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THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

September 3, 1992

SUBJECT: Taxation & Revenue - Collection Of Delinquent
Municipal Taxes By A County.

SYLLABI: 1. In the absence of specific statutory directions the governing body may establish procedures to return overages to a defaulting taxpayer or his assignee. Such procedures must require that a request for the overage be made by the taxpayer or his assignee and further require the taxpayer or the assignee to submit sufficient identification to establish the requesting party is in fact the taxpayer or the taxpayer's assignee.

2. The date of the "public auction tax sale" is the date the property was sold at the public auction and not the date the tax deed is issued.

3. Where a county conducts a tax sale to recover its delinquent county taxes and also, under a contract with a municipality, collects delinquent municipal taxes, the overage remaining after the county and municipal taxes are satisfied is held by the county and if not claimed within five years escheats to the general fund of the county.

TO: Mr. H. Wayne Capell
Lee County Treasurer

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

APPLICABLE LAW: S.C. Code Ann. §§ 12-51-90, 12-51-130,
12-51-170, and 5-7-300, (Supp. 1991).

QUESTION 1: What procedure should a governing body follow in returning an overage resulting from a tax sale?

DISCUSSION ON QUESTION 1:
Section 12-51-130 in part states the following:

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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.

Under the statute the funds belong to the defaulting taxpayer, but are held by the governing body. See OAG 79-49, March 13, 1979. The defaulting taxpayer may claim the funds himself or he may assign the funds to another, but in neither event does the statute state the procedure for the return of the overage. Where there is a lack of specific directions, the particulars of the procedure for accomplishing the return is within the discretion of the governing body.

. . . . statutory direction to perform official duties, unaccompanied by definite directions as to how the power is to be exercised, implies the right and duty on the part of individual officials to employ the means and methods necessary to comply with statutory requirements.

63A Am Jur 2d, Public Officers and Employees, Section 303.

In establishing the particulars of the procedure for returning the overage, it must be noted that the statute establishes two criteria. The governing body must first receive a request for the overage and must second establish that the party seeking the overage is in fact the taxpayer or one to whom the taxpayer has assigned the overage. The form and manner of the request and the method of establishing the identification of the taxpayer or his assignee is within the discretion of the governing body.

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Proper identification is accomplished where there is reliable evidence that proves that a person is the same that he alleges to be. Hall v. Cotton, 180 S.W. 779, 781.

CONCLUSION 1:

In the absence of specific statutory directions the governing body may establish procedures to return overages to a defaulting taxpayer or his assignee. Such procedures must require that a request for the overage be made by the taxpayer or his assignee and further require the taxpayer or the assignee to submit sufficient identification to establish the requesting party is in fact the taxpayer or the taxpayer's assignee.

QUESTION 2: Does the running of the five year period for holding the overage funds begin on the date of the tax sale or the date the tax deed is issued?

DISCUSSION ON QUESTION 2:

Section 12-51-130 states the following:

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.

In determining the meaning of words in a statute it is proper to consider similar language in other statutes dealing with the same or related subject matter. Spartanburg County v. Arthur, 180 S.C. 81, 185 S.E.2d 486, 488 (1936). Here the statute begins the five year period on the "date of public auction tax sale." A related statute, § 12-51-50, sets the date of the public auction.

The property duly advertised must be sold by the person officially charged with the collection of delinquent taxes at public auction at the courthouse on a legal sales date during regular hours for legal tender payable in full on the date of the sale.

Under this statute the date of the public auction is synonymous with the "date of the sale." Further § 12-51-90 allows the defaulting taxpayer the right to redeem the property "within twelve months from the date of the delinquent tax sale..." Thus it is established that the date of the "public auction tax sale" is the date the property was sold at the public auction and not the date a tax deed is issued.

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CONCLUSION 2:

The date of the "public auction tax sale" is the date the property was sold at the public auction and not the date the tax deed is issued.

QUESTION 3: If a county conducts a tax sale to recover its delinquent county taxes and further, under a contract with a municipality, collects delinquent municipal taxes, what disposition is made of the overage remaining after the county and municipal taxes are satisfied?

DISCUSSION ON QUESTION 3:

Under § 5-7-300 a municipality is empowered to collect delinquent real and personal property taxes when such is provided for by an ordinance enacted by the municipality. The statute has been interpreted to provide for the superiority of state and county liens over municipal liens.

A sale of property by a municipality is therefore subject to the liens for county and state taxes. A buyer at such a municipal tax sale would acquire a title to the property that is impressed with these prior liens. A sale of property for non-payment of county or state taxes, however, would be free of liens for the municipal tax.

OAG 89-126, p. 342.

Accordingly, a sale by the county for county taxes has the effect of eliminating the municipal lien on the property sold. Thus, under the existing procedures for the collection of county property tax, any overage resulting from a county sale is not applied to satisfy outstanding municipal liens, but rather such funds are held by the county as overage funds belonging to the defaulting taxpayer.

This result is not changed under the right-to-contract provisions of § 12-51-170 or § 5-7-300 where the municipality is authorized to contract with the county for the collection of municipal taxes. Section 5-7-300 places limitations upon the parties.

A municipality may contract with the county for the collection of municipal taxes or for the collection of delinquent municipal taxes upon such terms

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and conditions as may be mutually agreeable to both the municipality and the county. If a municipality contracts with a county for collection of municipal taxes or delinquent municipal taxes, then the provisions of state law which prescribe the procedure for collection of property taxes by counties must be followed.

Thus, while the parties may establish mutually agreeable terms, the contract may not alter any of the provisions of state law "which prescribe the procedure for collection of property taxes by counties ..." The priority of state and county liens over municipal liens is statutorily a fundamental basis upon which counties collect taxes and thus may not be changed by the parties by contract.

CONCLUSION 3:

Where a county conducts a tax sale to recover its delinquent county taxes and also, under a contract with a municipality, collects delinquent municipal taxes, the overage remaining after the county and municipal taxes are satisfied is held by the county and if not claimed within five years escheats to the general fund of the county.¹

RNS:acw

¹It should be noted that if the county, pursuant to its contract, sells property for which there is only a municipal lien, any overage is to be held by the municipality and, if not claimed within five years, escheats to the general fund of the municipality.