

1974 S.C. Op. Att. Gen. 257 (S.C.A.G.), 1974 S.C. Op. Att. Gen. No. 3847, 1974 WL 21350

Office of the Attorney General

State of South Carolina

Opinion No. 3847

August 27, 1974

***1 Section 65–2654 does not provide authority to refund taxes paid on manufacturer's property that is exempt from taxation when such manufacturer voluntarily returns the same for taxation and pays without protest the taxes levied because of such listing.**

Assistant Comptroller General

Reference is made to your request for the opinion of this office of whether certain property taxes paid to Richland County constitute taxes ‘illegally assessed and collected’ within the meaning of Section 65–2654 of the Code. The applicable provisions of the section are as follows:

‘If it shall become known to the county auditor that any taxes have been illegally assessed and collected * * *, he shall, on demand of the person interested, submit the matter to the Comptroller General and if the Comptroller General approves thereof in writing the amount of taxes so illegally collected * * * shall be repaid to the person paying such amount out of the county treasury, on the order of the county auditor * * *.’

A manufacturer, Hobart Corporation, was the owner of a manufactory in Richland County in 1972 and voluntarily paid the county taxes upon the manufactory for that year. It is conceded that the property was exempt from county taxes except those levied for school purposes under the provisions of Section 65–1569 of the Code and that no claim was made for the exemption. The section provides in part that:

‘Any manufactory locating in Richland County, with a capital of not less than one hundred thousand dollars and employing fifteen or more persons for full-time work, *shall be exempt* from all county taxes, except for school purposes, for five years from the time of its establishment. * * *.’ (Emphasis added)

While the term ‘illegally assessed and collected’ is subject to more than one meaning, we must review the same strictly and against the claimed refund.

‘A refund of taxes is solely a matter of governmental grace, * * *, and any person seeking such relief must bring himself clearly within the terms of the statute authorizing the same. While there is some diversity of opinion on the question, the weight of authority seems to be that such statutes are to be strictly construed against the taxpayer.’ [Asmer v. Livingston](#), 225 S. C. 341, 82 S. E. 2d 465.

Following this rule, the term ‘assessed’ means valuation and not the entire procedure that results in the tax.

‘The word ‘assessed’ may mean merely the valuation of property or may include the entire method of imposing the tax. * * *.’ 84 C.J.S., *Taxation*, Sec. 391(c). See also the meaning of the word ‘assess’ found in 84 C.J.S., *Taxation*, Sec. 391(b).

Our Court has applied this limited meaning in an identical factual situation where the appeal was to the South Carolina Tax Commission under Section 65–2682. The Court there considered the jurisdiction of the Tax Commission to order a refund of taxes paid Spartanburg County by a manufacturer on property that was exempt. The taxes were voluntarily paid without a claim for the exemption, and the Court considered the terms relating to taxes that had been ‘erroneously,

improperly or illegally assessed' or tax paid under 'an erroneous, improper or illegal assessment' and held the terms to relate only to valuation. *Owings Mills, Inc. v. Brady*, 246 S. C. 361, 143 S. E. 2d 717, and 249 S. C. 371, 154 S. E. 2d 560 (two cases). In the latter case the Court stated:

*2 'Assuming that the taxpayers were qualified for the exemption, the sole issue is whether they are entitled to a refund from the county after having paid the full amount without protest. The valuation placed upon the property is not in controversy, and the propriety of its having been listed and valued for tax purposes is manifest. Taxes for school purposes which have been paid on the basis of this valuation are not in question.'

The term 'illegally assessed' must therefore be interpreted to mean valuation and here there is no question concerning the valuation. The taxes therefore are not refundable under Section 65-2654.

Joe L. Allen, Jr.
Assistant Attorney General

1974 S.C. Op. Atty. Gen. 257 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3847, 1974 WL 21350

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.