

1978 WL 34995 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 24, 1978

***1 SUBJECT: Personal Property Taxes—Penalty for Failure to Return.**

The Tax Commission has the duty to correct or prevent improper administration of property tax laws and such may be accomplished by legal proceeding when necessary.

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QUESTIONS:

1. If a county does not apply the penalty required by law for failure to list or return personal property for ad valorem tax purposes, what responsibility does the Tax Commission have to see that it is enforced?
2. If it is a responsibility, what legal action is the Commission required to take?
3. If it comes to the attention of the Tax Commission that the county or a municipality refunds the penalty for failure to list or return personal property for ad valorem tax purposes, is the Tax Commission legally bound to prohibit this and if so, by what method?

APPLICABLE LAW:

[Sections 12-37-800](#) and [12-3-140 of the 1976 Code](#) of Laws.

DISCUSSION:

[Section 12-37-800](#) provides:

‘If any person shall fail to list the personal property he is required by law to list in any one year, the value thereof may be charged against him for taxation with a ten percent penalty added thereto, and the taxes and penalty collected as in other cases.’

The penalty has been interpreted to be mandatory. 4289 O.A.G., 1975-76, page 103. The basis for the opinion was that the term ‘may’ was mandatory in that a discretionary penalty would result in unequal treatment of persons similarly situated in the State and hence deny equal protection of the laws.

[Section 12-3-140](#) provides general powers of the Commission. Subsection (10) thereof provides:

‘The commission shall have and exercise all the powers conferred by law upon the former State Board of Equalization and upon the former State Board of Assessors prior to February 20, 1915 and:

(10) Shall carefully examine into all cases in which evasion or violation of the laws of the State relating to the assessment and taxation of property is complained of or discovered and into all cases in which property subject to taxation has not been assessed or has been fraudulently or for any reason improperly or unequally assessed or the laws in any manner

evaded or violated and shall cause to be instituted such proceedings as will remedy improper or negligent administration of the taxing of the property of the State;'

The Commission shall thus 'cause such proceeding as will remedy improper or negligent administration of the taxing of property of the State.'

The proceeding would consist of orders or directives to the officer involved to comply with the applicable law. Should a failure or refusal to comply exist, other legal proceedings could be instituted for such compliance.

Subsection (4) provides that the Commission:

'Shall (a) direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to penalties, liabilities and punishment of public officers and officers and agents of corporations for failure or neglect to comply with the provisions of the laws of this State governing the assessment and taxation of property and such rules of the commission and (b) cause complaints to be made against assessors, boards of equalization or other assessing and taxing officers to the proper authority for their removal from office for official misconduct or neglect of duty;'

*2 As evidenced by the above, the Commission has the statutory duty to require compliance with property-taxing statutes. At this time no need exists for a determination of the proper legal proceeding that would be taken, however, different remedies are available.

CONCLUSION:

The Tax Commission has the duty to correct or prevent improper administration of property tax laws and such may be accomplished by legal proceeding when necessary.

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