

1983 WL 181949 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 26, 1983

**\*1 SUBJECT: Taxation and Revenue—Alternate Procedure for the Collection of Delinquent Taxes.**

I: The provisions of Chapter 51 of Title 12 are available to collect delinquent taxes for the period 'next following the year in which the taxes became due'. The Chapter is not to be retrospectively applied.

II: A county may not impose penalty or cost charge that is in addition to those set forth in Chapter 51 of Title 12 when the taxes are collected under the provisions of the Chapter.

III: In the absence of a proper extension, the sale of property for delinquent taxes under the provisions of Chapter 51 of Title 12 should be held on the sales day in October next following the year in which the taxes became due.

Honorable Irene K. Rudnick  
House of Representatives  
District No. 81—Aiken County

QUESTIONS:

Aiken County has adopted the provision of Chapter 51 of Title 12 of the 1976 Code of Laws for the collection of delinquent taxes.

I. Can the Chapter be used retrospectively?

II. Can charges in addition to those stated be charged?

III. Can property be sold on a date different from that specified in the Chapter?

APPLICABLE LAW:

Chapter 51 of Title 12, Sections 12-1-20 and 4-9-30.

QUESTION I:

The Chapter prescribes specific dates by which the designated acts are to be performed. In example, § 12-51-40 provides in part that 'on March fifteenth next following the year in which the property taxes became due the Treasurer shall add an execution cost \* \* \*'.

The section further provides other specific dates that are 'next following the year in which the taxes became due'.

Under such, it would not be possible for the Chapter to apply to years that are not 'next following the year in which the taxes became due'. Such is fortified by accepted rules of statutory construction. The presumption is that the provisions of the Chapter are prospective unless a clear legislative intent is to the contrary. See 17 S.C.D., Statutes, Key 263, et seq.

In [Dibble v. Bryant](#), 274 S.C. 481, 265 S.E. 2d 673 our court held:

‘This court has consistently held the enforcing agencies of government to strict compliance with all the legal requirements surrounding tax sales. [Dickson v. Burckmyer](#), 67 S.C. 526, 46 S.E. 343 (1903); [Osborne v. Vallentine](#), 196 S.C. 90, 12 S.E. 2d 856 (1941); [Aldridge v. Rutledge](#), 269 S.C. 475, 238 S.E. 2d 165 (1977). The sound view is that all requirements of the law leading up to any sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded mandatory, and are to be strictly enforced. [Dickson v. Burckmyer](#), *supra*, 46 S.E. at 345.’

Here the legislative intent is that the Chapter apply to taxes next following the year in which the same became due.

#### CONCLUSION:

The provisions of Chapter 51 of Title 12 are available to collect delinquent taxes for the period ‘next following the year in which the taxes became due’. The Chapter is not to be retrospectively applied.

#### QUESTION II:

\*2 Section 4-9-30 confers power upon the governing body of Aiken County to levy the taxes. No separate power to impose a penalty has been delegated. Under the section, the power to levy the tax is subject to the general laws of the State. Chapter 51 is general law and the penalties and costs there provided are exclusive.

In [Watson v. Orangeburg](#), 229 S.C. 367, 93 S.E. 2d 20, the court held that:

‘The power of taxation being an attribute of sovereignty vested in the legislature subject to constitutional restriction, taxes can be assessed and collected only under statutory authority. \* \* \*.’

Here the General Assembly has provided the authority and prescribed the penalty and costs charges that can be made. The same are exclusive and no additional charges can be levied and collected.

#### CONCLUSION:

A county may not impose penalty or cost charge that is in addition to those set forth in Chapter 51 of Title 12 when the taxes are collected under the provisions of the Chapter.

#### QUESTION III:

Section 12-51-50 provides that if the taxes, penalties and costs are not paid, the property ‘shall’ be sold on the sales day in October at 10 a.m.

The statute uses the verb ‘shall’ in each provision. The same is generally construed to be mandatory. [Carolina Music Co., Inc. v. Query](#), 192 S.C. 308, 6 S.E. 2d 473. See also Volume 39, [Words and Phrases](#). An exception is when legislative intention is that it not be so construed.

It is settled that the General Assembly has the power to establish and prescribe the duties of the office charged with the collection of the taxes.

‘It appears, therefore, and we so hold, that the General Assembly of the State has the full power and authority to prescribe the duties and powers of county auditors, county treasurers, the comptroller general, and the South Carolina Tax Commission.’ [Bank of Johnson v. Prince](#), 136 S.C. 439, 134 S.E. 387.

The powers of the office are measured by the terms of the statute.

'In general, the powers and duties of officers are prescribed by the constitution or by statute, or both, and they are measured by the terms and necessary implication of the grant, and must be executed in the manner directed and by the officer specified. If broader powers are desirable, they must be conferred by the proper authority. They cannot be merely assumed by administrative officers, nor can they be created by the courts in the proper exercise of their judicial functions. No consideration of public policy can properly induce a court to reject the statutory definition of the powers of an officer, \* \* \*.' 63 Am.Jur. 2d, Public Officers and Employees, § 263. See also South Carolina Tax Commission v. S. C. Tax Board of Review, Guignard Land Company, Inc., et al., Opinion No. 21853, January 11, 1983.

It was also held in Parker v. Brown, 195 S.C. 35, 10 S.E. 2d 625, that the acts relating to tax collection were adopted for the protection of the public.

\*3 'They were enacted for the benefit and protection of the public, and the prevention of injury to the public. \* \* \*.'

Where the validity of the tax is at issue, the courts have generally construed prescribed dates to be directory and not mandatory. Mothershead v. Young, 114 Or. 15, 234 P. 299; Appeal of York & Foster, 163 Pa. Super. 602, 63 A. 2d 358; Spokane County v. Glover, 2 Wash. 2d 162, 97 P. 2d 628; St. Joe Paper Co. v. Ray (Fla.), 172 So. 2d 646; Fontana v. Village of Fontana-On-Geneva Lake, 69 Wis. 2d 736, 233 N.W. 2d 349; Chernotik v. Holter, 76 S.D. 551, 82 N.W. 2d 509.

Here, the validity of the tax is not at issue. The provisions of the sections must be strictly followed. Dibble v. Bryant, supra.

It should be further noted that § 12-1-20 provides authority to the Comptroller General, with approval by the Governor, to extend the dates. Such evidences legislative intent that the acts required on certain dates be then performed in the absence of an extension granted pursuant to § 12-1-20.

#### CONCLUSION:

In the absence of a proper extension, the sale of property for delinquent taxes under the provisions of Chapter 51 of Title 12 should be held on the sales day in October next following the year in which the taxes became due.

Joe L. Allen, Jr.  
Chief Deputy Attorney General

1983 WL 181949 (S.C.A.G.)