1978 S.C. Op. Atty. Gen. 106 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-76, 1978 WL 22557

Office of the Attorney General

State of South Carolina
Opinion No. 78-76
May 2, 1978

***1 SUBJECT: Property Tax Penalty**
Under the provisions of § 12–39–220, no penalty is to be added to property duly returned for taxation and not listed on the duplicate, however, a penalty is to be added when not returned and not listed.

TO: Honorable Catherine L. Gibson
Cherokee County Treasurer

QUESTIONS:

'If any real estate or new building, duly returned for taxation, has been omitted from the tax duplicate, and the Tax Assessor does not discover this until after January when penalty has been added, is the taxpayer liable for the penalty?'

'Assuming the same facts as above, with the exception that the taxpayer failed to return it for taxation, is he liable for the penalty?'

STATUTE:

Sections 12–39–220 and 12–45–180

DISCUSSION:

Section 12–39–220 provides that:

> 'If the county auditor shall at any time discover that any real estate or new structure, duly returned and appraised for taxation, has been omitted from the duplicate, he shall immediately charge it on the duplicate with the taxes of the current year and the simple taxes of each preceding year it may have escaped taxation. And if the owner of any real estate or new structure thereon, subject to taxation, has not reported it for taxation, according to the requirements of this chapter, and it has not been appraised for taxation, the auditor shall, upon discovery thereof, appraise it and, upon making return of such appraisement, shall charge it upon the duplicate, with the taxes of the then current year and the taxes of each preceding year it may have escaped taxation, with twenty per cent penalty upon such taxes of preceding years. And if any real estate shall have been omitted in any return, the auditor of the county shall appraise it immediately for taxation, file such appraisement in his office and charge it with the taxes of the current year and the simple taxes of preceding years it may have escaped taxation.'

Under the language of this section, no penalty is imposed when the property is returned and not entered on the duplicate, however, a penalty is imposed where the property has not been returned. Section 12–45–180 provides for penalties for late payment of taxes, however, a reasonable time must be given a person to pay taxes without penalty. Enclosed is a copy of an opinion of this office of February 13, 1975, that is applicable to the penalties provided by Section 12–45–180.

It should be noted that Section 12–39–220 contemplates the entry of the omitted property on the tax duplicate for the current tax year. It is doubtful that the entry is to be made on a tax duplicate on which any unpaid taxes are delinquent or in execution. The procedure is that the property be placed on the current year which would give the property owner the right to pay without the levy of the penalties provided by Section 12–45–180.

CONCLUSION:

Under the provisions of Section 12–39–220, no penalty is to be added to property duly returned for taxation and not listed on the duplicate, however, a penalty is to be added when not returned and not listed.

***2** Joe L. Allen, Jr.
Deputy Attorney General

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