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NE. STATE OF NEBRASKA
OFFICIAL
MAY 13 1994
DEPT. OF JUSTICE

DATE: May 10, 1994

SUBJECT: Computation of Interest on Redemption of Tax Sale Certificates Under Neb. Rev. Stat. § 77-1824 (1990).

REQUESTED BY: Paul Wood, Red Willow County Attorney

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding the computation of interest paid by persons redeeming tax sale certificates under Neb. Rev. Stat. § 77-1824 (1990). As you note in your letter, the sum listed on the treasurer's certificate of tax sale includes both the amount of delinquent taxes, plus the amount of any interest paid by the purchaser on the delinquent taxes, and also includes the total sum of the taxes and interest. Neb. Rev. Stat. § 77-1819 (1990). Your question is whether the person redeeming under § 77-1824 must pay interest at the rate specified in the statute on the amount of the delinquent taxes only, or whether interest must be paid computed on the total sum of both taxes and interest included on the tax sale certificate.

Section 77-1824 provides, in part, as follows:

> The owner or occupant of any land sold for taxes or any person having a lien thereupon or interest therein, may redeem the same at any time before the delivery of tax deed by the county treasurer by paying the county treasurer for the use of such purchaser, his or her heirs

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> or assigns, **the sum mentioned in his or her certificate, with interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of purchase to date of redemption,** . . . . (emphasis added).

In our view, § 77-1824 plainly provides that, for a person to redeem a tax sale certificate, interest at the rate specified in § 45-104.01 must be paid based on the total amount of delinquent taxes and interest paid by the tax sale certificate purchaser computed from the date of purchase to the date of redemption. This is evidenced by the statute's provision that interest at this rate is required to be paid on "the sum mentioned in [the] certificate. . . ." An examination of the "sum" mentioned in the treasurer's certificate of tax sale on the form required by § 77-1819 reveals that the "sum" referred to consists of both the amount of the taxes and any interest thereon paid by the purchaser. Thus, construing these statutes together, the "sum" referred to is the total amount of taxes and interest paid by the purchaser. It is this amount to which interest at the rate referred to in § 77-1824 must be applied.

This conclusion is consistent with previous opinions issued by this office. *See* Report of Attorney General 1938-39, 487 (November 3, 1939) (redemption following decree of foreclosure including amount of delinquent taxes and interest requires payment of interest "on the amount of the decree from the date it was rendered until the date of redemption."); Report of Attorney General 1940-41, 773-74 (June 2, 1941) ("redemption may only be made by the payment of the full amount of the tax sale certificate with interest"). It is also in accord with the Nebraska Supreme Court's decision in ***McDonald v. Masonic Temple Craft***, 133 Neb. 589, 276 N.W. 176 (1937). In ***McDonald***, the Court considered, ***inter alia***, the issue of the rate of interest due the owner of a tax sale certificate after entry of a decree of foreclosure on the certificate. The Court stated that, at the time the tax sale certificate was issued, former § 77-2020 (the predecessor to § 77-1824)

> provided that the owner or any person having a lien or interest in land sold for taxes might redeem the same by paying to the county treasurer the sum mentioned in the tax sale certificate with interest at the rate of 12 per cent. per annum from the date of purchase to the date of redemption, together with all other taxes subsequently paid with interest thereon at the same rate from the date of payment to date of redemption.

133 Neb. at 595, 276 N.W. at 179.

Section 77-2020 was amended after the date the tax sale certificate was issued to reduce the interest rate from twelve to nine percent. The Court further noted that former § 77-2041 provided that, "in the event of foreclosure by a private holder of a tax sale certificate, such person shall be entitled to a decree for the amount appearing thereon with interest at the rate per cent. per annum required to be paid for redemption from such tax sale, and that the decree shall draw interest at the same rate." *Id.* at 596, 276 N.W. at 179. Construing these provisions, the Court concluded:

> The tax sale certificate. . .bore interest at the rate of 12 per cent. per annum and at the time of the decree there was due thereon not only the amount paid at the time the tax sale certificate was acquired, with interest, but in addition thereto all sums paid for subsequent taxes.
>
> It seems clear from a careful reading of these two sections of the statute that. . .interest at the rate of 12 per cent. per annum to date of decree [was due], and that the decree should draw interest at the rate of 12 per cent. per annum until satisfied.

Id.

You indicate that, in your view, requiring payment of interest at the rate specified in § 77-1824 computed on the amount of taxes and interest paid by the purchaser would be unconstitutional because of "lack of actual notice of an interest increase and lack of any statutory provision for such notice." We do not believe that the statute is invalid for this reason. As noted above, notice of the computation of interest in this manner is, in our opinion, clearly provided by the statute. Moreover, we note that the Nebraska Supreme Court, in ***Kettle v. Shervin***, 11 Neb. 65, 7 N.W. 861 (1881), rejected a challenge to the constitutionality of a statute allowing holders of tax sale certificates interest at the rate of forty percent, computed on the amount of taxes and interest paid by the purchaser. In reaching this conclusion, the Court stated the following regarding the rationale behind the imposition of such a requirement, stating:

> The imposition of a high rate of interest on tax sales has for its primary object, the prompt payment of the revenues of the government, and for this purpose it is sought to operate on the tax payer and induce him to pay his taxes and thus avoid the payment of heavy interest; failing in this, to offer to other parties a field for the investment of money at a higher rate of interest than that paid by borrowers, so that in no event shall the

> state and its municipal agencies be deprived of the revenues necessary for their support. But if every owner of property, instead of paying the taxes thereon, can make himself the debtor of the state therefor, and let it run for an indefinite length of time at the same rate of interest, or even less than that at which money can be borrowed on the best of security, it needs but little experience in the business of life to see that the prompt payment of taxes could not be relied upon.

Id. at 73, 7 N.W. at 864.

In conclusion, it is our opinion that, in order for a person to exercise the right of redemption in § 77-1824, interest at the rate specified in § 45-104.01 must be paid on the "sum" mentioned in the tax sale certificate, which "sum" includes both the amount of delinquent taxes and any interest thereon paid by the purchaser, as reflected in the tax sale certificate.

Very truly yours,

DON STENBERG
Attorney General

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APPROVED BY:

DON STENBERG, Attorney General