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Title Derived by Sale of Land for Taxes.

- by -

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1930.
In all civilized countries there is a demand for revenues to pay the expenses of the government. They are derived from different sources, especially those derived from the tax on lands within its domain. The law governing the sale of them for the non-payment of its proportionate part of the required revenues is one branch of the American Statute law which has not for its basis the English Common Law. Of late years it has become of great importance, in fact one of the most important branches of the law of real property. The last half of the present century has witnessed great changes by legislative enactment; at one time in the earlier days of the law of the tax title, it was considered no title at all, and a mere farce on Judicial transaction. This has been changed in most states by legislative enactment or Constitutional provision, by granting to the purchaser of such lands some security for his money, and to protect the government in raising its revenues.

Proceedings Required for a Good Tax Title.

1. Taxation, laying assessments, etc.
2. Collection and Power of selling.


4. Forfeiture of lands and proceeding prior to the sale.

5. Time, place and conduct of the sale.

6. Who may purchase.

7. Subsequent proceedings.

8. Deed.

1st Taxation: In the Constitution of the several states it is declared that every member of society is bound to contribute his proportionate part to the expenses of the government, and also that they shall be equal and uniform through the state or municipality laying the tax, and must be laid in exact proportion to its value. Stimson, American Statute Law Sec. 330-332.

The tax must be legal and for a public purpose, for there can be no tax for any other purpose, for to lay the hands of the government for the private benefit for one, or a class of private objects, would be no less than robbery done under the hands of the government. Loan Association vs. Topeka, 20 Wallace, 335-33.

To distinguish whether the tax is laid for a public
purpose, there should be a distinction between the state and municipal taxation. Cooley, Taxation, 103. After the amount of taxes needed by the government has been ascertained, they should be apportioned to the different kinds of property, so that the burden should not fall upon any one class or kinds of property, as there can be no valid taxation until they have been so distributed; there should be some rule of uniformity to which each must contribute. There are several principles adopted by Judge Cooley in his work on Taxation. Cooley, Taxation, 244-6.

1st. The taxing district through which the tax is to be apportioned must be the district which is to be benefited by its collection and expenditure.

2nd. The basis for apportionment must be applied throughout the district.

3rd. May be more than one mode of collection.

4th. Not to embrace persons or property outside the district.

5th. No special or invidious discrimination, after the tax has been apportioned there remains the assessment before it becomes a lien on the land.
Assessment consists of the proper description of all persons and property liable for their part of the taxes, and the value of the property of all kinds after the value has been obtained or fixed by the assessor; it is then called the tax list or assessment roll. Without a proper assessment, no subsequent acts will make the deficiency valid, or if is lacking in any statutory provision it is void; nor will the Statute of Limitations make a deed sufficient if it is void in this respect, or give the deed a claim on the lands for taxes; nor can it be cured by statutory provisions. If there is no assessment there can be no taxes, therefore, it cannot be dispensed with by statutory authority. Such regulations as required by statute are deemed imperative, and must be strictly followed by the officer in performing his duty, as this is one of the safe-guards provided for the tax payer; but those regulations that are not in any measure injurious to the tax payer, but for the convenience of the assessor in discharge of his duty, will be overlooked by the courts. If the assessment is made by anyone not authorized, it will be void, and taxes assessed on such are invalid; but where the officer is authorized
by the statute to keep a deputy, the assessment made by such deputy is valid.

The land should have an actual cash value put thereon by the assessor. Where the assessor puts it thereon, the tax payer should have an opportunity to inspect the list and amount of valuation, to ascertain whether the assessor had put on it a false valuation. This duty of the assessor has been changed in many states by requiring the tax payer to make and deliver to the assessor an itemized list and valuation of all property subject to taxation. The list properly given and authenticated by the listor is conclusive for certain purposes, and is prima facie correct, but as a rule it is not absolutely conclusive on the assessor. If the tax payer fails to give in the required list, it is provided by statute that a penalty should be added. Cooley, Taxation, 353. In some states he is liable to indictment. 14 Tax. App., 171. Caldwell vs. State; Black Tax Titles, 59, note 2.

In the assessment of the lands, separate parts or parcels should be assessed and valued separately, as joining two or more parcels belonging to different own-
ors creates no lien for any part of the taxes, or where
the owner is unknown; this then is far more important,
for the land may belong to several different owners, and
if it was described in one body, it would be impossible
for them to know that it was delinquent and liable to
be sold if the taxes are not paid. Where there are
joint or co-tenants to lands each one should list his
interest separate. If the owner is known it should be
assessed in his name, but if he is unknown it may be
assessed to an unknown owner with other descriptions, so
the owner can distinguish it. The law protects the
owner of such property from being placed in such a
position, by requiring that when they are to be divested
of their property by statutory proceedings, that the di-
rections in the statute must be strictly pursued; but
when so listed the land should be so described as to
inform the owner of the delinquency of the taxes. Al-
though the general rule is, it must be a in the name of
the owner, there is an exception, as it makes no dif-
ference if assessed in the name of a person who has no
claim or title whatever. Morrick vs. Hutt, 15 Ark.;
Hensworthy vs. Mitchell, 21 Ark. 146; 27 Ark. 453;
Black, Tax Title, p. 49, note 2.

In Pennsylvania, if the name in which the land is assessed has become, in some way, linked to the land, it will support an assessment. Glass vs. Gilbert, 53 Pa. St., 339. This is not the only safeguard provided for the tax payer. The assessment list should contain a description of each parcel assessed separate. The object of this is:

1. To notify the owner of the delinquency of the tax. 2. That they are one and not paid, and to inform those wishing to purchase, that such lands will be offered for sale. 3. That a proper deed may be made to the vendee.

It has been difficult to say what is a sufficient description. It is held in Taylor vs. Wright, 121 Ill. 433, that this description was sufficient: W. side N. 1/2 S. E.R. W. 10 Acres, Sec. 3 Tp. 23, Range 10; while in Morgan vs. Schwartz, 6 So. Rep. 326, (1889) that S. W. pp. in Sp. S. Parish, Claim Sec. 30 T.I.R. 6 W. 261 25-100 acres, was insufficient; while other courts have held, that if the description would be sufficient to transfer the land between private parties, that it would
support a valid assessment.  See Wis. 107. Judge Cole-
ley in his work of Taxation (104-5) doubts this doctrine.

In several states they have provided that land shall
be listed as owned by a resident or non-resident, or as
in Pennsylvania, as seated or unseated: Hegley vs.
Broading, 32 Pa. St., 225. After the list has been
properly prepared, it should be signed and sworn to by
the assessor. After the list being delivered to the
proper officer, he should add to the roll the amount
of taxes due on each, for this fixes the amount due from
each kind of property.

End. Collection and Power to Sell.

The authority to collect is derived from the state,
and the manner or modes of collecting are: (1) Arrest
and imprisonment of the person. (2) Distress and sale
of all chattles of the delinquent. (3) Sale of lands.
As the last is the only one connected with this subject
I shall confine myself to it. The origin or foundation
of the power to sell for the non-payment of taxes is de-
rived directly from the statute. If the lands are sub-
jected to taxes, it would be for the same reason that
they should be liable for sale for the non-payment of
them, if they were not the demands of the state would never be collected.

The authority to collect and to sell the lands if the taxes are not paid is conferred upon some officer, with rules and regulations regarding his acts and manner of exercising this authority, who must strictly follow the directions provided by statute.

In Chandler vs. Spear, 22 Vt., 365, Judge Hall in his opinion says, "Where the statute under which land is to be sold for taxes, directs an act to be done, or prescribes the form, time and manner of doing an act, such act must be done and in the form, time and manner prescribed, or the title is invalid, and in this respect the statute must be strictly, if not literally, complied with."

The right to sell land for taxes is destroyed upon payment of the taxes by anyone, who has the right to make such payment.

The law in force at the time of assessment should govern all subsequent acts and the sale of lands upon that assessment.
Taxes are not a debt, in the ordinary sense of the word, upon which an action of assumpsit will lie, but in some states it is required that there should be a judgment given, by a court of competent jurisdiction, in order that there should be a valid sale, the statute in regard to this should be strictly followed. This is strictly not a judicial proceeding, and is only adopted for the protection of all concerned. Judge Benio, in the matter of trustees, etc., 31 N. Y., 574, says, "Where the state, or a local division of it, acting under a law of the state, seizes and sells lands for the non-payment of taxes, or of public charges in the nature of taxes imposed on such land, the proceeding is administrative and not judicial. The legislature may do away with the judicial form and adopt the measure that is more convenient and advantageous to the state and taxpayer", which is done in many states by proceedings in rem, and the one which is most used. The difference between this and former is, in the former there must be a personal notice, and is conclusive only between the parties to the proceedings, while the latter is binding
on all the world, and the notice is generally given by posting or advertisement of the delinquent part of the list. It must show the actual amount of taxes due by either way, personal or constructive notice, or it is defective. The amount must be expressed in the plainest manner possible, using numerals without the signs to denote what they represent is insufficient. After judgment, in some form against the person for taxes, it has been declared by statute that it is to be the prior claim on the land, and it will take priority over a mortgage or any prior incumbrance, and if not paid within the time prescribed, the land shall become delinquent and liable to be sold for the same, which, the sale, is but a summary foreclosure of the lien, and this is only for the security in the collection of the revenues. Tompkins vs. L. R. & F. Ry. R. & F. Ry. 18 Fed. 344. If the lands passes into the hands of a bona fide purchaser, without notice, it does not discharge this lien. This lien in some states continues for two years from the time the assessment list is completed.
4th. Forfeiture of the land and proceedings prior to the sale.

In some states after the lands become delinquent and the list has been returned by the collector to the proper officer, the title to the delinquent lands vests absolutely in the state, subject to the rights of the parties to redeem within a certain period, while in others it gives power to certain officers, designated by the Constitution or statutes of the state, to sell such, by certain rules prescribed in the act, giving such officer the power to sell. Such rules are to be strictly followed, while some have prescribed certain forms antecedent to the sale, viz.:— 1st, return of the delinquent list. 2nd, Collector's warrant. 3rd, Notice or advertisement of the sale, all of which are mandatory.

First, the Assessor should show compliance with all the requirements provided, as to its contents, time, place and manner of filing with the proper officer designated for that purpose, for upon his return depends the subsequent proceedings.

The person who collects the taxes should have a proper warrant for that purpose, which usually consists of the assessment roll with the taxes extended upon it, or a copy of the same, and if the steps are not taken which are provided for, he is a trespasser, if he uses any force or compulsion in collecting the same.

To authorize the collector to sell the lands they must be delinquent and liable to be sold.

Third. Notice.

After the collector or other officer has received his authority to collect the taxes, he is required 1st, to give notice of time and place of collection; 2nd, notice of time, manner and place of sale of those that are delinquent. The object in both cases is to notify 1st, that the taxes are due; 2nd, that they are unpaid, and the land is liable for the taxes; and 3rd, to notify those who are intending to invest in such lands, of the time and place of sale, and the amount due on such lands. The statutes of the different states are not uniform on this point, as in some states they require a personal notice, while others require it to be published in some
newspaper in the district, or at the seat of government, for a given number of times. In all states the notice as required by their statutes should be strictly followed. Where it requires a personal notice, a written or printed notice will not do, but where the statutes are silent, one in writing must be given. Parsons vs. Lovejoy, 53 Harb., 407.

This notice should contain the time, place of sale, property described, and that they are to be sold at public auction, the amount of taxes, name of the party to whom it is assessed. The property should be accurately described; this notice should contain all the requirements to render the sale valid. The description in the notice should be the same as it is in the assessment. Notice should give the year for which the taxes are due. If the notice was given before the officer qualified by taking the oath prescribed and a sale follows, its is void, or if the fails to affix his official title, so that it does not show it to be official, it is void. There are several other minor acts which are required.

As to the time of giving notice, it must be given
at the required time prescribed. If it is a day too soon, it is absolutely void; if it is required to be published once a week for any definite time, it should be done; but the actual day of publication need not be the exact week, but may be so that there is more than a week between such publications. Ricketts vs. The Village of Hyde Park, 85 Ill., 110. It is equally defective if published later than the time fixed. The proof of notice should be made a part of the record. Cooley Taxation, 497.

Fifth. Time, Place and Conduct of the Sale.

The sale must be on the day appointed. The rule of law in regard to the time and place of sale is to be strictly construed according to the statutes under which they are to be sold; and if sold at any other time or place, the sale is void and of no effect whatever. Chancellor vs. Keeler et al., 46 Iowa, 506. If this was otherwise, the rights of the taxpayer would be at the mercy of the collector. Where the statute requires it to be on a certain day, it is necessary for the sale to be commenced on that day, but if it is in the power of the courts to fix another day besides the one spec-
ified in the statute, that may be done. A tax deed reciting the sale but not the order of the court is void on its face, but the days for holding the tax sale are not always mentioned in the statute, as in some states it is provided that the collector shall commence in so many days after the return of the delinquent list, to give notice of the intended sale and to continue for so many days; or where the time begins to run from a certain day of the year, which the sale is to take place at the stated period or any mentioned in the notice. If the time has been shortened in any manner, the sale is void and creates no lien upon the land for the taxes, and it may render the officer liable for trespass. In the case where the statute requires notice to commence on a certain day and run for so many days, if the time should end on Sunday, the sale should be and will legally commence on the following Monday. The sale should be for the amount of the tax due, with any and all penalties, but should not be for more, no difference if the excess is a mere nominal sum; but some courts hold that if it was a mere trifle it would not invalidate the sale. Coleman vs. Shattuck et al. 62 N. Y. 343.
The sale should be by the proper officer designated for that purpose. In some states it may be conducted by the tax collector, sheriff of county, county treasurer, auditor, or a special commissioner for that purpose. A tax sale by an unauthorized person is void.

The officer must reside in the county where the land is situated, but where the land was assessed and after the assessment the county was divided into two counties before the sale, a sale by the proper officer of the county of original jurisdiction was held valid. Austin vs. Holt et al., 32 Wis., 475. The sale must be made public; if it sold privately for the amount of the tax due it is void. The sale must be to the highest bidder or the person who will pay the taxes due on the whole land for the least part. The sale should be recorded, so that it may appear to have been sold to the highest bidder; it should be for cash unless the statute expressly allows it to be sold on credit. The officer cannot allow it to the purchaser, and any fraud of the officer, whose duty it is to sell the land, in allowing any person to buy lands privately, or by not allowing others to bid for the same, renders the sale void. Where
there is a combination between the bidders at a sale to keep down competition for the land, it will render the sale void or voidable at the suit of the original owner, but two or more may bid jointly upon the property at the sale, if they do it to protect their interest and not to prevent competition. The validity is governed by the law in force at the time of the sale. The amount sold in one body should be assessed or advertised in the delinquent list, unless a less amount was sold for the entire tax.

Sixth. Who may Purchase.

Any person who owes a positive duty to the state to pay the taxes cannot be a purchaser at a tax sale for the non-payment of them, and if he does, he does not obtain any title by such purchase.

The mortgagor or any one claiming under him cannot purchase at the sale so as to defeat the lien of the mortgagee; nor can the mortgagee purchase so as to divest the title of the mortgagor.

Where land is owned by joint tenants or tenants in common, neither one of the tenants can buy so as to gain a paramount title over his co-tenant, for it is the duty
of any one to pay the tax, and a court of equity will not allow one tenant or partner to take advantage over his co-tenants or partners in business transaction relating to their common business. A tenant for life cannot purchase at a tax sale so as to obtain a title adverse to the remainder man. This is the same as to husband and wife, attorney and client, principal and agent, and others of a fiduciary relation, without first renouncing this fiduciary relation. A tenant for years in which he undertakes to pay all taxes, cannot benefit himself by not so doing, and then buying the land for taxes.

An adverse claimant, or person who claims title to such lands, cannot secure a better title by a tax deed. Most states provide that no public officer can purchase at a tax sale. If the land is not sold to a private person, the statutes provide in most states that the officer conducting the sale shall bid in the same for the state for the amount of taxes, penalties and costs of the sale.

Seventh. Subsequent Proceedings.

After the land has been sold there are yet several
required steps before the purchaser's title is complete.

Some required of the officer conducting the sale, others of the purchaser.

First, the officer must make a proper return of the sale in the form as required. The return is used in various ways, (a) as evidence in regard to the regularity of the sale, (b) to furnish the names of the buyers, (c) name of the delinquent, (d) quantity of the land sold and its description, (e) amount of the bid. The failure to make the proper return makes the sale void. In some states the sale must be affirmed by the court.

Second, when the purchaser has paid the purchase price or the amount of the bid, he is entitled to a certificate of purchase, and some states require this certificate to be recorded. It is capable of being assigned, and the assignee takes all the rights of the grantor; but it will not pass by mere delivery, and is usually transferred by a quit-claim deed.

In most states a deed is not made until the time allowed for redemption, which is generally fixed at two years from the time of sale; but in some states the purchaser is entitled to a deed as soon as he buys the
land, but it is not to be recorded until the time for
redemption has expired; but in all cases the purchaser
is not allowed to receive any benefit or to enter upon
the land until the time has expired for the owners to
redeem.

Eighth. Tax Deed.

The deed is the last step required by the statute.

This should conform strictly to the statute, as it is the
official evidence of the purchaser, and also his author-
ity to enter upon the enjoyment of his purchase. The
parties to the deed are different in the several states,
as they differ in regard to the grantor. Some require
the deed to be made in the name of the state, others the
county or city selling them; while some require it to be
in the name of the officer conducting the sale. It
should be made to the purchaser or his assignees; but
where it is to the latter, it should mention the assign-
ment. The purchaser or grantee should have his deed
recorded as evidence to all the world of his title.

But notwithstanding the dubious estimation in
which a tax-title is held, if all the requirements of
the law as to the preliminary proceedings have been com-
plica with, the tax deed conveys an absolute title, and the purchaser cannot be divested of it, although he may have paid for it a sum altogether disproportionate to the real value of the land. Tiedeman, R. P. sec. 730.