

ASSESSOR'S

EVIDENCE

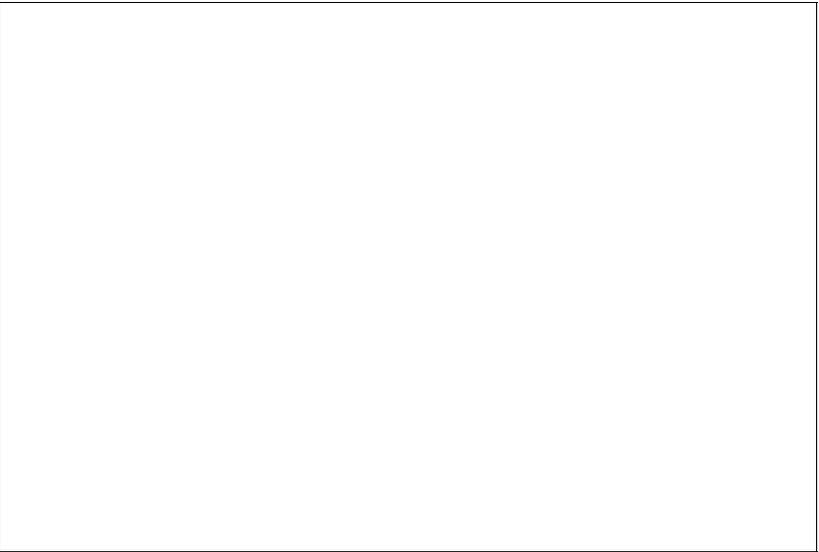
Washoe County
Appeal Summary Page-Unsecured Roll

Hearing # 17-0012P16
Hearing Date 02/08/2017
Tax Year 2016/2017

Account #: 5300699
DBA: N/A
Location: Air Sailing Gliderport

Owner: John J Scott
Mailing Address: 1533 Criquet Ct
Concord Ca 94518

Account Type: 15 year Aircraft
NAICS: 481 Air Transportation
Assessment/Billing Date: 10/19/2016
Assessment Type: Regular per NRS 361.260 (1)
 Estimated per NRS 361.265 (4)
 Corrected per NRS 361.765, 361.767, or 361.768



Valuation: Taxable: \$5,000 Current OBS: N/A
Assessed: \$1,750

Discussion: Aircraft is a 1983 Schleicher model ASW-20C glider. Tail number N20QS.
See discussion on page 2.

RECOMMENDATION: Uphold Reduce
5,000 1,750

Prepared by: Justin Taylor, Auditor/Appraiser Approved by: Mark Stafford, Senior Appraiser

ASSESSOR'S EXHIBIT I
22 PAGES

Pursuant to NRS 361.260 the assessor is required to discover all taxable property within the county as of the July 1st lien date. This aircraft was reported on a tie-down list at Air Sailing Gliderport (ASG) in Palomino Valley. The Assessor mailed a notice to file a property declaration on July 11, 2016 and a final notice to file on August 25, 2016. Receiving no response from the taxpayer the assessor estimated the aircraft value and a tax bill was issued on October 19, 2016.

The taxpayer objected to the assessment claiming the aircraft was now located in the State of California which is also his place of residence. On our behalf the Washoe County Treasurer requested a copy of a tax bill from that jurisdiction. The owner indicated he was not being assessed for his aircraft in California. Follow-up correspondence with ASG management reported the aircraft to be present at their facility sometime around the lien date of 7/1/2016 through 10/3/2016. Subsequent correspondence with the taxpayer confirmed the aircraft's presence in Washoe County during this time period.

We believe the aircraft established a taxable situs in the State of Nevada as it utilized a base of operations at ASG in Palomino Valley as of the lien date. At this same location it spent its' overnights when not in operation. The aircraft was not here "casually" or otherwise merely present in the State en route to its' ultimate destination. The property established contact with the taxing authority to confer upon it the opportunities, benefits and protections afforded by the taxing authority. (*Ott v. Mississippi Barge Line* (1949) 336 U.S. 169, 174.) The aircraft is not engaged in interstate commerce and therefore not subject to the Commerce Clause requiring an apportionment of value. Additionally, the property is not being taxed in another jurisdiction resulting in double-taxation.

Although the personal property was removed prior to the end of the fiscal year, there is no statutory authority for the proration of property tax. Pursuant to NRS 361.450(2) a perpetual lien for taxes attaches on July 1 upon all property then within the county. The owner of personal property located in Nevada on the day the tax lien attaches is liable for the personal property tax even if the property is removed from the State before actual assessment. (*State v. Eastabrook*, 3 Nev. 173 1867)

Attorney General's Opinion 681 (Accord, 09-01-1970) states that *"So long as the property had situs in the county in July, the assessor has the right to demand the full amount of the tax..."* and further concluded *"There is no legal basis for an assessor or board of equalization to prorate or apportion personal property tax liability..."*. See also WCDA OP #6406, Molde, (03-27-2002); AGO 96-28 (09-27-1996) attached.

Page	Note	Date
1	REC'D CBE PETITION	12/28/2016
2	CALLED JOHN SCOTT BACK AND REFERRED HIM TO OUR WEBSITE FOR LINK TO APPEAL FORM FOR COUNTY BOARD OF EQUALIZATION. TOLD HIM HIS ASSESSED VALUE IS \$1750 AND TOLD HIM THE DEADLINE IS 1/15/17.	12/06/2016
3	PHONE CALL FROM JOHN SCOTT RE DISPUTING TAX BILL. WILL CHECK W/ LYNN TO CONFIRM THE PROCESS.	12/06/2016
4	ATTACHED EMAIL CRPS FRM TREAS & COPY OF TAXPAYER LETTER	11/22/2016
5	RESPONSE FRM D VOLKMANN RE TIE DOWN DATES ATTACHED - APPRX JULY 1 2016 THRU OCTOBER 3 2016	11/15/2016
6	EMAILD INQ TO DVOLKMANN OF GLIDERPORT ABOUT TIE DOWN AND TIME GLIDER SPENT THERE	11/09/2016
7	ANDY SENT COPY OF TAXPAYER CRSP WITH TREAS RESPONSE & COPY OF CONTRA COSTA PP TAX INFO. FILED IN APPXTENDER	11/09/2016
8	TP SENT ATTACHED NOTE TO TREASURER'S OFFICE. M STAFFORD REQUESTS A COPY OF CALIF TAX BILL FOR 2016.	10/26/2016

Account Dates

Account Dates

Account

	Date	By
Processed On:	10/04/2016	jtayl JUSTIN TAYLOR
Billed by Treas:	10/19/2016	< None >
Sent to Treas:	10/11/2016	< None >

Return

	Date	By
Notice Date:	07/11/2016	< None >
Second Notice:		< None >
Final Notice:	08/25/2016	

Extension Request

Request Rec.:		Additional Ext:	
Determination:	< None >	Determination:	< None >
Ext. Due Date:		Addl Ext. Due:	

Additional Information

Requested:	
Requested By:	
Received:	
Determination:	< None >
Notice Resent:	

Penalty Return

Notification Date:	
Waiver Deadline:	
eDec Import Date:	
Determination:	< None >
Letter Date:	
Protest Deadline:	

Survey

Insp:	
Note:	

Notification Date:

Notification Date:	
Waiver Deadline:	
Waiver Req.:	
Determination:	< None >
Letter Date:	
Protest Deadline:	

FAA REGISTRY

N-Number Inquiry Results

N20QS is Assigned

Aircraft Description

Serial Number	20705	Status	Valid
Manufacturer Name	SCHLEICHER	Certificate Issue Date	11/09/2012
Model	ASW-20C	Expiration Date	11/30/2018
Type Aircraft	Glider	Type Engine	None
Pending Number Change	None	Dealer	No
Date Change Authorized	None	Mode S Code (base 8 / oct)	50310431
MFR Year	1983	Mode S Code (base 16 / hex)	A19119
Type Registration	Individual	Fractional Owner	NO

Registered Owner

Name	SCOTT JOHN J		
Street	1533 CRIQUET CT		
City	CONCORD	State	CALIFORNIA
County	CONTRA COSTA	Zip Code	94518-3849
Country	UNITED STATES		

Airworthiness

Engine Manufacturer	NONE	Classification	Experimental
Engine Model	NONE	Category	Racing Exhibition
A/W Date	02/06/1984		

The information contained in this record should be the most current Airworthiness information available in the historical aircraft record. However, this data alone does not provide the basis for a determination regarding the airworthiness of an aircraft or the current aircraft configuration. For specific information, you may request a copy of the aircraft record at <http://aircraft.faa.gov/e.gov/ND/>

Other Owner Names

None

Temporary Certificates

None

Fuel Modifications

None

acct	Year Acqui	Year Built	Make	Acquisition Cost
5300580	2006	1984	SCHLEICHER	58000
5300572	2010	1970	SCHLEICHER	13000
5300683	2013	0	SCHLIECHER	37000
5600957	2013	1998	SCHLEICHER	70000
5601025	2014	1978	SCHLEICHER	18000
5601202	2016	1983	SCHLEICHER	32000
			Median Acquisition Cost	34500

Sato, Lynn

From: David Volkmann <drvolkmann@charter.net>
Sent: Monday, November 14, 2016 7:28 PM
To: Sato, Lynn
Subject: RE: N20QS JOHN SCOTT

Lynn,

My records indicate N20QS was at the Air Sailing Gliderport from on or about July 1,2016 through on or about October 3, 2016.

David

From: Sato, Lynn [<mailto:L.Sato@washoecounty.us>]
Sent: Wednesday, November 09, 2016 3:02 PM
To: David Volkmann; David Volkmann
Subject: N20QS JOHN SCOTT

Hello Mr. Volkmann,

We have a question about the status of the glider N20QS owned by John Scott at the Air Sailing Gliderport. Can you tell us if you have any records of the time the glider spent at the Air Sailing Gliderport? If not, can you tell us what the length of time the tie down agreement covered? I appreciate your time.

Thanks very much,

Lynn Sato
Office Support Specialist | Washoe County Assessor's Office
(775) 328-2212 | 1001 E. Ninth St., Bldg. D, Reno, NV 89512
lsato@washoecounty.us



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OFFICE OF THE WASHOE COUNTY TREASURER
Tammi Davis, Treasurer

1001 E 9TH St - D140
P O Box 30039
Reno NV 89520-3039

OCTOBER 25, 2016

JOHN J SCOTT
1533 CRIQUET CT
CONCORD CA 94518

Parcel/Identifier No: 5300699

Dear John J Scott,

The aircraft appeared on the tie-down list from the Air Sailing Gliderport. The Washoe County Assessor sent two requests to file a property declaration and failure to respond resulted in the tax bill. If you can provide a copy of your tax bill in California for the current year, it will assist us in making a determination as to the appropriate taxing jurisdiction.

Please contact me with any questions.

Sincerely,

Andy Parmele
Collection Analyst
aparmele@washoecounty.us
(775)328-2517

NRS 361.045 Taxable property. Except as otherwise provided by law, all property of every kind and nature whatever within this state shall be subject to taxation.

[Part 1:344:1953; A 1954, 29; 1955, 340]

NRS 361.260 Method of assessing property for taxation; appraisals and reappraisals.

1. Each year, the county assessor, except as otherwise required by a particular statute, shall ascertain by diligent inquiry and examination all real and secured personal property that is in the county on July 1 which is subject to taxation, and also the names of all persons, corporations, associations, companies or firms owning the property. The county assessor shall then determine the taxable value of all such property, and shall then list and assess it to the person, firm, corporation, association or company owning it on July 1 of that fiscal year. The county assessor shall take the same action at any time between May 1 and the following April 30, with respect to personal property which is to be placed on the unsecured tax roll.

NRS 361.265 Written statement concerning personal property: Demand; contents; return of statement; valuation of unlisted property claimed by absent or unknown person; penalties.

1. To enable the county assessor to make assessments, he or she shall demand from each natural person or firm, and from the president, cashier, treasurer or managing agent of each corporation, association or company, including all banking institutions, associations or firms within the county, a written statement, signed under penalty of perjury, on forms and in the format prescribed by the county assessor of all the personal property within the county, owned, claimed, possessed, controlled or managed by those persons, firms, corporations, associations or companies. The signature required by this subsection may include an electronic signature as defined in [NRS 719.100](#).

2. The statement must include:

(a) A description of the location of any taxable personal property that is owned, claimed, possessed, controlled or managed by the natural person, firm, corporation, association or company, but stored, maintained or otherwise placed at a location other than the principal residence of the natural person or principal place of business of the firm, corporation, association or company;

(b) The cost of acquisition of each item of taxable personal property including the cost of any improvements of the personal property, such as additions to or renovations of the property other than routine maintenance or repairs, and the year in which each item of taxable personal property was acquired; and

(c) If the natural person, firm, corporation, association or company owns at least 25 mobile or manufactured homes that are being leased within the county for commercial purposes, and those homes have not been converted to real property pursuant to [NRS 361.244](#), the year, make or model, size, serial number and location of each such mobile or manufactured home.

3. The statement must be returned not later than July 31, except for a statement mailed to the taxpayer after July 15, in which case it must be returned within 15 days after demand for its return is made. Upon petition of the property owner showing good cause, the county assessor may grant one or more 30-day extensions.

4. If the owners of any taxable property not listed by another person are absent or unknown, or fail to provide the written statement as described in subsection 1, the county assessor shall make an estimate of the value of the property and assess it accordingly. If the name of the absent owner is known to the county assessor, the property must be assessed in that name. If the name of the owner is unknown to the county assessor, the property must be assessed to "unknown owner," but no mistake made in the name of the owner or the supposed owner of personal property renders the assessment or any sale of the property for taxes invalid.

5. If any person, officer or agent neglects or refuses on demand of the county assessor or his or her deputy to give the statement required by this section, or gives a false name, or refuses to give his or her name or sign the statement, the person, officer or agent is guilty of a misdemeanor.

[Part 5:344:1953] — (NRS A [1967, 558](#); [1969, 1452](#); [1981, 327](#); [1983, 519, 1193](#); [1985, 748](#); [1987, 531](#); [1989, 1820](#); [2003, 2761](#); [2005, 2656](#))

NRS 361.345 Power of county board of equalization to change valuation of property; review of changes in valuation and estimation of certain property by county assessor; notice of addition to assessed valuation.

2. If a person complaining of the assessment of his or her property:

(a) Has refused or, without good cause, has neglected to give the county assessor the person's list under oath, as required by [NRS 361.265](#); or

(b) Has, without good cause, refused entry to the assessor for the purpose of conducting the physical examination required by [NRS 361.260](#),

↳ the county assessor shall make a reasonable estimate of the property and assess it accordingly. No reduction may be made by the county board of equalization from the assessment of the county assessor made pursuant to this subsection.

3. If the county board of equalization finds it necessary to add to the assessed valuation of any property on the assessment roll, it shall direct the clerk to give notice to the person so interested by registered or certified letter, or by personal service, naming the day when it will act on the matter and allowing a reasonable time for the interested person to appear.

[Part 18:344:1953; A 1954, 29] — (NRS A [1969, 95](#); [1981, 796](#); [1985, 1435](#); [1991, 2097](#); [1997, 1576](#); [2003, 2764](#); [2005, 2657](#); [2009, 1219](#))

NRS 361.450 Liens for taxes: Attachment; superiority; expiration of lien on mobile or manufactured home.

1. Except as otherwise provided in subsection 3, every tax levied under the provisions of or authority of this chapter is a perpetual lien against the property assessed until the tax and any penalty charges and interest which may accrue thereon are paid. Notwithstanding the provisions of any other specific statute, such a lien and a lien for unpaid assessments imposed pursuant to [chapter 271](#) of NRS is superior to all other liens, claims, encumbrances and titles on the property, including, without limitation, interests secured pursuant to the provisions of [chapter 104](#) of NRS, whether or not the lien was filed or perfected first in time.

2. Except as otherwise provided in this subsection and [NRS 361.739](#), the lien attaches on July 1 of the year for which the taxes are levied, upon all property then within the county. The lien attaches upon all migratory property, as described in [NRS 361.505](#), on the day it is moved into the county. If real and personal property are assessed against the same owner, a lien attaches upon such real property also for the tax levied upon the personal property within the county. A lien for taxes on personal property also attaches upon real property assessed against the same owner in any other county of the State from the date on which a certified copy of any unpaid property assessment is filed for record with the county recorder in the county in which the real property is situated.

681 Property Taxation—Neither an assessor nor a board of equalization is authorized to prorate personal property tax liability when ownership of such property changes during a tax year.

CARSON CITY, September 1, 1970

THE HONORABLE WILLIAM MACDONALD, *Humboldt County District Attorney*, Humboldt County Courthouse, Winnemucca, Nevada 89445

DEAR MR. MACDONALD:

You have submitted to this office for an opinion the inquiry of the Humboldt County Board of Equalization as to whether Nevada's property tax laws authorize proration or any other relief when the ownership of personal property changes subsequent to assessment. The particular circumstances which gave rise to the inquiry involved the sale at auction of equipment of a contractor, the auction taking place on October 23. The contractor requested that his assessment or tax be prorated so as to give credit to the fact that he was the owner of the equipment for only a portion of the tax year.

ANALYSIS

The tax year coincides with the fiscal year, which extends from July 1 of one year to June 30 of the following year. [NRS 361.020](#). Each county assessor is required by law to ascertain between July 1 and December 31 all real and personal property subject to taxation in his county and the names of the owners of said property; he then must assess the property to the owners. [NRS 361.260](#). A lien for the tax attaches to the property on the first Monday in September. [NRS 361.450](#). The lien, therefore, may precede assessment. The Nevada Supreme Court has held that the owner of personal property which has a situs in Nevada on the date the property tax lien attaches is liable for the entire tax even though the property is removed from the State before actual assessment. *State v. Eastabrook*, [3 Nev. 173](#) (1867). This case seems to cover any of the contractor's equipment that was removed from the State after the October auction; the contractor remains liable for the entire amount of the tax on such equipment.

Some of the contractor's equipment probably was moved to another county in Nevada after the auction. The law in Nevada always has been that any nonexempt property having a situs within the State at any time during the assessment period (now July 1-December 31) shall be assessed and taxed, with the full cash value of the property being used as the measure for assessment and taxation. [NRS 361.260](#); *State of Nevada v. Earl*, [1 Nev. 394](#) (1865); *State of Nevada v. Carson and Colorado Ry. Co.*, [29 Nev. 487](#), [91 Pac. 932](#) (1907). Both cases are specific that the entire tax must be imposed once each year, but only once. It appears quite clear that no item of property may be subjected to multiple property taxation, regardless of change of ownership or change of county of situs. These same cases, however, imply that any apportionment of tax would have to come about through agreement between successive owners, for they call for one-time imposition of the tax only, and at the full amount called for by the full cash value of the property.

Only the Legislature may authorize apportionment or proration of property tax.

Attorney General's Opinion No. 269, dated October 29, 1965; Attorney General's Opinion No. 912, dated April 27, 1950. In 1967 the Nevada Legislature enacted legislation requiring proration of property tax on livestock located in more than one county during the tax year. [NRS 361.247](#). Likewise, in 1965 it amended [NRS 361.505](#) to require proration of tax on personal property brought into the State or a county for the first time during the year. This was accomplished by adding the sentence: "The county assessor shall prorate the tax on personal property brought into or entering the state or county for the first time during the fiscal year by reducing the tax one-twelfth for each full month which has elapsed since the beginning of the fiscal year." 1965 Statutes of Nevada, page 1249. This statutory provision applies to property entering a county for the first time; it makes no reference to the possible circumstance that the property came from another county in Nevada. If the Legislature intended that there be proration or apportionment between counties it could easily have said so. It did not. Further, the above-quoted amendment does not make any provision for the situation where the property not only comes into a county for the first time during the tax year, but also is removed from that county before the end of said year.

From the foregoing it appears that the Legislature intended existing law to remain in effect except as specifically changed by the 1965 amendment. The first requirement of existing law is that the property have a "situs" within the county seeking to impose property tax. Insofar as a contractor's equipment is concerned, this is the county in which it is located or used for at least a substantial portion of the tax year. See *Barnes v. Woodbury*, [17 Nev. 383](#), 30 Pac. 1068 (1883); *State v. Shaw*, [21 Nev. 222](#), 29 Pac. 321 (1892); Attorney General's Opinion No. 912, dated April 27, 1950. Unless the equipment first entered the county during the tax year, the full amount of tax must be assessed, as measured by the full cash value of the property. *State of Nevada v. Earl*, supra; *State of Nevada v. Carson and Colorado Ry. Co.*, supra. Payment of such full amount of tax constitutes a defense against any further property taxation of the same property in the same tax year by another county, despite any change of ownership. *Id.* The burden of proving prior payment lies with the owner who claims that he is not subject to further taxation because of such prior payment. 51 Am.Jur. Taxation § 524. Unless the assessor is satisfied that the personal property tax liability of the owner is covered by the value of the owner's real property in the county, the assessor is required to "proceed immediately to collect the taxes on the personal property." [NRS 361.505](#). This is a further indication that no proration or apportionment of taxes between counties was intended by the Legislature.

Some of the contractor's equipment purchased at the auction may have remained in Humboldt County under its new owner. Subsection 2 of [NRS 361.310](#) states that: "The county assessor may close his roll as to changes in ownership of property on December 1 of each year or on any other date which may be approved by the board of county commissioners." As a practical matter, any change from the December 1 date is usually to an earlier date, for the assessor is required to complete and publish his tax list or assessment roll by January 1. [NRS 361.300](#); [NRS 361.310](#). The Humboldt County Assessor closes his roll on September 15. Since the auction of the contractor's equipment 16 occurred on October 23, it would have been too late to change the ownership on the

assessor's roll. Tax liability does coincide with ownership, but there still would be no statutory or other legal basis for proration or apportionment of tax liability between the old owner and the new, no matter which one is listed on the roll at the time it is closed. Any such apportionment or proration would have to be as a result of agreement between the old owner and the new, and the assessor would not be bound by such an agreement. So long as the property had a situs in the county in July, the assessor has the right to demand the full amount of the tax from the person who is the owner at the time of assessment. [NRS 361.260](#).

CONCLUSION

There is no legal basis for an assessor or board of equalization to prorate or apportion personal property tax liability between successive owners when ownership of the property changes during the tax year.

Respectfully submitted,
HARVEY DICKERSON, *Attorney General*
By IRWIN AARONS, *Deputy Attorney General*



Washoe County District Attorney

RICHARD A. GAMMICK
DISTRICT ATTORNEY

March 27, 2002

Opinion 6406

Thomas J. Sokol
Asst. Chief Deputy Assessor
Washoe County Assessor
P.O. Box 11130
Reno, Nevada 89520

RE: Request for Refund of Personal Property Tax
Donald Molde, M.D.
Aircraft Identifier No. 51/00-396; 2001-2002 fiscal tax year
Amount of Requested Refund: \$117.03

Dear Mr. Sokol:

You asked this office to review a request for a partial refund of personal property taxes for the 2001-2002 fiscal tax year billed to Donald Molde, M.D., concerning the aircraft referenced above. According to the documentation provided to this office, Dr. Molde asserts that a partner and he owned the aircraft "from July 1, 2001 through August 25, 2001. At that point, the airplane was sold to a purchaser in San Diego." Accordingly, Dr. Molde states that he should not be responsible for the amount of the tax assessed for the period subsequent to his sale. Dr. Molde further asserts that the penalty he paid along with the taxes should be refunded because he acted promptly in contesting the tax.

Regarding a similar matter, the Nevada Attorney General's Office opined the following:

NRS 361.450(1) creates 'a perpetual lien against the property assessed' for taxes levied under NRS chapter 361 'until the tax and penalty charges and interest which may accrue are paid.' With certain exceptions, 'the lien attaches on July 1 of the year for which the taxes are levied.' NRS 361.450(2). The statutes are clear. A personal property tax lien attaches to the personal property assessed and remains with the property until satisfied, regardless of subsequent transfer(s) of the property. *See State of Nev. v. Yellow Jacket Silver Mining Co.*, 14 Nev. 220, 231 (1879) (analyzing a tax lien statute substantially similar to NRS 361.450(1), the court stated 'the lien created continues indefinitely, or until the tax is paid ... the effect of which is to subject the property to the payment of the tax, although it may have passed into other hands subsequent to the date of the lien').

AGO 96-28 (9-27-1996)

Thomas J. Sokol

March 27, 2002

Page 2

Similarly, the Nevada Supreme Court held that the owner of personal property, which is located in Nevada on the day the tax lien attaches, is liable for the personal property tax even though the property is removed from the State before actual assessment. *State v. Eastabrook*, 3 Nev. 173 (1867). The "perpetual lien" attaches to personal property on July 1 and the Assessor is not authorized by law to prorate or apportion the personal property tax between successive owners when ownership changes during the tax year. AGO 681 (9-01-1970). Such apportionment of the tax must be considered in the sale agreement between the buyer and seller. *Id.*

Regarding penalties accrued due to late payment, this office's prior opinions, and the long-standing policy of the Washoe County Board of Commissioners, declines penalty refund requests in similar circumstances when the tax bill is sent to former owners who fail to inform the Treasurer of a change in ownership. See Meiran, #4085; Comstock Games, Inc., #6185; Parker, #6020; Verex Properties, #6076; Nathan, #4021; Holland, #6166. Further, a protest of a tax bill without payment of the tax does not constitute such unusual mitigating circumstances as to justify a refund of penalties. Accord No. Nev. Equip. Co., #6178

Accordingly, it is the opinion of this office that Dr. Molde is not entitled to a partial tax refund or to a refund of the penalties. Without approval by this office of the requested refunds, the Treasurer may not refund the monies requested. NRS 354.240(3). Should you have any questions, please do not hesitate to call.

Sincerely,

RICHARD A. GAMMICK

District Attorney

By 

BLAINE E. CARTLIDGE

Deputy District Attorney

cc: Robert McGowan, Washoe County Assessor
Rita Lencioni, Washoe County Manager's Office
Bill Berrum, Washoe County Treasurer

Donald Molde, M.D.
3290 Penfield Circle
Reno, Nevada 89502

OPINION NO. 96-28LIENS; PERSONAL PROPERTY; TAXATION; TAXES: The summary seizure and sale remedy of [NRS 361.535](#) is available to collect delinquent taxes assessed against the specific personal property to which an [NRS 361.450\(1\)](#) lien has attached, but is no longer owned by the person assessed. A holder of a recorded security interest in personal property is entitled to notice by mail or personal service prior to tax sale of the personal property as a supplement to the constructive notice required by [NRS 361.535](#) in order to satisfy the requirements of due process. However, due process does not require notice to a mere holder of a recorded security interest prior to seizure of the property by the county assessor.

Carson City, September 27, 1996

Mr. Paul D. Johnson, Deputy District Attorney, Office of the District Attorney, Civil Division, Post Office Box 552215, Las Vegas, Nevada 89155-2215

Dear Mr. Johnson:

You have requested an opinion from this office on two questions relating to the summary seizure and sale of personal property for delinquent taxes authorized by [NRS 361.535](#). Our response follows.

QUESTION ONE

Is the seizure and sale remedy of [NRS 361.535](#) available to collect delinquent taxes assessed against personal property no longer owned by the person assessed?

ANALYSIS

[NRS 361.450\(1\)](#) creates “a perpetual lien against the property assessed” for taxes levied under [NRS chapter 361](#) “until the tax and penalty charges and interest which may accrue are paid.” With certain exceptions, “the lien attaches on July 1 of the year for which the taxes are levied.” [NRS 361.450\(2\)](#). The statutes are clear. A personal property tax lien attaches to the personal property assessed and remains with the property until satisfied, regardless of subsequent transfer(s) of the property. See *State of Nev. v. Yellow Jacket Silver Mining Co.*, [14 Nev. 220](#), 231 (1879) (analyzing a tax lien statute substantially similar to [NRS 361.450\(1\)](#), the court stated “the lien created continues indefinitely, or until the tax is paid . . . the effect of which is to subject the property to the payment of the tax, although it may have passed into other hands subsequent to the date of the lien”); cf. *Magee v. Whitacre*, [60 Nev. 208](#), 214-17, 106 P.2d 751, 753-55 (1940).

In 1977 the legislature amended [NRS 361.450](#). Act of January 26, 1977, ch. 483 § 4, 1977 Nev. Stat. 1000. The amendment created an exception for mobile homes whereby the tax lien expires upon sale, except liens for personal property taxes for the preceding twelve months. [NRS 361.450\(3\)](#). “Where a former statute is amended . . . it has been held that such amendment is persuasive evidence of what the legislature intended by the first statute.” *Hughes Properties v. State of Nev.*, [100 Nev. 295](#), 298, 680 P.2d 970, 972 (1984). Although [NRS 361.450\(1\)](#) was and is clear, the 1977 amendment confirms that a personal property tax lien created by [NRS 361.450\(1\)](#), with the exception of mobile homes, remains attached to the property upon transfer.

[NRS 361.535](#) sets forth the time for payment of personal property tax, the penalty for failure to pay, and authorizes the summary seizure and sale of personal property to satisfy delinquent taxes and costs. [NRS 361.535](#) provides in pertinent part:

1. If the person, company or corporation so assessed neglects or refuses to pay the taxes within 30 days after demand, a penalty of 10 percent must be added. If the tax and penalty are not paid on demand, the county assessor or his deputy shall seize, seal or lock enough

of the personal property of the person, company or corporation so neglecting or refusing to pay to satisfy the taxes and costs.

2. The county assessor shall post a notice of the seizure, with a description of the property, in three public places in the township or district where it is seized, and shall, at the expiration of 5 days, proceed to sell at public auction, at the time and place mentioned in the notice, to the highest bidder, for lawful money of the United States, a sufficient quantity of the property to pay the taxes and expenses incurred. For this service the county assessor must be allowed from the delinquent person a fee of \$3.

While one might argue that the summary seizure and sale remedy provided in [NRS 361.535](#) applies only to the assessed taxpayer, the most reasonable conclusion, based on the lien created by [NRS 361.450](#)(1), the purposes of the statutes, and case law from this and other jurisdictions, is that the summary seizure and sale remedy follows lien property into the hands of subsequent transferees for taxes assessed against that personal property. To conclude otherwise would frustrate the legislative intent and render the lien for delinquent personal property taxes a nullity upon mere transfer of the personal property.

Statutes and rules are to be read, construed, and interpreted in harmony with other statutes and rules so as to render them compatible wherever possible. *City of Las Vegas v. Mun. Court*, [110 Nev. 1021](#), 1024, 879 P.2d 739, 741 (1994); *Allianz Ins. Co. v. Gagnon*, [109 Nev. 990](#), 993, 860 P.2d 720, 723 (1993); *City Council of Reno v. Reno Newspapers*, [105 Nev. 886](#), 892, 784 P.2d 974, 978 (1989); *Weston v. County of Lincoln*, [98 Nev. 183](#), 185, 643 P.2d 1227, 1229 (1982) (holding that real property redemption statute, [NRS 361.585](#), applied to patented mining claims in addition to [NRS 517.410](#)). When construing statutory provisions, “[a]n entire act must be construed in light of its purpose and as a whole.” *Acklin v. McCarthy*, [96 Nev. 520](#), 523, 612 P.2d 219, 220 (1980); *see also List v. Whisler*, [99 Nev. 133](#), 138-39, 660 P.2d 104, 107 (1983) (determining constitutionality of factoring provisions of 1981 tax package, “construction of legislation should be based on legislative intent, and legislative intent is to be determined by looking at the whole act, its object, scope and intent”); *Ex Parte Iratacable*, [55 Nev. 263](#), 282-83, 30 P.2d 284, 290 (1934) (construing provisions of act for licensing of motor vehicles, the “clear purpose of [which was] to raise revenue,” entire act must be looked to and considered as a whole).

Although tax statutes are construed most strongly against the government and in favor of the taxpayer, the rule of strict construction is only one of several factors to be considered, and is to be utilized in conjunction with other rules of statutory construction. It is the duty of this court to give effect to the clear intention of the Legislature and to construe the language of a statute so as to give it force and not nullify its manifest purpose.

Hughes, 100 Nev. at 297 (citations omitted) (construing gaming license fees statutes and regulation in light of their primary purpose which is to produce revenue); *see also McKay v. Bd. of Supervisors*, [102 Nev. 644](#), 650-51, 730 P.2d 438, 443 (1986). When there are alternative possible interpretations of a statute, an interpretation which produces an unreasonable result should be rejected in favor of one producing a reasonable result. *Hughes*, 100 Nev. at 298. “If the language [of a statute] is capable of two constructions, one of which is consistent and the other is inconsistent with the evident object of the legislature in passing the law, that construction must be adopted which harmonizes with the intention.” *Recanzone v. Nev. Tax Comm'n*, [92 Nev. 302](#), 305, 550 P.2d 401, 403 (1976) quoting *State of Nev. v. Cal. M. Co.*, [13 Nev. 203](#), 217 (1878) (where [NRS 361.260](#) neither specifically permitted nor prohibited cyclical plan of reappraisal, the purpose of the statute to ensure that all property be assessed as current as practicable and to ensure obtaining maximum revenue from property tax structure, 5-year cyclical reappraisal of areas within a county was appropriate rather than a reappraisal of the entire county.)

Long ago, in a case involving various aspects of summary proceedings for the collection of taxes, the Nevada Supreme Court stated:

Revenue--money is what the state needs and must have to maintain its credit and keep the machinery of government in motion. Taxes are assessed upon the property of the people for the purpose of obtaining it. While the constitution requires that property shall not be taken from the owner, either for taxes or anything else without due process of law, that provision, as applied to the collection of taxes, requires the observance only of the most essential and fundamental steps. While the rights of the individual must be protected, the government should not be unnecessarily hampered in its efforts to make collections

State of Nev. v. Cent. Pac. R.R. Co., [21 Nev. 260](#), 269-70, 30 P. 689, 692 (1892), *aff'd*, 162 U.S. 512 (1896). Additionally, in an action to recover personal property sold at tax sale, wherein it was held that personal property sold under a conditional sales contract which retained title in the seller was assessable to the buyer in possession, the court explained:

The property itself is subject to taxation. The legal owner knows this. . . . Such taxes are a primary lien, enforceable by seizure and sale. Both constitutional and statutory requirements for equal taxation compel a reasonable and practicable method for making all property share, through taxation, in the expense of government.

Gen. Elec. Cr. Corp. v. Andreen, [74 Nev. 199](#), 205-06, 326 P.2d 731, 734 (1958).

Application of the foregoing rules and principles leads to the conclusion that the summary seizure and sale remedy of [NRS 361.535](#) follows specific personal property, upon which tax was assessed and to which a statutory lien has attached, into the hands of a transferee. [NRS 361.535](#) must be read and interpreted in conformity with [NRS 361.450\(1\)](#) and the purposes of Nevada's revenue laws. In order to give effect to the intention of the legislature, the statutes must be construed as to give them force and not nullify their manifest purpose. In so doing, the most reasonable conclusion is that liened personal property is subject to seizure and sale for taxes assessed against that property in the hands of a transferee.

Numerous courts have arrived at this conclusion under similar statutes. *See In Re Ever Crisp Food Products Co.*, 11 N.W.2d 852 (Mich. 1943) (summary seizure and sale of personal property subject to specific and perfected personal property tax lien authorized as against subsequent, bona fide purchaser); *Owens v. Or. Livestock Loan Co.*, 47 P.2d 963 (Ore. 1935) (tax assessed against specific personal property is a lien on that personal property, which is subject to seizure and sale upon transfer of ownership); *Farm & Cattle Loan Co. v. Faulkner*, 242 P. 415 (Wyo. 1926) (to the same effect); *Milliken v. O'Meara*, 222 P. 1116 (Colo. 1924) (where personal property has been assessed and is subject to lien, methods of enforcing discharge of lien applies to subsequent owner); *Robinson v. Youngblood*, 103 N.E. 347 (Ind. Ct. App. 1913) (transferred personal property subject to seizure and sale to enforce tax lien); *Minshull v. Douglas County*, 234 P. 661 (Wash. 1925) (“[u]nder the various statutes and under our own decisions it is manifest that the personal property tax is a specific lien against the specific property assessed; that the assessed personal property may be followed into the hands of a transferee and the assessed taxes collected”); *Mills v. County of Thurston*, 47 P. 759 (Wash. 1897) (summary seizure and sale remedy applies to transferred personal property to which tax lien has attached); *cf. Magee v. Whitacre*, 60 Nev 208, 106 P.2d 751, 753-55 (1940); *Davis v. State of Ariz.*, 401 P.2d 749 (Ariz. Ct. App. 1965).

In *Mills* the court reasoned as follows:

It is further contended that the right of distraint can only be exercised against the person owing the tax, and that, where the goods have been transferred and the title has passed, the remedy is lost. But applying the same rule of a fair construction to effect the purpose of the law, it would seem that the goods not only pass subject to the lien, but also subject to the remedy given. The statute provides that: `Immediately after the first day of December the

county treasurer shall proceed to collect all delinquent personal property taxes, and if such taxes are not paid on demand he shall distrain sufficient goods and chattels belonging to the person charged with such taxes, if found within the county, to pay the same.' The lien would be of little or no consequence if it was to cease upon the sale of the property to a third party, as a transfer would be easy to make at any time, and the payment of the taxes thus evaded in many instances. Taxes are usually collected in a summary manner; and necessarily so, that there may be no harmful delay in providing the public revenue. Unreasonable restrictions should not be placed thereon. The state is not required to resort to judicial proceedings to enforce payment. If the contention of the plaintiffs was true, it would destroy the object for which the lien was given, and would render that part of [the lien statute] relating to personal property nugatory. No other means of enforcing the lien is provided. The statutes referred to must be construed together, and one part will not be given a construction that nullifies another part unless they are clearly inconsistent. It is evident that the lien was given for the purpose of insuring the collection of the tax, and to prevent a loss by reason of a transfer of the property. There is no reason why the same remedy should not obtain against the party purchasing as against the original owner, so far as the property purchased is concerned. The legislature had in mind the subjection of the property to the payment of the tax, in giving this lien, rather than enforcing a mere personal obligation of the original owner. [The summary collection statute] directs the distress of goods and chattels, if found within the county; and this would indicate that it was not intended that the original owner should be considered as the only person who could be 'charged with such taxes,' but that property might be taken anywhere in the county, regardless of ownership or possession, where the lien had attached.

Mills, 47 P. at 760-61 (citations omitted).

In *State of Nev. v. Yellow Jacket Silver Mining Co.*, [14 Nev. 220](#) (1879) the court discussed the remedies provided under the revenue laws, including a summary seizure and sale statute substantially similar to [NRS 361.535](#), vis-a-vis the applicable statute of limitations. The court cited a tax lien statute substantially similar to [NRS 361.450](#) as providing a remedy against the property. The court then stated "that the lien created continues indefinitely, or until the tax is paid, or the property is sold under tax sale . . . the effect of which is to subject the property to the payment of the tax, although it may have passed into other hands subsequent to the date of the lien." *Yellow Jacket Silver Mining Co.*, 14 Nev. at 231.

The reasoning of the *Mills* court, and the statements of the *Yellow Jacket* court, are persuasive and applicable to [NRS 361.535](#) and [NRS 361.450](#)(1). The evident object of the Nevada legislature in passing the laws was to subject personal property to not only the lien right but also the summary seizure and sale remedy.

CONCLUSION TO QUESTION ONE

The summary seizure and sale remedy of [NRS 361.535](#) is available to collect delinquent taxes assessed against the specific personal property to which an [NRS 361.450](#)(1) lien has attached, but is no longer owned by the person assessed.

QUESTION TWO

Whether the seizure and sale of personal property in accordance with [NRS 361.535](#) satisfies the requirements of procedural due process as applied to a security interest holder of record?

ANALYSIS

[NRS 361.535](#)(2) provides as follows:

The county assessor shall post a notice of the seizure, with a description of the property, in three public places in the township or district where it is seized, and shall, at the expiration of 5 days, proceed to sell at public auction, at the time and place mentioned in the notice, to the highest bidder, for lawful money of the United States, a sufficient quantity of the property to pay the taxes and expenses incurred. For this service the county assessor must be allowed from the delinquent person a fee of \$3.

[NRS 361.535](#)(4) provides:

Upon payment of the purchase money, the county assessor shall deliver to the purchaser of the property sold, with a certificate of sale, a statement of the amount of taxes or assessment and the expenses thereon for which the property was sold, whereupon the title of the property so sold vests absolutely in the purchaser.

Both the Fourteenth Amendment of the United States Constitution and article 1, section 8 of the Nevada Constitution provide that “no person shall . . . be deprived of life, liberty or property without due process of law.” The Nevada Supreme Court has recognized that notice of a tax sale of a mobile home pursuant to [NRS 361.535](#)(3) must be “reasonably calculated, under all the circumstances, to apprise [property owners] of the pendency of the action and afford them an opportunity to present their objection.” *Keck v. Peckham*, [93 Nev. 587](#), 590, 571 P.2d 813, 815 (1977), quoting *Mullane v. Cent. Hanover Tr. Co.*, 339 U.S. 306, 314 (1950). The court has also recognized that prior to a tax sale of land under [NRS 361.565](#), “a county tax collector must give personal notice to the holder of a recorded interest in the land.” *Bell v. Anderson*, [109 Nev. 363](#), 366, 849 P.2d 350, 352 (1993), citing *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 (1983).

In *Mennonite*, the U.S. Supreme Court held that publication, posting, and mailed notice to the owner of real property, prior to a tax sale, was inadequate to notify the holder of a recorded mortgage, and did not meet the requirements of the Due Process Clause of the Fourteenth Amendment. The Court stated:

When the mortgagee is identified in a mortgage that is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address, or by personal service. But unless the mortgagee is not reasonably identifiable, constructive notice alone does not satisfy the mandate of *Mullane*.

Mennonite, 462 U.S. at 798.

In *Omnibank Iliff, N.A. v. Tipton*, 843 P.2d 71 (Colo. Ct. App. 1992), the court held that a holder of a recorded security interest in personal property was entitled to notice by mail or personal service of tax sale, and statutory constructive notice was not sufficient under the due process clause. Likewise, in *Joe Self Chevrolet v. Bd. of County Comm'rs*, 802 P.2d 1231 (Kan. 1990), the court held that the sale of personal property for delinquent taxes assessed, without actual notice to a secured creditor of record, violated due process and rendered the statute unconstitutional as applied, although it was not unconstitutional on its face.

Based upon the above authorities, a holder of a recorded security interest in personal property, is entitled to actual notice of a tax sale as a supplement to the constructive notice required by [NRS 361.535](#)(2). However, this does not end the inquiry. We must also determine whether due process requires notice to a secured creditor of record prior to seizure of the personal property.

In *T.M. Cobb Co. v. County of Los Angeles*, 547 P.2d 431 (Cal. 1976), the purchaser of a taxpayer's personal property at foreclosure sale conducted by secured creditors of taxpayer, sued

the city and county to recover taxes assessed against the property and paid by the purchaser under protest. The court examined the constitutionality of the California statute authorizing the summary seizure and sale of personal property to collect delinquent taxes. The court held that the statute did not deny the assessee due process insofar as it authorized the seizure of the assessee's property. The court reasoned as follows:

[T]he county has a substantial interest in the collection of revenue. The protection of this interest justifies the summary seizure of property. Only in this manner can the assessee be prevented from dissipating his assets and impeding the collection of the tax which he owes. While seizure of the property may deprive the assessee or a third party claimant such as plaintiff of the use of the asset during the period between the seizure and the final determination of rights in the property at an administrative hearing, the collection of taxes is one of those extraordinary situations where `summary procedure may well meet the requirements of due process'

Id. at 436 (citations omitted).

The reasoning and holding of the California Supreme Court in *T.M. Cobb* as set forth above applies to and answers the question at hand. Procedural due process does not require notice to a secured interest holder of record prior to the seizure of personal property authorized by [NRS 361.535](#).

CONCLUSION TO QUESTION TWO

A holder of a recorded security interest in personal property is entitled to notice by mail or personal service prior to tax sale of the personal property as a supplement to the constructive notice required by [NRS 361.535](#) in order to satisfy the requirements of due process. However, due process does not require notice to a mere holder of a recorded security interest prior to seizure of the property by the county assessor.

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