

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. ~~88-45~~ ~~pg 138~~ May 12, 1988

SUBJECT: Taxation & Revenue - Refund Of Taxes Paid On Property Exempt From Taxation.

SYLLABUS: Taxes paid on property exempt by reason of an extension of the time period in which to apply for the exemption are to be refunded under Section 12-47-420.

TO: Honorable Ellen Smith  
Auditor, Colleton County

FROM: Joe L. Allen, Jr. *JLA*  
Chief Deputy Attorney General

QUESTION: Section 12-3-145 requires a timely application as a condition for the exemption of certain property from taxation. The application was not timely made and the property was taxed and the taxes paid. By Joint Resolution S-1008 the General Assembly retrospectively extended the time in which to make the application. The question is whether the tax that was paid is to be refunded.

APPLICABLE LAW: Sections 12-3-145 and 12-47-420 of the South Carolina Code of Laws, 1976; and Article X, Section 3 of the South Carolina Constitution.

DISCUSSION:

Article X, Section 3 provides for certain specific exemptions from property taxes and also confers authority upon the General Assembly to grant others. The section also states that:

The General Assembly shall provide for methods and procedures in applying for the exemption of any property as is described in this section.

Section 12-3-145 requires a timely application for the exemption. The joint resolution, however, extends the time in which to apply, a matter that is within the authority of the General Assembly.

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In American Hardware Supply v. Whitmire, 278 S.C. 607, 300 S.E.2d 289, the South Carolina Supreme Court held that:

. . . assessment of tax exempt property is an "erroneous, improper or illegal assessment" within the meaning of statute [12-47-420], entitling respondent to a refund of the taxes erroneously paid.

CONCLUSION:

Taxes paid on property exempt by reason of an extension of the time period in which to apply for the exemption are to be refunded under Section 12-47-420.

JLA/jws