

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

April 5, 1994

SUBJECT: Taxation and Revenue - Penalties on Notices  
Not Mailed to the Taxpayer

SYLLABUS: Where the county mails a tax notice to an address which the county believes will provide notice to the property owner of the amount of taxes owed on such property, any late payment of the taxes on such property will be subject to penalty under S.C. Code Ann. Section 12-45-180 (Supp. 1993) where the person authorized to send the notice exercised diligence to ascertain the correct address of the property owner or used an address consistent with the intentions of the property owner.

TO: Honorable Mary A. Gray  
Auditor, Beaufort County

FROM: Ray N. Stevens *RNS*  
Chief Deputy Attorney General

QUESTION: Numerous taxpayers' property tax notices were mailed to a mortgage company. The mortgage company did not pay the taxes represented by the tax notices and instead, after the time period in which to pay the taxes without penalty, notified the county of the reasons for not paying the taxes. The reasons varied but were all based upon the facts surrounding each of the tax notices (e.g. the mortgage was already paid in full, the notice was sent in error, the note and mortgage had been transferred to another company, etc.). After being told the mortgage company would not pay the taxes, the county prepared and mailed new tax notices and mailed such to the taxpayers at the taxpayers' addresses. Are penalties for late payment under Section 12-45-180 due by the taxpayers?

APPLICABLE LAW: S.C. Code Ann. Section 12-45-180 (Supp. 1993).

## DISCUSSION:

Section 12-45-180 establishes a three-step penalty for late payments of property taxes, with the extent of the penalty

April 5, 1994

increasing with the lateness of the payment. The first stage of the penalty covers taxes not paid "before the sixteenth day of January or thirty days after the mailing of tax notices, whichever occurs later . . . ." A second penalty is due if the "taxes, assessments, and penalty are not paid before the second day of the next February" and a third penalty is due if "the taxes, assessments, and penalties are not paid before the seventeenth day of the next March."

Under this statutory scheme, obviously the second and third stages of the penalty cannot be reached until the first deadline passes with no payment received. Thus, the penalty is not operative until there is a failure of payment by the later of January 16 or the thirtieth day after the mailing of the tax notice. Therefore, before the penalty is applicable, the county must have mailed a tax notice.<sup>1</sup>

Here there is no doubt that a tax notice was mailed. The problem, however, is that the tax notice was not received by the taxpayer. The question becomes whether, under such circumstances, a penalty under Section 12-45-180 is imposed upon the late payment.

The property tax structure in South Carolina does not place the duty upon the county to insure the taxpayer actually receives a notice of taxes due.

Nowhere in the statute is there a requirement that the Tax Collector give the owner actual notice each year of the taxes due. . . .

Southern Region Industrial Realty v. Timmerman, 285 S.C. 142, 328 S.E.2d 128, 131 (S.C. App. 1985). Also see 84 C.J.S., Taxation, Section 608. Thus, a taxpayer is liable for property taxation without regard to whether he received a tax notice. Whether or not a penalty is due on a late payment, however, is covered by Section 12-45-180.

Section 12-45-180 requires that before a tax penalty can be imposed, the county must provide tax notices by mail. The extent to which that notice by mail must be designed to assure actual notice is not stated in the statute. The

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<sup>1</sup>The mechanics of how and by whom a tax notice is mailed is not addressed here and in some instances may be affected by local legislation.

April 5, 1994

General Assembly has demonstrated that when it so desires, it is quite capable of spelling out the degree of notice required by mail in matters related to collection of taxes. For instance, during the process of selling property for delinquent taxes, S.C. Code Ann. Section 12-51-40(a) (Supp. 1993) states the following:

On April first or as soon thereafter as practicable, [the county shall] mail a notice of delinquent property taxes, penalties, assessments, and costs to the owner of record at the best address available which is either the address shown on the deed conveying the property to him, the property address, or such other corrected or forwarding address that the owner of record has filed with the appropriate tax authority. . . .

Further, the notice that the redemption period is about to close as required by S.C. Code Ann. Section 12-51-120 (Supp. 1993) has specific language concerning the degree of notice by mail.

Neither more than forty-five days nor less than twenty days prior to the end of the redemption period for real estate sold for taxes, the person officially charged with the collection of delinquent taxes shall mail a notice by "certified mail, return receipt requested--deliver to addressee only" to the owner of record immediately preceding the end of the redemption period at the best address of the owner available to the person officially charged with the collection of delinquent taxes that the real property described on the notice has been sold for taxes and if not redeemed by paying taxes, assessments, penalties, costs and eight percent interest on the bid price in the total amount of \_\_\_\_ dollars on or before \_\_\_\_ (twelve months from date of sale) (date) \_\_\_\_, a tax title will be delivered to the successful purchaser at the tax sale. . . .

Thus, while other statutes give specific guidance on the degree and extent of notice by mail, Section 12-45-180 has no specific direction. If there is a lack of specific direc-

April 5, 1994

tion as to the manner and particulars to carry out a task, the officials must exercise their discretion and judgment to accomplish the task in a reasonable manner. 63A Am.Jur.2d, Public Officers and Employees, Section 303.

In exercising discretion and judgment, the general rule concerning notice by mail is that where a statute permits the giving of notice by mail, the person authorized to send the notice must exercise diligence to ascertain the correct address of the property owner. 85 C.J.S., Taxation, Section 868 (1954). What actions or steps will constitute the proper exercise of diligence is a factual determination that must be decided on the basis of each case. Good v. Kennedy, 291 S.C. 204, 352 S.E.2d 708 (S.C.App., Jan. 12, 1987). Thus, the answer to the question raised will depend upon the specific facts surrounding the reasons the county sent the tax notice to the mortgage company rather than to the taxpayer's address. This office is unable to make the required factual determinations since such a duty is best performed by those involved in the actual transaction under review. Accordingly, we are unable to provide a definitive answer to your question.

Case law, however, presents some guidance to assist the county in making its determinations. First, courts have held that statutes which involve the imposition of penalties must be strictly construed. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). Thus, the burden is on the county to demonstrate that the penalty is proper. Further, proper diligence in providing notice by taxing officials was not shown where the tax notice was sent to an address other than the one the taxpayer notified the county to use. Snelgrove v. Lanham, 298 S.C. 302, 379 S.E.2d 904 (S.C., May 30, 1989). Additionally, notice mailed to a supposed agent of the property owner is insufficient notice where the evidence of the agency relationship is unsupported. 85 C.J.S., Taxation, Section 868 (1954). Under such circumstances, no penalty could be imposed until thirty days after the mailing of a tax notice to the new address.

The county should examine all of the facts surrounding each tax notice to determine if the penalty is proper. While other facts should be reviewed, three variations of notice are presented here as examples. First, the county should determine if the address used was at the request of the taxpayer or someone legally acting on behalf of the taxpayer. If so, the penalty should be upheld in that the county followed the instructions of the taxpayer as to notice. Second, the county should determine whether it unilaterally chose to mail the tax notice solely to the mortgage company without the agreement or at least consent

Honorable Mary A. Gray  
Page Five

April 5, 1994

of the taxpayer. If so, the penalty, in the absence of other offsetting facts, would most likely be held improper based on a failure to mail a tax notice. Third, the county should determine whether multiple notices were sent, with one to the taxpayer and one to the mortgage company. If so, the imposition of the penalty should be upheld since the taxpayer would have been mailed the tax notice required by Section 12-45-180.

CONCLUSION:

Where the county mails a tax notice to an address which the county believes will provide notice to the property owner of the amount of taxes owed on such property, any late payment of the taxes on such property will be subject to penalty under S.C. Code Ann. Section 12-45-180 (Supp. 1993) where the person authorized to send the notice exercised diligence to ascertain the correct address of the property owner or used an address consistent with the intentions of the property owner.

RNS:wcg