

1979 WL 42863 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 14, 1979

***1 TO: Ms. Karen R. Sargent**

SUBJECT: Property Tax—Joint Collection of County and City Taxes—406 Form

- (1) The treasurer's certificate is to be issued when the county taxes on motor vehicles are paid as prescribed by § 56-3-260.
- (2) The issuance of the certificate cannot be withheld because the municipal tax is not paid.
- (3) There is no statute that precludes a city and county from contracting to collect the other's tax and for the billing of the same upon the same notice. Such, however, would not enlarge the authority to collect either tax beyond the methods and procedures otherwise provided by law for each tax.
- (4) When the city and county tax is jointly billed, the taxpayer has the right to separately pay the tax for either the county or city or to pay both.

Associate Planner
Catawba Regional Planning Council

QUESTIONS:

- (1) Is it legal for the county to put the county and city personal property tax on one notice, and, in order to raise the municipality's collection rate, withhold the 406 form until the total amount is paid, not allowing the citizen to break out just the payment to the county if he so desires?
- (2) Can the county put the county's and city's real and personal property taxes on one notice and allow the citizen to only pay the total in order to receive the 406 form?

APPLICABLE LAW:

[Article VIII, Section 13 of the South Carolina Constitution](#); §§ [6-1-20](#), [56-3-260](#), [56-3-280](#) and [12-45-60 of the 1976 South Carolina Code of Laws](#).

DISCUSSION:

The two questions are consolidated for purposes of this opinion [Article VIII, Section 13 of the Constitution](#) confers authority to a city and county to jointly administer the collection of the taxes due each entity. [Section 6-1-20 of the Code](#) further provides: 'Local governments, including counties, municipalities and special service districts, may enter into contractual agreements with each other to provide joint public facilities and services when considered mutually desirable.'

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The provisions of this section shall not be construed to restrict the powers of the participating local governments nor permit the levy of taxes not otherwise authorized by law.'

As indicated by this last language there is no authority granted to extend a tax or to permit the collection except as provided by law. [Section 12-45-60](#) further provides:

'County treasurers are prohibited from collecting any tax except such as has been first entered upon the tax duplicates of their respective counties or upon the order of the auditors of such counties.'

Insofar as the treasurer is concerned with the collection of county taxes, only those reflected on the 'county duplicate' can be collected. The tax for the municipality would not be reflected upon this duplicate and the right of the treasurer to collect the city's tax would be contractual only. The treasurer would have no greater rights in collecting the city tax than is provided by law therefor.

*2 'Tax collection is a governmental function and is one of the distinct processes by which the power of taxation is exercised; and within constitutional limitations it is a matter in which the power of the legislature is paramount.

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Within constitutional limitations, the legislature may determine the method which will be employed to enforce the collection of taxes, and any valid means deemed appropriate may be selected, since in prescribing the means by which taxes shall be collected the power of the legislature is exclusive and discretionary. * * *' [84 C.J.S. Taxation](#), § 640, p. 1314.

The 406 form could not therefore be withheld when a person paid the county tax, however, failed to pay the city tax. Section 56-3-260 provides for the treasurer's certificate (form 406) and states:

* * * that there are no personal property taxes due and unpaid on any motor vehicle listed on the county tax rolls * * *.'

In addition to this, § 56-3-280 makes it unlawful:

* * * to use the treasurer's statement to obtain motor vehicle license plates unless all municipal personal property taxes due in the county of his residence on any vehicle now or previously owned by the applicant have been paid. * * *.'

This language is further recognition that the treasurer's certificate relates only to county taxes.

With reference to the joint billing for the taxes, please be advised that there is no general law that requires a tax billing. For some counties special laws exist. The general state law is found in § 12-45-40. We know, however, of no prohibition in sending a notice or tax bill or the inclusion of both the county and municipal tax separately on the same notice. The form or the inclusion would not, however, extend the law for the collection of the tax or the authority under which the same may be collected or the character of the tax. [84 C.J.S. Taxation](#), § 640, p. 1314, supra.

CONCLUSION:

- (1) The treasurer's certificate is to be issued when the county taxes on motor vehicles are paid as prescribed by § 56-3-260.
- (2) The issuance of the certificate cannot be withheld because the municipal tax is not paid.

(3) There is no statute that precludes a city and county from contracting to collect the other's tax and for the billing of the same upon the same notice. Such, however, would not enlarge the authority to collect either tax beyond the methods and procedures otherwise provided by law for each tax.

(4) When the city and county tax is jointly billed, the taxpayer has the right to separately pay the tax for either the county or city or to pay both.

Joe L. Allen, Jr.
Deputy Attorney General

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