



ALAN WILSON
ATTORNEY GENERAL

October 27, 2025

The Honorable Gil Gatch, Member
South Carolina House of Representatives
PO Box 2160
Summerville, SC 29484

Dear Representative Gatch:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. You seek an opinion regarding:

Assuming all the legal requirements for a tax sale are met, is it proper for a County's Delinquent Tax Collector to void a tax sale once a piece of property has been sold at the tax sale if, subsequent to the that sale, the tax collector receives a personal or business check by mail postmarked prior to the sale in the amount of the taxes and penalties that were owed prior to the tax sale?

Law/Analysis

In South Carolina, the sale of property of a defaulting taxpayer is governed strictly by statute. *F.C. Enterprises, Inc. v. Dibble*, 335 S.C. 260, 263, 516 S.E.2d 459, 461 (Ct. App. 1999) (citing *Von Elbrecht v. Jacobs*, 286 S.C. 240, 332 S.E.2d 568 (Ct. App. 1985)). The statutory scheme provides a mechanism for enforcing the collection of taxes, including the seizure and sale of the property. *Id.* "South Carolina's tax sales laws were promulgated to protect the government against wilful, persistent, and long standing delinquents." *Johnson v. Arbabi*, 347 S.C. 132, 144-145, 553 S.E.2d 453, 460 (Ct. App. 2001), *rev'd on other grounds* 355 S.C. 64, 584 S.E.2d 113 (2003). The process of recovering delinquent taxes begins with S.C. Code § 12-45-180. It provides that beginning on the later of January 16 or 30 days after the mailing of tax notices and continuing until March 17, the county auditor shall add various penalties to an unpaid tax bill. S.C. Code Ann. § 12-45-180(A) (Supp. 2025). In addition to assessing penalties, "[i]f the taxes, assessments, and penalties are not paid before the seventeenth day of March, the county treasurer shall issue his tax execution to the officer authorized and directed to collect delinquent taxes, assessments, penalties, and costs for their collection as provided in Chapter 51 of this title and they must be collected as required by that chapter." *Id.*

After issuance of the treasurer's tax execution, recovery of delinquent taxes is governed by Chapter 51 of Title 12. Section 12-51-40(a) instructs the officer authorized to collect delinquent taxes to mail a notice to the delinquent taxpayer on April 1, or as soon after as is practicable. S.C. Code Ann. § 12-51-40(a) (2014). "The notice must specify that if the taxes, penalties, assessments, and costs are not paid, the property must be advertised and sold to satisfy the delinquency." Id. Thirty days later, the officer shall take exclusive possession of the property by mailing notice to the taxpayer, via certified mail of the delinquent taxes, assessments, penalties, and costs. Id. § 12-51-40(b) (2014). The "notice[]" shall specify that if the taxes, assessments, penalties, and costs are not paid before a subsequent sales date, the property must be duly advertised and sold for delinquent property taxes, assessments, penalties, and costs." Id. After the certified mail receipt has been returned, the officer shall take exclusive physical possession of the property by posting a notice at one or more conspicuous places on the premises. Id. § 12-51-40(c) (Supp. 2025). The notice shall read "Seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes." Id.

Thereafter, the property must be advertised for sale at public auction, Id. § 12-51-40(d) (2014), and "property duly advertised must be sold . . . at public auction . . . on the advertised date for legal tender payable in full by cash, cashier's check, certified check, or money order on the date of the sale," Id. § 12-51-50 (2014).

Following the sale of the property, "[t]he defaulting taxpayer, any grantee from the owner, or any mortgage or judgment creditor may within twelve months from the date of the delinquent tax sale redeem each item of real estate by paying to the person officially charged with the collection of delinquent taxes, assessments, penalties, and costs, together with interest as provided in subsection (B) of this section." Id. § 12-51-90(A) (2014). Subsection B of 12-51-90 provides an increasing amount of interest ranging from 3 to 12 percent, based upon the time between the tax sale and redemption. Id. § 12-51-90(B). "Upon the real estate being redeemed, the person officially charged with the collection of delinquent taxes shall cancel the sale in the tax sale book and note thereon the amount paid, by whom and when." S.C. Code Ann. § 12-51-100 (2014).

In this context, we consider your question regarding whether a county's delinquent tax collector can void a tax sale after a piece of property has been sold if, subsequent to that sale, the tax collector receives a personal or business check by mail postmarked prior to the sale in the amount of the taxes and penalties that were owed prior to the tax sale?

When construing a statute, the primary goal is to understand and give effect to the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Where possible, legislative intent "should be ascertained primarily from the plain language of the statute." State v. Hudson, 366 S.C. 237, 246, 519 S.E.2d 577, 581 (Ct. App. 1999). "The sound view is that all requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are regarded to be mandatory, and are to be strictly enforced." Dickson v. Burckmyer, 67 S.C. 526, ---, 46 S.E. 343, 345 (1903); *see also* Marx v. Hanthorn, 148 U.S. 172, 180 (1893) ("As there must be express statutory authority for selling lands

for taxes, and as such sale is in the nature of an *ex parte* proceeding, there must be, in order to make out a valid title . . . compliance with the provisions of the law authorizing the sale. A statutory power, to be validly executed, must be executed according to the statutory directions.”). Therefore, “[t]ax sales must be conducted in strict compliance with statutory requirements.” In Re Ryan Investment Co., 335 S.C. 392, 395, 517 S.E.2d 692, 693 (1999) (*citing Dibble v. Bryant*, 274 S.C. 481, 265 S.E.2d 673 (1980)).

To answer your question, we must begin by ascertaining the deadline for a delinquent taxpayer to pay their tax bill in order to prevent sale of the property. When describing the second notice that must be provided to the delinquent taxpayer by the county delinquent tax collector, section 12-51-40(b) states that the “notice[] shall specify that if the taxes, assessments, penalties, and costs are not **paid before a subsequent sales date**, the property must be duly advertised and sold for delinquent property taxes, assessments, penalties, and costs.” S.C. Code Ann. § 12-51-40(b) (emphasis added). Thus, the statute requires payment of any taxes, assessments, penalties, and costs prior to the sale date. This reading aligns with the analysis of the South Carolina Supreme Court in Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 577 S.E.2d 202 (2003). In Hawkins, the notices sent by the county delinquent tax collector set two deadlines for payment, both of which were several weeks prior to the sale date. Id. at 37, 577 S.E.2d at 205-206. The Court held that the notice description establishes the payment deadline and that the county lacked statutory authority to create an earlier deadline for payment. Id. at 38, 577 S.E.2d at 206. Therefore, delinquent taxpayers must pay any taxes, assessments, penalties, and costs before the sale date in order to prevent the sale of property at auction.

In the scenario you describe, the question arises whether mailing payment prior to the sale date satisfies the statutory requirement, even if the payment is not received by the county until after the sale. Section 12-45-185 provides that “the county treasurer may waive the penalties imposed pursuant to [Section 12-45-180] and notify the county auditor if necessary if the taxpayer provides clear and convincing evidence to the county treasurer that the taxpayer delivered the timely payment to the United States mail or that the taxpayer otherwise timely delivered or caused to be delivered the payment.” S.C. Code Ann. § 12-45-185 (Supp. 2025). “The United States postmark is the determining date for mailed payments.” Id. § 12-45-180(A). Under section 12-45-185 the date of mailing a payment is used to calculate the effective date; however, section 12-45-185, by its own terms, is limited to removal of penalties applied to a tax bill for late payment and is not applicable to the payment of taxes, assessments, penalties, and costs required to prevent the sale of property. This Office is unaware of any provision in Chapter 51 which contemplates the use of the postmark date to backdate the effective date of a payment. Thus, the receipt of payment after a tax sale, even if postmarked prior to the sale likely does not constitute payment of the taxes, penalties, assessments, and costs sufficient to prevent or cancel the sale.

Section 12-51-100 does provide a mechanism for the cancellation of a tax sale; however, that cancellation is contingent on the redemption of the property by the delinquent taxpayer within the statutorily allowed time. S.C. Code Ann. § 12-51-100 (2014). Courts have also recognized that tax sales which did not comply with the statutorily mandated procedures are invalid and must be

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cancelled. See e.g., King v. James, 388 S.C. 16, 25, 694 S.E.2d 35, 39 (Ct. App. 2010) (“Failure to give the required notice [of a tax sale] is a fundamental defect in the tax sale proceedings which renders the proceedings absolutely void.” (*quoting Rives v. Balsa*, 325 S.C. 287, 293, 478 S.E.2d 878, 881 (Ct. App. 1996))). Cancellation because of redemption and cancellation as a result of an invalid sale are the only methods for cancellation which the Office is aware of. Thus, if the county does not receive payment of any unpaid taxes, assessments, penalties, and costs prior to the sale of real property, these appear to be the only methods for cancelling the sale.

Conclusion

Assuming all the legal requirements for a tax sale are met, if a county delinquent tax collector sells a piece of real property at auction and subsequently receives payment for the unpaid taxes, assessments, penalties, and costs, it is not proper for the county delinquent tax collector to void the tax sale, even if the payment was received with U.S. mail and was postmarked prior to the tax sale.

Sincerely,



David Leggett
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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