

1983 S.C. Op. Atty. Gen. 123 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-77, 1983 WL 142746

Office of the Attorney General

State of South Carolina

Opinion No. 83-77

September 26, 1983

***1 SUBJECT: Taxation and Revenue—Refund of Property Taxes**

Under § 12–47–70, et seq., the officers there enumerated are without authority to order the refund of a tax paid when the claim therefor is that the statute or ordinance is invalid.

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QUESTION:

Section 12–43–280 limits tax increases caused by a reassessment program to one per cent of the tax collected for the preceding year. Section 12–47–70 authorizes the county auditor, county treasurer, county assessor to refund taxes incorrectly paid. When the tax is that of a municipality, the chief finance officer is to be included with the above. A claim has been filed for taxes paid for the 1982 year to the City of Greenwood. The basis for the claim is that the tax exceeded the limitations of § 12–43–280. The question is thus the authority of the county auditor, treasurer, assessor and chief finance officer to act upon the claim.

APPLICABLE LAW:

Sections 12–47–70, et seq., and 12–43–280 of the 1976 Code of Laws; [Article X, § 7\(b\), South Carolina Constitution](#).

DISCUSSION:

[Article X, § 7 of the South Carolina Constitution](#) requires the municipality to annually adopt a budget and to provide for sufficient revenue to fund the same. Section 5–7–260 requires that the budget be adopted by ordinance. For purposes of this opinion, it is therefore assumed that the tax levy was established by ordinance. Under such circumstances the issue is whether the county officials and the chief finance officer of the city have the authority to declare the ordinance invalid.

The authority of the county officials is that prescribed by the General Assembly.

“It appears, therefore, and we so hold, that the General Assembly of the State has full power and authority to prescribe the duties and powers of the county auditors, county treasurers, the comptroller general and the South Carolina Tax Commission.’ [Bank of Johnston v. Prince](#), 136 S.C. 439, 134 S.E. 387.’ [South Carolina Tax Commission v. S. C. Tax Board of Review, et al.](#), 299 S.E. 2d 489.

Section 12–47–70 confers authority when there is an ‘incorrect’ assessment or collection. Here, it is contended that the collection is illegal. In [Coca-Cola Company v. Coble](#), 293 N.C. 565, 238 S.E. 2d 780, the Supreme Court of North Carolina considered a similar issue. The court held:

‘As we have said earlier, our statutes and case law ‘ . . . recognize a distinction between an erroneous tax and an illegal or invalid tax. An illegal or invalid tax results when the taxing body seeks to impose a tax without authority, as in cases where it is asserted that the rate is unconstitutional, or that the subject is exempt from taxation.’ [Redevelopment Commission of High Point v.](#)

[Guilford County](#), 274 N.C. 585, 589, 164 S.E. 2d 476, 479 (1968) (citations omitted). The Secretary of Revenue has no authority under [G.S. 105-266.1](#) to order the refund of an invalid or illegal tax, since questions of constitutionality are for the courts. * * *.'

*2 The powers conferred upon the officer by §§ 12-47-70 and 12-47-80 do not include the authority to declare an ordinance of the county to be invalid. The officers can act only when the assessment or collection is 'incorrect'.

CONCLUSION:

Under § 12-47-70, et seq., the officers there enumerated are without authority to order the refund of a tax paid when the claim therefor is that the statute or ordinance is invalid. ¹

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Footnotes

- 1 A taxpayer has an adequate and complete remedy under Sections 12-47-210 and 12-47-220 to have the court adjudicate the validity of the ordinance or statute.
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