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THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

September 2, 1992

SUBJECT: Abandoned Property - Overage Funds Resulting From A Sale Of Property For Delinquent Taxes.

SYLLABUS: The disposition of overage funds resulting from a sale of property for delinquent taxes is controlled by Section 12-51-130 (Supp. 1991), rather than The Uniform Unclaimed Property Act. The language of Section 12-51-130 (Supp. 1991) is clear and unambiguous in directing that the overage funds escheat to the governing body. Further, the General Assembly stated its intent in Act 166 to create an exclusive method for collecting tax. Such method provides for overage funds escheating to the taxing jurisdiction. Finally, Section 12-51-130, as a special statute, is construed to prevail over the more general provisions of The Unclaimed Property Act.

TO: Mr. Ricky Taylor
Office Services
Abandoned Property

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

QUESTION: Are the overage funds resulting from the sale of property for delinquent taxes subject to the Uniform Unclaimed Property Act (1981), or are such funds subject to disposition under S.C. Code Ann. Section 12-51-130 (Supp. 1991)?

APPLICABLE LAW:

South Carolina Code Ann. Section 12-51-130 (Supp. 1991); The Uniform Unclaimed Property Act (1981) at Section 27-18-140; Act 264, Acts and Joint Resolutions of 1992; and Act 166, Acts and Joint Resolutions of 1985.

DISCUSSION:

In many instances, a county's sale of a defaulting taxpayer's property for delinquent taxes yields more funds than are needed to satisfy the debt due the county. If

Mr. Ricky Taylor
Page Two

September 2, 1992

these excess funds are held by the county and not claimed by the taxpayer, a determination is required as to whether the unclaimed funds are treated as abandoned property under the Unclaimed Property Act or as funds which escheat to the county under S.C. Code Ann. Section 12-51-130.

The Uniform Unclaimed Property Act (1981) at S.C. Code Section 27-18-140, as amended by Act 264, Acts and Joint Resolutions of 1992, provides the following:

Intangible property held for the owner by a court, state, or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than five years after becoming payable or distributable is presumed abandoned.

In a tax sale for delinquent taxes, however, another statute, Section 12-51-130 (Supp. 1991), addresses funds that remain unclaimed by the owner of those funds.

In case the tax sale of an item produced an overage in cash above the full amount due in taxes, assessments, penalties, and costs, the overage shall belong to the defaulting taxpayer to be claimed or assigned according to law. If neither claimed nor assigned within five years of date of public auction tax sale, the overage shall escheat to the general fund of the governing body. Prior to the escheat date unclaimed overages must be kept in a separate account and must be invested so as not to be idle and the governing body of the political subdivision is entitled to the earnings for keeping the overage. On escheat date the overage must be transferred to the general funds of the governing body.

The question turns upon deciding which statute did the General Assembly intend to govern the excess funds resulting from the tax sale. While statutory construction is ultimately the duty of the court (Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942)), it is most likely that a court would find Section 12-51-130 (Supp. 1991) controlling.

The language of Section 12-51-130 is explicit. Where a statute is clear and unambiguous, there is no room for

Mr. Ricky Taylor
Page Three

September 2, 1992

construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. South Carolina Tax Commission, 292 S.C. 64, 354 S.E.2d 902 (1987). The overage funds are held by the county and "[i]f neither claimed nor assigned within five years of date of public auction tax sale, the overage shall escheat to the general fund of the governing body." There is no ambiguity in this language and the literal terms of the statute must control. Beaty v. Richardson, 56 S.C. 173, 34 S.E. 73 (1899).

To the extent that Section 12-51-130 (Supp. 1991) is in conflict with Section 27-18-140, such statutes are to be construed so as to give harmonious effect to both statutes with consideration given to the General Assembly's intent. See Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973). To derive an interpretation that is consistent with the intent of the General Assembly is the primary goal of statutory construction. Multi-Cinema, Ltd. v. South Carolina Tax Commission, 292 S.C. 411, 357 S.E.2d 6.

Here the General Assembly has stated the intent behind Section 12-51-130. Section 12-51-130 (Supp. 1991) was enacted as Section 13 of Act 166, Acts and Joint Resolutions, 1985. Section 1 of Act 166 states that the intent of the act ". . . is to provide a procedure to be used exclusively for the collection of property taxes by counties." By this language, the General Assembly intended to provide an exclusive method for collecting property taxes. In designing that method, the General Assembly did not include any reference to the Unclaimed Property Act. Thus, the collection method was not intended to be governed by the Unclaimed Property Act.

Further, in arriving at a determination of legislative intent various rules of construction are helpful. One well-recognized rule of construction is that a special statute prevails over a similar general statute.

. . . where there is a statute dealing with a subject in general terms and another statute dealing with a part of the same subject in a more minute and definite way, the special statute will be considered as an exception to, or qualification of, the general statute and given effect.

Wilder v. S.C. State Hwy. Dept., 228 S.C. 448, 90 S.E.2d 635, 638 (1955).

Mr. Ricky Taylor
Page Four

September 2, 1992

Here the two statutes both address governmental agencies holding funds belonging to another. Section 12-51-130, however, is a special statute disposing of excess unclaimed tax funds while Section 27-18-140 is a general statute broadly addressing funds held by governmental agencies. Thus Section 12-51-130 is controlling.

CONCLUSION:

The disposition of overage funds resulting from a sale of property for delinquent taxes is controlled by Section 12-51-130 (Supp. 1991), rather than The Uniform Unclaimed Property Act. The language of Section 12-51-130 (Supp. 1991) is clear and unambiguous in directing that the overage funds escheat to the governing body. Further, the General Assembly stated its intent in Act 166 to create an exclusive method for collecting tax. Such method provides for overage funds escheating to the taxing jurisdiction. Finally, Section 12-51-130, as a special statute, is construed to prevail over the more general provisions of The Unclaimed Property Act.

RNS/jws