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THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 85-50 p. 153

May 9, 1985

SUBJECT: Taxation and Revenue - Penalty On Roll-Back Taxes.

SYLLABUS: A penalty is due for the late payment of roll-back taxes under § 12-45-180 or § 12-51-30.

TO: Honorable Marjorie H. Sharpe
Lexington County Treasurer

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

QUESTION: Is a penalty due and payable for the late payment of the roll-back tax?

APPLICABLE LAW: §§ 12-43-220(d)(4), 12-45-60, 12-51-30, and 12-45-180, South Carolina Code of Laws, 1976.

DISCUSSION:

Section 12-43-220(d) provides for the taxation of property within an agricultural classification. An additional tax designated as a "roll-back" tax is levied when the use of property within the classification changes to a non-agricultural use. The tax is the difference between that paid under the agricultural classification and that due under the classification for other real property. This section, however, does not provide the date the tax is due, how it is collected and for any penalty. A consideration of other related statutes, however, clarify the matter. Reference to such other statutes is proper and an accepted method to ascertain legislative intent. (For cases so holding, see 17 S.C.D., Statutes, Key 223, et seq.)

Section 12-45-60 provides that the Treasurer shall not collect a tax that does not appear on the county duplicate. The roll-back taxes are thus to be entered on the tax duplicate as other ad valorem property taxes. If they were not entered, there could be no lawful tax.

Two procedures exist for the collection of taxes that are on the duplicate, however, are not timely paid. Section 12-45-180 provides for the penalty for one of the procedures. The statute's language in part is that:

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"When the taxes and assessments or any portion thereof charged against any property or person on the duplicate for the current fiscal year shall not be paid on or before the thirty-first day of December, the county auditor shall proceed to add a penalty * * *."

The statute further provides that the amount of the penalty be from one to seven percent depending upon the date of payment.

Section 12-51-30 provides for a penalty of fifteen percent for delinquent taxes collected under the other procedure. A penalty¹ is thus due and payable on delinquent roll-back taxes.

CONCLUSION:

A penalty is due for the late payment of roll-back taxes under § 12-45-180 or § 12-51-30.

JLAJr:wcg

¹The tax would be reflected on the duplicate for the tax year that begins on December 31 following the year in which the use changed.