

1983 S.C. Op. Atty. Gen. 124 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-78, 1983 WL 142747

Office of the Attorney General

State of South Carolina

Opinion No. 83-78

September 26, 1983

**\*1 SUBJECT: Taxation and Revenue—Sale of Property of a Minor for Nonpayment of Taxes**

The property of a minor that is subject to a lien for unpaid property taxes can be sold to enforce collection of the taxes. An action should be instituted, however, and a guardian appointed to protect the interest of the minor.

TO: William C. Keels, Esq.  
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**QUESTION:**

An adult father was the owner of real property at the time the tax liability was fixed. He subsequently conveyed the property to his minor children. The question is the procedure to collect the taxes.

**APPLICABLE LAW:**

§§ 12-49-10, et seq. and 12-51-10, et seq., 1976 Code of Laws.

**DISCUSSION:**

We are not advised whether Chester County has adopted the alternate procedure to collect delinquent taxes as provided by Chapter 51 of Title 12. For purposes of this opinion we therefore treat the sale of property of a minor for nonpayment of taxes.

Here, the father was the owner of the property and is the person liable for payment of the tax. See [Atkinson Dredging Co. v. Thomas](#), 266 S.C. 361, 223 S.E.2d 592. Any property of the father is subject to execution and sale for the collection of the tax. In [Valentine v. Robinson](#), 188 S.C. 194, 198 S.E. 197, our court held that:

‘It is a common assumption that a tax execution is issued against 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. \* \* \*. And the taxes may be made out of any property the taxpayer has. \* \* \*.’

The tax can therefore be collected from any property the father owns. Should the father not own any property, however, the tax can be collected from the property conveyed by the father to the minor children. Sections 12-49-10 and 12-49-20 impressed the property with a lien for the tax that enjoys priority over all others.

Only payment satisfies a tax. The general rule is found in 72 Am.Jur.2d, [State and Local Taxation](#), § 843. It is there provided that: ‘The law recognizes no excuse for the failure of a property owner to pay property taxes which have been duly and properly assessed against his property \* \* \*. Legal disabilities, such as the common law disability for coverture or the disability of infancy or insanity, do not relieve a property owner from the duty of paying taxes thereon. \* \* \*.’

The above must be considered, however, in conjunction with §§ 12-49-480 and 12-49-570. Prior to the adoption of § 12-49-480, the notice of sale, etc., had to be in the name of the true owner. Under the statutes then existing, the notice, etc., had to be in the name of the minor. The section was adopted in 1947 and provides that a county:

'\* \* \* may levy upon and sell any property, real or personal, in the name of the person or corporation in whose name the property was returned for taxation \* \* \*.'

Section 12-49-570 provides that the sheriff's deed is prima facie evidence of good title. The section further states that:

\*2 'No action for the recovery of land sold by the sheriff under the provisions of this chapter or for the recovery of the possession thereof shall be maintained unless brought within two years from the date of such sale.'

This limitation is subject, however, to the disability of the minor and the limitation would not begin to run until the disability ended. In [Jones v. Boykin](#), 70 S.C. 309, 49 S.E. 877, the court held:

'The statute creates no right of action, but is a mere limitation on the assertion of a right of action existing at common law and independent of the statute. Hence the statute is a pure statute of limitations, affecting the remedy, not the right, and must be affected by the disability of infancy of plaintiffs \* \* \*.' See also [Glymph v. Smith](#), 180 S.C. 382, 185 S.E. 911.

The property of a minor may therefore be levied upon and sold for nonpayment of property taxes. The statute of limitations, however, does not begin to run until the disability is removed. Under such circumstances, it would thus be advisable for an action to be instituted and a guardian appointed to preserve and protect the rights of the minor. The sale could be confirmed by the court or the action directly instituted for judgment and execution upon the property. The general rule is stated in 42 Am.Jur.2d, [Infants](#), § 22, as follows:

'It has long been recognized that courts of equity may exercise their jurisdiction for the protection of the persons and estates of infants, even if they are not parties to a litigation. The jurisdiction of equity over the persons and property of infants is supposed to have originated in the prerogative of the Crown in England, arising from its general duty as parens patriae to protect persons who have no other rightful protector.

This jurisdiction is broad, comprehensive, and plenary, and is not confined to cases of a strictly fiduciary character. In all suits or legal proceedings, of whatever nature, in which the personal or property rights of a minor are involved, the protective powers of a court of chancery may be invoked whenever it becomes necessary fully to protect such rights. \* \* \*.'

In the absence of such an action, the purchaser at the tax sale takes subject to the action of the minor, upon reaching maturity, to set the sale aside. Such would in our view prejudice the rights of the minor by diminishing the marketability of the property. This would be avoided by the action.

#### CONCLUSION:

The property of a minor that is subject to a lien for unpaid property taxes can be sold to enforce collection of the taxes. An action should be instituted, however, and a guardian appointed to protect the interest of the minor.

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