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THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. 85-12 p. 5

February 26, 1985

SUBJECT: Taxation and Revenue - Collection of delinquent taxes by levy and sale of after acquired inventory.

SYLLABUS: Taxes due on merchants' inventory are a first lien on the inventory. A levy and sale can be made of the inventory in the hands of a purchaser. Additionally, an action may be instituted against the seller and/or the purchaser for the tax.

TO: Honorable Marianne Kneece  
Edgefield County Tax Collector

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

QUESTION: A corporation owning and operating an automobile dealership returned its inventory for ad valorem taxation in October, 1982. The return was for ad valorem taxes for the 1983 tax year. The corporation sold its assets including inventory in March of 1983. The corporation was subsequently dissolved. The question is the person liable for payment of the taxes and whether the lien upon the property attached to the inventory of the purchaser?

APPLICABLE LAW: §§ 12-49-10, 12-49-20, 12-49-30 and 29-1-30, South Carolina Code of Laws, 1976.

DISCUSSION:

The tax in this case is the liability of the selling corporation.

"It is a common assumption that a tax execution is issued against the property; such is not the case; it is issued against the defaulting taxpayer. The assessed taxes are a debt due to the State by the owner of the property. \* \* \*." Vallentine v. Robinson, 188 S.C. 194, 198 S.E. 197. See also American Surety Co. v. Hamrick Mills, 194 S.C.

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721, 9 S.E.2d 433 and Weatherly v. Medlin, 141 S.C. 290, 139 S.E. 633.

The statutes, §§ 12-49-10 and 12-49-20, give property tax a first lien upon the property taxed. Holmes v. Weinheimer, 66 S.C. 18, 44 S.E.2d 82. The lien here involved would be effective as of December 31, 1982. Myrtle Beach v. Holliday, 203 S.C. 25, 26 S.E.2d 12. The lien created under §§ 12-49-10 and 12-49-20 applies under § 12-49-30 with equal force and effect upon inventory subsequently acquired by the seller.

"When considered together, the above statutes clearly indicate the legislative intent that the first lien created in § 12-49-10 extends to subsequently acquired property. By using the words 'the lien' instead of 'a lien' and the word 'also,' it is apparent the drafter of § 12-49-30, is referring to the 'first lien' discussed in §§ 12-49-10 and 12-49-20." Chrysler Credit Corporation v. Lee, et al., 278 S.C. 565, 299 S.E.2d 488.

The inventory was at the time of sale, thus, impressed with a first lien for the taxes. The selling corporation is liable for the taxes, however, the property sold was under lien to secure the payment.

Before considering the enforced collection of the tax, attention should be called to § 29-1-30 of the Code. It provides in part that:

"Any person who shall wilfully and knowingly sell and convey any real or personal property on which any lien exists without first giving notice of such lien to the purchaser of such real or personal property shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be imprisoned for a term of not less than ten days nor more than three years and be fined not less than ten dollars nor more than five thousand dollars, either or both in the discretion of the court. \* \* \*."

Insofar as proceeding against the selling corporation, § 33-21-220 provides that the dissolution:

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" \* \* \* shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders for any right or claim existing, or any liability incurred. \* \* \*"

An action could therefore be maintained against the selling corporation for the taxes due.

The inventory so acquired and remaining in the purchaser's possession, is subject to the lien and because of such can be levied upon and sold to satisfy the tax execution. It is doubtful, however, that the lien attaches to replacement inventory acquired by the purchaser. Section 12-49-30 provides that the lien attaches to personal property subsequently acquired by the delinquent taxpayer.

The purchaser is not the delinquent taxpayer, hence, there is no lien except upon that inventory acquired from the seller. Such, however, would not preclude the collection of the tax from the purchaser. The inventory when acquired was impressed with a first lien and because of such the purchaser is liable to the extent of the value of the inventory. The tax is a debt due the state for which an action may be maintained for payment. See Vallentine v. Robinson, supra.

Should such be considered, an analysis should be made of the Bulk Sales Act, § 36-6-101, before the action is instituted. If that act was followed, it is doubtful that the purchaser has any liability.

CONCLUSION:

Taxes due on merchants' inventory are a first lien on the inventory. A levy and sale can be made of the inventory in the hands of a purchaser. Additionally, an action may be instituted against the seller and/or the purchaser for the tax.

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