

1983 S.C. Op. Atty. Gen. 99 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-62, 1983 WL 142732

Office of the Attorney General

State of South Carolina

Opinion No. 83-62

August 19, 1983

***1 SUBJECT: Taxation, Property, Payment Under Protest**

Where a person fails to bring an action to recover taxes paid under protest within thirty days as required by § 12-47-220, there is no further requirement that the funds be retained.

TO: William C. Keels, Esquire
Chester County Attorney

QUESTION:

Must the Chester County Treasurer continue to retain county property taxes and penalties paid under protest for the tax year 1968 or can these monies now be expended for budgetary needs?

STATUTES:

§§ 12-47-210 and 12-47-220, [South Carolina Code](#) of Laws, 1976.

DISCUSSION:

For the tax year 1968, Act 480, Acts of 1967, imposed a penalty of fifty per cent upon persons who failed to file a property tax return in Chester County. Section 4 of the Act provided that:

‘A penalty of fifty per cent of the assessment shall be assessed against those persons failing to make a return and for those persons failing to return property at true value; * * *.’

The Act was effective January 1, 1968, however, the same was repealed as of January 1, 1969 by Act 504, Acts of 1969. You further advise that § 4 of Act 480 was also declared unconstitutional as it applied to the 1968 tax period. While the statute was effective, some persons paid the taxes and penalties under protest pursuant to § 12-47-210. Section 12-47-210 provides in pertinent part that:

‘When * * * any county charges or levies any tax whatsoever against any person upon the books of any county treasurer of the State * * * and such treasurer * * * shall claim the payment of the taxes so charged or assessed, or shall take any step or proceeding to collect them, the person against whom such taxes are charged or assessed or against whom such step or proceeding shall be taken * * * may, if he conceives such taxes to be unjust or illegal for any cause, pay such taxes, and any penalties thereon, under protest in writing * * *. The county treasurer shall retain all taxes and penalties collected by him * * *.’ (Emphasis added)

Within thirty days after making this payment, the taxpayer may under § 12-47-220 bring an action against the county to recover the amount paid. Section 12-47-220 provides:

‘* * * if it be determined in such action that such taxes and penalties, if any, were wrongfully or illegally collected for any reason going to the merits, the court before whom the case is tried shall certify of record that such taxes were wrongfully collected and ought to be refunded and thereupon the county treasurer shall refund the taxes and penalties * * *.’ (Emphasis added)

In the present situation, we are informed an action was not brought within thirty days after payment under protest. The county treasurer, however, still maintains these monies in two separate accounts, one for taxes and another for penalties. Your inquiry is whether these monies are available for the general budgetary needs of the county. Refund of taxes is a matter of governmental grace which our courts have noted as follows:

2 ‘ * *. A refund of taxes is solely a matter of governmental grace, and any person seeking a refund must bring himself clearly within the terms of the authorizing statute.’ [Asmer v. Livingston](#), 225 S.C. 341, 82 S.E.2d 465, 466.

Furthermore, it has been held that in actions for the recovery of taxes paid under protest, the action must be brought within the specified thirty-day prior after making payment. In [Weathers v. City of Laurens](#), 187 S.C. 297, 197 S.E. 317, the taxes in question were paid under protest under a statute which required that an action could be brought at any time within thirty days after payment. In holding that such action must be brought within thirty days, the court reasoned:

‘* * *. This limitation on actions of this nature is entirely reasonable. It is necessary that the officers of a city's government be informed of the amount of collected tax monies upon which they may depend in their calculations in the preparation of the operating expenses of the city government. For the promotion of certainty in this matter, the statute provides the thirty day limitation for the commencement of suits for the recovery of tax monies paid under protest * * *.’

Therefore, the taxpayers here have failed to comply with the statutory requirements for recovering taxes paid under protest.¹ Thus, the monies may now be expended by the county.

CONCLUSION:

Where a person fails to bring an action to recover taxes paid under protest within thirty days as required by § 12-47-220, there is no further requirement that the funds be retained.

Joe L. Allen, Jr.
Chief Deputy Attorney General

Footnotes

¹ This opinion does not address the issue of whether other remedies exist or are available to the taxpayers, since this is the only remedy which requires the monies paid under protest to be retained by the county. cf., § 12-47-440, [South Carolina Code of Laws; Bank of Johnston v. Prince](#), 136 S.C. 439, 134 S.E. 387 (1926).

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