

1974 WL 28038 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 31, 1974

\*1 The Kershaw County Council is without statutory authority to order an abatement of taxes paid without protest.

John K. De Loach, Jr., Esq.  
Kershaw County Attorney  
Post Office Box 625  
Camden, South Carolina 29020

Dear Mr. De Loach:

Your letter of December 19, 1974, with the Petition of the Camden Military Academy has been handed this writer for attention and reply. The Academy petitions for the refund of taxes paid on its property for the tax years 1969 through 1974, inclusive, and you request that this office 'Please give County Council your opinion on the legal obligation Kershaw County may have to make such rebate as well as the extent to which such rebates should be made, under the circumstances.' The Petition is predicated on the ground that the property is exempt under the provisions of Article 10, Section 4 of the Constitution and that the taxes were unconstitutionally collected.

The Supreme Court of South Carolina in the case of A smer v. Livingston, 226 S. C. 341, 82 S. E. 2d 465, considered the right to a refund of taxes and stated:

'A refund of taxes is solely a matter of governmental grace, Pacific American Fisheries, Inc. v. Mullaney, D. C., 108 F. Supp. 133; New Consumers Bread Co. v. Commissioner of Internal Revenue, 3 Cir., 115 F. 2d 162, 131 A.L.R. 1329, and any person seeking such relief must bring himself clearly within the terms of the statute authorizing the same. 84 C.J.S. Taxation, Sec. 682. 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. \* \* \*.'

The court did not pass on the question of a strict construction except to provide that the exemption before the court was not to be construed against the state.

Chapter 21 of Title 65 provides the exclusive remedies for the recovery of property taxes. (See Section 65-2655). We find no authority therein that confers jurisdiction to the Kershaw County Council to rebate or refund the taxes referred to in the Petition, therefore Council has no legal obligation to rebate the tax.

We enclose the Petition forwarded with your letter and with best wishes, I am  
Yours very truly,

Joe L. Allen, Jr.  
Assistant Attorney General

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