



May 1, 2018

Todd D. Rowe, Esq.
Pennsylvania Land Title Association
1010 W. 8th Avenue, Suite H
King of Prussia, PA 19406

Re: PLTA's Questions on Pennsylvania Inheritance Tax Liens

Dear Mr. Rowe:

Our Office received your letter dated April 6, 2018 wherein you requested the Department's position on Pennsylvania Inheritance Tax liens' duration and priority. The Department's response mirrors the order in which your questions were raised, to wit:

1. Lien Duration.

When an individual dies and has a Pennsylvania Inheritance and Estate Tax Act reporting obligation, there is an encumbrance upon the title to their property unless and until, at the very least, the impacted real property is reported. This encumbrance constitutes a statutory lien but is unquantifiable until the property is reported, the property is valued under the Act, and a tax liability, if applicable, can be ascertained.

The Department's interpretation of 72 P.S. § 9169 is premised upon an Estate being opened, an inheritance tax return being filed, and the Department failing to take any action to collect upon the tax or preserve its claim by filing a lien. Said differently the Department's filing of a lien is the action under which the Department files suit to collect upon its claim and the revival language from § 9169 was superseded by the automatic revival language of 72 P.S. § 1404.1. In short, the Department does not construe § 9169 to cut off any Department of Revenue rights unless property has been reported and the Department has not done anything for twenty years following the decedent's date of death to perfect its claim for inheritance taxes (i.e., file its tax lien).

Based upon our discussions, it appears your organization believed 72 P.S. § 9169 to operate as a *statute of repose* whereby the Department's ability to collect inheritance tax against real property would be extinguished irrespective of whether an Estate were opened and property were reported; this is incorrect. No other Pennsylvania tax type has a statute of repose for reporting obligations or which acts as a bar to an assessment of tax or for collection thereto. All statutes of limitations in the Department's tax codes are tied to the filing of a return, and relate to the Department's requirement to respond to filed tax reports in a timely fashion. The Department interprets the Inheritance and Estate Tax Act in a similar manner, and § 9169 only applies to inheritance tax issues arising from compliant Estate liabilities.

In the event there are purchasers (i.e., “bona fide third party/purchasers”) whom have purchased encumbered property where the parcel was not reported in an opened Estate and more than 20 years and 9 months have passed since the date of death without the Department taking any action on the Estate, the Department will abstain from looking to that property for future collection actions. Please note, however, the Department does not consider any purchaser acquiring property from an Estate or a transferee of property from a decedent to be a “bona fide purchaser” and the Department’s agreement to abstain from future collection actions will not be extended in these circumstances.

To assist in clarifying this position, the following examples illustrate who the Department considers to be a “bona fide purchaser”: Decedent “A” dies on January 1, 2000, and Executor “B” opens an Estate but never reports Decedent “A’s” home; Executor “B” sells the property to Purchaser “C” on January 1, 2015; and Purchaser “C” sells the property to Purchaser “D” in October of 2020. The Department does not consider Purchaser “C” to be a bona fide purchaser and will not agree to forebear on potential inheritance tax obligations at any point in time (even after October of 2020 if Purchaser “C” continues to own) because Purchaser “C” knew or should have been aware of the inheritance tax obligation at the time of the purchase. The Department would, however, agree to forebear on inheritance tax collections against the property after October of 2020 if the property was purchased by Purchaser “D” through an arm’s length transaction.

Ultimately, the Department of Revenue, through its Office of Chief Counsel, is agreeable to reviewing circumstances where a party has acquired encumbered property to determine whether any inheritance tax should still be owed. Such inquiries can be directed to the Bankruptcy and Collections Unit of the Office of Chief Counsel with such supporting documentation as merited by the circumstances of the case. The Office of Chief Counsel will respond on a case by case basis.

2. Foreclosures.

Pennsylvania law generally requires that the Department be notified of judicial sales of real property to ensure tax claims are properly honored. See 42 Pa. C.S. § 8151; also see 72 P.S. § 1402. The Department accepts Pa. R.C.P. 3129 Notices to be sufficient notice for any existing Department liens which may exist against the captioned Defendants.

For inheritance tax purposes, however, the Rule 3129 Notices are only sufficient for those Estates that are opened and have reported the real property in question. To the extent there is a tax liability, the Department’s position is that its inheritance tax lien will survive any sale until it is paid pursuant to 72 P.S. § 9167 or unless the situation falls within the parameters of 72 P.S. § 9169 as previously discussed.

In the absence of an Estate being opened or the property being reported, the Department's statutory lien cannot be cleared until an Estate recognizing the decedent as dead is of record, and the impacted property has been reported as part of the Estate. At that point in time, the Department would have sufficient information to ascertain an inheritance tax claim was at issue and its claim on the property could be asserted. *The Department relies upon 72 P.S. §§ 1401, 1404.1, 9102, 9103, 9121, 9126, 9129, 9136, 9137, 9138, 9139, 9140, 9141, and 9167.*

In an effort to reduce the ambiguity in this area, the Department recommends that mortgagees or other associated financial institutions report property with any available valuation information and their corresponding date of death mortgage balances so the Department can adequately respond and provide the appropriate consideration. The Department is examining ways it can improve reporting processes to accommodate this problematic scenario. The Department will provide further guidance in this area as the accommodating processes evolve and are formally addressed and implemented.

3. Tax Sales.

The Department's claim for inheritance taxes would not be divested under any tax sale laws of the Commonwealth. Tax sale laws rely upon a statutory framework to divest "taxes" which are defined terms in the context of the respective tax sales which do not include Commonwealth tax liens. The intent of these statutes is to give the various political subdivisions the ability to sell property in their jurisdictions for unpaid real estate taxes, school taxes, and other similarly defined taxes and claims) and to provide the statutory mechanisms to accomplish this.

When it comes to Pennsylvania inheritance taxes, 72 P.S. § 9167 reflects that the lien remains until the taxes are paid. In this light, 72 P.S. § 9167 serves as an example of the "except as otherwise provided by law" language which is frequently found in these statutes. This interpretation is consistent with the Commonwealth's sovereign status of being a superior creditor to political subdivisions and other lienholders, and the full amount of the Commonwealth's tax liens are to be paid in their entirety.

The April 6, 2018 letter also requested confirmation of the Department of Revenue's position on the duration of other Department tax liens, their effect on after-acquired property, and their lien priority within the context of purchase money mortgages.

4. Lien Duration.

A Pennsylvania Department of Revenue tax lien will remain a validly filed lien until it is satisfied or is otherwise withdrawn by the Department. As previously discussed, all Pennsylvania Department of Revenue tax liens which are filed in the judgment index of a Court of Common Pleas are automatically revived so as to avoid lapsing or abandonment of the Department's claims. 72 P.S. § 1404.1.

Corporate tax liens are statutory liens and are created as of the date of settlement, assessment, or determination of the tax. 72 P.S. § 1401. The Department is required by statute to provide corporate tax lien certificates upon request.

The statute of limitations does not run against the sovereign. The Department has, literally, forever to collect its tax liabilities from a delinquent taxpayer and their encumbered property, including after-acquired property.

5. Effect on After-Acquired Property.

Pennsylvania Department of Revenue tax liens attach to after-acquired property.

The statutory language of the various lien provisions, in conjunction with the automatic revival statute, create a substantially similar scenario to the framework under which the Internal Revenue Service ("IRS") operated which was reviewed, approvingly, by the United States Supreme Court in Glass City Bank of Jeanette, PA v. U.S., 326 U.S. 265 (1945). In Glass City Bank, the Court held "stronger language could hardly have been selected to reveal a purpose to assure the collection of taxes" and "a continuing lien covers property or rights to property in the delinquent's hands at any time prior to expiration." The Court further held the language was clearly intended to cover after-acquired property when one considered the lien covered "property owned" when suit is filed rather than merely referencing property owned when the lien arose. Id. at 267. Because the various lien provisions employ similar language and logic in their filing status, enforcement provisions, and lien duration, it follows that the Department of Revenue's liens attach to after-acquired property. Further, it is unrealistic to believe the Legislature intended the Department to file new tax liens everyday to insure its tax liens attach to after-acquired property.

6. Lien Priority Compared to Purchase Money Mortgages.

The Department of Revenue's tax lien statutes for sales and use tax, personal income tax, employer withholding tax, and realty transfer tax all contain language that the liens are in favor of the Commonwealth against the property, real and personal, of such person but only after such lien has been duly entered and docketed of record. See generally, 72 P.S. § 7242(a), 7345(a), and §8112-C(a). These lien provisions create a traditional first in time first in right lien priority distribution scheme.

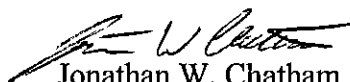
The only exceptions to this general rule are for corporation taxes which are still governed by 72 P.S. § 1401, and inheritance tax claims by virtue of 72 P.S. § 9167.

Corporation taxes are super-priority liens which will supersede even a previously recorded mortgage. See 72 P.S. § 1401.

The Department appreciates your organization's interest in these matters and recognizes the efforts your organization's members have made to ensure the Commonwealth's laws are honored in prior transactions. I hope the above adequately responds to your inquiries. If you have any questions please contact me.

Thank you for your time, attention, and future cooperation.

Sincerely,


Jonathan W. Chatham
Deputy Chief Counsel