

Office of the Attorney General  
State of Iowa

\*1 Opinion No. 88-6-2(L)

June 7, 1988

TAXATION: Collection And Compromise Of Tax On Buildings On Leased Land. [Iowa Code §§ 428.4, 445.8, 445.32 \(1987\)](#). Delinquent property taxes on buildings on leased land are collected by enforcing the [§ 445.32](#) tax lien on the building by selling the building at a distress sale. The County has no authority to compromise the delinquent tax. (Mason to Riepe, Henry County Attorney, 6-7-88)

Michael A. Riepe  
Henry County Attorney  
Courthouse, P.O. Box 69  
Mt. Pleasant, Iowa 52641

Dear Mr. Riepe:

You have requested an Attorney General's Opinion regarding real estate taxes on buildings on leased lands. Specifically, you have raised the following issues:

1. Who may compromise delinquent taxes levied on a building erected by a person other than the owner of land on which the building is located, as provided for in [§ 428.4, the Code](#), which are required to be collected in the manner prescribed in [§ 445.32, the Code](#)? When can such a compromise be effected? What procedures must be followed in such a compromise?

2. What procedures are to be followed and what property is subject to distraint and sale in collection of delinquent real estate taxes levied against buildings pursuant to [§ 445.32, the Code](#)?

The context in which you wish to have these issues addressed is the following problem:

A restaurant building was constructed by lessee on undeveloped real estate. In settlement of suit over forfeiture of leasehold, in which County was not a party, all interest in the building of the lessee, lessee's assignees and some of lessee's creditors were quit-claimed to lessor. Property taxes, assessed in the name of the building owner-lessee, and levied as real estate taxes against the building were, at the time of settlement, delinquent and are still not paid and are now more than one year delinquent. The County Treasurer desires to collect the delinquent taxes, as required by [§ 445.32](#), through issuance of a distress warrant and by distraint and sale of the restaurant building only commencing in June, 1988. The lessor-owner believes that [§§ 445.32 and 445.8](#), when read together, limit the method of collection of the taxes to issuance of a distress warrant for the distraint and sale of personal property, not the building. Lessor-owner also wishes to enter into negotiations for the compromise of the delinquent

taxes.

The issues you have raised will be addressed in reverse order.

[Iowa Code § 428.4 \(1987\)](#) provides that a building erected by a person other than the owner of the land on which the building is located shall be listed and assessed to the owner of the building "as real estate." Therefore, the tax on the building is treated as a real estate tax rather than a personal property tax. [Iowa Code § 445.32 \(1987\)](#) provides the following:

If a building is erected by a person other than the owner of the land on which the building is located, as provided for in [section 428.4](#), the taxes on the building shall be and remain a lien on the building from the date of levy until paid. If the property taxes on the building become delinquent for a tax year the county treasurer shall collect the tax in the same manner as delinquent personal property taxes are collected under [section 445.8](#).

\*2 [Iowa Code § 445.8 \(1987\)](#) provides for the issuance of a distress warrant for the collection of delinquent personal property taxes. [\[FN1\]](#) Therefore, although the tax on the building is considered to be a real estate tax, the legislature has decided to allow the delinquent tax to be collected by selling the building pursuant to a distress warrant rather than requiring the county to follow the tax sale procedures set forth in Iowa Code chapter 446 (1987).

The assessment of the building in a particular name "is only a matter of administrative convenience." See [Oberstein v. Adair County Board of Review, 318 N.W.2d 817, 819 \(Iowa App.1982\)](#). [\[FN2\]](#) The real estate tax on the building is a charge upon the building, and is not a personal obligation of any person. See [Merv E. Hilpipe Auction Co. v. Solon State Bank, 343 N.W.2d 452, 455 \(Iowa1984\)](#). Also, the lien on the building does not attach to the underlying land. 1984 Op.Att'y Gen. 125.

"Where a specific remedy is provided for tax collection, such remedy must be followed; the statutory remedy is exclusive." [Hilpipe, 343 N.W.2d at 456](#). The specific statutory remedy for collection of the real estate tax on a building on leased land is to enforce the lien on the building by distraint and sale of the building under [Iowa Code § 445.8](#). The procedures to be followed are the same as those followed for any other warrant for the distraint and sale of personal property. See [Iowa Code § 445.8\(4\) \(1987\)](#). Notice of the tax delinquency must be published in an official newspaper in the county, in compliance with [Iowa Code §§ 445.8\(2\) and \(3\)](#). Within ten days following publication of the notice, the county treasurer issues a distress warrant "in the form prescribed in section 445.7." [Iowa Code § 445.8\(3\)](#). The form prescribed in § 445.7 can be easily modified to refer to real estate taxes and to command the sheriff or tax collector to "distrain, seize, levy upon, and sell" the building on which the delinquent tax is a lien.

The above procedures are not affected by the fact that the building has changed ownership since the tax was assessed and became delinquent. The lien stays with the building, and the in rem claim for the delinquent tax is satisfied by sale of the

building. The levy was against the building and the fact that the titleholder's name subsequently was changed is irrelevant. See [Hilpipre, 343 N.W.2d at 455.](#)

The remaining questions to be addressed are who may compromise delinquent taxes on buildings on leased lands, when can the compromise be effected, and what procedures must be followed. "The general rule is that the power to tax does not include the power to remit or compromise taxes. Where taxes are legally assessed, the taxing authority is without power to compromise, release or abate them except as specifically authorized by statute." 1972 Op.Att'y Gen. 398, 399. There is no statute which grants compromise authority for a real estate tax on a building on leased land. [Iowa Code §§ 445.19 and 633.475](#) apply to personal property taxes only. They make no provision for compromise of a real estate tax. [Iowa Code § 445.16](#) provides for the compromise of real estate taxes under certain conditions. Among those conditions is the requirement that the property be sold at a "scavenger" sale before boards of supervisors may compromise the tax. 1972 Op.Att'y Gen. 29; 1938 Op.Att'y Gen. 699; 1936 Op.Att'y Gen. 319. By following the required distraint and sale procedure set forth in [§ 445.8](#), however, there will never be a "scavenger" sale of the building. The scavenger sale, provided for by [Iowa Code § 446.18](#), takes place only after the property has been previously advertised and offered for sale for two years or more and remains unsold for want of an adequate bid. 1980 Op.Att'y Gen. 378. It appears, therefore, that the legislature has not provided for the compromise of the tax on buildings on leased lands. [\[FN3\]](#)

Sincerely,

\*3 Marcia Mason

Assistant Attorney General

[\[FN1\]](#) The 1988 General Assembly of the State of Iowa enacted Senate File 452, which added a new subsection to [Iowa Code § 445.8](#) to cancel all personal property taxes not collected by July 1, 1988, and rescind all personal property tax liens. Since the tax on the building is a real estate tax, Senate File 452 is not relevant to its collection.

[\[FN2\]](#) In fact, [Iowa Code § 428.4](#) and [Iowa Code § 428.1\(6\)](#), which states that property under lease is to be listed by and taxed to the lessor, unless listed by the lessee, have been construed by the Iowa Supreme Court to allow for the assessment of taxes for improvements, such as new buildings, to be made against the lessor or the lessee. [Duda v. Hastings, 389 N.W.2d 404, 407 \(Iowa App.1986\); Ruan Center Corp. v. Board of Review, 297 N.W.2d 538, 554 \(Iowa 1980\).](#) The burden is on the lessor and lessee to decide who is going to pay the tax, and the assessor does not have to investigate whether a tenant or a lessor improved the property. [Ruan Center, 297 N.W.2d at 554.](#)

[\[FN3\]](#) The delinquent taxes could be suspended or cancelled under [Iowa Code §§ 427.9 and 427.10](#), if the owner is a recipient of federal supplementary security income or state supplementary assistance or is a resident of a health care facility which is receiving payment from the department of human services for the person's care. See 1940 Op.Att'y

1988 Iowa Op. Atty. Gen. 93

Page 4

1988 Iowa Op. Atty. Gen. 93, 1988 WL 247785 (Iowa A.G.)

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Gen. 257. [Iowa Code § 427.8](#) allows suspension of taxes "for the current year" if a person, by reason of age or infirmity, is unable to contribute to the public revenue. It does not, however, allow suspension or cancellation of taxes for past years. See 1942 Op.Att'y Gen. 34.

1988 Iowa Op. Atty. Gen. 93, 1988 WL 247785 (Iowa A.G.)

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