



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

August 25, 1960

Mr. Henry Wade
District Attorney
Dallas County
Dallas, Texas

Opinion No. WW-921

Re: Two questions on collection
of taxes under Art. 7297,
R.C.S. 1925.

Dear Mr. Wade:

You ask the opinion of this office on two questions:

- 1) Whether Art. 7297, R.C.S. 1925, applies to all delinquent personal property taxes or only to such taxes on personal property as are back-assessed under authority of this article;
- 2) Whether suit for an amount less than twenty-five dollars for taxes due on personal property under this article is prohibited by this article.

Article 7297 reads as follows:

"The district or county attorney of the respective counties of this State, by order of the commissioners court, shall institute suit in the name of the State for recovery of all money due the State and county as taxes due and unpaid on unrendered personal property; and in all suits where judgments are obtained under this law, the person owning the property on which there are taxes due the State and county shall be liable for all costs. The State and county shall be exempt from liability for any costs growing out of such action. All suits brought under this article for the recovery of taxes due on personal property shall be brought against the person or persons who owned the property at the time such property should have been listed or assessed for taxation. No suit shall be brought until after demand is made by the collector for taxes due, and

no suit shall be brought for an amount less than twenty-five dollars. Such suits may be brought for all taxes so due and unpaid for which such delinquent tax payer may be in arrears for and since the year 1886."

In answer to your first question:

We answer that Art. 7297 applies only to taxes due the State and county as taxes due and unpaid on unrendered personal property, and which taxes have been back-assessed as authorized by this article and other articles. (See also the opinion of a prior Attorney General, Opinion No. 0-5862, 1944.)

In answer to your second question:

We answer that such a suit is prohibited by this article.

We quote from two decisions of our Texas Supreme Court:

"If, therefore, the law makes the tax a personal obligation of the taxpayer, it is fairly within all the authorities that a right to sue would exist in favor of the state or municipal corporation entitled by statute to exact payment of such taxes, unless another remedy is given, which is exclusive in its character." City of Henrietta v. Eustis, 87 Tex. 14, 26 S.W. 619 (1894). (The Court held that the law does make the tax a personal obligation of the taxpayer.)

". . .that under Sections 13 and 15 of Article VIII the legislature is authorized in its discretion to provide for 'summary sale' as the exclusive method or for judicial sale as the exclusive method or for both methods; . . ." Duncan, Tax Collector v. Gabler, 147 Tex. 229, 215 S.W.2d 155 (1948), page 162.

Both of these cases involved suits for taxes on land, but the law as therein interpreted and applied is fully applicable to your question which involves suit for taxes on personal property. See also Mexia Independent School Dist. v. City of Mexia, 134 Tex. 95, 133 S.W.2d 118, (1939) at page 123.

In conformity to Sec. 15, Art. 8 of our Texas Constitution, considered in the above cases, the Legislature has provided for summary seizure and sale of personal property for taxes (R.C.S., articles 7266, 7272, 7273, and others). This procedure is available for collection of the personal property taxes due under Article 7297, where the amount of such tax is less than Twenty-five Dollars.

S U M M A R Y

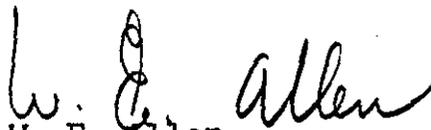
Under Article 7297, R.C.S., 1925:

- 1) only state and county taxes on personal property back assessed may be collected;
- 2) taxes for less than \$25.00 may be collected by summary seizure and sale but not by suit.

Yours very truly,

WILL WILSON
Attorney General of Texas

By


W. E. Allen
Assistant

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APPROVED:

OPINION COMMITTEE:

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REVIEWED FOR THE ATTORNEY GENERAL

By: Houghton Brownlee