

1983 S.C. Op. Atty. Gen. 115 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-73, 1983 WL 142742

Office of the Attorney General

State of South Carolina

Opinion No. 83-73

September 21, 1983

***1 SUBJECT: Taxation and Revenue—Review of Records Relating to Taxable Personal Property**

A county auditor may examine a person regarding personal property to be returned or that is incorrectly returned and any documents and records relating to information required on the return by regulation of the South Carolina Tax Commission.

TO: Mr. James L. Brodie
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QUESTION:

Can a county auditor examine and review the records of taxpayers who are required to file personal property tax returns with that office?

APPLICABLE LAW:

§§ 12–37–750, 12–37–820 and 12–39–340, [Code of Laws of South Carolina](#), 1976.

DISCUSSION:

The statutes give the auditor the authority to examine persons who fail to correctly return personal property. In example, § 12–37–760 provides that when a person fails to properly return personal property, the auditor is to assess and charge the tax. The section further states:

‘* * *. To enable such auditor to make up such statement, he may examine any person under oath and ascertain, from general reputation and his own knowledge of facts, the character and value of the personal property of the person thus absent or sick or refusing or neglecting to list or swear. * * *.’

In case of suspected evasion of making the return or of making a false return, the auditor under § 12–37–780 shall:

‘* * * notify such person to appear before him at his office at a time fixed in such notice, together with such other person or persons as the auditor may desire to examine * * *.’

The powers and duties of the county auditors are prescribed by the General Assembly.

‘It appears, therefore, and we so hold, that the General Assembly of the State has full power and authority to prescribe the duties and powers of the county auditors, * * *.’ [Bank of Johnston v. Prince](#), 136 S.C. 439, 134 S.E. 387.’ [South Carolina Tax Commission v. S. C. Tax Board of Review, et al.](#), 299 S.E.2d 489.

Likewise, the office has only those powers that are expressly conferred or that are reasonably necessary (incidental) to carry out the duties of the office. [Creech v. S. C. Public Service Authority, 200 S.C. 127, 20 S.E.2d 645](#). In 63 Am.Jur.2d [Public Officers and Employees](#), § 263, p. 782, it is stated that:

‘In general, the powers and duties of officers are prescribed by the constitution or by statute, or both, and they are measured by the terms and necessary implication of the grant, and must be executed in the manner directed and by the officer specified. If broader powers are desirable, they must be conferred by the proper authority. They cannot be merely assumed by administrative officers, nor can they be created by the courts in the proper exercise of their judicial functions. * * *.’

Here, the General Assembly has given power to the auditor to examine the person. Section 12–37–780 provides the scope of the examination in certain cases. It provides that the auditor may examine the person required to make the return and any witness. The examination of such persons may include those matters:

*2 * * * touching the personal property and the value thereof of such person and everything which may tend to show the true amount such person should have returned.’

The section, however, does have limited application. The statute is conditioned upon the evasion of making a return, the making of a false return, the failure to make a complete return or the valuation returned being less than the actual value. The statute is further restricted as to time. The notice of examination is to be given prior to the time of settlement with the county treasurer. (See § 12–45–300, July 1)

The statute authorizes the examination of the person and everything which tends to show the true amount such person should have returned for taxation. Whether the records can be examined under this section and [§ 12–37–750](#) is dependent upon the power being incidental to the principal purpose of the office. See 63 Am.Jur.2d 264, [Public Officers and Employees](#).

An incidental power is defined as follows:

‘Accordingly, an incidental power may be defined to be one that is directly and immediately appropriate to the execution of the specific power granted, and not one that has merely some slight or remote relation to it. Powers merely convenient or useful are not implied if they are not essential * * *.’ [S. C. Electric & Gas Co. v. S. C. Public Service Authority, 215 S.C. 193, 54 S.E.2d 777](#).

Act 208, Acts of 1975, now in part codified as [§ 12–39–340](#), provided that:

‘In addition to other duties and responsibilities provided by law, the county auditor shall have the responsibility of ascertaining that all personal property subject to the ad valorem tax by the Constitution or general law is listed and assessed according to manuals, guidelines and rules and regulations promulgated by the Commission.’

It should be noted that personal property is to be listed and assessed according to ‘regulation’ of the Tax Commission. The Commission by [Regulation 117–119.1](#) sets forth the contents of the return and directs the method of valuation. Among the information required is the cost of inventory, original cost of furniture, fixtures and equipment and the amount of depreciation for income tax purposes. Obviously, for the auditor to be able to verify the accuracy of the return, a right to review such documents and records is necessary. Such appears to be within the implied or incidental powers of the office and its duties as prescribed by [§ 12–39–340](#) and the Commission's regulation.

CONCLUSION:

A county auditor may examine a person regarding personal property to be returned or that is incorrectly returned and any documents and records relating to information required on the return by regulation of the South Carolina Tax Commission.

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