



HENRY McMASTER
ATTORNEY GENERAL

November 23, 2010

The Honorable Murrell Smith
Member, House of Representatives
Post Office Box 580
Sumter, South Carolina 29151

Dear Representative Smith:

We understand from your letter to Attorney General Henry McMaster that you seek advice on behalf of a constituent as to who is responsible for the payment of property taxes during the redemption period of property purchased during a tax sale. In your letter, you explained:

My constituent purchased property at a Tax Sale in December of 2008. He waited for the owner to come forth and pay the taxes to which the owner of the land never redeemed the property during this Redemption Period.

When the Redemption Period had expired, Sumter County sent him a letter stating that his deed was now ready for pick up. He also received a bill in the letter for property taxes for the calendar year 2009.

Law/Analysis

Chapter 51 of title 12 of the South Carolina Code (2000 & Supp. 2009) governs distress sales of property for failure to pay property taxes. As you alluded to in your letter, section 12-51-90 of the South Carolina Code (Supp. 2009) allows defaulting taxpayers to redeem their property "within twelve months from the date of the delinquent tax sale . . . by paying to the person officially charged with the collection of delinquent taxes, assessments, penalties, and costs, together with interest as

provided in subsection (B) of this section.” We understand your constituent wishes to know who is responsible for the property taxes accruing on such property during this twelve-month period.

In our examination of chapter 51 of title 12, we did not find a provision particularly addressing who is responsible for property taxes during the redemption period. However, we issued an opinion in 1984 addressing this question. Op. S.C. Atty. Gen., March 8, 1984. We presented the following analysis:

The defaulting property owner is not dispossessed of the property during the eighteen month redemption period provided by § 12-51-90. Section 12-51-130 precludes giving the purchaser title or possession until the period expires. Under § 12-37-610 the person seized in fee or for life is the person liable for payment of the tax. The estate of the defaulting taxpayer is thus not ended until the redemption period expires. The ownership by the purchaser is contingent upon a failure to redeem. The purchaser’s interest in the contingency is protected by § 12-49-540 when a threatened waste or damage to the property may be enjoined.

Id. Based on this analysis, we concluded: “When property is sold for nonpayment of property taxes pursuant to the provisions of Chapter 51 of Title 12, the taxes accruing during the eighteen-month redemption period are the liability of the owner, the defaulting taxpayer.” Id.

The Legislature made several amendments to the statutes cited as support in our 1984 opinion. However, we believe that as amended these statutes continue to support our analysis in the 1984 opinion and cause us to reach the same conclusion today. First, section 12-51-90 of the South Carolina Code continues to allow the defaulting taxpayer to remain in possession of the sold property. Second, section 12-51-130 (Supp. 2009) does not allow the purchaser of the property to receive title to the property prior to the expiration of the redemption period. Third, section 12-37-610 of the South Carolina Code (Supp. 2009) continues to provide that the fee owner of real property is responsible for payment of the associated property tax. Therefore, the provisions contained in chapter 51 indicate that the defaulting taxpayer continues to have title and possession of the sold property during the redemption period. As such, pursuant to section 12-37-610, the defaulting taxpayer is responsible for property taxes owed on the property.

Conclusion

The defaulting taxpayer, not the purchaser of property sold at a distress sale, holds both title and possession of the subject property during the redemption period. Therefore, pursuant to section 12-37-610 of the South Carolina Code, we are of the opinion that the defaulting taxpayer, not the

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purchaser of such property, is responsible for property taxes during the redemption period following the sale.

Very truly yours,

Henry McMaster
Attorney General


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Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Deputy Attorney General