

1983 WL 182006 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 26, 1983

***1 SUBJECT: Taxation And Revenue, Property, Immunity Of Small Business Administration From Ad Valorem Taxes Exempting Property Transferred Prior To Tax Becoming A Fixed Charge.**

Since property acquired on April 19, 1982, by the Small Business Administration was acquired prior to the ad valorem tax becoming a fixed charge and the Small Business Administration is a tax exempt governmental entity, the subject property is tax exempt for the 1982 tax year.

Honorable Margaret D. Jackson
Treasurer
Clarendon County

QUESTION:

Is property acquired on April 19, 1982, by the Small Business Administration by foreclosure of a mortgage subject to ad valorem taxes for the 1982 tax year?

APPLICABLE LAW:

§§ 12-39-150, 12-45-40 and 12-45-70, [South Carolina Code](#) of Laws, 1976, as amended.

DISCUSSION:

The liability for ad valorem taxes is that of the owner of the property as of December 31 preceding the tax year, notwithstanding that the property owner may transfer the property subsequent to such date. [Atkinson Dredging Co. v. Thomas](#), 266 S. C. 361, 223 S. E. 2d 592. However, if the subsequent transfer is to a governmental agency exempt from tax and such transfer occurs prior to the tax becoming a fixed charge, the property is exempt for the year. [Town of Myrtle Beach v. Holliday](#), 203 S. C. 25, 26 S. E. 2d 12.

The facts of your inquiry state that on April 19, 1982, the Small Business Administration obtained title to specified property by reason of a foreclosure action. Thus, under the holding of [Town of Myrtle Beach](#), supra, the property is exempt for the 1982 tax year if the transfer occurred prior to the date the tax becomes a fixed charge and if the Small Business Administration is exempt from taxation.

Taxes become a fixed charge upon the auditor's delivery to the county treasurer of the tax duplicate as required by § 12-39-150. Such delivery must be made not later than September 30. Upon receipt of the tax duplicate, the treasurer begins collecting property taxes (§ 12-45-40) with taxes being due and payable between September 15 and December 31 (§ 12-45-70). Thus the taxes become a fixed charge when the tax duplicate is delivered to the treasurer.

The Small Business Administration is an agency of the United States Government and is immune from state taxation absent a waiver of such immunity by Congress. [United States v. Schwartz](#), 278 F. Supp. 328 (S.D.N.Y. 1968), [United States v. City of Roanoke](#), 258 F. Supp. 415 (W.D. Va. 1966) and 84 C.J.S., [Taxation](#), § 198. Congress has not waived the immunity of

the United States as it concerns the Small Business Administration and thus property of the Small Business Administration is exempt from ad valorem taxation.

CONCLUSION:

Since property acquired on April 19, 1982, by the Small Business Administration was acquired prior to the ad valorem tax becoming a fixed charge and the Small Business Administration is a tax exempt governmental entity, the subject property is tax exempt for the 1982 tax year.

*2 Ray N. Stevens
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