

1984 WL 249894 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 22, 1984

*1 The Honorable H. E. Pearce, Jr.
Member
House of Representatives
422-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Pearce:

By your letter to Attorney General Medlock dated April 27, 1984, you have asked whether a county council may enact an ordinance providing for the payment of county property taxes on an installment basis. Attached to your letter was a constituent's letter proposing an alternative to paying such taxes in a lump sum; the plan would permit estimated taxes to be paid in quarterly installments, with certain percentages of the estimated tax liability discounted from the first three quarterly installments. The letter contained other details of such a plan which are not pertinent for this discussion.

For the reasons following, it is the opinion of this Office that a county ordinance permitting pre-payment of real or personal property taxes on an installment basis would not be proper absent specific authorization by the General Assembly. Such authorization might be a statute permitting pre-payment of such taxes on the installment plan or a statute authorizing a county governing body to enact an ordinance to adopt such an alternative method of payment of real or personal property taxes, for example.

Article X, Section 1 of the Constitution of the State of South Carolina, 1895 as amended, provides in part that '[t]he General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property.' Article X, Section 6 also provides in part that '[t]he General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State.' Pursuant to these grants of power, the General Assembly, in the Home Rule Act as amended, now [Section 4-9-140, Code of Laws of South Carolina \(1983 Cum. Supp.\)](#), empowered county councils in part to 'further provide for the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources.' It would appear from [Section 4-9-140](#) that county councils would have the power or discretion to collect taxes in whatever manner might be deemed desirable or necessary. However, these powers granted to the counties are subject to the general law of this State, see Section 4-9-30, and the county lacks the power to change the general law. See Ops. Atty. Gen. dated June 18, 1980 and October 16, 1980.

Other statutes in the South Carolina Code relate to the duties of the county treasurer and the assessment, levy, and collection of taxes and are thus in pari materia, and all such statutes must be construed together and reconciled, to render all operative, if possible. [Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 \(1970\)](#). Section 12-45-50 provides in part:

The county treasurers are forbidden to collect any tax whatsoever levied for the fiscal year other than those mentioned in the notice required to be published under the provisions of § 12-45-40, unless expressly authorized to do so, except:

*2 (5) Such special taxes or collections as are authorized under the act or joint resolution of the General Assembly.

Moreover, Section 12-45-60 provides that '[c]ounty treasurers are prohibited from collecting any tax except such as has been first entered upon the tax duplicates of their respective counties or upon the order of the auditors of such counties.' ¹

Section 12-45-70 establishes the time for payment of such taxes, and Section 12-45-180 establishes penalties for delinquent payment of taxes and collection and execution therefor. See also Section 12-37-2610 *et seq.* for similar statutes establishing dates to pay taxes on motor vehicles. It would appear that unless the General Assembly chose to create an exception to Sections 12-45-50, 12-45-60, and Section 12-37-2610 *et seq.*, the county treasurer could not collect any tax until it has been entered on the duplicate pursuant to Section 12-39-150, which entry is an annual procedure for the county auditor. Because pre-payment of taxes on an installment basis would very likely result in a collection of taxes prior to entry of the property on the duplicate for a given year and delivery of the duplicate to the county treasurer, the treasurer would be violating Section 12-45-60 to collect the tax. [Section 4-9-140 of the Code](#) notwithstanding, it would appear that the General Assembly, in failing to repeal the above-cited provisions of Title 12 of the Code after adopting the Home Rule Act, intended to maintain uniformity in tax collection procedures; thus, the General Assembly should be the legislative body to authorize deviations therefrom. ²

Allowing payment or pre-payment of taxes in installments, or permitting a discount for early or timely payment of taxes has been deemed a function of the state's legislature in many jurisdictions, including those in which political subdivisions have been granted home rule powers. See, for example, [Buckress Land Co. v. Metropolitan Dade County](#), 232 So.2d 384 (Fla. 1970); [Bridgman v. Korzen](#), 54 Ill.2d 74, 295 N.E.2d 9 (1972); [Stevenson v. Blake](#), 113 S.W.2d 525 (Tex. 1938); [Keator v. Lackawanna County](#), 292 Pa. 269, 141 A.37 (1928); [Nantahala Power & Light Co. v. Clay County](#), 213 N.C. 698, 197 S.E. 603 (1938); 16 McQuillin, [Municipal Corporations](#), §§ 44.126, 44.128; [Annot.](#), 84 A.L.R. 774, 776; [Annot.](#), 96 A.L.R. 1475.

We trust that we have satisfactorily responded to your inquiry. Please advise us if additional information or clarification is necessary.

Sincerely,

Patricia D. Petway
Staff Attorney

Footnotes

- ¹ Preparation of the county duplicate list by the county auditor is provided for by [Section 12-39-150 of the Code](#). The list is to be maintained by the auditor and a copy delivered to the county treasurer on or before September 30, annually.
- ² We note that, by [Section 5-21-120 of the Code](#), the General Assembly has expressly authorized cities and towns to collect taxes in such installments as may be prescribed by ordinances.

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