

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

March 8, 1993

SUBJECT: Taxation and Revenue - Apportionment Of Taxes
On Property Transfer Subsequent To
Assessment.

SYLLABUS: The apportionment of taxes allowed by S.C.
Code Ann. Section 12-45-140 (1976) applies to
roll back taxes resulting from the change in
use of property from agricultural to
nonagricultural.

TO: Honorable Lois Sikes
Calhoun County Auditor

FROM: Ray N. Stevens *RNS*
Chief Deputy Attorney General

QUESTION: Does the apportionment of taxes allowed by Sec-
tion 12-45-140 apply to roll back taxes resulting from the
change in use of property from agricultural to
nonagricultural?

APPLICABLE LAW: S.C. Code Ann. Sections 12-45-140 (1976)
and 12-43-220(d) (Supp. 1992).

DISCUSSION:

Section 12-45-140 states the following:

When the title or an interest in real or
personal property, or any part thereof,
shall have become transferred to or
vested in any person not the owner at
the time such property was assessed for
taxation, the county auditor, upon the
application at any time prior to sale
under tax execution of the person acquir-
ing such title or interest subsequent to
assessment, shall apportion the share of
taxes and costs due by the original
owner upon that portion of or interest
in the property acquired subsequent to
assessment by the person so applying,

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and thereupon the county treasurer, county sheriff, county tax collector, town or city tax collector or any officer charged with the collection of taxes shall accept from the person so applying the proportionate share of taxes and costs upon such part of or interest so acquired since assessment as estimated by the auditor and give receipt therefor, which shall discharge such portion or interest from the taxes and costs so assessed.

Under this section, a portion of a property may be discharged from taxes due on the entire property. The section applies where title or an interest in the property is transferred to a party who was not the owner of the property at the date of assessment. Where the original owner is delinquent in taxes on the property and the property has not yet been sold pursuant to tax execution, the new owner may apply to the auditor to pay the liability due on the portion of the property acquired by the new owner.

Upon receiving the application from the new owner, the auditor calculates the "share of taxes and costs due by the original owner upon that portion of or interest in the property acquired subsequent to the assessment". Section 12-45-140. Thus, the new owner may pay the portion of the entire taxes and costs represented by the property purchased by the new owner. Once the auditor determines the amount due, the treasurer "or any other officer charged with collection of taxes" shall accept the payment. Section 12-45-140. Such payment shall discharge that portion of the property from the taxes and costs.

The fact that the tax includes a roll back tax under Section 12-43-220(d) does not change the applicability of Section 12-45-140. A roll back tax results from a change in use of the property from agricultural use to nonagricultural use. The tax amount is the difference in the tax that was paid as agricultural use and the tax that would have been due under a nonagricultural classification. The roll back tax is entered on the duplicate as a property tax and collected in accordance with the collection procedures as any other property tax. See OAG 85-50, May 9, 1985 from

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Joe L. Allen, Jr. to Honorable Marjorie H. Sharpe.

Thus, a roll back tax is treated in the same fashion for collection purposes as are other property taxes. Section 12-45-140 is a part of the tax collection process. Accordingly, the apportionment provisions of Section 12-45-140 are available for properties upon which roll back taxes are due.

CONCLUSION:

The apportionment of taxes allowed by Section 12-45-140 applies to roll back taxes resulting from the change in use of property from agricultural to nonagricultural.

RNS:wcg