

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____ February 1, 1994

SUBJECT: Taxation and Revenue - Collection of Delinquent Property Taxes

SYLLABUS: A county must first attempt to collect delinquent property taxes pursuant to S.C. Code Ann. Section 12-51-40, et seq., (Supp. 1992) before proceeding under the provisions of the Setoff Debt Collection Act.

TO: Mr. Michael L. Horton
Assistant Comptroller General

FROM: Ronald W. Urban *RWN*
Deputy Attorney General

QUESTION: Must a county first attempt to collect delinquent property taxes pursuant to Section 12-51-40, et seq., before proceeding under the provisions of the Setoff Debt Collection Act?

APPLICABLE LAW: Act 677, 1882 S.C. Acts; Setoff Debt Collection Act; S.C. Code Ann. Sections 5-7-300, 12-45-180, 12-51-40, 12-51-50, 12-51-170, 12-54-410, 12-54-420 and 12-54-430 (Supp. 1992).

DISCUSSION:

Sections 12-45-180 and 12-51-40, et seq., provide a procedure whereby property is seized and sold as a means for collecting delinquent property taxes. Although modified over the years, this procedure is longstanding.¹

In 1988, the General Assembly enacted the Setoff Debt Collection Act. See Section 12-54-410, et seq. Pursuant to that

¹Said method was first enacted as part of Act 677, 1882 S.C. Acts. That act instituted a comprehensive system whereby property taxes were levied and collected throughout the State. Much of that system remains in effect.

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act, whenever a delinquent debt is owed a claimant agency, the agency can seek payment by requesting a setoff against the debtor's income tax refund. The definitions of "claimant agency" and "delinquent debt" at Section 12-54-420 are broad enough to include delinquent property taxes owed a political subdivision.

The question posed here is whether a county must first attempt to collect property taxes through seizure and sale before proceeding under the provisions of the Setoff Debt Collection Act.

Statutory language indicates the seizure and sale of property for delinquent taxes are required. For example, when addressing delinquent county taxes, Section 12-45-180 mandates the following:

. . . If 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. . . .
(Emphasis added)

Similarly, after the issuance of the tax execution, Section 12-51-40 states the person authorized to collect delinquent taxes "shall" perform certain tasks. The accomplishment of these tasks results in the seizure of the property that is to be sold for delinquent taxes. Thereafter, Section 12-51-50 directs that such property "must" be sold.

The property duly advertised must be sold by the person officially charged with the collection of delinquent taxes. . . . (Emphasis added)

Section 12-51-50.

On the other hand, the Setoff Debt Collection Act has no similar mandatory language. Rather, Section 12-54-430 specifically states that act is an additional remedy that "may" be used to collect delinquent debts.

(A) The collection remedy under this article is in addition to any other remedy available by law.

(B) Claimant agencies may submit for collection under the procedure established by this article all delinquent debts which they are owed.

Section 12-54-430.

The words "shall," "must" and "may" in the above-noted statutes are significant. Both "shall" and "must," as ordinarily used, indicate a mandatory duty. People v. Nicholls, 45 Ill.App.3d 312, 359 N.E.2d 1095 (1977), and Federal Land Bank of St. Paul v. Waltz, 423 N.W.2d 799 (1988). Conversely, "may" generally means an action is optional or discretionary. State v. Wilson, 274 S.C. 352, 264 S.E.2d 414 (1980). In view of these definitions, it appears a county must attempt to collect delinquent property taxes pursuant to Section 12-51-40, et seq., before proceeding under the provisions of the Setoff Debt Collection Act.²

CONCLUSION:

A county must first attempt to collect delinquent property taxes pursuant to S.C. Code Ann. Section 12-51-40, et seq., (Supp. 1992) before proceeding under the provisions of the Setoff Debt Collection Act.

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²This conclusion would also be applicable to municipal property taxes where a municipality has contracted with a county for the collection of municipal taxes pursuant to Section 12-51-170. In other instances, however, a municipality's ability to proceed first with the Setoff Debt Collection Act is dependent upon the terms of its collection ordinance. See Section 5-7-300.