

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

November 30, 1990

SUBJECT: Taxation & Revenue - Time Computation Within Which Specific Acts Are To Be Accomplished.

SYLLABUS: When computing the time requirements of S. C. Code Ann. Sections 12-49-220, 12-49-300, 12-51-40 and 12-51-90, the first day is to be excluded and the last day included unless the last day falls on a Saturday or Sunday or a legal holiday.

TO: Honorable William H. Linder
Richland County Treasurer

Honorable Joan Owen
Tax Collector of Dorchester County

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

QUESTIONS: The Treasurer of Richland County:

How are the days to be counted for purpose of giving proper notice under Sections 12-49-300, 12-49-220, and 12-51-40?

The Tax Collector of Dorchester County:

When the last day of the twelve month period for the redemption of property falls on a holiday, can the redemption be made on the following day?

APPLICABLE LAW: S. C. Code Ann. Sections 12-49-300, 12-49-220, 12-51-40 and 12-51-90 (1976).

DISCUSSION:

The requests have been consolidated because the inquiries are similar. Section 15-1-20 would have answered both questions, however, the statute was repealed in 1985 by Act 100. It was replaced by Rule 6(a) of the SCRCF. That rule, however, is applicable to judicial proceedings. It provides

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that the first day is excluded and the last day included unless it is a Saturday, Sunday or holiday.

As early as 1830, our court held that the first day was to be excluded.

Whenever, in the computation of time, a forfeiture would be incurred, or a right divested by including "the day of the date" or "an act done," it will be excluded, unless the contrary is expressly provided.

Williamson v. Farmer, 1 Bailey 611, 21 Am. Dec. 492.

This comports with the general rule.

However at the present time, both in the construction of contracts and statutes as well as matters of practice, when time is to be computed from a particular day or when an act is to be performed within a specified period from or after a day named, the rule is to exclude the first day and to include the last day of the specified period, . . .

74 Am.Jur.2d, Time, Section 15, page 598.

Section 12-49-300 requires notice of "not less than thirty days" to mortgagees or assignees when property is to be sold. Section 12-49-220 requires notice of "twenty days" to certain mortgagees of a levy for nonpayment of taxes prior to advertisement. Section 12-51-40 provides that a levy be made "if the taxes remain unpaid after thirty days."

In all of these statutes, the time period should be computed by excluding the first day and including the last.

Section 12-51-90 provides that property may be redeemed "within twelve months from the date of the delinquent tax sale." The term "month" must be construed to mean a calendar and not lunar month. Williamson v. Farmer, supra.

A calendar month is

. . . the period of time running from the beginning of a certain numbered day up to, but not including, the corresponding numbered day

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of the next month, and if there is not a sufficient number of days in the next month, then up to and including the last day of that month.

74 Am.Jur.2d, Time, Section 9.

In computing the months, the first day is to be excluded and the last included. The next inquiry is whether Saturdays, Sundays and holidays are excluded.

Section 53-1-40 provides in part that Sunday shall be a day of rest.

The general rule is that Sundays are excluded.

. . . when an act is to be performed within a given number of days, and the last day falls on Sunday, the person charged with the performance of the act has the following day in which to comply with his obligation.

74 Am.Jur.2d, Time, Section 17, page 600.

Following this general rule if the last day of the redemption period falls on a Sunday, then the person has the following day in which to redeem the property. (See also Backer v. Pyne, 130 Ind. 288, 30 N.E. 21, 30 Am.Jur.2d, Execution, Section 536, page 752)

Whether Saturdays and holidays are to be excluded is a more difficult question. For purposes of this opinion, we adopt the language found in Wirtz v. Local Union, 169 International Hod Carriers', etc., 246 F. Supp. 741 (1965).

The court there held that

In the absence of such a statutory definition, the Courts should declare and apply the modern common law, recognizing that in judicial and quasi-judicial or administrative proceedings, it is commonly understood that when the last day falls on a non-business day, the time is extended to the next regular business

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day.¹

Following this holding the time period would therefore also exclude Saturdays and holidays.² This conclusion is fortified by the fact that each of the statutes extends protection to the mortgage holder or property owner of the sale of either owned or secured property or property rights. The office in which these rights could be protected would be closed on Saturdays, Sundays and holidays. It would appear that the next working day would be the most appropriate ending day.

CONCLUSION:

When computing the time requirements of Sections 12-49-220, 12-48-300, 12-51-40 and 12-51-90, the first day is to be excluded and the last day included unless the last day falls on a Saturday, Sunday or a legal holiday.

JLAJR/jws

¹It should be noted that we do not here have a statute that provides for an act to be done on a designated date, in example, taxes become delinquent if not paid on or before January 15 following the tax year. This opinion is not applicable to that circumstance.

²It should be noted that there is conflicting law as to these questions. See 74 Am.Jur.2d, Time, Section 8. A judicial or legislative act is needed to resolve the questions with finality.