Public Law: State Taxation

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As might be expected, matters relating to collection of ad valorem taxes comprised the major body of appellate literature in this area during the Symposium period.

In Standard Homes, Inc. v. Prestridge, the court sustained the standing of a mortgage creditor (who had already acquired title in foreclosure proceedings) to prosecute a suit to annul an allegedly invalid tax sale. Suit was brought within the five-year peremption period for annulments, although after the three-year period for a right of redemption had expired. The tax purchaser unsuccessfully urged a distinction between the rights of a mortgagee under these two remedial provisions, relying upon several statutes, including La. R.S. 47:2183. Unconvinced of the urged thrust of these provisions the court reached its conclusion, in part, pursuant to the following reasoning of the lower court:

"A purchaser at tax sale is similar to one who takes a pledge or pawn or is a secured endorser. His purchase is actually for the benefit of the tax debtor. His rights are strictly limited. The delinquent tax sale is used only for the purpose of tax collection and is not devised to divest ownership or to effect gain for bargain buyers or advantage seekers. It is intended to protect ownership of property while at the same time it insures tax collection. The tax purchaser is

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1. 193 So.2d 100 (La. App. 2d Cir. 1966). Another decision dealing with the notice requirement in terms of the right to redeem or annul was Finley v. Abbitt, 190 So.2d 658 (La. App. 2d Cir. 1966).

2. Insufficient notice to the mortgage-owner was the basis successfully urged for invalidity. In rejecting the adequacy of the attempts to actually notify the absent owner the court repeated "the rule that where the tax collector after the tax delinquency notice is sent to the wrong address, was returned unclaimed, and made no further efforts to ascertain the tax debtor's correct address and deliver the notice, the tax sale was void and purchaser's tax title invalid: Act No. 170 of 1898, §§ 50-52, LSA-R.S. 47:2179, 47:2180; Act No. 106 of 1934, LSA-R.S. 47:2228; Const. 1921, art. 10, § 11; Miller v. Cormier, 16 So.2d 82 (La. App. 1st Cir. 1943); Robinson v. Mafrige, 229 La. 376, 86 So.2d 72 (1956)."

3. LA. CONST. art. X, § 11.

4. Providing that upon the expiration of the three-year redemption period, recordation of the tax sale deed "in the conveyance or mortgage office shall operate as a cancellation of all conventional and judicial mortgages." Also urged were the provisions of La. R.S. 9:5201 and 47:2105 (1950).
not a favored creature of the law. The contrary is apparent from our jurisprudence, i.e., the tax debtor is protected. The assignees and others of interest through the tax debtor stand in this same favor.

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"Certainly the statute which gives rise to the right to set aside an invalid tax sale during a period of five years has an overriding significance and takes precedence over a statute which cancels all mortgages and liens after the three year period of redemption. The cancellation of mortgages and liens after the passing of the three year redemptive period is predicated upon the validity of the sale. If the sale is invalid and if in fact, a right exists for the owner to set aside said sale as null and void, redemption is not applicable and the cancellation period would not operate.

* * *

"The suit which is involved herein questions the validity of the tax sale. This court has a right to pass upon that question and once that question is decided, the defendant cannot complain that the party to whom the property should revert, is not a party to the suit. As one in interest, the defendant, even though not record owner, had there been no executory proceeding, could set aside this sale and return it into the name of the record owner. He could then bring an executory proceeding and could foreclose. The fact that he has proceeded with executory process prior to the setting aside of the tax sale does not affect his rights under the law. . . ."\(^5\)

In another case dealing with tax sales the Fourth Circuit concluded that a contractual acquisition of property by the City of New Orleans did not operate so as to extinguish a matured tax lien upon the property.\(^6\) Applying that principle the court sustained the validity of a deed acquired by a purchaser of the tax lien which matured prior to the city's acquisition. In doing so the court rejected the applicability of article 2217 of the Civil Code\(^7\) delineating extinguishment of obligation by unity of

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7. "When the qualities of debtor and creditor are united in the same person, there arises a confusion of right, which extinguishes the obligation." (Emphasis added.)
debtor and creditor, primarily upon the ground that the in rem nature of the tax obligation precluded the application of the apparent in personam thrust of the code provision.8

Finally, in Glidden v. Loe9 the Second Circuit construed the statutory prohibition against the issuance of process designed to "restrain the collection of an ad valorem tax"10 in such fashion as to allow issuance of an injunction to restrain a sheriff's seizure and sale of property owned by one party for purposes of satisfying ad valorem tax delinquency owed by another.

No discussion of the ad valorem tax area would be complete without reference to the continuing controversy relating to equalization of assessments. Unless the assessors or legislators act promptly and frankly to remedy the present abuses, it is this writer's opinion that judicially imposed upheaval equivalent to reapportionment confronts Louisiana. Such a development, clearly not in the best interests of the state, must be appreciated and avoided if at all possible.

Modern technology apparently deprived the state of revenues in Collector of Revenue v. Louisiana Ready Mix Company.11 This observation flows from the First Circuit's conclusion that new models of concrete mixing trucks are exempt from the power use tax since the engines in such trucks are "primarily used" to propel the vehicles rather than the mixing device. It should be noted, however, that the court limited its ruling to the newly developed "power take off" systems, to be distinguished from the older truck systems in which the mixers are turned by means of separate engines.

In perhaps the most significant tax decision during the period of this Symposium the Louisiana Supreme Court appears to have effectively construed away most of the constitutional provisions12 regarding prescription of tax claims. The decision, in Collector of Revenue v. Pioneer Bank and Trust Company,13 was reached after evaluation of a number of Civil Code,14 stat-

8. The identity of the city with the state was the contended personam rationale, to wit, the city [state] was the owner of the tax then as well as of the property.
11. 197 So.2d 141 (La. App. 1st Cir. 1967).
13. 250 La. 446, 196 So.2d 270 (1967).
utory, and constitutional provisions. In view of the far-reaching import of the decision, a rather full exposition seems warranted.

The case presented to the court arose out of the collector's effort to collect back income taxes through distraint of the delinquent's bank account. The taxes which formed the basis of the claim were originally unpaid state income taxes for the year 1945. In June of 1949, the collector assessed the taxpayer for the unpaid 1945 taxes, plus interest to June of 1949, whereupon the taxpayer protested and appealed to the Board of Tax Appeals. The Board, in February of 1950, rendered its decision affirming the assessment, which decision was not thereafter appealed by the taxpayer.

Notwithstanding this activity and conclusion, the taxpayer never paid the assessed amount. Subsequent efforts by the collector to locate assets owned by the taxpayer in Louisiana, as well as suits filed (but not culminating in judgments) outside Louisiana led to naught. Finally, during 1965, twenty years after the year for which the taxes were due, and fifteen years after the disposition by the Board of Tax Appeals, the state located assets of the taxpayer on deposit with a Louisiana bank. The collector moved to distrain the account, but was opposed by the bank, which conflict produced the law suit under examination.

The thrust of the bank's opposition was the constitutional assurance in article 19, section 19, of the Louisiana Constitution "that all taxes and licenses, other than real property taxes shall prescribe in three years from the 31st day of December in the year in which such taxes or licenses are due." Absent other considerations, this provision would seem to have prescribed the state's tax claim on December 31, 1949. The state, however, successfully urged that the assessing of a deficiency was such a consideration. In fact, the state urged that the "assessing" interrupted the running of the prescriptive period.

While the court had little difficulty in assenting to this proposition, it had more difficulty in determining the quality of the interruption. These matters aside, however, the ultimate

16. LA. CONST. art. XIX, §§ 16, 19.
17. The conclusion ultimately reached was that the filing of the assessment permanently interrupted the tolling of the prescriptive period on tax claims.
conclusion reached turned more on statutory than code provisions. In point, the court was principally concerned with sections 47:1580 and 47:1581 of the Revised Statutes.

Section 47:1580 provides that the course of the three-year prescription is interrupted, inter alia, by "(1) the collector's action in assessing any such amounts in the manner provided by law."18 Section 47:1581 builds upon that foundation, declaring, in effect, that assessments rendered by the collector are to be considered "the equivalent of a judgment [and] shall not be subject to the running of any prescription other than such prescription as would run against a judgment in favor of the State of Louisiana." Which is to say—as article 19, section 19, of the Louisiana Constitution provides—it shall not run at all. Thus the 1945 taxes were rendered collectible in 1965, despite the three-year prescriptive period!

One is troubled by the opinion. Serious questions of constitutional dimension are raised. The issue is defining the limits, if any, to the capacity of a legislature to emasculate constitutional guarantees by statutory redefinition of the crucial verbiage. To state the problem in its extreme—one might suppose that the assurance of a jury trial in a criminal case could not be emasculated by a statute redefining "criminal cases" as including only those involving capital offenses. Still further problems are presented with regard to the "assessment" which the statutes equate with "judgments." For unless this statutory provision is limited beyond the dimensions indicated by the opinion or by other statutes, the entire thrust of article 19's prescriptive provisions are rendered next to meaningless. Further clarification of both these problem areas is awaited.

18. Sections 47:1561 et seq. of the Louisiana revised statutes delineate the power and duty of the Collector to assess taxes. Essentially, the duty there imposed extends to unpaid or "back" taxes other than ad valorem taxes. The manner in which the law directs him to make such assessments is upon an "audit, investigation or examination" to make a determination "by estimate or otherwise" of taxes due plus any penalties or interest due. The assessment is thereupon mailed to the delinquent, who is thereby also informed of his rights to protest and proceed to oppose the finality of the assessment.