

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 88-57 p 162 August 1, 1988

SUBJECT: Taxation and Revenue - Uncollectible Tax Executions

SYLLABUS: Tax executions that are ten years or older should be returned to the County Treasurer as uncollectible by operation of law. The officer to whom the execution was issued should make this declaration. Uncollectible executions should be returned to the County Treasurer by the officer to whom the same were issued with the declaration of why the same were not collectible.

TO: Honorable Johnny C. Allen
Treasurer of Horry County

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

QUESTION: What disposition should be made of tax executions that are ten or more years old or of tax executions that are uncollectible?

APPLICABLE LAW: Sections 12-45-300, 12-45-330, 12-45-380 and 12-49-70, South Carolina Code of Laws, 1976.

DISCUSSION:

Section 12-49-70 provides in part that:

"Except as provided in Article 7 of Chapter 16 of this title, all taxes levied or becoming due under the laws of this State are conclusively presumed paid after ten years from the last date taxes could have been paid without penalty. This section does not apply to taxes for the collection of which the State institutes judicial proceedings within the time limit above."

Under the specific language of this statute, the taxes are "conclusively presumed paid." Black's Law Dictionary de-

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finds "conclusive" as follows:

"Shutting up a matter; shutting out all further evidence; not admitting of explanation or contradiction; putting an end to inquiry; final; irrefutable; decisive. . . . Beyond question or beyond dispute; manifest; plain; clear; obvious; visible; apparent; indubitable; palpable; and 'notorious'." See also 8 Words and Phrases, Conclusive, for similar definitions.

By operation of law, the tax is no longer collectible and by operation of law the execution is of no further effect. Tax executions were treated under Article 5 of Chapter 49 of Title 12. The article, however, was repealed and those provisions are no longer a part of our statute law. The article designated the official to return executions as uncollectible and how the same were to be accounted.

In the absence of these provisions, it is necessary to look at Chapter 45 of Title 12 of our Code.

Section 12-45-300 requires an annual settlement of the Auditor with the Treasurer. It provides in part that:

". . . The auditor shall take from the duplicate previously put into the hands of the treasurer for collection a list of all such taxes, assessments and penalties as such treasurer has been unable to collect, describing the property as described on the duplicate, and shall note thereon in a marginal column the several reasons assigned by the treasurer why such taxes or other charges could not be collect. . . . "

Section 12-45-330 list the approved causes for the failure to collect the tax. The same are:

- "(1) Sheriff's return to execution issued that no sufficient property of the person charged therewith could be found out of which to make the same;
- (2) That property was found, but for want of bidders was sold and conveyed to the forfeited land commission of the county by the sheriff, pursuant to law;

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- (3) Execution issued and in the hands of the sheriff; and
- (4) That the collection of such taxes, assessments and penalties was enjoined by a competent court.

This statute contemplates that the sheriff is to return a tax execution as uncollectible when there is no property from which the same can be collected. At the time this statute was adopted, the executions were directed to the sheriff. Since then, legislation has in most counties been adopted transferring those duties to a Tax Collector or a County Treasurer. It is that office who should therefore return executions to the County Treasurer when the same are uncollectible. The executions are to be returned to the County Treasurer who will annually make settlement thereon with the County Auditor. Section 12-45-380.

CONCLUSION:

Tax executions that are ten years or older should be returned to the County Treasurer as uncollectible by operation of law. The officer to whom the execution was issued should make this declaration.

Uncollectible executions should be returned to the County Treasurer by the officer to whom the same were issued with a declaration of why the same were not collectible.

JLAJr:wcg