens: Payment of the amount of the tax only not including accrued interest, fees and penalties.

On December 31, 1987, the assessor in preparing the 1988 tax roll, lists the property as exempt federal property.

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

TAX LIENS:

Imposition on lands acquired by
Small Business Administration

Interest and penalties on taxes
on lands acquired by Small
Business Administration

The Small Business Administration, an agency of the United States, is not subject to liens imposed upon lands for ad valorem property taxes arising after the date of acquisition of fee title by the agency.

The lien imposed upon lands for ad valorem property taxes arising prior to the date the Small Business Administration acquires a security interest in the lands is superior to the interest of the Small Business Administration, and the lien for interest and penalties associated with late payment of the taxes enjoys that same superiority.

The lien imposed upon lands for ad valorem property taxes arising subsequent to the time the Small Business Administration acquires a security interest in the lands is superior to the interest of the Small Business Administration, but the lien for interest and penalties associated with the late payment of taxes is subordinate to the interest of the Small Business Administration in such lands.

Opinion No. 6528

JUN 29 1988

Honorable Lana Pollack
State Senate
465 Farnum Building
Lansing, MI 48909

You have requested my opinion concerning ad valorem real property taxes, as well as interest and fees associated therewith imposed upon property with respect to which the

United States Small Business Administration (SBA) holds fee title or a mortgage interest.

Your first question may be stated as follows:

Are lands, title to which is held by the SBA, subject to a lien for taxes arising after the date on which the SBA acquired title?

Taxes are levied for a calendar year and are collected for the calendar year in which the taxes are assessed and the levy is made. Pere M R Co v Kalamazoo, L S & C R Co, 158 Mich 40, 42; 122 NW 356 (1909); OAG, 1965-1966, No 4463, p 207 (February 21, 1966). "Tax day," which is the 31st of December, is the day on which the taxable status of all lands for the ensuing calendar year is determined. General Property Tax Act, 1893 PA 206, § 2, MCL 211.2; MSA 7.2.

The General Property Tax Act, § 7, MCL 211.7; MSA 7.7, provides:

"Public property belonging to the United States is exempt from taxation under this act. This exemption shall not apply if taxation of the property is specifically authorized by federal legislative action or federal administrative rule, regulation, or lease."

Should the SBA, an instrumentality of the United States hold title to lands on December 31, the lands are

exempt from ad valorem real property taxes for the ensuing calendar year.

There is no federal legislation or federal administrative rule, regulation or lease subjecting lands, fee title to which is held by the SBA, to a state or local unit's jurisdiction to tax.¹

It is my opinion, in answer to your first question, that the Small Business Administration, an agency of the United States, is not subject to liens imposed upon lands for ad valorem property taxes arising after the date of acquisition of fee title by the agency.

Your second question is:

What taxes, interest and fees must the SBA pay to remove liens for taxes, interest and penalties which arose prior to the date on which the SBA acquired title to property as a result of the foreclosure of a mortgage held by it or a deed given it in lieu of foreclosure?

A different result applies with respect to interest and charges that may be imposed upon taxes levied on lands in which the SBA has a security interest. 15 USC 646 provides:

¹Compare with 38 USC 1820(a)(6), subjecting certain lands acquired by the Veterans' Administration to state and local jurisdiction to tax. See also 1953 PA 189, MCL 211.181; MSA 7.7(5), providing for the taxation of certain lessees and users of tax-exempt property, including properties owned by the federal government.

"Any interest held by the [Small Business] Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States."

Under provisions of the General Property Tax Act, § 40, MCL 211.40; MSA 7.81, the obligation to respond to annual taxation becomes a lien upon the lands on December 1, for state, county, village and township taxes, or upon such other day as provided in the charter of a city or village (commonly July 1 for most cities). The lien date for school district or intermediate school district taxes in the case of lands of the district located in a city is the same as that of the city, and in the case of a township, is July 1. School Code of 1976, §§ 1611 and 1612; MCL 380.1611 and 380.1612; MSA 15.41611 and 15.41612. In the absence of any other date specified by law or charter, real property tax obligation becomes a lien against the property on December 1. General Property Tax Act, § 40, MCL 211.40; MSA 7.81, US v Michigan, 429 F Supp 8, 10 (ED Mich, 1977); cf City of Gaylord v Gaylord City Clerk, 378 Mich 273, 301; 144 NW2d 460, 471 (1966). This lien is for the taxes "and for all interest and charges thereon [and] shall continue until payment thereof." General Property Tax Act, § 40, supra.

With respect to those taxes which became a lien upon lands prior to the acquisition of a security interest by the SBA, there can be no doubt as to the priority to be assigned the lien for taxes and the interest and charges associated therewith. The tax lien takes precedence. Should the SBA be desirous of improving its subordinate position or removing the lien, it must pay all taxes, interest and charges.

In those instances in which the lien for taxes (interest and charges) arises after the date the SBA acquires a security interest in the affected lands, a diverse result obtains.

In US v Consumers Scrap Iron Corp, 384 F2d 62 (CA 6 1967), the Small Business Administration and the City of Detroit were involved in a dispute over the relative priority to be assigned their respective claims to the proceeds of a foreclosure sale where the SBA acquired the security interest prior to the date of the tax lien on the lands. The court held:

"We believe the lien given priority over SBA security interests is only a lien on such property for taxes due on the property. Neither in the ordinary use of language, nor in any federal case law can we find authority for the proposition that Congress by using the word 'taxes' intended to include therein 'interest' and 'penalties.'
...

"Nor do we believe that the reference to 'applicable state law' in the currently considered federal enactment authorizes us to interpret the entire statute (including the term 'taxes') by state as opposed to federal law. ...

"We hold that where Congress has subordinated the United States' secured interests to 'any lien on such property for taxes due,' but has not similarly waived the sovereign's immunity from 'interest' and 'penalties,' that the phrase 'any lien on such property for taxes due' must be construed as referring to only that part of any lien which is for 'taxes due.'" Consumers Scrap Iron, supra, 384 F2d at 65.

Research reveals the decision of the federal district court in US v Cambria County, 532 F Supp 634 (WD Pa, 1982), a case virtually indistinguishable from Consumers Scrap Iron, reaching the opposite result.² The court relied on US v Kimbell Foods, Inc, 440 US 715; 99 S Ct 1448; 59 L Ed 2d 711 (1979), for the proposition that "where Congress has not addressed the specific issue involved, established non-discriminatory state law could be utilized in defining the rights of quasi-commercial agencies like the SBA which voluntarily expose themselves to the risks associated with commercial enterprise." Cambria County, supra, 532 F Supp at 635.

²The court noted:

"While Consumer Scrap Iron [sic] appears to have been the only case to consider this exact question, the divergence between the rationale of that case and Kimbell Foods convinced this Court that a reexamination of the issue is necessary in light of the reasoning set forth in Kimbell Foods." Cambria County, supra, at 532 F Supp 636, n 1.

The court quoted from Kimbell Foods, supra, 440 US
at 734:

"That collection of taxes is vital to the functioning, indeed existence, of government cannot be denied.... The importance of securing adequate revenues to discharge national obligations justifies the extraordinary priority accorded federal tax liens.... By contrast, when the United States operates a moneylending institution under carefully circumscribed programs, its interest in recouping the limited sums advanced is of a different order. Thus, there is less need here than in the tax lien area to invoke protective measures against defaulting debtors in a manner disruptive of existing credit markets." Cambria County, supra, 532 F Supp at 636.

The court concluded Pennsylvania law should be applied and, therefore, the lien for taxes due correctly included interest, fee, penalty and cost assessments. In so concluding, the court expressly reviewed the decision of the Sixth Circuit in US v Consumers Scrap Iron Corp, supra, and rejected that decision as being inconsistent with the subsequent opinion of the United States Supreme Court in Kimbell Foods, supra. Nevertheless, because Michigan is located within the Sixth Circuit, we are constrained to follow the opinion of that circuit until such time as it may be overruled by either the United States Supreme Court or the Sixth Circuit itself.

It is my opinion, in answer to your second question, that the lien imposed upon lands for ad valorem property taxes

arising prior to the date the Small Business Administration acquires a security interest in the lands is superior to the interest of the Small Business Administration, and the lien for interest and penalties associated with late payment of the taxes enjoys that same superiority. It is my further opinion that the lien imposed upon lands for ad valorem property taxes arising subsequent to the time the Small Business Administration acquires a security interest in the lands is superior to the interest of the Small Business Administration, but the lien for interest and penalties associated with the late payment of taxes is subordinate to the interest of the Small Business Administration in such lands.


FRANK J. KELLEY
Attorney General