

1978 S.C. Op. Atty. Gen. 181 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-146, 1978 WL 22614

Office of the Attorney General

State of South Carolina

Opinion No. 78-146

July 26, 1978

***1 SUBJECT: Income Tax—Refunds on Forged Joint Returns or With Forged Endorsement.**

When a joint return is filed by forgery it is invalid as to the person whose name is forged. No refund check should issue to any person on such a return. If a refund voucher has been issued, immediate notice should be given the State Treasurer and the monies recovered. The Commission should require a correct return from the taxpayer and if a refund is due, the same should then issue.

When the return is proper and a forgery exists as to an endorsement, notice should also be given the State Treasurer. The Treasurer through established procedure recovers the payment and issues another payment for proper endorsement.

TO: Mr. C. H. Brooks
Director
Income Tax Division

QUESTION:

When a forgery has been determined, what are the responsibilities of the (1) Income Tax Division because the check is an income tax refund, (2) the responsibilities of the State Treasurer's Office because the check is drawn on the State's account, and (3) the taxpayer's recourse for collecting the funds?

APPLICABLE LAW:

[Section 12-7-310](#), [36-4-406](#) and [36-3-404](#) of the 1976 Code of Laws.

DISCUSSION:

It is necessary to divide your questions into two categories. One is when the return is falsely made and the other when the return is properly made and the refund check is improperly endorsed.

[Section 12-7-310](#) provides in part:

'* * *. Husband and wife living together may at their option file separate or joint returns. * * *.' (Emphasis added)

Webster's New Collegiate Dictionary defines 'their' to mean:

'Of or belonging to themselves; as their property.'

It has likewise been held to import a 'joint obligation'. [Cattrell v. Hataway](#), 108 Mich. 619, 66 N. W. 596. See also 41A Words and Phrases, 'Their'.

The facts as submitted establish that the wife had no income, an alleged joint return was received, the husband states that he did not sign or consent to the joint return and that his signature upon the return and the refund check was forged. He further advises that he did not authorize the filing and has timely given notice to the Tax Commission. If this is correct, then the husband has not filed a return. He has not exercised his option. The wife had no income and was therefore not required to file a return. The return is therefore void from inception and the refund voucher issued by reason of a forgery.

[Section 36-4-406\(1\)](#) provides:

‘When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.’

*2 Upon discovery of the forgery of the endorsement on the check, the State Treasurer should be immediately notified by the Tax Commission. It is understood that the Treasurer gives the required notice to the bank and recovers the amount paid by reason of the forgery. The paying bank probably seeks recovery from the forger when possible.

In the case above stated, no refund is in order and none should issue. It would be necessary for the husband to file a proper return before the refund could properly issue.

In the other example, the refund is proper, however, the endorsement in part or in whole is forged. The Commission under such circumstances should also immediately notify the Treasurer. Any monies paid out by the Treasurer will be recovered by notice to the bank. Under established procedure another check, drawn to the same payees, will be issued by the Treasurer. As a guide we set forth the provision of [Section 36-3-404](#) that provides:

‘(1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this chapter. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.’

The taxpayer receives in both instances a proper refund unless they are precluded from doing so by some act of approval or ratification.

CONCLUSION:

When a joint return is filed by forgery it is invalid as to the person whose name is forged. No refund check should issue to any person on such a return. If a refund voucher has been issued, immediate notice should be given the State Treasurer and the monies recovered. The Commission should require a correct return from the taxpayer and if a refund is due, the same should then issue.

When the return is proper and a forgery exists as to an endorsement, notice should also be given the State Treasurer. The Treasurer through established procedure recovers the payment and issues another payment for proper endorsement.

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