



ALAN WILSON
ATTORNEY GENERAL

July 30, 2013

Marvin C. Jones, Esquire
Jasper County Attorney
PO Box 420
Ridgeland, SC 29936

Dear Mr. Jones:

This Office received your request for an opinion regarding whether or not a successful purchaser at a tax sale is entitled to payment of interest and repayment of ad valorem taxes by the County after a tax deed is set aside by a Court. Our understanding of the facts is that the Circuit Court entered a decree setting aside a tax deed on the basis of a failure by Jasper County to meet certain statutory notice requirements. The decree did not rule as to the obligation of Jasper County to pay interest or to repay ad valorem taxes to the purchaser.

Please be aware that only the South Carolina Legislature or a Court can determine what Jasper County is required to pay the purchaser. However, this Office can assist you by providing you with the law regarding such matters.

LAW/ANALYSIS

Payment of Interest by County

As you said in your letter, section 12-51-90 of the South Carolina Code addresses redemption of real property that has been sold at a tax sale. It states:

(A)The defaulting taxpayer...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...

S.C. Code Ann. Sec. 12-51-90 (1976 Code, as amended).

Section 12-51-100 of the South Carolina Code adds "Upon the real estate being redeemed...[t]he successful purchaser, at the delinquent tax sale, shall promptly be notified by mail to return the tax sale receipt to the person officially charged with the collection of delinquent taxes in order to be expeditiously refunded the purchase price plus the interest provided in Section 12-51-90." S.C. Code Ann. Sec. 12-51-100 (1976 Code, as amended).

Although the setting aside of a tax deed would not appear to be a redemption, the South Carolina Court of Appeals has held otherwise. In H & K Specialists v. Brannen, 340 S.C. 585, 532 S.E.2d 617 (Ct. App. 2000), Mr. and Mrs. Brannen failed to pay the taxes on property they owned and H & K Specialists (“H & K”) purchased the property at a tax sale. The Brannens failed to redeem and the property was deeded to H & K. The Brannens brought an action and the Master-in-Equity set aside the tax sale on the basis that the Brannens had not received proper notice of it. The Brannens were issued a new deed and the County paid the Brannens the purchase price (less the taxes and penalties due), instead of refunding it to H & K.

H & K brought suit for payment of the purchase price plus interest against the Brannens, the Beaufort County Treasurer, the Beaufort County Tax Collector, and the County of Beaufort. The Master-in-Equity held that the Brannens, not the County defendants, owed H & K the money.

The Court of Appeals overruled the Master-in-Equity and held that the County entities were jointly liable with the Brannens for paying the purchase price plus interest. The Court stated:

We view the return of the property to the Brannens as the ultimate redemption and hold that section 12-51-100 applies. It is inconceivable to this court that the General Assembly would require the taxing entity to ‘expeditiously refund the purchase price’ to the tax purchaser when the property is redeemed during the redemption period, but not require the entity to do so when a tax sale is set aside. In our view, this would constitute an absurd result and one that could not have been intended by the General Assembly.

Brannen, 340 S.C. 585, 532 S.E.2d 617 at 589.

In finding the County defendants liable for the funds, the Court stated:

[W]e are mindful of the fact that the master based his decision, in part, on the fact that the Brannens received both the property and the money and thus H & K’s sole remedy was against the Brannens. However, it was the Beaufort County Respondents which created this inequitable situation by failing to provide the Brannens with the proper notice that resulted in the tax sale being set aside and erred in refunding the purchase price, less the tax delinquency, to the Brannens rather than to H & K. Therefore, we do not believe H & K is limited to pursuing a legal remedy solely against the Brannens.

Id. at 589.

It appears that the Brannens were liable merely because of their receipt of both the property and the money.¹ It appears that the Court of Appeals found the County entities jointly liable with the Brannens

¹ In Smith v. Barr, 375 S.C. 157, 650 S.E.2d 486 (Ct. App. 2007), the Court held that the plain language of section 12-51-90 showed that the delinquent taxpayers who had a tax sale set aside (and who did not appear to have received any money from the County) did not owe an interest payment to the successful purchaser at the tax sale.

because of their errors in not giving the proper notice to the Brannens and in paying the purchase price to the Brannens instead of to H & K.

In the case at hand, Jasper County erred, like the Beaufort County defendants, in not giving the proper notice to the delinquent taxpayer of the tax sale. Accordingly, Jasper County should be responsible for refunding the purchase price and paying interest to the purchaser.

There appears to be little law on the subject but other jurisdictions have concurred that a purchaser whose tax deed has been set aside is entitled to both the purchase price and interest, although only South Carolina appears to consider the setting aside of a tax deed a redemption. See Cornelius v. Ferguson, 16 S.D. 113, 91 N.W. 460 (SD 1902); Levy v. Inman, 103 Okla. 90, 229 P. 436 (Okla. 1924); 85 C.J.S. Taxation section 1699 (2013) (citing Warn v. Tucker, 236 Iowa 450, 19 N.W.2d 201 (Iowa 1945)).

It should be noted that when the Brannen case was decided, section 12-51-90 of the South Carolina Code provided for the payment of a constant eight percent (8%) interest. The statute was subsequently amended as follows to provide for a variable interest rate:

(B) The lump sum amount of interest due on the whole amount of the delinquent tax sale based on the month during the redemption period the property is redeemed and that rate relates back to the redemption period according to the following schedule:

Month of Redemption Period Property Redeemed	Amount of Interest Imposed
First three months	three percent of the bid amount
Months four, five, and six	six percent of the bid amount
Months seven, eight, and nine	nine percent of the bid amount
Last three months	twelve percent of the bid amount

However, in every redemption, the amount of interest due must not exceed the amount of the bid on the property submitted on behalf of the forfeited land commission pursuant to Section 12-51-55...

S.C. Code Ann. Sec. 12-51-90 (1976 Code, as amended).

We are not aware of any South Carolina law that specifically addresses what interest rate Jasper County should pay a purchaser if the tax sale has been set aside after the year redemption period has passed and a tax deed has been issued.² However, “[n]o rate of interest is fixed by the statute in this class of cases, and hence the legal rate [of 7%] is proper.” Cornelius, 16 S.D. 113, 91 N.W. 460 at 461. “In the absence of a statute providing otherwise, interest at the legal rate on the amount due or paid at the time of the sale may

² Section 12-51-150 of the South Carolina Code provides “If the official in charge of the tax sale discovers before a tax title has passed that there is a failure of any action required to be properly performed, the official may void the tax sale and refund the amount paid, plus interest in the amount actually earned by the county on the amount refunded, to the successful bidder...” S.C. Code Ann. Sec. 12-51-150 (1976 Code, as amended). Obviously, this statute does not apply to this situation since a tax deed had been issued by Jasper County.

be recovered by the holder of an invalid tax title in an action concerning the tax title.” 85 C.J.S. Taxation section 1699 (2013). The Court in Brinkley v. Western World, Inc., 281 N.J.Super. 124, 656 A.2d 872 (N.J. Super. Ct. Ch. Div. 1995) held that “[t]he ‘legal rate of interest’ is commonly associated with the post-judgment rate of interest” (citing Dan B. Dobbs, Remedies: *Damages-Equity-Restitution* section 3.5 (1973)). An accompanying case, Brinkley v. Western World Incorporated, 292 N.J.Super. 134, 678 A.2d 330 (N.J. Super. Ct. Ch. Div. 1996), held “while we agree that the post-judgment interest rate is the appropriate rate and that plaintiff [purchaser] is entitled to interest from the date of the sale, we conclude that the interest should be calculated for each year in accordance with the applicable interest rate for each year...”

Section 34-31-20 of the South Carolina Code provides for the calculation of post-judgment interest on an annual basis. A review of the cases cited above seems to indicate that interest should be paid to the purchaser at the post-judgment rate for each year since the property was sold. Nevertheless, this issue would most properly be addressed by the South Carolina Legislature or by a Court since the exact amount of interest to be paid can not be determined by this Office.

Payment of Ad Valorem Taxes by County

You stated in your letter that ad valorem taxes had been paid after the tax deed was issued. Your question was whether Jasper County had to refund these ad valorem taxes to the purchaser if he could prove that he had paid them.

“A refund of taxes is solely a matter of governmental or legislative grace and any person seeking such relief must bring himself clearly within the terms of the statute authorizing the same.” Asmer v. Livingston, 225 S.C. 341, 82 S.E.2d 465 (1954).

The applicable law appears to be the statutes comprising the South Carolina Revenue Procedures Act, which provides for an administrative tax remedy. These are codified at S.C. Code Ann. Sections 12-60-10 *et seq.* “[T]here is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes...” S.C. Code Ann. Sec. 12-60-80 (1976 Code, as amended). “Even if a taxpayer has not filed a claim for refund, where no question of fact or law is involved, and it appears from the record that money has been erroneously or illegally collected from a taxpayer or other person under a mistake of fact or law, the department³ may, subject to the limitations in Section 12-60-1750, within the period specified in Section 12-54-85 and upon making a record in writing

³ “Department” is defined in the Revenue Procedures Act as “the South Carolina Department of Revenue.” S.C. Code Ann. Sec. 12-60-30 (1976 Code, as amended). However, “[l]ooking at the RPA [Revenue Procedures Act], we find the Act clearly envisions protests to county assessments. *See, e.g.*, S.C. Code Ann. Sec. 12-60-30, 12-60-2560, 12-60-2940 (including definitions and references to county auditor, county assessor, and county board of assessment appeals).” B & A Development, Inc. v. Georgetown County, 372 S.C. 261, 641 S.E.2d 888 (2007). Additionally, “It is the intent of the General Assembly to provide the people of this State with a straightforward procedure to determine a dispute with the Department of Revenue and a dispute concerning property taxes...” See S.C. Code Ann. Sec. 12-60-20 (1976 Code, as amended).

of its reasons, order a refund to the taxpayer or other person.” S.C. Code Ann. Sec. 12-60-2150 (1976 Code, as amended).

The limitations of Section 12-60-1750 are as follows:

Notwithstanding any other provision of law, no refund of property taxes must be given:

- (1) for a property tax exemption requiring an application, unless the application was timely filed; or
- (2) for errors in valuation...

S.C. Code Ann. Sec. 12-60-1750 (1976 Code, as amended). The period specified in section 12-54-85(F) is as follows:

(F)(1) Except as provided in subsection (D), claims for credit or refund must be filed within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later. If no return was filed, a claim for credit or refund must be filed within two years from the date the tax was paid. A credit or refund may not be made after the expiration of the period of limitation prescribed in this item for the filing of a claim for credit or refund, unless the claim for credit or refund is filed by the taxpayer or determined to be due by the department within that period.

(2) If the claim was filed by the taxpayer during the three-year period prescribed in item (1), the amount of the credit or refund may not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to three years plus the period of any extension of time for filing the return.

(3) If the claim was not filed within the three-year period, the amount of the credit or refund may not exceed the portion of the tax during the two years immediately preceding the filing of the claim.

(4) If no claim was filed, the credit or refund may not exceed the amount which would be allowable under item (2) or (3), as the case may be, as if a claim were filed on the date the credit or refund is allowed...

Pursuant to S.C. Code Ann. Sec. 12-60-2150, Jasper County can refund ad valorem taxes to the purchaser since the money was erroneously collected from the purchaser pursuant to a mistake. However, under section 12-54-85, Jasper County can only refund ad valorem taxes paid within the last two years.

CONCLUSION

In conclusion, the setting aside of a tax deed by a court constitutes a redemption which requires that interest be paid to the purchaser. The amount of interest to be paid has yet to be determined by the South Carolina Legislature or by a South Carolina court but a review of the decisions of courts in other jurisdictions seem to indicate that interest should be paid to the purchaser at the post-judgment rate for each year since the property was sold. The purchaser is entitled to a refund of ad valorem taxes he paid within the last two years.

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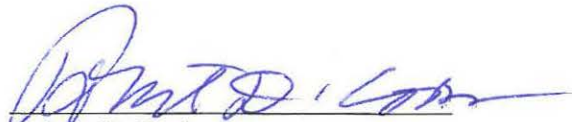
Please be aware that this opinion is based on the facts stated above. Until a court or the legislature specifically addresses the issues in your letter, this is only an opinion as to how this Office believes a court would interpret the law in this matter.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General