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tion. A prospective purchaser at a tax sale should remember that a lawful tax, a lawful levy, and a legal assessment are conditions precedent to a valid tax sale.⁵⁴

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DEFECTS IN THE TAX SALE AS AFFECTING VALIDITY OF TITLE

In Wyoming, prior to 1941, a tax deed, though regular on its face, was not prima facie evidence of title.¹ The 1941 Wyoming legislature shifted the burden of proof with a law² which became section 32-1627, Wyoming Compiled Statutes, 1945, and provided that a tax deed, or a Commissioners' Deed of property bid in for taxes shall be prima facie evidence of title to the property therein described.³

But even this shifting of the burden of proof (possibly in response to the suggestion of the Wyoming Supreme Court in *Davis v. Convention*⁴) does not relieve property held under tax deed or Commissioners' Deed of the cloud on title caused by any failure to follow every mandatory provision of the law under which the sale was effected.⁵ Apparently even today, a litigant seeking to invalidate a tax title need only show that one of the mandatory steps in the proceedings from assessment to sale is ineffective. Upon such a showing, a tax title will be invalidated.⁵

Obviously then county officials must be schooled and urged to follow the prescribed procedure with meticulous care if tax titles are to be saleable. It is the threat of sale of property for taxes unpaid that makes possible the collection of tax assessments. If the threat is removed because of the inability of a county to pass a defensible title, it is very possible that the whole tax structure of the state may break down.

After a valid and sufficient assessment of taxes, the County Treasurer (sometimes called the "collector"⁶) is charged with the duty of collecting taxes. Taxes

54. *Secombe v. Louis Phillips' Estate*, 162 Cal. 161, 121 Pac. 388 (1912); *Fuller v. Wilkinson* 128 S. W. (2d) 251 (1939) (Where a three mill road levy had not been voted by electors at the preceding general election, there was no authority for extending the tax against the lands, and a sale for the lands for taxes including such road tax was void.) *Hecht v. Boughton* 2 Wyo. 385 (1881); where the court said a levy of tax before the owner of property has had an opportunity to object to the assessment is invalid.

1. *Mathews v. Blake*, 16 Wyo. 116, 92 Pac. 242 (1907).

2. Laws 1941, Ch. 23, Sec. 1. Approved and effective February 1, 1941.

3. Sec. 32-1627, Wyo. Comp. Stat. 1945. Tax deed or deed from county for real estate purchased at tax sale—Prima facie evidence of title—Right to possession.—Any person, firm or corporation being the grantee in any tax deed issued by the County Treasurer of any County in this State on account of prior sales made for delinquent taxes on lands, or who shall be the grantee under any County Commissioners' deed issued by the Board of the County Commissioners of any County in the State of Wyoming, where the real property described therein shall have been sold to any County on account of delinquent taxes, and all successors in title interest of each such grantee shall be entitled to the possession of the lands described in such deed and such deed shall be prima facie evidence of title to the property described therein; and the burden of proof shall be upon any party seeking to set aside or invalidate such title in any action in the courts of this State.

4. 45 Wyo. 148, 154-155, 16 P.(2d) 48 (1932). Approved in *McCarthy v. Union Pacific*, 58 Wyo. 308, 131 P.(2d) 326.

5. *Davis v. Convention*, 45 Wyo. 148, 16 P.(2d) 48 (1932).

6. Sec. 32-1606, Wyo. Comp. Stat. 1945.

levied become delinquent on the tenth day of November and the tenth day of May of each year. The amount of the tax draws interest at 11 percent per annum until paid or collected by distress or sale.⁷

No property shall be sold for taxes, except in the manner now provided by the laws of the State of Wyoming.⁷

After taxes become delinquent in any year, the statute⁸ provides that the collector shall at once proceed to make demand upon the taxpayers for the taxes due. The necessity for this "demand" is set out in an early Wyoming case⁹ in which it is asserted that a sale of realty for non-payment of taxes must be based on a delinquency—a default. "There can be no delinquency or default without prior notice to the owner, so as to enable him to pay and prevent sale; hence all the proceedings prior to the sale must involve such notice and connect the tax with the owner, so as to bind property and ownership. If the proceedings violate this principle, they are void. No delinquency or default can be committed by the owner unless demand shall have been made upon him."

The demand for payment having been made and the taxpayer having failed to make payment, it is the duty of the county treasurer to certify the delinquency.¹⁰ The failure of the collector (Treasurer) does not vitiate the taxes.¹¹ But such taxes cannot be collected by distress unless there be made out, certified and filed in the office of the treasurer, in substantial compliance with the law, a list of delinquent taxes, including the taxes sought to be collected.¹¹

Delinquent taxes are enforced by the levy of distress upon the real or personal estate of the delinquent and the sale of any or all of the property for the taxes due, plus prescribed interest and penalties.¹² In such a sale, only the estate assessed will pass by the sale. For instance, in *Ohio Oil Co. v. Wyoming Agency*¹³ it was held that "after a severance of the mineral estate has been worked, even a valid sale for delinquent taxes will not affect the title to the mineral estate. An assessment of the surface estate (after a severance) is not an assessment of the mineral estate."

Section 32-1610 provides that "it shall be the duty of the county treasurer to advertise for sale, in the manner now provided by law, previous to the first week in September in each year, all real property within their respective counties upon which the taxes, either real or personal, have not been paid for the preceding year or years . . ." ¹⁴ Although the statute quoted does not specifically require that the taxes delinquent be identified by years in the giving of notice, the Wyoming Supreme Court in *Davis v. Minnesota Baptist Convention*¹⁵ expressed the opinion that good practice would be to indicate in the published notice of tax sale the year for which delinquent taxes were due and for which the property was to be sold.

7. Sec. 32-1603, Wyo. Comp. Stat. 1945.

8. Sec. 32-1606, Wyo. Comp. Stat. 1945.

9. *Hecht v. Boughton*, 2 Wyo. 385, 400 (1881).

10. Sec. 32-1604, Wyo. Comp. Stat. 1945.

11. *Noble et. al. v. Amoretti*, 11 Wyo. 230, 71 Pac. 879 (1903).

12. Sec. 32-1606, Wyo. Comp. Stat. 1945.

13. 63 Wyo. 187, 179 P.(2d) 773 (1947).

14. Sec. 32-1610, Wyo. Comp. Stat. 1945.

15. 45 Wyo. 148, 16 P.(2d) 48 (1932).

In view of Section 32-1610 it is clear that the language of Section 32-1607¹⁶ imposes no limitation on the sale of realty for delinquent taxes, even though the land is sold for several years of back taxes.

The county treasurer is specifically commanded to "give notice of the sale of real property for delinquent taxes by publication . . . the first (publication) of which notice shall be at least four weeks before the day of sale . . ." ¹⁷ Prior to the enactment of Sec. 32-1627, Wyo. Comp. Stat. 1945, which shifted the burden of proof, the Supreme Court of Wyoming said¹⁸: "Failure to prove publication of notice is fatal to a tax deed." Under the present statute, it would seem obvious that proof of lack of publication of notice would be fatal to validity of a tax deed, since "a sale without notice is invalid."¹⁹

Section 32-1611, Wyo. Comp. Stat. 1945, sets out in detail the procedure for giving notice and provides what information shall be contained in the notice. Although it is essential that notice be given, a sale is not invalid for error in stating the amount due and unpaid.²⁰

At this point in the proceeding, alternative routes are available, depending on whether or not there is a private purchaser (as distinguished from a purchase by the county). These are detailed separately below, and will later be compared.

Sale to a Private Purchaser

A private purchaser who offers to pay the amount of taxes, penalties and costs on any parcel of land, in exchange for the smallest portion of the land, will be deemed the purchaser.²¹ The homestead may be sold only for taxes due on the homestead itself, and the land may be so divided as to include the homestead in the smallest portion.²¹

Should a purchaser fail to pay forthwith, the sale is a nullity and the land will be re-sold just as if no sale had taken place.²²

Upon payment of the amount of taxes, penalty, interest, etc due, a purchaser is thereby entitled to a "Certificate of Purchase" upon the payment of a fee of fifty cents,²³ which Certificate is freely assignable.²⁴

The Certificate of Purchase is held by the purchaser subject to a broad right of redemption. This right of redemption is available to one with almost any right in the land. As was said in *Sanders v. Ellis*²⁵ and quoted with approval in *Hackett v. Linch et al* ²⁶, "Almost any right, either at law or in equity, perfect or inchoate, in possession or in action, or whether in the nature of a charge or encumbrance on land amounts to such an ownership as will entitle the party holding it to redeem."

16. ". . . it is hereby made the duty of the officer . . . to proceed and collect all such (delinquent) taxes . . . at any time within one year after the first payment of such taxes become due and payable."

17. Sec. 32-1611, Wyo. Comp. Stat. 1945.

18. *Barrett v. Barrett*, 46 Wyo. 84, 23 P.(2d) 857 (1933).

19. *Electrolytic Copper Co. v. Rambler Consolidated Mines Corp.*, 34 Wyo. 304, 243 Pac. 126 (1925).

20. *McCague Inv. Co. v. Mallin*, 25 Wyo. 373, 170 Pac. 763 (1918).

21. Sec. 32-1613, Wyo. Comp. Stat. 1945.

22. Sec. 32-1614, Wyo. Comp. Stat. 1945.

23. Sec. 32-1616, Wyo. Comp. Stat. 1945.

24. Sec. 32-1617, Wyo. Comp. Stat. 1945.

25. 42 Ark. 215 (1883).

26. 57 Wyo. 289, 298, 116 P.(2d) 868 (1941).

One with a right to, and a desire to redeem may do so at any time within four years after the date of sale²⁷ or prior to the date set as the date when the right to redemption will expire, which expiration date must be not less than three months after the date of notice given by the holder of the Certificate of Purchase.²⁸

A redemptioner perfects his right by paying to the County Treasurer for the benefit of the holder of the Certificate of Purchase, the amount for which the property was sold, plus three percent, plus eight percent interest on the whole amount, plus the amount of all taxes accrued subsequent to the sale, plus eight percent interest per annum on that amount.²⁹

In case one entitled to redeem was, at the time of the sale, under the disability of minority or lunacy, he may redeem at any time within one year after the removal of the disability.³⁰

When a redemption is effected, it is the duty of the County Treasurer to issue a Certificate of Redemption to the redemptioner, and to notify the person holding the Certificate of Purchase.³¹

Although Sec. 32-1621, Wyo. Comp. Stat. 1945, seems to provide for the issuance and delivery of a deed upon surrender of the Certificate of Purchase and payment of a two dollar fee (without more), such a deed, so delivered, is so completely ineffective that it will not even provide a color of title sufficient to set in motion the Statute of Limitations.³²

The additional procedure necessary to provide entitlement to a tax deed are set out in Sec. 32-1622, Wyo. Comp. Stat. 1945, and these additional procedures must be followed with meticulous care.³³

First, the purchaser must give notice of the purchase to every person in actual possession of the land by personal service,³⁴ every person in whose name the land was taxed if, on diligent inquiry he can be found in the county; by registered mail to the record owner of the land and mortgagees of record.³⁵ Failure to give this notice or, in the alternative, to affirmatively prove that the address of such record owner or mortgagee is unknown, will invalidate subsequent proceedings at least as to that owner or mortgagee.³⁶ Even though notice is effectively given by registered mail to a record owner or mortgagee, the purchaser must give notice by publication.³⁷

The time for redemption will not expire until three months after the giving of notice³⁸ and the notice must state a day certain not more than five months nor

27. Sec. 32-1618, Wyo. Comp. Stat. 1945.

28. *Hackett v. Linch et al*, 57 Wyo. 289, 297, 116 P.(2d) 868 (1941).

29. Sec. 32-1618, Wyo. Comp. Stat. 1945.

30. Sec. 32-1619, Wyo. Comp. Stat. 1945.

31. Sec. 32-1620, Wyo. Comp. Stat. 1945.

32. *Denny v. Stevens*, 52 Wyo. 253, 73 P.(2d) 308, 75 P.(2d) 378 (1937), rehearing denied

33. As is said in *Burns v. State*, 25 Wyo. 491, 173 Pac. 55, (1917) (approved in *Barrett v. Barrett*, 46 Wyo. 84, 23 P.(2d) 857 (1933), "... a statute (providing a right of redemption) should be liberally construed in the interests of the owner."

34. *Clinton v. Elder*, 40 Wyo. 350, 360, 277 Pac. 968, 280 Pac. 889 (1929).

35. *Barlow v. Lonabaugh*, 61 Wyo. 118, 137, 156 P.(2d) 289 (1943).

36. *Hackett v. Linch et al*, 57 Wyo. 289, 297, 116 P.(2d) 868 (1941).

37. Sec. 32-1622, Wyo. Comp. Stat. 1945.

38. *Hackett v. Linch et al*, 57 Wyo. 289, 298, 116 P.(2d) 868 (1941).

less than three months after the final publication of notice on which the time for redemption will expire.³⁹

Having given sufficient notice of intention to apply for a tax deed, the purchaser is required to file with the county treasurer proof of compliance,⁴⁰ and to surrender the Certificate of Purchase. Proof of service of Notice of Intention to apply for tax deed should be explicit in identifying the person served.⁴¹

It is the duty of the County Treasurer to issue a tax deed⁴² which deed, together with the proof of service should be filed and recorded as other instruments affecting the title to real estate.⁴³

The form of the tax deed is set out in Sec. 32-1624, Wyo. Comp. Stat. 1945, and must be acknowledged before the Clerk of the District Court.⁴⁴

Should a purchaser complete all the necessary steps and then find that through some error on the part of the county treasurer or his deputies, the county had no right to sell the land, then the county is obligated to hold the purchaser harmless.⁴⁵

Sale to the County

At the tax sale each year . . . any real estate that cannot be sold for the amount of taxes . . . shall be bid in by the County Treasurer for his county, and such County Treasurer (who) shall thereupon issue a certificate of purchase to said county.⁴⁶ The Certificate of Purchase so issued may be sold by the County Commissioners at public or private sale during the following four years, and if the Certificate is not so sold, then at the expiration of the four year period the County Treasurer shall issue a Tax Deed for the property to the county. After the tax deed has been issued, the County Commissioners may dispose of the property at private sale, giving their deed therefor.⁴⁷ The deed so given by the County Commissioners, however, is without warranty⁴⁸, and the provisions that the county should repay in case of an unlawful sale, available under Sec. 32-1625, Wyo. Comp. Stat. 1945, does not apply to such sales.⁴⁸

The procedure set out in Sec. 32-1703, Wyo. Comp. Stat. 1945, is disarmingly simplified, for the following section⁴⁹ sets out a procedure for redemption, similar in most respects to the procedure for redemption after sale to a private purchaser.

Within four years after the Certificate of Purchase is issued to the County, the original owner⁵⁰ may redeem by paying the purchase price paid by the county

39. Sec. 32-1622, Wyo. Comp. Stat. 1945. *Bishop v. Bramblette*, 43 Wyo. 470, 5 P.(2d) 279 (1931); *Burns v. State*, 25 Wyo. 491, 499, 173 Pac. 55 (1918).

40. Sec. 32-1622, Wyo. Comp. Stat. 1945.

41. *Davis v. Minnesota Baptist Convention*, 45 Wyo. 148, 161, 16 P.(2d) 48 (1932).

42. Sec. 32-1622, Wyo. Comp. Stat. 1945.

43. Sec. 32-1623, Wyo. Comp. Stat. 1945; *Mathews v. Blake*, 16 Wyo. 116, 92 Pac. 242 (1907).

44. *Mathews v. Blake*, 16 Wyo. 116, 92 Pac. 242 (1907); *Denny v. Stevens*, 52 Wyo. 253, 73 P.(2d) 308, 75 P.(2d) 378 (1937).

45. Sec. 32-1625, Wyo. Comp. Stat. 1945.

46. Sec. 32-1701, Wyo. Comp. Stat. 1945.

47. Sec. 32-1703, Wyo. Comp. Stat. 1945.

48. *Board of Commissioners of Big Horn County v. Brewer*, 50 Wyo. 419, 62 P.(2d) 685 (1936).

49. Sec. 32-1704, Wyo. Comp. Stat. 1945.

50. By this section right of redemption is confined to "original owner" of the land which seems to bar any other party. *Board of Comrs. of Big Horn County v. Bench Canal*, 56 Wyo. 260, 267, 108 P.(2d) 590 (1940).

plus accrued taxes, penalties and interest at specified rates,⁵¹ which purchase price must be paid to the holder of the Certificate of Purchase (i.e. either to the county or to the county's assignee).

If, at the end of four years, the county has not assigned its Certificate of Purchase, it is the duty of the County Treasurer to make, execute and deliver to the county a tax deed for the property so sold, and it is the duty of the County Clerk to notify the original owner and any known mortgagee, by registered mail to the last known address, at least sixty days prior to the date of delivery of the Treasurer's Tax Deed.⁹¹

This section is ambiguous in that it provides that the County Clerk shall give notice by registered mail prior to the expiration of the four year period, but there is no provision by which the County Treasurer is required to notify the County Clerk of the impending expiration of the four year period. Effective liaison between the two offices should, however, obviate any difficulty.

If, at the end of the four-year period the county *has* assigned its Certificate of Purchase in accordance with the procedure in Sec. 32-1703, Wyo. Comp. Stat. 1945, then the holder of the Certificate of Purchase proceeds in accordance with Sec. 32-1704, Wyo. Comp. Stat. 1945, which procedure is identical with that outlined in Sec. 32-1622, Wyo. Comp. Stat. 1945, and discussed above.

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LIMITATIONS AND DEFECTIVE TAX DEEDS

Tax deeds are of statutory development and therefore to be valid must conform to the particular statute which directs their execution. Numerous cases construing tax deeds have arisen in Wyoming and only in one instance has the Supreme Court held a tax deed to be valid.¹ Therefore, a purchaser at a tax sale should be greatly concerned with what rights he has derived from the purchase and his later tax deed, or title, and just how easily these rights may be upset by the former owner. A right of redemption exists in the former owner for a four year period after his land has been sold for the failure to pay taxes. If there is no application for redemption during this four year period then the tax sale purchaser is entitled to a tax deed from the county treasurer.² This article is concerned with the rights of the holder of a tax deed which is invalid, for if the tax deed is the rare one which is valid then no problem arises.

When the holder of the deed looks to the statutes for assistance he finds, "no action for the recovery of real property sold for the non-payment of taxes, shall be maintained unless the same be brought within six years after the date of sale for taxes aforesaid."³ The purchaser has waited at least four years to acquire his tax deed and a natural assumption, to one not acquainted with the problem, would be that only two more years are required until any action by the former owner

51. Sec. 32-1704, Wyo. Comp. Stat. 1945.

1. *Nowells v. Jones et al.*, 37 Wyo. 405, 263 Pac. 698 (1928).

2. Wyo. Comp. Stat. 1945, sec. 32-1621.

3. Wyo. Comp. Stat. 1945, sec. 32-1628.