

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____ October 20, 1993

SUBJECT: Taxation and Revenue - Receipt and Application of Tax Payment on Property Previously Sold for Delinquent Taxes.

SYLLABUS: Where property has been sold for delinquent taxes, and the successful bidder has paid sufficient funds to satisfy the taxpayer's delinquency, the taxes are no longer delinquent for the tax year for which the taxpayer's property was sold. Accordingly, the taxpayer may pay a subsequent tax liability on the same property without the county being required under S.C. Code Ann. Section 12-45-410 (Supp. 1992) to apply the tax payment to the taxes for the tax year for which the property was sold.

TO: Mr. Michael L. Horton
Assistant Comptroller General

FROM: Ray N. Stevens *ANS*
Chief Deputy Attorney General

QUESTION: Taxpayer A owns real property, Blackacre, and receives a tax bill on November 1, 1991, for \$100 of ad valorem taxes for the tax year 1991. Taxpayer A fails to pay the \$100 ad valorem taxes due on such property. The county, in accordance with the law, sells Blackacre to Bidder B at a delinquent tax sale on October 1, 1992, for \$130, which price is sufficient to cover the taxes and penalties as well as the expenses of the levy, seizure and sale.

On November 1, 1992, Taxpayer A, who is still the legal owner of Blackacre, receives a tax bill for \$100 on Blackacre for tax year 1992. Taxpayer A does not pay the taxes for tax year 1992. On May 1, 1993, Taxpayer A seeks to pay in full the taxes and penalties due for the 1992 tax year. Is the County Treasurer or Tax Collector allowed to receive the tax payment as payment of the 1992 taxes, or must the payment be applied to the 1991 tax year?

APPLICABLE LAW: S.C. Code Ann. Section 12-45-410 (Supp. 1992).

DISCUSSION:

Section 12-45-410 states in part the following:

Any taxes paid by a delinquent taxpayer to a county treasurer or tax collector must be applied to the oldest chronological delinquency on the property for which payment was intended.

. . .

Here Taxpayer A has tendered payment to the Tax Collector, and it is clear the payment must be applied to the oldest delinquency on Blackacre. The issue is whether 1991 is the "oldest chronological delinquency" or is 1992.

The Legislature is presumed to have fully understood the import of words used in a statute and intended to use them in their ordinary and common meaning. Powers v. Fidelity & Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 523 (1936). The word "delinquent" is commonly defined as "an overdue payment". American Heritage Dictionary, Houghton Mifflin Company. Thus, under common usage, a delinquency must involve an amount that is unpaid.

Consistent with the common usage of the word "delinquent", the courts have held that a tax is delinquent when the tax remains unpaid after the time for its payment. Chauncey v. Wass, 30 N.W. 826, 830. Additionally, the courts have held that a tax does not remain unpaid where the property has been sold for taxes, and have further held that such a sale prevents the taxpayer from being a "delinquent taxpayer". Honeycutt v. Colgan, 85 P. 165, 186 (1906). Accordingly, the sale of the property for 1991 taxes to a successful bidder for a sum sufficient to satisfy the 1991 obligation prevents the taxes from being delinquent for 1991.

This conclusion is fortified by the statutes allowing disbursement of the funds from the tax sale. S.C. Code Ann. Section 12-51-60 (Supp. 1992) explains that after covering expenses, the bid money may result in an ". . . excess due the defaulting taxpayer after payment of delinquent taxes, . . .". Thus, the statutes treat the bid money as the actual payment of the delinquent taxes. Further, under S.C. Code Ann. Section 12-51-80 (Supp. 1992), the County Treasurer is to ". . . make full settlement of tax sale monies, . . . to the respective political subdivisions for which the taxes were levied". Thus, again, the statutory scheme treats the bid funds in the same fashion as taxes paid.

Mr. Michael L. Horton
Page Three

October 20, 1993

CONCLUSION:

Where property has been sold for delinquent taxes, and the successful bidder has paid sufficient funds to satisfy the taxpayer's delinquency, the taxes are no longer delinquent for the tax year for which the taxpayer's property was sold. Accordingly, the taxpayer may pay a subsequent tax liability on the same property without the county being required under S.C. Code Ann. Section 12-45-410 (Supp. 1992) to apply the tax payment to the taxes for the tax year for which the property was sold.

RNS:wcg