

1978 S.C. Op. Atty. Gen. 60 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-37, 1978 WL 22520

Office of the Attorney General

State of South Carolina

Opinion No. 78-37

February 24, 1978

*1 (1) Under [Section 12-49-70 of the 1976 Code](#), tax executions that have been unpaid for ten or more years are conclusively presumed paid and are better accounted for by a nulla bona return.

(2) There is no statutory authority for a tax collector to abate any tax, penalty or other charge that may appear on a tax execution.

(3) A tax execution when uncollectible may be returned nulla bona by the tax collector and the fact that the property was assessed by the South Carolina Tax Commission has no effect thereon.

(4) The poll tax imposed by Chapter 4 of Title 65 of the 1962 Code of Laws was repealed by Act 389, Acts of 1973, and such unpaid taxes cannot now be collected.

(5) The road tax is levied by the governing body of a county under authority of Section 57-19-10 and we know of no authority granted to the tax collector to abate the tax so imposed. The execution may however be returned as nulla bona when uncollectible.

TO: Honorable Earle E. Morris, Jr.
Comptroller General
State of South Carolina

QUESTION I

Does a tax collector have authority to abate or nulla bona tax executions that have been unpaid for ten or more years?

STATUTE INVOLVED

[Section 12-49-70](#).

DISCUSSION

The above statute provides in part that:

‘All taxes levied or becoming due under the laws of this State shall be conclusively presumed paid after ten years from the last date such taxes could have been paid without penalty, * * *.’

The section provides for some exceptions that are not here considered.

Under mandate of the above statutory language the taxes are conclusively presumed paid and a conclusively presumption is defined as:

‘* * * one which is final and irrebuttable, an inference which must be drawn from proof of given facts and which no evidence, however, strong, can overcome, whereas a ‘procedural presumption’ is one which is rebuttable, which operates to require production of credible evidence to refute the presumption, after which the presumption disappears.’ [Maryland Cas. Co. v. Williams](#), C. A. Miss., 377 F. 2d 389, 394, 35 A.L.R. 3d 275. (See also Vol. 8, Words and Phrases, Conclusive Presumption).

The lapse of the time period therefore has the legal effect of payment. The taxes cannot therefore be collected, and are probably better accounted for by a nulla bona return because the same are no longer collectible by operation of law.

QUESTION II

Does a tax collector have authority to abate or nulla bona personal property taxes that result from property assessed by the South Carolina Tax Commission?

DISCUSSION

We know of no statutory authority for the tax collector to abate any tax, penalty or other charge that may appear on a tax execution. The tax collector being without such statutory authority may not therefore abate a tax.

With reference to the other part of the question, when property is assessed by the Tax Commission, the assessed value is certified to the county auditor. The auditor places the value on the books and apportions the tax thereon as is done to other property values on the tax books. Such entries are the authority for the treasurer to collect the taxes and Section 12–49–410 directs the issuance of a tax execution when the taxes are unpaid. The execution is directed to the official having responsibility for collection and Section 12–49–650, et seq., provide for the return and accounting for the executions. These statutes provide for a nulla bona return of the execution with the reason stated for such return. Nulla bona is a latin term meaning ‘no good’. Here it is the name of the return for reasons of noncollection.

*2 ‘The name of the return made by the sheriff to a writ of execution, when he has not found any goods of the defendant within his jurisdiction on which he could levy.’ [Black's Law Dictionary](#) citing [Woodward v. Harbin](#), 1 Ala. 108; [Reed v. Lowe](#), 163 Mo. 519, 63 S. W. 687, 85 Am. St. Rep. 578.

By reason of the above the execution, when uncollectible, may be returned nulla bona by the tax collector and the fact that the property was assessed by the South Carolina Tax Commission has no effect thereon.

QUESTION III

May a tax collector abate or nulla bona delinquent poll and road taxes for tax years prior to 1973?

DISCUSSION

The poll tax was imposed by Chapter 4 of Title 65 of the 1962 Code of Laws, however, the same was repealed by Act 389, Acts of 1973.

While the act contains no express declaration relative to any uncollected taxes, significance must be given to the fact that the failure or payment constitutes a misdemeanor and the general rule is that:

‘Repeal of a statute has the effect of blotting it out as if it had never existed and of putting an end to all proceedings under it.’ [Marshall v. Richardson](#), 125 S. E. 2d 639.

The general rule is, in the opinion of this office, here applicable and such unpaid taxes cannot now be collected.

The executions issued for unpaid poll tax cannot be collected and therefore are probably better accounted for by a nulla bona return by reason of uncollectibility of operation of law.

The road tax is levied by the governing body of a county under authority of Section 57-19-10 and we know of no authority granted by the tax collector to abate the tax so imposed. The execution may however be returned as nulla bona when uncollectible, the same as property taxes. We do not find where the 1973 year has any effect upon the road tax.

Joe L. Allen, Jr.
Deputy Attorney, General

1978 S.C. Op. Atty. Gen. 60 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-37, 1978 WL 22520

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.