

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellee,

v

CITY OF ST. JOSEPH,

Defendant-Appellant.

UNPUBLISHED

August 1, 1997

No. 194753

Berrien Circuit Court

LC No. 95-003079-CZ-H

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right a circuit court order affirming the validity of tax assessments for the years 1988 through 1993 on real property acquired by defendant from the bankruptcy estate of Auto Specialties Manufacturing Company (AUSCO). We affirm.

The facts of this case are undisputed. On October 11, 1988, AUSCO filed a petition seeking relief under Chapter 11 of the bankruptcy code. Subsequently, on February 6, 1990, the Chapter 11 proceeding was converted to one under Chapter 7. On March 15, 1995, as part of the Chapter 7 proceeding, the bankruptcy judge authorized the transfer of the property involved in this case from the estate of AUSCO to defendant, whereupon the trustee in bankruptcy issued a quitclaim deed conveying the real property to defendant. Before the transfer and while the bankruptcy proceeding was ongoing, the County of Berrien continued to issue property tax accrual notices with respect to the subject property but took no formal action to collect or enforce those taxes before the transfer. However, on February 26, 1996, plaintiff notified defendant that it was delinquent in the payment of taxes on the subject property. Defendant filed written objections to the assessment of taxes, and the circuit court affirmed the validity of the taxes and ordered that the subject property be sold at the state's annual tax sale unless defendant paid the outstanding taxes.

Real estate taxes and the incidents relating to their collection are generally left to local statute. The creation and perfection of tax liens, however, are matters of state law. *In re Shoreham Paper Co*,

117 BR 274, 275 (Bankr WD Mich, 1990). This Court reviews questions of law de novo. See *Cardinal Mooney High School v MHSAA*, 437 Mich 75, 80; 467 NW2d 21 (1991).

Defendant argues that no liens ever attached to the property at issue in this case such that plaintiff could sell the property in lieu of payment of real property taxes because (1) the automatic stay prevented attachment during the pendency of the bankruptcy proceeding and (2) defendant's status as a municipal corporation prevented attachment following the conveyance of the real property from the bankruptcy estate to defendant. Although we agree that the bankruptcy code's automatic stay prevented attachment of the statutory liens during the pendency of the bankruptcy proceeding, we find that defendant's status as a municipal corporation did not prevent attachment of the liens following the conveyance of the real property from the bankruptcy estate of AUSCO to defendant. The circuit court, therefore, did not err in affirming the validity of the taxes and ordering the sale of the property unless defendant paid the taxes.

Defendant correctly maintains that the tax liens never attached to the real property during the pendency of the bankruptcy proceeding. Michigan real property taxes are assessed and levied on a calendar year basis with the tax "debt" arising on December 31 of the preceding year ("tax day"), MCL 211.2; MSA 7.2. The amount due is then determined during the ensuing months, and a bill is issued on December 1 of the current year ("levy day" or "lien day"). John G. Cameron, Jr., *Michigan Real Property Law* (2d ed), § 28.25, p 1305. Pursuant to MCL 211.40; MSA 7.81, the tax assessed on December 1 becomes a lien upon the real property, which continues until paid. *Id.* At the time AUSCO's bankruptcy proceeding was commenced, the automatic stay provision of the bankruptcy code, 11 USC 362(a)(4), prevented the creation, perfection, or enforcement of any lien against property of the bankruptcy estate during the pendency of the bankruptcy proceeding. This ban included the attachment of a statutory tax lien. *In re Shoreham*, *supra* at 285. However, pursuant to 11 USC 362(b)(9)(D), "the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment" is expressly permitted by the bankruptcy code. Therefore, while the automatic stay prevented the tax liens from attaching to the property on lien day while AUSCO owned the property and was in bankruptcy, the bankruptcy code permitted the continuation of property tax assessments, which attached when the stay was lifted at the transfer of the property to defendant.¹

Defendant argues, however, that as a municipal corporation, it is exempt from real property taxation pursuant to MCL 211.7m; MSA 7.7(4j). Thus, defendant contends that once the property was conveyed to it from AUSCO's bankruptcy estate, MCL 211.7m; MSA 7.7(4j) prevented attachment of the real property tax liens. We disagree.

Tax exemptions are the antithesis of tax equality. *Advo-Systems Inc v Treasury Dept*, 186 Mich App 419; 465 NW2d 349 (1990). Therefore, exemption statutes are to be strictly construed in favor of the taxing unit. *Saginaw General Hosp v Saginaw*, 208 Mich App 595, 598; 528 NW2d 805 (1995). MCL 211.7m; MSA 7.7(4j) does not exempt defendant from real property taxation. Rather, it exempts from taxation the parcels of real property owned by defendant as of tax day if such parcels are used for public purposes. The Tax Tribunal has interpreted this to require the occurrence of two events before an exemption is granted: first, the property must be owned by a county, township,

city, village or school district; and second, the property must be used for public purposes. *County of Wayne v City of Romulus*, MTT Docket No. 110923, dec'd 6/11/92, 1992 Mich Tax LEXIS 20, *5. Importantly, however, “[i]t is the use of the property at the time when the tax is assessed [tax day] which determines whether it is exempt from taxation or not.” *County of Wayne v Northville Twp*, MTT Docket No. 142706, dec'd 6/6/95, 1995 Mich Tax LEXIS 66, *9.

In the present case, the outstanding real property taxes were assessed neither while defendant owned the real property nor while the property was used for public purposes. Rather, the taxes accrued while the property was part of the bankruptcy estate in the AUSCO proceeding. Therefore, defendant cannot maintain a claim of exemption from taxation pursuant to MCL 211.7m; MSA 7.7(4j).

Accordingly, because defendant has advanced no reason to justify why the real property tax liens should not have attached upon conveyance of the property to defendant, we affirm the judgment of the lower court.

Affirmed.

/s/ Hilda R. Gage

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald

¹ We note that as part of the Bankruptcy Reform Act of 1994, Congress amended 11 USC 362 by adding subsection (b)(18), which now excludes from the automatic stay the creation or perfection of a statutory lien for ad valorem property taxes imposed by a political subdivision of a state for taxes coming due after the filing of a petition in bankruptcy. However, because Congress added this provision after the commencement of AUSCO's bankruptcy case, it has no effect upon the property in the case at bar.