

Notes of Decisions

Construction and application 1
Interest 2

1. Construction and application

Statutes providing for assignment of tax sale certificates and for redemption therefrom were in pari materia, and they would have to be considered together and apparently conflicting sections considered and reconciled with general intent of the statute. *Kerr v. Trescher*, 34 N.J.Super. 437, 112 A.2d 598 (Ch.1955).

This section does not give the lien of a town priority over a prior lien of the state. *Town of Irvington v. Ollemar*, 128 N.J.Eq. 402, 16 A.2d 563 (1941) affirmed 131 N.J.Eq. 189, 24 A.2d 368.

2. Interest

Where property owner tendered payment to township, which had purchased tax sale certificate with respect to property in question, but amounts tendered were insufficient to pay in full delin-

quent taxes and accrued interest thereon in order to redeem property, interest accrual on delinquent taxes was not tolled by any of the tenders of payment, in that township was not obligated to accept anything less than full amount required for redemption. *Millburn Tp. In Essex County v. Block 1208, Lot 2*, 189 N.J.Super. 523, 461 A.2d 163 (Ch. 1983).

Municipality cannot, on redemption of property from tax sale, charge interest on tax subsequent to that for which property was sold, absent statutory authority. *Township of Long Beach v. Daniel B. Frazier Co.*, 10 N.J.Misc. 918, 161 A. 677 (1932) affirmed 112 N.J.Eq. 329, 164 A. 569.

Both general tax act and tax sale revision contemplate that municipality shall collect interest on delinquent taxes before sale and also on redemption, even though municipality has not by resolution fixed rate. *Id.*

54:5-60. Amount required if certificate is not held by municipality

If the certificate of sale is not held by the municipality, the amount required for redemption shall include all sums for subsequent municipal liens, and interest and costs thereon, actually paid by the holder of the tax title or his predecessor therein, together with interest on the amount so paid at the rate chargeable by the municipality, provided the holder of such title shall have made and filed with the collecting officer an affidavit showing the amount of such payment, which affidavit may be taken before such officer.

Historical Note

Source: L.1918, c. 237, § 43, p. 894 [1924 Suppl. § 208-444a(46)].

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1. Construction and application

Statutes providing for assignment of tax sale certificates and for redemption therefrom were in pari materia, and they

would have to be considered together and apparently conflicting sections considered and reconciled with general intent of the statute. *Kerr v. Trescher*, 34 N.J.Super. 437, 112 A.2d 598 (Ch.1955).

This section contemplates redemption only from individual purchaser or his assignees at original tax sale and not redemption from assignee of municipality. *Id.*

Section 54:5-99, prohibiting entry of decree foreclosing tax lien, in absence of evidence that all subsequent municipal liens were paid to time of commencement of foreclosure suit, does not require that subsequent taxes be paid by holder of tax title, especially in view of this section, so that payment of taxes on realty by guardian of lunatic having life estate therein does not bar foreclosure of lien for previous taxes by remaindermen, whose agent purchased tax sale certificate from township. *Di Bologna v. Earl*, 130 N.J.Eq. 571, 23 A.2d 791 (1942).

Where deceased acquired no title to land by reason of grantor's prior conveyance to another, and land was sold for taxes and assigned to deceased's executors, who paid taxes after certificate executed by collector of taxes was recorded as mortgage, executors were not entitled to repayment of taxes paid by them since tax certificate was assigned to them. *Hildreth v. Vineland Trust Co.*, 104 N.J.Eq. 317, 145 A. 625 (1929).

2. Legislative intent

Legislative intent in authorizing sale of tax sale certificates by municipalities was to provide three separate and different methods of sale, with different conditions appended and with different rights in assignee as regards amount he could receive upon redemption, so that municipality could by its choice of method exercise its judgment so as best to serve its interests and liquidate its delinquent taxes and obtain cash for operating needs. *Kerr v. Trescher*, 34 N.J.Super. 437, 112 A.2d 598 (Ch.1955).

In statutory intendment, the holder of the "tax title" is the possessor of the tax sale certificate. *City of Camden v. Local Government Board*, 127 N.J.L. 175, 21 A.2d 292 (1941).

3. Interest

Under § 54:5-56 (repealed) where purchaser so elected, lien of tax upon property did not become a mere individual lien so as to preclude the purchaser, upon redemption by person primarily liable to pay lien, from obtaining interest on amount paid at rate chargeable by municipality. *Tax Investment Corporation of New Jersey v. Dilts*, 131 N.J.L. 437, 36 A.2d 896 (1944) followed in 131 N.J.L. 441, 36 A.2d 898.

Both general tax act and tax sale revision contemplate that municipality shall collect interest on delinquent taxes before sale and also on redemption, even though municipality has not by resolution fixed rate. *Township of Long Beach v. Daniel B. Frazier Co.*, 10 N.J. Misc. 918, 161 A. 677 (1932) affirmed 112 N.J.Eq. 329, 164 A. 569.

4. Fees

A purchaser of four tracts of land at a tax sale in 1910, having filed a bill to foreclose the right to redeem in which one of the owners of the fee filed an answer, was not entitled to search fees amounting to \$407.80, as claimed, but defendant was entitled to a certificate of redemption on paying to the collector of delinquent taxes the redemption money, including a maximum search fee of \$40 for each tract of land. *Harris v. McMurray*, 92 N.J.Eq. 1, 116 A. 702 (1922).

In the absence of a clear and express legislative intent to the contrary, no fees or expenses other than those clearly fixed by L.1903, p. 394, could be required to be tendered in order to redeem from a tax sale. *Fitzsimmons v. Bonazita*, 77 N.J.Eq. 277, 76 A. 213 (1910).

5. Disposition of monies

In view of fact that § 54:5-54 relating to disposition by collector of monies received upon redemption of property sold at tax sale does not provide merely that collector shall receive the money for the use of the purchaser at the sale, but for the use of the purchaser, his heirs or assigns, the assignee of a borough, which was the original purchaser of the tax sale certificate, was entitled to receive the redemption monies, notwithstanding any distinctions which might be made between a "purchaser" at tax sale

and "holder" of the certificate of tax sale. *Parlo v. Van Horn*, 27 N.J.Super. 64, 98 A.2d 721 (Ch.1953).

6. Overpayments

Where town foreclosed tax sale certificates through assignee for amount more than due, and mortgagee redeemed by paying town's assignee full amount paid to town by assignee, mortgagee not questioning overcharge, mortgagee could not recover overpayment from town, since payment by mortgagee was voluntary. *Gem Building & Loan Ass'n of Newark v. Town of Belleville*, 117 N.J.L. 59, 186 A. 466 (1936).

7. Mandamus

Where relator, who held prior tax sale certificate, attempted to redeem within 10 days of subsequent tax sale at the rate bid and elected to succeed to municipality's lien, and to file affidavit as to amount paid so as to obtain interest from person primarily liable upon redemption at rate chargeable by municipality, mandamus would lie to compel collector to accept such redemption and affidavit notwithstanding that purchaser at tax sale also bid a premium. *Tax Investment Corp. of New Jersey v. Dilts*, 131 N.J.L. 437, 36 A.2d 896 (1944) followed in 131 N.J.L. 441, 36 A.2d 898.

54:5-61. Holder of tax title entitled to expenses; limitation

The holder of the tax title, upon compliance with the provisions of section 54:5-62 of this title, shall be entitled for his expenses, to such sums, as he may have actually paid out for recording fees, fees for services of notices necessarily and actually served, and fees and expenses in ascertaining the persons interested in the premises sold, but such fees and expenses shall not exceed in all the sum of twelve dollars, besides the fees actually paid for recording the certificate and fees actually paid for necessary advertising in a newspaper under this chapter. When the taxes, interest and costs shall exceed the sum of two hundred dollars, the holder of the tax title shall be entitled to collect from the owner or other person having an interest in the lands an additional sum equal to two per cent of the amount so paid for the tax title.

When the taxes, interest and costs shall exceed the sum of \$5,000, such additional sum shall be equal to 4% of such amount paid; and when that sum exceeds \$10,000, such additional sum shall be equal to 6% of such amount paid. This section shall also apply to all existing certificates held by municipalities on the effective date of this act.

Amended by L.1991, c. 75, § 48, eff. March 28, 1991.

Source: L.1918, c. 237, § 44, p. 895, [1924 Suppl. § 208-144a(47)]; L.1928, c. amended by L.1919, c. 120, § 5, p. 284 121, § 1, p. 248.

Notes of Decisions

Construction and application 2
Validity of prior law 1

1. Validity of prior law

L.1912, p. 652 (repealed), relating to fees due on sale for taxes by persons interested in the land sold, was not unconstitutional as special legislation. *Jersey Realty Co. v. Van Buskirk*, 87 N.J.L. 367, 94 A. 389 (1915).

2. Construction and application

Purchaser of tax sale certificate as to which redemption monies were in hands of collector, was not entitled to recover recording fees, fees for service of a notice, fees for title searches, when he had failed to file an affidavit with collector showing amount expended by him for such fees, nor was he entitled to recover costs or counsel fees. *Parlo v. Van Horn*, 27 N.J.Super. 64, 98 A.2d 721 (Ch. 1953).

Note 2

The tax sale statute does not preclude owner of remainder in land sold from taking assignment of tax sale certificate and foreclosing it, but permits one not primarily liable for payment of taxes on land in which he has interest to redeem it from tax sale and compel assignment of certificate, thus obtaining every right to enforce municipality's tax lien. *Di Bologna v. Earl*, 130 N.J.Eq. 571, 23 A.2d 791 (1942).

In statutory intentment, the holder of the "tax title" is the possessor of the tax sale certificate. *City of Camden v. Local Government Board*, 127 N.J.L. 175, 21 A.2d 292 (1941).

The provision that when taxes, interest, and costs shall exceed the sum of \$200, the holder of tax title shall be entitled to collect from owner or other persons having an interest in the lands an additional sum equal to 2 percent of the amount so paid for the tax title, applied in suit to foreclose a tax lien, where amount involved was upward of \$20,000. *Municipal Mut. Corporation v. City of Garfield*, 124 N.J.Eq. 370, 2 A.2d 604 (1938).

There is no general grant of the right to the fees specified in this section, but only a grant conditioned upon compliance with § 54:5-62. *Borough of Park*

Ridge v. Bellavigna, 13 N.J.Misc. 631, 179 A. 312 (1935).

Under L.1915, p. 383 (repealed), strict compliance with law was prerequisite to collection of search fees on redemption from tax sales. *Harrington Co. v. Jones*, 104 N.J.Eq. 377, 145 A. 869 (1929) affirmed 106 N.J.Eq. 280, 151 A. 906.

Under L.1903, p. 431, §§ 57, 58, as amended by L.1909, p. 395 (both repealed), a purchaser of four tracts of land at a tax sale in 1910, having filed a bill to foreclose the right to redeem in which one of the owners of the fee filed an answer, was not entitled to search fees amounting to \$407.80, as claimed, but defendant was entitled to a certificate of redemption on paying to the collector of delinquent taxes the redemption money, including a maximum search fee of \$40 for each tract of land. *Harris v. McMurray*, 92 N.J.Eq. 1, 116 A. 702 (1922).

No fees and expenses of the tax sale could be charged against the owner unless definitely fixed by statute, and expenses incurred for searching the record in order to give the notice required in proceedings to foreclose the equity of redemption could not be charged against the owner as a condition to the redemption of the land. *Fitzsimmons v. Bonavita*, 77 N.J.Eq. 277, 76 A. 313 (1910).

54:5-62. Prerequisites to collecting fees or expenses; redemption payment to collector; affidavit

No such fees or expenses incurred as aforesaid shall be collectible, unless such redemption is made by payment to the collecting officer and unless the holder of the tax title shall have made and filed with such collecting officer affidavits showing the amount or amounts of such expenses actually disbursed or incurred, affidavits of service, including copies of the notices served, and certificates of the searches made in the form of an abstract of title covering a period of not less than twenty years.

Amended by L.1941, c. 84, p. 196, § 1.

Historical Note

Source: L.1918, c. 237, § 45, p. 895 [1924 Suppl. § 208-444a(48)].

Prior to the 1941 amendment, this section provided as follows:

"No such fees or expenses shall be collectible unless the holder of the tax title shall have made and filed with the collecting officer affidavits showing the amounts of such expenses actually dis-

bursed or incurred, affidavits of service, including copies of the notices served, and certificates of the searches made in

the form of an abstract of title covering a period of not less than twenty years."

Notes of Decisions

1. Construction and application

Purchaser of tax sale certificate as to which redemption monies were in hands of collector was not entitled to recover recording fees, fees for service of a notice, fees for title searches, when he had failed to file an affidavit with collector showing amount expended by him for such fees, nor was he entitled to recover costs or counsel fees. *Parlo v. Van Horn*, 27 N.J.Super. 64, 98 A.2d 721 (Ch. 1953).

This section, precluding recovery of fees or expenses in suit to foreclose tax title, unless holder of tax title has filed

affidavit, showing amount, with collecting officer, applies when holder of tax title is municipality. *Borough of Park Ridge v. Bellavigna*, 13 N.J.Misc. 631, 179 A. 312 (1935).

Where municipality by contract empowered individual to collect amount due municipality on tax sale certificates, individual was not "collecting officer" within this section regulating recovery of fees or expenses in suit to foreclose tax title; collecting officer being officer to whom is payable the amount required for redemption. *Id.*

54:5-63. Fee for serving notice upon person having interest in property

When any title, interest, lien, claim, equity of redemption or other legal or equitable right remains in any person after the sale or conveyance of a lot or tract of real estate or any right therein by a municipality or municipal office under a law authorizing the sale or conveyance, and notice is given to such person in accordance with such law, the person serving the notice shall be entitled to receive one dollar per lot for each notice necessarily served.

Historical Note

Source: L.1914, c. 95, § 1, p. 150 [1924 Suppl. § 74-40e].

Notes of Decisions

1. Fees and expenses in general

No fees and expenses of the tax sale can be charged against the owner unless definitely fixed by statute, and expenses incurred for searching the record in order to give the notice required by

L.1903, p. 432, § 59 (repealed), in proceedings to foreclose the equity of redemption could not be charged against the owner as a condition to the redemption of the land. *Fitzsimmons v. Bonavita*, 77 N.J.Eq. 277, 76 A. 313 (1910).

54:5-63.1. Excessive charges or fees charged by tax sale certificate holder on redemption; forfeiture

Any holder of a tax sale certificate, excepting any municipal corporation, his agent, servant, employee or representative, who knowingly charges or exacts any fee or charge in connection with

the redemption of any tax sale certificate owned by him, in excess of the amounts permitted by chapter five of Title 54 of the Revised Statutes, shall forfeit such tax sale certificate to the person who as charged such excessive or unlawful fee and the person paying such unlawful charge shall become vested with all the right, title and interest of such tax sale certificate holder in and to such tax lien. In addition thereto the person aggrieved shall have a right of action to recover back the full amount paid by him to such tax lien holder, by an action at law in any court of competent jurisdiction.

The collection of any excessive charge or fee in connection with the redemption or assignment of a tax sale certificate shall be deemed prima facie evidence of the fact that such tax sale certificate holder did knowingly charge and exact such excessive fee or charge within the intent of this act.

1941, c. 83, p. 195, § 1.

Notes of Decisions

Fraud

The conduct of defendant in demanding a grossly excessive sum from complainant for the redemption of the property in question from tax sales and in refusing to meet with complainant for the purpose of arriving at the correct amount due, was a fraud on complainant, perpetrated with intent to force complainant to pay defendant's illegal claim, and complainant was entitled to come into court for relief. *Gonzales v. Harrington Co.*, 2 N.J.Misc. 311, 126 A. 38 (1924).

Where purchaser at tax sale demanded excessive sum of mortgagee seeking to redeem, true amount due could not be ascertained from tax collector or from official records, and resort to purchaser's books was necessary, who refused to meet with complainant to state an account, equity had jurisdiction, on ground of fraud, to entertain bill to redeem and mortgagee's prayer for accounting, to enable him to do so, without regard to expiration of time for redemption. *Gonzales v. Harrington Co.*, 2 N.J. Misc. 311, 126 A. 38 (1924).

54:5-64. Revival and continuance of certain liens

Any lien which may have lapsed prior to March fourth, one thousand nine hundred and eighteen, by reason of delay in enforcement and which was revived by section fifty-seven of the act entitled "An act concerning unpaid taxes, assessments and other municipal charges on real property, and providing for the collection thereof by the creation and enforcement of liens thereon (Revision of 1918)," approved March fourth, one thousand nine hundred and eighteen, shall continue in effect to the end that it may be enforced under the provisions of this chapter, but such revival and continuance shall not operate as against any person who has acquired an interest in the property for value subsequent to such lapse, and without notice of the claim of the municipality.

Historical Note

Source: L.1918, c. 237, § 57, p. 899
[1924 Suppl. § 208-444a(61)].

Library References

Municipal Corporations ¶¶ 519(5), 530, 975, 978(7).	C.J.S. Municipal Corporations §§ 1569, 1585, 2058 to 2063, 2077.
Taxation ¶¶ 513, 734(12).	C.J.S. Taxation §§ 595, 913.

Notes of Decisions

Estoppel 1
Priorities 2

1. Estoppel

Township in tax-certificate holder's suit to foreclose tax certificate was estopped to assert failure of its collector to list lapsed taxes, since reinstated by this section. *Harrington Co. v. Walker*, 105 N.J.Eq. 172, 147 A. 199 (1929).

2. Priorities

Lien of holder of tax sale certificate issued in 1918 had priority over claim of township founded on tax certificate issued in 1922, based on taxes for years subsequent to 1918, as well as certain taxes for years prior to 1916, since L.1918, p. 899, § 57, now incorporated in this section, did not create a new lien for previously lapsed tax liens. *Harrington Co. v. Roach*, 105 N.J.Eq. 745, 147 A. 201 (1929).

ARTICLE 7. REDEMPTION IN INSTALLMENTS

Cross References

Fire damaged property, installment payments, see § 17:36-11.

54:5-65. Installment redemption; resolution

A municipality holding a tax sale lien may provide by resolution, general or special, as to any one or more specific parcels of property, for the redemption of the lien by installment payments. The resolution may be amended, altered or supplemented from time to time.

Historical Note

Source: L.1932, c. 195, § 1, p. 454.

Cross References

Institution of actions on tax sale certificate, see § 54:5-104.34.
Sale of realty for nonpayment of installments, see § 54:5-19.