

1975 S.C. Op. Atty. Gen. 41 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3970, 1975 WL 22268

Office of the Attorney General

State of South Carolina

Opinion No. 3970

February 13, 1975

***1 When a taxpayer has fully complied with the law relating to the return of property for ad valorem taxes and the tax assessments are not completed prior to the date that the 1% penalty is imposed, the penalty is improper; no penalties should be imposed until the taxpayer has had an opportunity to make payment.**

Attorneys at Law
Greenwood, S. C.

Joe Allen, Assistant Attorney General, asked me to respond to your letter of February 5, 1975, concerning property tax penalties as he is tied up at this time and is unable to give a prompt reply. You request of this office an opinion whether or not late payment penalties provided for in Section 65–2008 of the Code of Laws of South Carolina, 1962, on taxes unpaid as of February 1 must be applied under the following circumstances. The *Index Journal* is a newspaper that filed 1974 property tax returns with the South Carolina Tax Commission as required by Section 65–1647.1 of the Code, as amended. Following return of the property the Tax Commission issued a proposed assessment and gave notice thereof to the *Index Journal*. An appeal of the proposed assessment was made and a hearing for the purpose of reviewing the assessment was provided. The Commission rendered its decision and certified the tax assessment to the County on January 30, 1975. We are not advised of the date that the taxes were actually levied by the County or the date that notice of levy was given, where, we know that this could not have been prior to January 30. Thus payment prior to this date was precluded.

Our court, in the case of *Newberry Mills, Inc. v. Dawkins*, 259 S. C. 7, 190 S. E. 2d 503, recognized the need both for a ‘valuation’ and ‘assessment’ as the basis for a tax. In 51 Am. Jur. *Taxation*, Section 647, at page 615, it is stated that a valid assessment is undoubtedly indispensable to the levy of a tax. ‘Assessment’ there was said to include the procedure on the part of the officials ‘by which property is listed, valued, and finally the proportion declared.’

Section 65–1772 of the Code makes it the duty of the auditor to determine the actual taxes on property by applying the county rate of taxation to the value ultimately arrived at and certified by the Tax Commission. The duplicate entering the tax must then be prepared. (Section 65–1773) September 30th of each tax year is generally considered to be the time when the tax rolls must be completed (see Sections 65–1766 and 65–1767) and taxes are generally due and payable without the penalty between September 15th and December 31st. (Section 65–1965) Section 65–2008 provides for penalties for unpaid taxes following this period. Among the provisions of this section is the one percent penalty which is to be added to taxes unpaid as of February 1st. In the case of *Webster v. Williams*, 183 S. C. 368, 191 S. E. 51, it was stated that a one percent per month charge for failure to pay taxes when due is not a tax but is instead a penalty which is in the power of the General Assembly.

***2** It has been held improper to charge a taxpayer with penalties for non-payment of taxes until he has had an opportunity to pay them. *Morrison-Knudson Co. v. State Board of Equalization*, ___ Wy. ___, 135 P. 2d 927, and *Bayonne v. Murphy and Perrett Co.*, 7 N. J. 298, 81 A. 2d 485, 51 Am. Jur., *Taxation*, Section 974. The *Index Journal* complied in every respect with the law in regard to the return and assessment of its property and in the opinion of this office should be given a reasonable opportunity to pay the same without penalty. Accordingly, we advise that the penalties imposed as of February 1st should not be applied in this case.

If a taxpayer fails to make a return or fails to comply with the law and the taxes are not assessed before the penalty date because of such failure, our conclusion would be that the penalties provided in Section 65–2008 of the Code would be proper and must be charged.

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