

3715 Lumber

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

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

July 11, 1989

SUBJECT: Taxation and Revenue - Abatement of incorrect tax on motor vehicle duplicate.

SYLLABUS: The taxes on vehicles listed as taxable upon the duplicate provided by Section 12-37-2650 are to be abated when the vehicles are not licensed.

TO: Honorable Kenneth Holt  
Auditor, Horry County

FROM: Joe L. Allen, Jr. *[Signature]*  
Chief Deputy Attorney General

QUESTION: How are tax charges deleted from the duplicate for motor vehicles when there is no evidence the vehicle was licensed or registered with the South Carolina Department of Highways and Public Transportation for a particular tax year?

APPLICABLE LAW: Sections 12-37-2610, 12-37-2650 and 12-39-250, South Carolina Code of Laws, 1976.

DISCUSSION:

You advise that there are several thousand entries upon the duplicate for motor vehicles that are unpaid and there is no evidence available to establish that a tax was in fact due. The tax charges relate back for several years. You request the opinion of this office as to the procedure to abate or delete the charges from the duplicate.

The General Assembly in 1980 by Act 405 adopted the present procedure for the payment of taxes on motor vehicles. The tax year for a motor vehicle is its license year for registration with the South Carolina Department of Highways and Public Transportation. (See Section 12-37-2610.)

The Department provides the auditor with a list of license registration applications to be mailed to the owners of

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vehicles each month.<sup>1</sup>

The lists are mailed at least sixty days before the Department mails the application to the vehicle owner. (See Section 12-37-2660.)

An entry for each vehicle licensed or subject to being licensed is entered upon a duplicate for each month. (See Section 12-37-2650.)

While not a statutory requirement, the Department provides a later list of vehicles licensed in any one month. If a vehicle is not licensed, then under such circumstance there is no tax due under Section 12-37-2610, et seq.<sup>2</sup>

A procedure was established when these laws were enacted that would "cleanse" the duplicate of the motor vehicles that were not licensed. The Department provides the auditor with a list of vehicles licensed in each month. A simple comparison of that list to the duplicate reflects those vehicles that were not licensed and on which no tax was due.

At that time, Section 12-39-250 gave power to the Comptroller General to authorize the abatement of a tax. That office agreed to authorize the abatement of the charges after a period of one hundred and twenty days when the vehicle was not licensed. You advise, however, that this was not done in your county and that there are now no records upon which you can determine the existence of a tax liability.

Section 12-39-250 was amended in 1982 and provides in part that:

". . . At any time prior to payment of the tax the auditor shall also correct upon the duplicate for any tax year any errors that may be discovered that were made by county or state officers. At any time during the current tax year

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<sup>1</sup>Vehicle license years are staggered and some vehicles are licensed in each of the twelve months.

<sup>2</sup>If a person owns an unlicensed vehicle, it should be returned and taxed as other personal property. (See Section 12-37-900.)

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and before payment of the tax the auditor further shall correct other errors that may appear in the duplicate. At any time before the tax is paid the auditor shall also correct other errors in the duplicate when such errors invalidate or make void the collection of the tax reflected by reason of such error. If the correction results in a reduction or withdrawal of the taxes assessed or levied, the correction shall be in the form of an abatement and a record of such correction and the reasons therefor shall be maintained in an abatement book. . ."

By reason of this amendment, the authority to abate such tax charges is now vested with the county auditor.

It further appears to the satisfaction of this office that the failure to perform a required or necessary act constitutes "error." The word "error" is defined in Webster's Ninth New Collegiate Dictionary to mean:

"a: an act or condition of ignorant or imprudent deviation from a code of behavior b: an act involving an unintentional deviation from truth or accuracy c: an act that through ignorance, deficiency, or accident departs from or fails to achieve what should be done: . . ."

The auditor has a duty to correct the duplicate when a property is listed as taxable when in fact, it is not subject to the tax. A failure to make such a correction would in our view constitute error. The tax on vehicles that are listed as taxable upon the duplicate when in fact the same are not taxable, should be abated by the auditor under Section 12-39-250 and the proper records of the abatement maintained.

CONCLUSION:

The taxes on vehicles listed as taxable upon the duplicate provided by Section 12-37-2650 are to be abated when the vehicles are not licensed.

JLAJr:wcg