

1973 S.C. Op. Atty. Gen. 21 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3451, 1973 WL 20916

Office of the Attorney General

State of South Carolina

Opinion No. 3451

January 12, 1973

**\*1 1. If a person is of opinion that title to marshlands is held by the State and such person has been assessed a tax upon such marshlands, then in such event the taxes should be paid under protest with an action at law instituted to recover the same on the grounds, that the property is that of the State and the tax was illegally assessed and collected.**

**2. A tax execution is issued against the defaulting taxpayer.**

Lt. Col., U. S. Army  
Mt. Pleasant, S. C.

Reference is made to your letter of November 22, 1972, concerning the Charleston County tax notice received by you and the others on the 200 acre tract of land of which 152 acres are under water on a 'very high tide.' Your inquiry is to the payment of taxes on this property when the owner thereof may well be the State of South Carolina.

Title to all tidelands is held by the State in trust for public purposes.

'The title to land below the high water mark on tidal navigable streams, under the well settled rule, is in the State not for the purpose of sale, but to be held in trust for public purpose. [Cape Romain Land & Improvement Co. v. Georgia-Carolina Canning Co.](#), 148 S. C. 428, 146 S. E. 434.' *The State of South Carolina v. Hardee*, Opinion No. 19516, November 14, 1972.

The statute designates the person responsible for the payment of taxes and you are liable for taxes only upon the land that you hold title to in fee or for life.

'Every person shall be liable to pay taxes and assessments on the real estate of which he may stand seized in fee or for life, in dower or as husband in right of his wife or may have the care of as guardian, executor, trustee or committee.' *Section 65-1611*.

The question is therefore whether such lands are 'tide-lands' within the legal definition of the term. If the same are, then title thereto is held by the State and there is no requirement that taxes be paid on the land. The answer to this question is of course one of fact and Section 65-2661 provides the appropriate legal remedy to resolve the issue and because the taxes have been assessed this is the only remedy available to question the illegality of the assessment (See Section 65-2655).

If you are of opinion that the taxes are improperly assessed because title to the property is in the State, then the taxes should be paid under protest with an action at law instituted within thirty days thereafter for the recovery of the same.

The reason this procedure is necessary for the 1972 tax year is that you failed to exclude this acreage from the tax rolls for the tax year. Administrative remedies are available to raise the issue with the tax assessor and the Tax Board of Appeals for Charleston County at the beginning of each tax year.

On the other question presented, a tax once assessed is a debt owed by the person to whom the same is assessed and can be collected from any property of such person.

'It is a common assumption that a tax execution is issued against the property; such is not the case; it is issued against the defaulting taxpayer, for the assessed taxes are a debt due to the State by the owner of the property.' *Valentine v. Robinson*, 188 S. C. 194, 198 S. E. 197.

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