



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

October 21, 2022

The Honorable Sharon Nash Barnett  
Harrison County Tax Collector  
Post Office Box 1270  
Gulfport, Mississippi 39502

Re: Priority of Tax Liens

Dear Ms. Barnett:

The Office of the Attorney General has received your request for an official opinion.

### **Question Presented**

Can the tax collector have the Sheriff seize personal property owned by a taxpayer that is already subject to a lien and have the Sheriff sell it with the proceeds of the sale applied to the delinquent personal property taxes over the objections of the lien holder?

### **Brief Response**

Yes. Under the authority of Section 27-41-101 of the Mississippi Code, the tax collector may file a notice of tax lien with the circuit clerk of the county, who in turn shall enter it on the judgment roll. Such judgment shall serve as authority for the clerk to issue remedial writs, or in lieu thereof, the tax collector may issue a warrant, per Section 27-41-103, directing the sheriff to seize and sell the personal and real property of the taxpayer for the payment of the delinquent ad valorem taxes. With exceptions for motor vehicles and certain mobile homes, the resulting tax lien “shall be entitled to preference over all judgments, executions, encumbrances, or liens. . . .” Miss. Code Ann. § 27-41-101.

### **Applicable Law and Discussion**

As an initial matter, opinions of this office are limited to prospective questions of state law. Miss. Code Ann. § 7-5-25. This office does not validate or invalidate past actions, nor do we make factual determinations. Therefore, to the extent your request may involve past action, we decline to respond with an official opinion of this office. MS AG Op., *Brock* at \*1 (Nov. 8, 2019). We also offer no opinion about whether a specific piece of personal property may be seized and sold for payment of personal property taxes.

In order for the sheriff to seize and sell the personal property of a delinquent taxpayer, the tax collector must first follow the procedure set forth in Section 27-41-101 before enrolling a tax lien as a judgment on the court judgment roll:

In the event the tax collector elects to use the provisions of Sections 27-41-101 through 27-41-109 to collect delinquent tax payments on personal property and, upon default of the payment of ad valorem taxes upon personal property upon the due dates prescribed in this chapter or, in the case of mobile or manufactured homes classified as personal property, the due date prescribed in Section 27-53-11, the tax collector shall give written notice to the taxpayer and to any secured lender demanding the payment of the ad valorem taxes on personal property then remaining in default within twenty (20) days from the date of the delivery of the notice. The notice shall be sent by certified or registered mail . . . .

Miss. Code Ann. § 27-41-101(1). If the notice and demand requirement as set forth in Section 27-41-101 is met, and there is no response from the taxpayer or anyone liable for payment of taxes (or the secured lender if any), “the tax collector may file a notice of a tax lien for such ad valorem taxes with the circuit clerk of the county in which the taxpayer resides or owns property which shall be enrolled as a judgment on the judgment roll.” Miss. Code Ann. § 27-41-101(2). Thereafter:

The judgment shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors, and other persons from the time of filing with the clerk; provided, however, that the preference of a judgment in regard to any personal property upon which the taxes are assessed, excepting motor vehicles as defined by the Motor Vehicle Ad Valorem Tax Law of 1958, and manufactured housing and mobile homes having certificates of title as defined by the Mississippi Motor Vehicle and Manufactured Housing Title Law shall be entitled to preference over all judgments, executions, encumbrances or liens whensoever created upon such personal property.

Miss. Code Ann. § 27-41-101(3). This office has opined that if a tax collector utilizes the “scheme enacted in Section 27-41-101, the lien so obtained is a general lien upon all real and personal property belonging to the delinquent taxpayer and *remains a first priority lien to the specific personalty upon which the tax was levied*, but is only superior, as to real property, to all mortgagees, pledgees, entrusters, purchasers, creditors and all other persons from the time of filing with the clerk.” MS AG Op., *Rogers* at \*2 (May 30, 1997) (emphasis added) (internal quotations omitted).

Once enrolled, the judgment serves as authority for the circuit clerk to issue writs of garnishment, execution, attachment, and other remedial writs. Miss. Code Ann. § 27-41-101(3). In lieu of the remedial writs issued by the circuit clerk, the tax collector is empowered to issue warrants for the collection of ad valorem taxes:

The tax collector may issue a warrant under his official seal directed to the sheriff of any county of the state commanding him to immediately seize and sell the real and personal property of the person owning the property found within the county

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in which the judgment is enrolled for the payment of the amount of ad valorem tax on personal property as set forth in the warrant, and the cost of executing the warrant. Any such property sold shall be sold by sheriff's bill of sale.

Miss. Code Ann. § 27-41-103. Sections 27-41-103 through 109 govern the seizure and sale by the sheriff of property belonging to the taxpayer. MS AG Op., *Pepper* at \*1-2 (Dec. 21, 1995). The sale of property by virtue of an execution or other process implicates the requirements of Sections 13-3-161 through 173.

In conclusion, it is the responsibility of the tax collector to follow the notice and demand requirements of the above-cited statutes in order for the circuit clerk to enroll a lien upon the judgment roll. Subsequently, the tax collector may issue a warrant to the sheriff directing the sheriff to seize property belonging to the taxpayer and selling the same to satisfy the delinquent taxes.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Misty Monroe*

Misty Monroe  
Assistant Attorney General