

January 16, 2008

The Honorable Converse A. Chellis III
Treasurer, State of South Carolina
Post Office Box 11778
Columbia, South Carolina 29211

Dear Mr. Chellis:

In a letter to this office you questioned the applicability of S.C. Code Ann. § 15-3-530 which establishes a statute of limitations to the Treasurer's office responsibility for receiving court assessments pursuant to S.C. Code Ann. §§ 14-1-206 through 14-1-208. You have questioned whether Section 15-3-530 effectively limits your office's ability to collect the court assessments due the State beyond a three year period.

Section 15-3-530(2) states that the period for commencement of actions for "an action upon a liability created by statute other than a penalty or forfeiture" must be within three years. Pursuant to S.C. Code Ann. § 15-3-620 "[t]he limitations prescribed by this article...(which would include Section 15-3-530(2))...shall apply to actions brought in the name of the State or for its benefit in the same manner as to actions by private parties...."

S.C. Code Ann. §§ 14-1-206 through 14-1-208 require general sessions, magistrates and municipal courts to impose and remit certain assessments to the State Treasurer's office. Such assessments are then distributed by formula for specific programs. In your letter you referenced that a particular municipality has been delinquent in remitting court assessments and has informed your office that the time period involved could extend beyond the past three years. According to your letter, "[t]hey have raised the question that § 15-5-530 may effectively bar...(your)...ability to collect beyond three years and consequently, would like to resolve this situation by remitting funds based on their delinquencies of the last three years." You, therefore, have questioned whether or not the amount the State can expect to collect is limited to the past three years or not.

As to municipalities, Section 14-1-208 provides that a convicted defendant for an offense which is tried in the municipal court

...must pay an amount equal to 100 percent of the fine imposed as an assessment. This assessment must be paid to the municipal clerk of court and deposited with the city treasurer for remittance to the State Treasurer.

As you referenced, the State Treasurer then deposits such amount by a formula for particular programs specifically provided for by such provision. Pursuant to subsection (E),

[t]o ensure that fines and assessments imposed pursuant to this section and Section 14-1-209(A) are properly collected and remitted to the State Treasurer, the annual independent external audit required to be performed for each municipality pursuant to Section 5-7-240 must include a review of the accounting controls over the collection, reporting, and distribution of fines and assessments from the point of collection to the point of distribution and a supplementary schedule detailing all fines and assessments collected at the court level, the amount remitted to the municipal treasurer, and the amount remitted to the State Treasurer.

Proviso 72.75 of the FY 2007-2008 Appropriations Act, Act No. 117 of 2007, provides for a random audit of municipal treasurers and municipal courts "...to report whether the assessments...imposed or mandated, or both" in the municipal courts were properly collected and remitted to the State. Such proviso further states that

If the State Auditor finds that any authority has under remitted, incorrectly reported, incorrectly retained, or incorrectly allocated the state or victim services portion of the funds collected by the authority, the State Auditor shall determine where the error was made. If the error is determined to have been made by the county or municipal treasurer's office, the State Auditor shall notify the State Office of Victim Assistance for the crime victim portion and the chief administrator of the county or municipality of the findings and, if full payment has not been made by the county or municipality within ninety days of the audit notification, the State Treasurer is directed to adjust the authority's aid to subdivisions funding in an amount equal to the amount determined by the State Auditor to be the state's portion; or equal to the amount incorrectly reported, retained, or allocated pursuant to Sections 14-1-206(B)(D), 14-1-207(B)(D), 14-1-208(B)(D), and 14-1-211(B) of the 1976 Code.

If an error is determined to have been made at the magistrate, municipal, family, or circuit courts, the State Auditor shall notify the responsible office, their supervising authority, and the chief justice of the State. If full payment has not been made by the court within ninety days of the audit notification, the chief magistrate or municipal court or clerk of court shall remit an amount equal to the amount determined by the State Auditor to the state's portion or the crime victim fund portion within ninety days of the audit notification.

It is generally stated that “[t]here is authority to the effect that actions for...statutory fees are not actions on debts arising on contract, express or implied, but are actions on liabilities created by statute, and are subject to the limitation related to such liabilities....” 54 C.J.S. Limitations of Actions, Section 73(a). See also: State v. Life Insurance Company of Georgia, 254 S.C. 286, 298, 175 S.E.2d 203 (1970) (“...the general rule seems to be that the ordinary period of limitation applicable to ‘an action upon a liability created by statute’ applies to an action for the collection of taxes and assessments, but where there is an applicable specific limitation, such ordinary limitation does not apply.”).

In Richland County v. State, 180 N.W.2d 649 (N.D. 1970), an action was brought by counties which had received less than their share of motor vehicle registration fees established by state law against the State and counties which had received more than their proper share of such fees. The court ruled that the counties which had received less than their share of such fees had a cause of action against the defendant counties which had received more than their proper share. The court referenced the six year statute of limitations applicable to “[a]n action upon a contract, obligation, or liability, express or implied...” The court determined that such statute of limitations was applicable to the particular cause of action.

However, the situation addressed by you appears to be distinguishable from these cases in that the assessment collected by a municipality pursuant to Section 14-1-208 is paid by a convicted defendant tried in the municipal court which is “deposited with the city treasurer for remittance to the State Treasurer.” Therefore, these monies are never the monies of the municipality but instead are merely collected by the municipality for transfer to the State Treasurer.

In State v. Stanton County, 161 N.W. 264 (Neb. 1917), the Nebraska Supreme Court determined that certain monies collected by a county belonged to the state and, therefore, the statute of limitations did not apply to an action to recover the same from the county. The court stated that

...when this money had been collected under this statute, there was a continuing duty on the part of the county to turn the money over to the state...As the collections were held in trust, the statute of limitations constituted no defense.

161 N.W. at 266. See also: City of Chadron v. Dawes County, 118 N.W. 469 at 470. (Neb. 1908) (“...the county held that portion belonging to the city as a public trust, that it was the continuing duty of the county to faithfully execute the trust by paying over the money, and that the statute of limitations does not apply.”); Brooks v. Brooks et al., 12 S.C. 422 (1879) (“Creditors in interest may seek the aid of a court of equity to enforce its terms, and the statute of limitations is no bar to the trust thus created.”).

Consistent with such, in the opinion of this office, the monies collected by a municipality pursuant to Section 14-1-208 are held by the municipality in trust for transfer to the State Treasurer. These monies are never considered the “property” of the municipality and, therefore, should not be

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considered a “liability created by statute”. As a result, in the opinion of this office, the three year statute of limitations would be inapplicable to any action brought to force the payment of such monies.

In your letter you also asked that we consider the provisions of S.C. Code Ann. § 12-54-85 to the situation you addressed. However, it does not appear that such provisions would be applicable to the assessments referenced by you as it appears that Section 12-54-85 is limited in applicability to taxes in the traditional sense and not assessments such as those authorized by Section 14-1-208.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General