



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON

B-21817

FEB 12 1942

Colonel W. B. Nixon, E. D., U. S. Army,  
Finance Officer, Washington, D. C.

Through Chief of Finance.

Sir:

There was received by first indorsement dated November 4, 1941, from the Chief of Finance, your letter of May 6, 1941, requesting decision whether payment is authorized on a voucher transmitted therewith in favor of Ralph S. Stacy, County Treasurer, Seattle, Washington, in the amount of \$22,653.47 covering all State, county, municipal, school, road, and other district taxes for 1941 on certain real estate located in Seattle, Washington, acquired as of December 31, 1940, by the United States from Pacific Terminals, Inc., for quartermaster depot purposes.

It appears that the title to said real estate was conveyed to the United States by the Pacific Terminals, Inc., by deed recorded January 28, 1941, under the terms of an option dated November 22, 1940, whereby the Pacific Terminals, Inc., agreed, for the consideration named therein, to convey a fee simple title to said real estate to the United States, "free and clear of all tax liens payable in 1940 and prior years, and encumbrances of every other kind and character" and that the levy of the taxes here involved was completed during the second week of October,

1940, although no portion of the taxes was required to be paid under the provisions of the applicable State law before May 31, 1941.

It is, of course, a well established principle of constitutional law that a State may not impose a tax upon the property of the United States. Van Brocklin v. State of Tennessee, 117 U. S. 151, 172-180; Glelliam County v. United States, 263 U. S. 341, 345; Lee v. Weick, 208 U. S. 643, 645. But the real estate here involved was not owned by the United States at the time the taxes in question were levied and the Laws of Washington, 1939, Chapter 206, section 45, provide that "The taxes assessed upon real property shall be a lien thereon from and including the first day of January in the year in which they are levied until the same are paid, but as between a grantor and a grantee such lien shall not attach until the fifteenth day of February of the succeeding year. \* \* \*"

Thus it appears that although the taxes here involved had not become payable at the time the United States acquired the property on which they were levied, a statutory lien for their payment had then been impressed on the property as of January 1, 1940, and the question now for consideration is, in the final analysis, with respect to the validity and legal effect of such lien so far as the Federal Government is concerned.

In the recent decision of the Supreme Court of the United States in the case of United States v. Alabama, 313 U. S. 274, the principal question presented for judicial determination was whether real estate is subject to a lien for State taxes when it is acquired by the United States after the date upon which the property is made subject to such a lien by State statute but before the time when by completion of levy and assessment the amount of taxes is ascertained; and, the court in holding that a tax lien arising under such circumstances is valid, though unenforceable while the property is owned by the United States, said:

"Our present inquiry is whether, assuming the validity of the state statute creating a lien as of October 1, 1936, as against other subsequent purchasers, it should be deemed invalid as against the United States. The question is not whether such a lien could be enforced against the United States. The fact that the United States had taken title and that proceedings could not be taken against the United States without its consent would protect it against such enforcement. But that immunity would not be predicated upon the invalidity of the lien. If in this instance title had been taken by the United States in the summer of 1937 after the amount of the taxes had been ascertained and the respective liens were concededly valid, still proceedings against the United States could not be prosecuted without its consent.

"The Government is not content with that measure of protection. The Government brings this suit in the view that it is entitled to have a marketable title and it seeks to remove the liens in question as clouds upon that title which would interfere with the disposition of the lands in the future. From that standpoint the Government asks a decree declaring the invalidity of the liens and enjoining the State from asserting any claim in the lands either adverse to the United States or to its successors in title. We think that the United States is not entitled to that relief. The United States took the conveyances with knowledge of the state law fixing the lien as of October 1st. That law

in creating such liens for the taxes subsequently assessed in due course and making them effective as against subsequent purchasers did not contravene the Constitution of the United States and we perceive no reason why the United States, albeit protected with respect to proceedings against it without its consent, should stand, so far as the existence of the liens is concerned, in any different position from that of other purchasers of lands in Alabama who take conveyances on and after the specified tax date. It is familiar practice for grantees who take title in such circumstances to see that provision is made for the payment of taxes and the Government could easily have protected itself in like manner. Finding no constitutional infirmity in the state legislation, we think that the liens should be held valid."

The language thus used leaves no room for doubt that a State tax lien is not invalidated by the acquisition by the United States of the real estate upon which the lien had been imposed. And it would seem to be clear that the provisions contained in the Washington statute prescribing the time for the attachment of a lien "as between a grantor and a grantee" have no application here for the matter now for consideration is with respect to the validity and legal effect of a tax lien so far as the State and the United States are concerned and not with respect to an adjustment between the United States and its vendor of the liability for the taxes in question. Hence<sup>o</sup>, it must be concluded that the tax lien here involved is valid, though unenforceable so long as the property upon which it rests is held by the United States. It is for the administrative agency concerned, of course, and not this office, to determine whether in the interests of the Government, a prior lien on property acquired by the United States

should be discharged. Accordingly, you are advised that since the present record does not show that the extinguishment of this unenforceable lien is necessary to the accomplishment of the purpose for which the land was acquired, payment on such record is not authorized; but if it should be administratively determined that the discharge of the tax lien here involved is necessary in connection with the accomplishment of the purpose for which the land was acquired, payment is authorized, from the appropriation made for the purchase of the land, of such amount as is required by State law to effect such discharge. See 19 Comp. Gen. 768.

The papers transmitted to this office by the Chief of Finance are enclosed herewith.

respectfully,

(Signed) Lindsay C. Warren  
Comptroller General  
of the United States

Enclosures