

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

March 14, 1989

SUBJECT: Taxation and Revenue - Collection of taxes when assessment is under appeal.

SYLLABUS: The tax due upon an assessment issued under Section 12-43-305 is due and payable as provided by Section 12-45-70. Penalties for late payment are to be assessed as provided by Section 12-45-180 and both when unpaid may be collected by execution and sale as provided by Chapter 51 of Title 12.

TO: Mr. James L. Brodie, Director
Property Division, S. C. Tax Commission

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: When the tax levied upon an assessment issued under Section 12-43-305 is unpaid, are penalties for late payment to be charged and can collection be enforced?

APPLICABLE LAW: Sections 12-43-305, 12-45-70, 12-45-180 and 12-51-40, South Carolina Code of Laws, 1976.

DISCUSSION:

The Section provides for the taxation of property when the assessment of the property is under appeal. If the appeal is to extend beyond December 31 of the tax year, the property is to be taxed upon an eighty percent assessment. The pertinent language here applicable is that:

" . . . The auditor shall adjust the assessment of property under appeal to eighty percent of the assessed value and enter the adjusted assessment on the tax duplicate and the tax must be paid as in other cases." (Emphasis added)

Perhaps the language would have been clearer by the use of the phrase "other taxes" instead of "other cases." Nonetheless, the legislative intent is clear. The tax on an assessment issued pursuant to Section 12-43-305 is to be paid as other taxes are to be paid. The Section would serve no useful purpose if the tax is not required to be paid as

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other taxes are to be paid. The Section would in effect be meaningless under such a construction. Such is to be avoided.

"Court must presume that legislature intended by its action to accomplish something and not to do a futile thing." State ex rel McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778.

Section 12-45-70 provides that:

"All taxes are due and payable between the thirtieth day of September and the fifteenth day of January after their assessment in each year. . . ."

Section 12-45-180 provides for penalties when taxes are not paid and Section 12-51-40 provides for the levy and sale when the tax remains unpaid on a designated date. Under settled rules, all of the provisions are to be construed together and effect given to all. For cases see 17 S.C.D., Statutes, Key 223.2, et seq.

It is thus evident that the tax levied pursuant to an assessment issued under Section 12-43-305 is due and payable as other taxes, that the penalties for late payment are applicable thereto¹ and that the collection of the tax can be enforced.

CONCLUSION:

The tax due upon an assessment issued under Section 12-43-305 is due and payable as provided by Section 12-45-70. Penalties for late payment are to be assessed as provided by Section 12-45-180 and both when unpaid may be collected by execution and sale as provided by Chapter 51 of Title 12.

JLAJr:wcg

¹The penalties are due on the tax generated by the eighty percent assessment. If on final settlement of appeal an additional tax is due, interest at the rate of one percent (1%) per month is to be added. There would be no penalty on this additional assessment.