

1979 S.C. Op. Atty. Gen. 66 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-49, 1979 WL 29055

Office of the Attorney General

State of South Carolina

Opinion No. 79-49

March 13, 1979

***1 SUBJECT: Property Tax—Tax Collection by Execution Procedures**

(1) The procedure provided by § 12-51-10, et seq., is an alternate procedure for the collection of county taxes, however, is the exclusive procedure for municipal taxes.

(2) We know of no statutory requirement that property be sold jointly for city and county taxes.

(3) The only known exception to enforce collection of taxes due a county by way of an execution and sale as provided for by statute is that found in § 12-49-10 that makes the tax a debt. A judicial action to enforce collection could therefore be prosecuted.

(4) The tax on property assessed by the South Carolina Tax Commission is collected in the same manner as the tax on other property. There is no difference in collection procedures simply because the property was assessed by the South Carolina Tax Commission.

(5) Under a sale of property for nonpayment of taxes under the general procedure the proceeds are held or disbursed as provided by § 12-49-460(5). Under a sale authorized by the alternate procedure, § 12-51-10, et seq., the funds are held or disbursed as provided by § 12-51-130.

TO: Paul E. Short, Jr., Esq.
Chester County Attorney

QUESTION:

Five questions are presented and the same shall be treated separately.

QUESTION 1.

Is the procedure for the enforced collection of taxes that is provided by § 12-51-10 the exclusive procedure?

APPLICABLE LAW:

§§ 12-51-10 and 12-51-20 of the 1976 Code of Laws.

DISCUSSION:

Insofar as county taxes, school and special service district taxes, the procedure prescribed by § 12-51-10, et seq., is an alternate procedure. Such is specifically provided by § 12-51-10 that states in part that:

‘* * *. The provisions of this chapter are intended to be in addition to, and not to the exclusion of, any methods and procedures now authorized * * * for collecting, handling and distributing delinquent property taxes, penalties and costs upon the voluntary election of a governing authority as is provided herein.’

With reference to municipal taxes, however, this remedy is exclusive. The other statutes that provided authority to a municipality to collect delinquent taxes were repealed by the Home Rule Act. A city must therefore adopt and follow the procedure provided by this chapter in order to collect delinquent taxes by execution and sale.

CONCLUSION:

The procedure provided by § 12-51-10, et seq., is an alternate procedure for the collection of county taxes, however, is the exclusive procedure for municipal taxes.

QUESTION 2.

When taxes are due both by the city and county of Chester, must the sale be for both taxes?

APPLICABLE LAW:

§ 12-49-10.

DISCUSSION:

We know of no statutory provision that requires or prohibits a joint sale of property for nonpayment of taxes. There is doubt that a lien exists for city taxes, however, notwithstanding such, the lien for the county taxes would have priority over the municipal tax. In other words, if the city sold the property the sale would be subject to the county tax, however, if the county sold the property the sale would not be subject to the city tax.

CONCLUSION:

*2 We know of no statutory requirement that property be sold jointly for city and county taxes.

QUESTION 3.

Are there methods of collecting delinquent taxes other than by execution and sale of property?

CONCLUSION:

The only known exception to enforce collection of taxes due a county by way of an execution and sale as provided for by statute is that found in § 12-49-10 that makes the tax a debt. A judicial action to enforce collection could therefore be prosecuted.

QUESTION 4.

How are taxes on property that has been assessed (valued) by the South Carolina Tax Commission collected?

CONCLUSION:

The tax on property assessed by the South Carolina Tax Commission is collected in the same manner as the tax on other property. There is no difference in collection procedures simply because the property was assessed by the South Carolina Tax Commission.

QUESTION 5.

What happens to the monies from the sale of property that is in excess of the taxes, et cetera, that are due?

APPLICABLE LAW:

§ 12-49-460 and § 12-51-130.

DISCUSSION:

It is dependent upon which procedure was followed to collect the tax. Under the general procedure, subsection (5) of § 12-49-460 provides:

'Under and by virtue of such warrant or execution the sheriff shall:

(5) Upon written notice given or information ascertained from the records of any mortgage or other lien on the premises so sold for taxes, hold the excess, if any, until authorized or directed by proper judicial authority as to the mode of disposition thereof or until he shall receive the written consent of the defaulting taxpayer that the excess be paid over to a mortgagee or lien creditor, according to priority if more than one, when he shall comply with such authorization or direction of proper judicial authority or with the terms of such written consent.'

If the alternate procedure was used, § 12-51-130 provides in part that:

'In case the tax sale of an item produced an overage in cash above the full amount due in taxes, penalties and costs, such overage shall belong to the defaulting taxpayer to be claimed or assigned according to law. However, if neither claimed nor assigned within five years of date of public auction tax sale, the overage shall escheat to the general fund of the governing body. Prior to the escheat date unclaimed overages shall be kept in a separate account and shall be invested so as not to be idle and the governing body of the political subdivision shall be entitled to the earnings for keeping the overage, such earnings to be settled quarterly. On escheat date the overage shall be transferred to the general funds of the governing body.'

CONCLUSION:

Under a sale of property for nonpayment of taxes under the general procedure the proceeds are held or disbursed as provided by § 12-49-460(5). Under a sale authorized by the alternate procedure, § 12-51-10, et seq., the funds are held or disbursed as provided by § 12-51-130.

*3 Joe L. Allen, Jr.
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