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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5749

July 31, 1980

DEEDS AND CONVEYANCES:

Proration of property taxes incident to conveyance

Statutory and alternative methods of proration

REAL ESTATE:

Proration of property taxes incident to conveyance

TAXATION ASSESSMENTS AND TAXATION:

Liability for

Methods for proration upon conveyance

Calendar year/tax day/levy day/lien day for property taxes

The statutory tax proration provision, which is operative upon the conveyance of real property in the absence of any contrary agreement, does not change or alter the calendar year period for the assessment, levy and collection of real property taxes.

The Honorable Tom Mathieu

State Representative

Capitol Building

Lansing, Michigan 48909

You have requested clarification of Michigan law relative to the proration of property taxes incident to the sale of real estate between private parties and the impact thereof, if any, upon the annual assessment and levy of real property taxes.

The starting point for consideration of this matter is 'tax day' which is designated as December 31 of each year, by The General Property Tax Act, 1893 PA 206, Sec. 2, as last amended by 1968 PA 277, MCLA 211.2; MSA 7.2, which provides in pertinent part:

'The taxable status of persons and real and personal property shall be determined as of each December 31, which shall be deemed the tax day, any provisions in the charter of any city or village to the contrary notwithstanding. . . .' [Emphasis supplied.]

In Michigan, taxes are levied for a calendar year and are collected for the calendar year in which the levy is made. Pere Marquette Railroad Co v Kalamazoo Lake Shore & Chicago Railway Co, 158 Mich 40; 122 NW 356 (1909); OAG, 1965-1966, No 4463, p 207 (February 21, 1966).

On tax day (December 31), the owners of real property having a taxable status are obligated to respond to taxation for the following calendar year, the tax owing being a debt due, pursuant to 1893 PA 206, supra, Sec. 40; MCLA 211.40; MSA 7.81. The obligation, however, does not become a lien until December 1 of the following calendar year, for state, county, village and township taxes, or such other day as provided in the charter of a city or village (commonly July 1 of the following calendar year for most cities). 1893 PA 206, Sec. 40, supra. The lien date for school district or intermediate school district taxes in the case of a city is the same as that of the city in which all or a portion of each school district or intermediate school district is located, and in the case of a township, on July 1st, pursuant to the provision of 1893 PA 206, supra, and the School Code of 1976, 1976 PA 451, Secs. 1611-1612; MCLA 380.1611-.1612; MSA 15.41611-.41612. On December 1, in the absence of any other date specified by law or charter, any unsatisfied real property tax obligation becomes a perfected lien against the property, pursuant to 1893 PA 206, Sec. 40, supra, United States v State of Michigan, 429 F Supp 9, 10 (ED Mich, 1977); City of Gaylord v Gaylord City Clerk, 378 Mich 273, 301; 144 NW2d 460, 471 (1966).

1893 PA 206, Sec. 40, supra, further provides that each statement and receipt for taxes on real estate sent or given by any county, city, township or village treasurer shall contain a printed statement, setting forth the dates of the fiscal year of each taxing unit during which the general taxes stated thereon will defray the costs of governmental services rendered thereby. This requirement, however, does not change the fact that the tax shown as owing is for the next succeeding calendar year in which it is levied and collected. OAG, No 4463, supra.

1 OAG, 1955, No 2074, p 256, 258 (May 11, 1955), addressed the levy of taxes for each calendar year under 1893 PA 206, supra.⁽¹⁾ The opinion stated that while under 1893 PA 206, supra, taxing officials assess taxable property on tax day, with the debt due becoming a lien on December 1st, such procedure does not change the fact that the taxes are taxes for the calendar year in which they are levied and collected. OAG, No 4463, supra.

Absent a controlling agreement to the contrary, a seller who conveys by warranty deed is responsible for the payment of all taxes for which a lien has attached prior to the date of the conveyance. A seller who conveys by quitclaim deed, in the absence of any agreement to the contrary, has no duty to satisfy any tax lien. (RS 1846, ch 65, Sec. 5; MCLA 565.5; MSA 26.524).

However, 1965 PA 207; MCLA 213.311 et seq; MSA 7.679(1) et seq,⁽²⁾ provided a statutory method for proration of general taxes on real property acquired for public purposes, such proration to be to the date of closing when acquired by negotiation, or when acquired by condemnation to the date compensation was made or secured. 1965 PA 205, supra, prompted the issuance of OAG, No 4463, supra, which stated that under 1965 PA 207, supra, taxes would be prorated on a calendar year basis. This method of prorating was further changed by 1966 PA 288, amending, inter alia 1893 PA 206, Sec. 2, supra. 1893 PA 206, Sec. 2, supra, as amended by 1966 PA 288, supra, required all public agencies to prorate taxes and specified the method of proration in the absence of a proration agreement.

Thereafter, 1968 PA 277 further amended 1893 PA 206, Sec. 2, supra, by the addition of a fourth paragraph providing a similar method of proration taxes with respect to conveyances between private parties, absent any contrary agreement:

'In any real estate transaction between private parties in the absence of any agreement to the contrary, the seller shall be responsible for that portion of said annual taxes levied during the 12 months immediately preceding, but not including, the day title passes, from the levy date or dates to, but not including, the day title passes and the buyer is responsible for the remainder of such annual taxes. As used in this paragraph 'levy date' means the day on which any general property tax becomes due and payable.'

Thus, 1893 PA 206, Sec. 2, as last amended by 1968 PA 277, supra, is concerned only with the settlement of accounts between private vendors and vendees of real property during a tax year. It does not change or alter the period for which the taxes are assessed and levied (calendar year), nor the statutorily designated tax day or lien dates. In fact, the proration provision assumes, for accounting purposes, that taxes are paid prospectively from the levy date or dates rather than for the calendar year in which they are assessed and levied. Further, this provision is not effective if the parties agree to any alternate method of settling their respective accounts.

The following hypotheticals will illustrate the operation of (1) the statutory proration method, which controls absent a contrary agreement and (2) an alternative proration method utilizing the fiscal year of the taxing units wherein the property purchased lies. It should be noted that the parties to a real estate contract may provide for alternative tax proration methods. Further, the method of tax proration utilized will customarily appear in the buy-and-sell agreement (also known as the offer to purchase) or in a similar contractual agreement. In addition, the parties may agree to employ the statutory proration method.

(1) Hypothetical I (Statutory Proration Method)

A desires to purchase Meadowacres from B by warranty deed. The parties agree to employ the statutory proration method. The closing date is set for July 2, 1980. ⁽³⁾ All real estate taxes on Meadowacres, located in Brown City, for years prior to 1980 have been paid. 1980 county, city, school district and intermediate school district taxes on Meadowacres, which have not been paid, total \$1500. At closing B (the Seller) will be charged taxes for 183 days (January 1, 1980-July 1, 1980). Thus, at closing, B will be charged \$750.00 (183/366 days X \$1500 = \$750). A (the Buyer) will be credited the \$750 which B was charged for unpaid, prorated taxes. A will be responsible for the payment of all 1980 taxes.

(2) Hypothetical II (Fiscal Year Method)

A desires to purchase Meadowacres from B by warranty deed. The parties agree to employ the fiscal year proration method for property taxes, up to, but not including, the day of closing. The fiscal year for the county, city, school district and intermediate school district in which Meadowacres is located, is the period July 1-June 30. ⁽⁴⁾ There are no unpaid taxes for previous years, and B has already paid 1980 taxes in the amount of \$1500. The date of closing is set for March 1, 1980. ⁽⁵⁾

At closing, A (the Buyer) will be charged taxes for the 122 days remaining in the fiscal year (ending June 30) in the amount of \$500 (122/366 X \$1500 = \$500). B (the Seller) will be credited the \$500 paid by A, B having previously paid all 1980 taxes.

In summary, ad valorem property taxes are assessed for the calendar year in which they become due and payable. The various fiscal years of the individual governmental units for which the tax revenues are budgeted and expended serve an accounting function and do not alter the 'calendar year' taxing system.

The private parties proration provision, added to 1893 PA 206, Sec. 2, supra, by amendatory 1968 PA 277, supra, is entirely unrelated to how, when, and for what period, property, taxes are assessed, levied or collected. It merely provides a method of settling accounts between private parties to a real estate transaction in the absence of a contrary agreement. In fact, its assumptions, for accounting purposes, do not follow the calendar year formulation. ⁽⁶⁾ Rather,

the proration provision is based upon a prospective 'due date' year, i.e., December 1-November 30 and/or July 1-June 30.

It is, therefore, my opinion that 1893 PA 206, Sec. 2, supra, which sets forth the method of prorating taxes between private parties in the absence of an agreement to the contrary, does not change or alter the calendar year period for the assessment, levy and collection of real property taxes in Michigan.

Frank J. Kelley

Attorney General

(1) At the time of issuance of OAG, No 2074, supra, January 1 was the tax day, and December 1 of the same year was lien day. The provisions of 1958 PA 209, Sec. 2, as amended 1893 206, Sec. 2, supra, changing tax day from January 1 to December 31. December 31 is tax day, and December 1 of the succeeding year is the day when the tax debt due and owing becomes a lien. 1893 PA 206, Secs. 2 and 40, supra.

(2) Repealed by 1976 PA 67.

(3) 1980, a leap year, has 366 days. July 2 is the 184th day in the year 1980. For the purposes of statutory tax proration, the seller, (B) is not charged or credited with prorata taxes attributable to the actual date of closing (July 2). Thus, for statutory tax proration purposes, A and B will be equally chargeable at closing for taxes for 183 days.

(4) For the purposes of this hypothetical, it is assumed that the county in which Meadowacres is located has a population greater than 1,500,000. As provided in 1943 PA 174, Sec. 1; MCLA 42.201; MSA 5.357, the fiscal year in counties with less than 1,500,000 population is the calendar year ending December 31 of each year; counties with population in excess of 1,500,000 may establish an appropriate fiscal year period. With respect to cities, no provision of the Home Rule Cities Act, 1909 PA 279, MCLA 117.1 et seq; MSA 5.2071 et seq, mandates a prescribed fiscal year period. For school districts and intermediate school districts, the School Code of 1976, supra, Sec. 1133, MCLA 380.1133; MSA 15.41133 provides a fiscal year period commencing July 1.

(5) The July 1, 1979 to June 30, 1980 fiscal year period comprises 366 days. February 29, 1980 (the day preceding March 1 the closing date) is the 244th day of the fiscal period with 122 days remaining.

(6) It should be noted that the Internal Revenue Service has recognized the 'calendar year' formulation as the 'real property tax year' in Michigan for purposes of apportioning property taxes between the seller and purchaser of real property pursuant to Section 164(d)(1) of the Internal Revenue Code of 1954, 68A Stat 47, 26 USC 164(d)(1), and its implementing regulations, 26 CFR 1.164-6. See Rev Rul 67-31, 1976-1 CB 49.

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