



ALAN WILSON
ATTORNEY GENERAL

October 23, 2012

Marvin C. Jones, Esquire
Jasper County Attorney
Post Office Box 420
Ridgeland, South Carolina 29936

Dear Mr. Jones:

Attorney General Alan Wilson has referred your letter of September 12, 2012 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue: How many previous years of property taxes can be recovered by the County for a parcel of land that has not been taxed for thirteen years due to an error by the County?

Short Answer: As this office reads the law, the county auditor is the only one authorized by statute to collect real property taxes for previous years for a county, and he may collect up to three previous years of property taxes, as limited by South Carolina Code of Laws §12-54-85 (1976, as amended). The county is free to make its own determination to collect any additional property taxes for previous years based on a different interpretation of the law, but it must be prepared to defend any such decision in court.

Law/Analysis: This office has issued previous opinions clearly answering this question, but those opinions were issued on statutes that have been repealed. Those opinions limited recovery to the auditor only but allowed recovery for previous tax years up to ten years. Those opinions were based on Code §65-2706 through 2707, 1962 Code (which later became §12-49-70 through 80, 1976 Code) but those code sections were repealed in 1995 and 1998, respectively. See Ops. S.C. Atty. Gen., 1959 WL 11492 (February 11, 1959); 1963 WL 8320 (August 20, 1963); 1970 WL 12124 (February 9, 1970). However, a 1965 opinion addressed this same issue limiting the recovery period by the auditor's office for the previous ten years based on §65-1631, et seq., 1962 Code (which later became §12-37-750, 1976 Code). Op. S.C. Atty. Gen., 1965 WL 8045 (July 26, 1965). §12-37-750 is still in effect today, but only applies to instances where it is the taxpayer's fault, not when it is the county's error, as in this case.

As you mentioned in your letter, South Carolina Code of Laws §12-39-220 (1976, as amended) allows the county auditor to recover taxes for "each preceding year it may have escaped taxation." It is clearly established that the county auditor is the only person authorized to assess back taxes and requires adequate statutory authority to do so. Op. S.C. Atty. Gen., 1968 WL 8923 (October 18, 1968).

As you observed, §12-39-220 (1976, as amended) seems to conflict with §12-54-85 (1976, as amended) which limits the period to thirty-six (36) months and which has previously been held to apply to real property taxes. It reads:

(A) Except as otherwise provided in this section, taxes must be determined and assessed within thirty-six months from the date the return or document was filed or due to be filed, whichever is later.

(B) Except as otherwise provided in this section:

(1) if a tax, except for a penalty described in item (2), is not required to be remitted with a return or document, the amount of taxes must be determined and assessed within thirty-six months after the later of the date the tax was due or the first date on which any part of the tax was paid; and

(2) a penalty that is not associated with the assessment of a tax must be determined and assessed within thirty-six months after the date of the violation giving rise to the penalty.

(C) Taxes may be determined and assessed after the thirty-six month limitation if:

(1) there is fraudulent intent to evade the taxes;

(2) the taxpayer failed to file a return or document as required by law;

(3) there is a twenty percent understatement of the total of all taxes required to be shown on the return or document. The taxes in this case may be assessed at any time within seventy-two months from the date the return or document was filed or due to be filed, whichever is later. For the purpose of this item, the total of all taxes required to be shown on the return is the total of all taxes required to be shown on the return before any reduction for estimated payments, withholding payments, other prepayments, or discount allowed for timely filing of the return and payment of the tax due, but that amount must be reduced by another credit that may be claimed on the return...

None of the exceptions listed in Section (C) appear to apply in this instance based on the information given.

The issue of interpreting §12-54-85 (1976, as amended) came up in a 2003 South Carolina Administrative Law Court decision. Quoting that opinion, the Administrative Law Court found §12-54-85 applied to property taxes even though it is written in the context of taxes for the South Carolina Department of Revenue:

3. S.C. Code Ann. §12-54-85(F) (Supp. 2002) provides that "claims for credit or refund must be filed within three years of the time the return was filed or two years from the date of payment, whichever is later. If no return was filed, a claim must be filed within two years from the date of payment." Although this section applies to state taxes collected by the Department of Revenue, S.C. Code Ann. §12-60-2560 (2002) incorporates these same limits into requests for property tax refunds from the county.

4. Specifically, S.C. Code Ann. §12-60-2560 (2002) provides that "[S]ubject to the limitation in §12-60-1750 and within the limitations of §12-54-85(F), a property taxpayer may seek a refund of real property taxes assessed by the county assessor

and paid . . . by filing a claim for refund with the county assessor. . . .” This section makes the statutory limitations of §12-54-85(F), which apply to taxes collected by the Department of Revenue, also applicable to the property taxes owed to the county and sets the procedure and time limits for such actions.

...

6. In enacting S.C. Code Ann. §12-54-85, the General Assembly provided a remedy for taxpayers whose property has been erroneously assessed. At the same time, in not providing exceptions for untimely refund claims, the legislature virtually ensured that the Department, and by extension the political subdivisions of the State, would not be inundated with requests for refunds after the expiration of the statutory period (of thirty-six months). See Anonymous Taxpayers v. South Carolina Department of Revenue, 00-ALJ-17-0681 (2000).

Harry E. Thornley v. Charleston County Assessor and Charleston County Auditor, 02-ALJ-17-0260-CC (2003). Additionally, case law supports equitable principles such as unjust enrichment govern actions to recover improperly paid taxes. American Legion Post 15 v. Horry County, 381 S.C. 576, 674 S.E.2d 181 (2009).

As a background on statutory interpretation, the cardinal rule in statutory interpretation is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 577 S.E.2d 202 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. An entire statute’s interpretation must be “practical, reasonable, and fair” and consistent with the purpose, plan and reasoning behind its making. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942). Statutes are to be interpreted with a “sensible construction,” and a “literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose.” U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950).

There are a few different principles used that can reach the same conclusion that the thirty-six (36) month limitation should apply in this instance. One principle that would apply here is the long-recognized rule of statutory interpretation that any ambiguity in the imposition of a tax must be interpreted in favor of the taxpayer. Op. S.C. Atty. Gen., 1967 WL 12119 (April 28, 1967). Another such principle is that in the case of conflicting statutes the later in time trumps. Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943). In this case §12-54-85 was passed much more recently than §12-39-220, which is much older. A clear reading of §12-54-85 would set the limit on recovery of taxes to thirty-six months. There is no ambiguity in that statute. Additionally, using the reasoning by the Administrative Law Court, the thirty-six months would apply to property tax refunds, and the same reasoning could be applied to this case. The reasoning is that the same statute of limitations exists for the county for recovery of taxes as for property tax refunds. Equity would not allow one interpretation of the same language for when a taxpayer owes money (at no fault of the taxpayer) and a different interpretation when a taxpayer is owed a refund. That reasoning leads to the same conclusion that could be inferred to apply here.

Mr. Jones
Page 4
October 23, 2012

It should also be noted that S.C. Code Ann. §12-54-85(E) (Supp. 2002) essentially places a ten (10) year statute of limitations for collection of taxes under a levy, warrant for distraint or proceedings in court. This Office believes a tax auditor establishing a property tax is a part of the limitation on the determination and assessment of taxes as established in §12-54-85 (A). §12-54-85 (E) is a statute of limitations on the collection of those taxes, not the assessment and determination that applies here.

Conclusion: Based on the above principles, it appears a county auditor is probably limited to the thirty-six (36) months outlined in SC Code of Laws §12-54-85 (1976). If you have any additional questions or issues, please let me know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General