

2841
Libray

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 87-56 pg 162

June 19, 1987

SUBJECT: Taxation and Revenue - Refunds Of Property
Tax And Penalty Payments.

- SYLLABI:
- (1) Certain incorrect property tax payments, including any penalty thereon, can be refunded under §§ 12-47-70 through 12-47-90. Other incorrect payments can be refunded upon order of the South Carolina Tax Commission that may be issued under § 12-47-420.
 - (2) A valid tax paid by one not liable therefor cannot be refunded under § 12-47-420 or § 12-47-70, et seq.
 - (3) No refund should issue under § 12-47-70 or § 12-47-420 for the payment of a valid tax.

TO: Mr. Donald L. Eliason
Horry County Assessor

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

QUESTIONS:

- (1) If a taxpayer is erroneously charged a penalty and the penalty is collected, should the assessor abate the paid receipt number and reissue the exact same charge under another receipt number as the means to refund the penalty?
 - (A) What would be the proper method of refunding an erroneously collected penalty and who is the proper authority to initiate such a refund?
- (2) If a taxpayer finds that they have paid the wrong tax bill by error, what recourse do they have for obtaining a refund?
 - (A) Should the assessor abate the receipt number which was a good charge and erroneously paid and charge the property again under a new receipt number as a means of making the refund?

Mr. Donald L. Eliason
Page Two

June 19, 1987

- (3) If a good charge to the tax roll is paid and then abated solely for the purpose of making a refund, who is responsible for the taxes on the charge under a new receipt if it is not paid?
- (A) If the taxes are not paid on the new receipt issued, is it collectible since it has already been posted as paid under the initial receipt number?

APPLICABLE LAW: Sections 12-47-70, et seq., and 12-47-420 of the South Carolina Code of Laws, 1976.

DISCUSSION:

Question 1: The refund of a tax payment is a matter of legislative grace. In the absence of a statute, no refund can be issued.

"A refund of taxes is solely a matter of governmental or legislative grace and any person seeking such relief must bring himself clearly within the terms of the statute authorizing the same. Asmer v. Livingston, 225 S.C. 341, 82 S.E.2d 465. . . ." Guaranty Bank & Trust Company v. South Carolina Tax Commission, 254 S.C. 82, 173 S.E.2d 367.

An incorrect tax payment (including a penalty payment) can be refunded under §§ 12-47-70 through 12-47-90. The application for the refund is to the county auditor and must be made within one year from the date of payment. The refund is limited to payments caused by nonvaluation errors. The auditor, treasurer, assessor and when applicable, the municipal finance officer must approve the refund. When these officers disagree, a hearing is required. A majority then determines if the refund should issue.

Any other refund request must be submitted to and considered by the South Carolina Tax Commission under § 12-47-420. If the refund is to be issued, the Commission will order the county treasurer to issue the same.

Except for the participation in the refund decision under § 12-47-70, no action is required of your office for the refund to issue.

June 19, 1987

CONCLUSION:

Certain incorrect property tax payments, including any penalty thereon, can be refunded under §§ 12-47-70 through 12-47-90. Other incorrect payments can be refunded upon order of the South Carolina Tax Commission that may be issued under § 12-47-420.

Question 2: The answer to this question is found in the quotation from the case of Guaranty Bank & Trust Co. v. South Carolina Tax Commission, supra, set forth in the discussion of Question 1. We do not know of any authority to refund a valid tax when paid by someone other than the person liable therefor. The general rule is stated in 84 C.J.S., Taxation, § 636(a), as follows:

"Payment by person not liable for tax.
Where, because of a special arrangement between individuals, a person other than the one liable for it pays the tax, he is not entitled to recover back his payment on the ground that he paid the tax under duress, since the duress contemplated by the rule must be the product of governmental action and must be directed at the person liable for the tax."

CONCLUSION:

A valid tax paid by one not liable therefor cannot be refunded under § 12-47-420 or § 12-47-70, et seq.

Question 3: The first question is why was a "good charge" refunded? Without further information that would invalidate the tax there should be no abatement or refund.

CONCLUSION:

No refund should issue under § 12-47-70 or § 12-47-420 for the payment of a valid tax.

JLAJr:wcg