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Amendment to Internal Revenue Act as an Aid to Chattel Mortgagees

AMENDMENT TO INTERNAL REVENUE ACT AS AN AID TO CHATTEL MORTGAGEES

By LOUIS A. HELLERSTEIN, *of the Denver Bar*

UPON the repeal of the prohibition act it was felt by finance companies and particularly those dealing in automobile mortgages that the Federal Government would cease its activities in the way of seizing automobiles, upon which they held mortgages for the carrying, illegally, of liquor. This hopeful feeling was short-lived since an examination of the Internal Revenue Act in force prior to August 27, 1935, was such as to make his burden even heavier. Under the prohibition act, a holder of a chattel mortgage upon an automobile, seized while carrying what is commonly termed "bootleg liquor" could, under the prohibition act, in the event he was an innocent holder of the mortgage and had carefully investigated the applicant who mortgaged the car, file his claim under the mortgage and thereupon, after the production of evidence to substantiate his claim, have the automobile returned to him, if the amount of his debt exceeded the appraised value of the car, or if in the event the car was appraised at a greater value than his debt, have his claim allowed and upon sale of the automobile he paid his indebtedness. An examination of the Internal Revenue Act (prior to August 27, 1935) disclosed that if the evidence showed the automobile was seized with illicit liquor therein, the same was subject to forfeiture to the United States, regardless of the fact that the mortgagee was innocent in the transaction and had no knowledge concerning its usage or that it would be so used. Numerous authorities have so held and their citation at this time would be of little value in view of the new amendment hereinafter referred to and now in effect. There were some exceptions to forfeiture such as in the case of a stolen car and other similar examples.

At the last session of Congress, at the request of interested parties, there was introduced before that body and passed

both by the Senate and the House, a new amendment to the Internal Revenue Act, which was duly approved thereafter by the President of the United States on August 27, 1935. This new amendment appears in the United States Code Compact Edition, special pamphlet, No. 9, as title 21, under "Intoxicating Liquor," and Section 40 A thereof. This new amendment is as follows:

Sec. 40a. REMISSION OR MITIGATION OF FORFEITURE OF VEHICLE OR AIRCRAFT; POSSESSION PENDING TRIAL.

(a) **JURISDICTION OF COURT.** Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

(b) **CONDITIONS PRECEDENT TO REMISSION OR MITIGATION.** In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, or the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

(c) CLAIMANTS FIRST ENTITLED TO DELIVERY.

Upon the request of any claimant whose claim for remission or mitigation is allowed and whose interest is first in order of priority among such claims allowed in such proceeding and is of an amount in excess of, or equal to, the appraised value of such vehicle or aircraft, the court shall order its return to him; and, upon the joint request of any two or more claimants whose claims are allowed and whose interests are not subject to any prior or intervening interests claimed and allowed in such proceedings, and are of a total amount in excess of, or equal to, the appraised value of such vehicle or aircraft, the court shall order its return to such of the joint requesting claimants as is designated in such request. Such return shall be made only upon payment of all expenses incident to the seizure and forfeiture incurred by the United States. In all other cases the court shall order disposition of such vehicle or aircraft as provided in sections 304f to 304m of Title 40, and if such disposition be by public sale, payment from the proceeds thereof, after satisfaction of all such expenses, of any such claim in its order of priority among the claims allowed in such proceedings.

(d) DELIVERY ON BOND PENDING TRIAL. In any proceeding in court for the forfeiture under the internal-revenue laws of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquor, the court shall order delivery thereof to any claimant who shall establish his right to the immediate possession thereof, and shall execute, with one or more sureties approved by the court, and deliver to the court, a bond to the United States for the payment of a sum equal to the appraised value of such vehicle or aircraft. Such bond shall be conditioned to return such vehicle or aircraft at the time of the trial and to pay the difference between the appraised value of such vehicle or aircraft as of the time it shall have been so released on bond and the appraised value thereof as of the time of trial; and conditioned further that, if the vehicle or aircraft be not returned at the time of trial, the bond shall stand in lieu of, and be forfeited in the same manner as, such vehicle or aircraft. Notwithstanding the provisions of this subsection or any other provisions of law relating to the delivery of possession on bond of vehicles or aircraft sought to be forfeited under the internal-revenue laws, the court may, in its discretion and upon good cause shown by the United States, refuse to order such delivery of possession. (Aug. 27, 1935, c. 740, Sec. 204, 49 Stat ____.)

An examination of the foregoing discloses that the holder of the mortgage, if he comes within the amendment,

may obtain relief so that his mortgage debt is protected when seized under the Internal Revenue Act. The amendment is just and equitable as otherwise the holder of the mortgage loses his property, practically without any recourse, since he is deprived of his security and may not have the same subjected to his debt. The new amendment also permits the delivery of the car to a mortgagee upon bond which is of substantial assistance since it ordinarily takes approximately 90 days to have a claim heard and pending the hearing the automobile depreciates in value and storage is added to the cost of the proceedings, which are chargeable against the claimant before he may have the automobile returned upon allowance of his claim.

Attorneys representing finance companies or those dealing in mortgages particularly upon automobiles will find in the amendment the means of protection of the interest of the clients where the clients themselves use diligence in investigating the party mortgaging the automobile to them and find no facts to indicate the automobile would be used illegally. The former provisions of the Internal Revenue Act were harsh and without justification. It may have originally suited the existing conditions, when the law was passed, but with advent of automobiles, the law was extreme and unwarranted. The new amendment indicates the progress in the making of laws consistent with present conditions.

Mr. F. D. Stackhouse, clerk of the District Court, advises that approximately fifty attorneys are interested in the decree in Case No. 91471, Water District No. 9; that the counties and the water board who pay for the printing of the decree have agreed on a price of \$5.00 for extra copies and there will be approximately ninety copies available at that price as soon as the decree is printed. Any attorney who desires a copy may notify the clerk's office.

Mr. Stackhouse further advises that the law library has received the latest book published by the American Law Institute, entitled "Restatement of Trusts," in two volumes.