

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____ July 6, 1994

SUBJECT: Taxation and Revenue - Use of S.C. Code Ann. Section 12-54-90 (Supp. 1993) in collecting property taxes by a county.

SYLLABUS: The authority granted to the Department of Revenue under S.C. Code Ann. Section 12-54-90 (Supp. 1993) to revoke one or more licenses held by a taxpayer is applicable to a taxpayer who fails to report its business personal property for property tax purposes. S.C. Code Ann. Section 12-37-970 (Supp. 1993) requires the filing of a return reporting the taxpayer's business personal property, requires the Department to utilize the information in making its assessment and requires the Department to supply the assessment to the various political subdivisions. Such statute is within the scope of Section 12-54-90 since the statutory duty to file a return is established under a "law . . . administered by the commission."

TO: Honorable J. Martin Posey
Tax Collector, Aiken County

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

QUESTION: Does the Department of Revenue have the authority to revoke a license under Section 12-54-90 for a taxpayer who fails to report its business personal property?

APPLICABLE LAW: S.C. Code Ann. Sections 12-37-970 and 12-54-90 (Supp. 1993).

DISCUSSION:

Section 12-54-90 provides in part the following:

When a person fails, neglects, violates, or refuses to comply with a provision of law or regulation administered by the commission, the commission, in its discretion, may revoke one or more licenses held by the taxpayer. . . .

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Under this section, the Department of Revenue may revoke a license if the law with which the taxpayer fails to comply is a law "administered by the commission." Thus, the question becomes one of deciding if the duty to file a business personal property tax return is pursuant to a law administered by the Department of Revenue. If yes, Section 12-54-90 is applicable, and if not, Section 12-54-90 is not applicable.

The law requiring the filing of a business personal property return is Section 12-37-970. That statute requires that "property tax returns [must be] submitted by the taxpayers to the department on or before the last day of the fourth month after the close of the accounting period. . . ." Upon obtaining the returns, the Department calculates the assessed value of the property and "shall forward the assessments prepared as a result of the returns submitted pursuant to this section [12-37-970] to the appropriate local taxing authorities. . . ."

In Bowaters Carolina Corp. v. Smith, 257 S.C. 563, 186 S.E.2d 761 (1972), the Court was asked to decide if interest was owed on the refund of property taxes to a manufacturer who recovered its property taxes through litigation. The statute under review authorized interest on taxes "administered by the South Carolina Tax Commission." The Court held interest was required on the property tax recovery since the Tax Commission did in fact administer the property tax owed by manufacturers. The Court relied upon the fact that the law required that the "returns by such taxpayers shall be made to the Commission on forms prescribed by it" and that the assessment was required to be made by the Tax Commission. Bowaters, supra, 186 S.E.2d 761, 765.

Here, just as in Bowaters, Section 12-37-970 requires the taxpayer to file its business personal property return with the Department. Further, again just as in Bowaters, the Department is directed to make the assessment and supply the assessment to the various political subdivisions. Accordingly, Section 12-37-970 is a law administered by the Department.

CONCLUSION:

The authority granted to the Department of Revenue under S.C. Code Ann. Section 12-54-90 (Supp. 1993) to revoke one or more licenses held by a taxpayer is applicable to a taxpayer who fails to report its business personal property for property tax purposes. S.C. Code Ann. Section 12-37-970

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(Supp. 1993) requires the filing of a return reporting the taxpayer's business personal property, requires the Department to utilize the information in making its assessment and requires the Department to supply the assessment to the various political subdivisions. Such statute is within the scope of Section 12-54-90 since the statutory duty to file a return is established under a "law . . . administered by the commission."

RNS:wcg