

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

January 15, 1990

SUBJECT: Taxation and Revenue - Authority Of A County Council To Waive Penalties.

SYLLABUS: A county governing body is without authority to abate or waive a penalty. A penalty that has been incorrectly levied may be abated by the county auditor prior to payment under Section 12-39-250. Additionally, a penalty incorrectly levied may be abated or refunded by the county auditor, treasurer and assessor under Sections 12-47-70 through 12-47-90.

TO: Robert R. Horger, Esquire
Orangeburg County Attorney

FROM: Joe L. Allen, Jr. *JA*
Deputy Attorney General

QUESTION: Does the Orangeburg County Council have the authority to abate a penalty?

APPLICABLE LAW: Article VIII, Section 7 and Article X, Section 6 of the South Carolina Constitution, Sections 4-9-30, 12-45-180, 12-39-250, 12-45-190 and 12-47-70 through 12-47-90.

DISCUSSION:

Article VIII of the South Carolina Constitution provides that the General Assembly set forth the powers of the governing body of a county. Article X, Section 6 is the authority to delegate the taxing power of the state. Section 4-9-30 publishes the powers of a county governing body. Subsection 5 thereof provides the authority for the county "to assess property and levy taxes." Those powers, however, are by the section "subject to the general law of this State"

Section 12-45-180 is a general law and provides the penalties when taxes are not timely paid. There is no authority there conferred to a county council to waive or

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abate any penalty there provided. Section 12-45-190 authorizes the abatement in very limited circumstances, however, again this abatement is not within the powers of the county governing body. Section 12-39-250 provides authority to the county auditor to correct errors in the tax duplicate prior to payment. A penalty that has been wrongfully applied may be abated under this statute by the auditor. This, however, is not a discretionary power and is applicable only to the correction of errors.

Sections 12-47-70 through 12-47-90 provide further authority to abate or refund a penalty that was wrongfully applied. Again this is limited to a penalty that was incorrectly applied and the authority is vested in the county auditor, treasurer and assessor.

CONCLUSION:

A county governing body is without authority to abate or waive a penalty. A penalty that has been incorrectly levied may be abated by the county auditor prior to payment under Section 12-39-250. Additionally, a penalty incorrectly levied may be abated or refunded by the county auditor treasurer and assessor under Sections 12-47-70 through 12-47-90.

JLAJR/jws