CHAPTER 51

Alternate Procedure for Collection of Property Taxes

**SECTION 12‑51‑40.** Default on payment of taxes; levy of execution by distress and sale; notice of delinquent taxes; seizure of property; advertisement of sale.

 After the county treasurer issues his execution against a defaulting taxpayer in his jurisdiction, as provided in Section 12‑45‑180, signed by him or his agent in his official capacity, directed to the officer authorized to collect delinquent taxes, assessments, penalties, and costs, requiring him to levy the execution by distress and sale of the defaulting taxpayer’s estate, real or personal, or both, or property transferred by the defaulting taxpayer, the value of which generated all or part of the tax, to satisfy the taxes, assessments, penalties, and costs, the officer to which the execution is directed shall:

 (a) On April first or as soon after that as practicable, mail a notice of delinquent property taxes, penalties, assessments, and costs to the defaulting taxpayer and to a grantee of record of the property, whose value generated all or part of the tax. The notice must be mailed to the best address available, which is either the address shown on the deed conveying the property to him, the property address, or other corrected or forwarding address of which the officer authorized to collect delinquent taxes, penalties, and costs has actual knowledge. The notice must specify that if the taxes, penalties, assessments, and costs are not paid, the property must be advertised and sold to satisfy the delinquency.

 (b) If the taxes remain unpaid after thirty days from the date of mailing of the delinquent notice, or as soon thereafter as practicable, take exclusive possession of the property necessary to satisfy the payment of the taxes, assessments, penalties, and costs. In the case of real property, exclusive possession is taken by mailing a notice of delinquent property taxes, assessments, penalties, and costs to the defaulting taxpayer and any grantee of record of the property at the address shown on the tax receipt or to an address of which the officer has actual knowledge, by “certified mail, return receipt requested‑restricted delivery” pursuant to the United States Postal Service “Domestic Mail Manual Section S912”. If the addressee is an entity instead of an individual, the notice must be mailed to its last known post office address by certified mail, return receipt requested, as described in Section S912. In the case of personal property, exclusive possession is taken by mailing the notice of delinquent property taxes, assessments, penalties, and costs to the person at the address shown on the tax receipt or to an address of which the officer has actual knowledge. All delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid before a subsequent sales date, the property must be duly advertised and sold for delinquent property taxes, assessments, penalties, and costs. The return receipt of the “certified mail” notice is equivalent to “levying by distress”.

 (c) If the “certified mail” notice has been returned, take exclusive physical possession of the property against which the taxes, assessments, penalties, and costs were assessed by posting a notice at one or more conspicuous places on the premises, in the case of real estate, reading: “Seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes”, the posting of the notice is equivalent to levying by distress, seizing, and taking exclusive possession of it, or by taking exclusive possession of personalty. In the case of personal property, the person officially charged with the collection of delinquent taxes is not required to move the personal property from where situated at the time of seizure and further, the personal property may not be moved after seized by anyone under penalty of conversion unless delinquent taxes, assessments, penalties, and costs have been paid. Mobile homes are considered to be personal property for the purposes of this section unless the owner has de‑titled the mobile home according to Section 56‑19‑510.

 (d) The property must be advertised for sale at public auction. The advertisement must be in a newspaper of general circulation within the county or municipality, if applicable, and must be entitled “Delinquent Tax Sale”. It must include the delinquent taxpayer’s name and the description of the property, a reference to the county auditor’s map‑block‑parcel number being sufficient for a description of realty. The advertising must be published once a week before the legal sales date for three consecutive weeks for the sale of real property, and two consecutive weeks for the sale of personal property. All expenses of the levy, seizure, and sale must be added and collected as additional costs, and must include, but not be limited to, the expenses of taking possession of real or personal property, advertising, storage, identifying the boundaries of the property, and mailing certified notices. When the real property is divisible, the tax assessor, county treasurer, and county auditor may ascertain that portion of the property that is sufficient to realize a sum upon sale sufficient to satisfy the payment of the taxes, assessments, penalties, and costs. In those cases, the officer may partition the property and furnish a legal description of it.

 (e) As an alternative, upon approval by the county governing body, a county may use the procedures provided in Chapter 56, Title 12 and Section 12‑4‑580 as the initial step in the collection of delinquent taxes on real and personal property.

 (f) For the purpose of enforcing payment and collection of property taxes when the true owner is unknown because of the death of the owner of record and the absence of probate administration of the decedent’s estate, the property must be advertised and sold in the name of the deceased owner of record.

HISTORY: 1962 Code Section 65‑2815.3; 1971 (57) 499; 1985 Act No. 166, Section 4; 1988 Act No. 451, Section 1; 1989 Act No. 78, Section 1; 1996 Act No. 431, Section 26; 1997 Act No. 106, Section 4; 1998 Act No. 285, Section 1; 2000 Act No. 399, Section 3(X)(3), eff January 1, 2001; 2015 Act No. 87 (S.379), Section 55, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 55, in (c), substituted “has de‑titled the mobile home according to Section 56‑19‑510” for “gives written notice to the auditor of the mobile home’s annexation to the land on which it is situated”; and in (e), inserted “and Section 12‑4‑580”.

CROSS REFERENCES

Authority for municipalities to provide by ordinance a procedure for collection of delinquent real and personal property taxes, see Section 5‑7‑300.

Library References

Taxation 2846, 2847, 2945.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1167 to 1173, 1261 to 1263, 1294.

RESEARCH REFERENCES

Encyclopedias

28 Am. Jur. Proof of Facts 3d 439, Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property.

Attorney General’s Opinions

A court will likely find a Delinquent Tax Collector may rely on electronic records of signatures and electronic signatures retained by the United States Postal Service as long as the other requirements under the law are met for such notices. S.C. Op.Atty.Gen. (March 25, 2014) 2014 WL 1398584.

A county treasurer may not use penalties collected pursuant to sections 12‑45‑180 or 12‑51‑40 to offset collection costs. S.C. Op.Atty.Gen. (November 9, 2012) 2012 WL 5883797.

Any fees imposed by a county treasurer in addition to the penalties and costs expressly permitted in Section 12‑45‑180(A) or Section 12‑51‑40, as the case may be, are invalid on the basis they are not authorized by statute. S.C. Op.Atty.Gen. (November 9, 2012) 2012 WL 5883797.

Discussion of the applicability of Hawkins v. Bruno Yacht Sales, 353 S.C. 31, 577 S.E.2d 202 (2003) to delinquent tax sales conducted in 2002 by the Delinquent Tax Collector for Newberry County. S.C. Op.Atty.Gen. (Feb. 18, 2004) 2004 WL 439327.

McCormick County Ordinance 92‑17 does not conflict with delinquent tax collection provisions of Title 12, SC Code of Laws. 1993 Op Atty Gen, No 93‑30 (May 10, 1993) 1993 WL 720118.

McCormick County Treasurer does not have authority to bring action in Magistrate Court to enforce collection of unpaid solid waste service fees. 1993 Op Atty Gen, No 93‑30 (May 10, 1993) 1993 WL 720118.

Officer charged with tax collection duty incurs collection expenses. That duty is not given to anyone else, and it is that individual who establishes, within confines of collection statutes, nature and amount of expenses required to effectuate duties of levy, seizure, and sale. Such individual is not free to add expenses based on arbitrary reasons or arbitrary amounts for costs. Rather, individual must be able to substantiate expenses which are being added as costs. 1993 Op Atty Gen, No 93‑28 (May 4, 1993) 1993 WL 720117.

Both taxes due upon an assessment under Section 12‑43‑305 and penalties for late payment of such taxes may be collected by execution and sale as provided in Chapter 51 of Title 12. 1989 Op Atty Gen, No 89‑32, p 88 (March 14, 1989) 1989 WL 406122.

The newspaper advertisement of the sale of property for nonpayment of taxes should be published in the pages of the newspaper and not included as an advertising insert. 1986 Op Atty Gen, No 86‑63, p 201 (June 6, 1986) 1986 WL 192023.

The property of a minor which is subject to a lien for unpaid property taxes can be sold to enforce collection of the taxes; however, an action should be instituted, and a guardian appointed to protect the interests of the minor. (Decided under former law.) 1983 Op Atty Gen, No 83‑78, p 124 (September 26, 1983) 1983 WL 142747.

The penalties and costs allowed by Chapter 51 of Title 12 are exclusive and no additional costs or expenses may be collected by the county; the officer that seizes property under a tax execution is required to exercise proper care and diligence to preserve the same. If the property is damaged, lost or destroyed by the failure to exercise such care and diligence, the officer is liable therefor; the “notice of delinquent property taxes, penalties and costs” as provided by Section 12‑51‑40 should be mailed as directed by the section and not delivered by hand; the officer charged with the duty to enforce the tax execution or warrant should proceed as directed by Chapter 51 of Title 12 where applicable when the notice of delinquency is not delivered. 1980 Op Atty Gen, No 80‑37, p 76 (March 27, 1980) 1980 WL 81921.

Only so much of a defaulting taxpayer’s property as is sufficient to satisfy the tax is to be levied upon and sold under execution. (Decided under former law.) 1979 Op Atty Gen, No 79‑55, p 73 (March 16, 1979) 1979 WL 29061.

Execution may be had upon a single parcel of property for unpaid taxes and the proceeds from the sale of such property may be applied to the payment of the taxes upon the parcel sold as well as the unpaid taxes upon other property of the defaulting taxpayer. Should there be creditors secured by the parcel sold, they would have to be satisfied before the proceeds could be applied to the unpaid taxes on the other parcels. (Decided under former law.) 1975‑76 Op Atty Gen, No 4551, p 422 (December 22, 1976) 1976 WL 23167.

When property is sold for delinquent taxes the purchaser at the tax sale takes the property free of any existing mortgages. The mortgagee is entitled under ordinary circumstances only to the excess over cost and taxes. (Decided under former law.) 1974‑75 Op Atty Gen, No 4023, p 97 (April 24, 1975) 1975 WL 22320.

There is no statutory requirement that lienholders or mortgagees be notified when personal property is levied upon and sold for nonpayment of taxes generated by reason of such property; a purchaser of personal property takes free and clear of other mortgages or liens when such property is sold for nonpayment of taxes generated by such property; personal property that customarily and generally constitutes a part of a mobile home may be levied upon and sold as a part of the mobile home for nonpayment of the taxes on the mobile home; Code 1962 Section 65‑2815.10 [Code 1976 Section 12‑51‑110] prescribes the form to be given the purchaser of personal property when such property is sold under the provisions of Article 5.1 of Chapter 22 of Title 65 [Chapter 51 of Title 12 of 1976 Code]; the purchaser is to be given possession of personal property when sold for nonpayment of taxes. 1974‑75 Op Atty Gen, No 4020, p 91 (April 21, 1975) 1975 WL 22317.

Subsection (3) of former Code 1962 Section 65‑2766 stated that the purchaser at a tax sale must be given a duplicate warrant showing the taxes for which the warrant was issued. 1969‑70 Op Atty Gen, No 2899, p 143 (May 14, 1970) 1970 WL 12182.

The surplus remaining after the sale of real property for nonpayment of taxes is to be held pending a proper judicial order for its disposition except in cases where written consent of the defaulting taxpayer is obtained. (Decided under former law.) 1969‑70 Op Atty Gen, No 2812, p 21 (January 6, 1970) 1970 WL 12111.

The tax collector of Pickens County was required by the provisions of subsection (5) of former Code 1962 Section 65‑2766 to disburse the excess money from a tax sale when the taxpayer consented in writing for it to be paid to the mortgagee or lienholder. 1967‑68 Op Atty Gen, No 2602, p 323 (November 7, 1968) 1968 WL 8994.

NOTES OF DECISIONS

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1. In general

Under South Carolina law, tax sales must be conducted in strict compliance with statutory requirements. Baker v. Denton, 2014, 37 F.Supp.3d 794. Taxation 2942

South Carolina’s tax sales laws were promulgated to protect the government against wilful, persistent, and long standing delinquents; they were not created to punish taxpayers who have failed to pay their taxes because of legitimate mistake or error. Johnson v. Arbabi (S.C.App. 2001) 347 S.C. 132, 553 S.E.2d 453, rehearing denied, reversed 355 S.C. 64, 584 S.E.2d 113. Taxation 2901

Intent of the legislature as to procedure for conducting tax sale of divisible property was to fairly collect all taxes due the state. Folk v. Thomas (S.C. 2001) 344 S.C. 77, 543 S.E.2d 556, rehearing denied. Taxation 2961

The overriding objective of the statute providing that once a constructive “levy by distress” has been accomplished, the tax collector must “advertise[] the property for sale at public auction,” is to protect the defaulting taxpayer from unfair surprise and sacrifice. Hawkins v. Bruno Yacht Sales, Inc. (S.C.App. 2000) 342 S.C. 352, 536 S.E.2d 698, rehearing denied, certiorari granted, affirmed as modified 353 S.C. 31, 577 S.E.2d 202. Taxation 2847

2. Construction and application

Under South Carolina law, all requirements of laws leading up to tax sales are intended for the protection of the taxpayer against surprise or the sacrifice of his property and are regarded as mandatory and are strictly enforced. Baker v. Denton, 2014, 37 F.Supp.3d 794. Taxation 2942

All requirements of the law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded as mandatory and are to be strictly enforced. King v. James (S.C.App. 2010) 388 S.C. 16, 694 S.E.2d 35. Taxation 2942

Tax sales of land must be conducted in strict compliance with statutory requirements. King v. James (S.C.App. 2010) 388 S.C. 16, 694 S.E.2d 35. Taxation 2942

Tax sale of land by county was invalid for failure to strictly comply with all statutory requirements, where delinquent tax notices were stamped with payment deadlines that were before the actual date of sale. King v. James (S.C.App. 2010) 388 S.C. 16, 694 S.E.2d 35. Taxation 2909

All requirements of law leading up to tax sales which are intended for the protection of the taxpayer against surprise or the sacrifice of his property are to be regarded as mandatory and are strictly enforced. Hawkins v. Bruno Yacht Sales, Inc. (S.C. 2003) 353 S.C. 31, 577 S.E.2d 202. Taxation 2847

All conditions governing tax sales are mandatory and strictly enforced. Hawkins v. Bruno Yacht Sales, Inc. (S.C.App. 2000) 342 S.C. 352, 536 S.E.2d 698, rehearing denied, certiorari granted, affirmed as modified 353 S.C. 31, 577 S.E.2d 202. Taxation 2847

The sale of the property of a defaulting taxpayer is governed by statute. Durham v. United Companies Financial Corp. (S.C. 1998) 331 S.C. 600, 503 S.E.2d 465. Taxation 2900

All requirements of law leading up to tax sales which are intended for protection of taxpayer against surprise or sacrifice of his property are to be regarded as mandatory and are to be strictly enforced. Rives v. Bulsa (S.C.App. 1996) 325 S.C. 287, 478 S.E.2d 878. Taxation 2942

3. Notice, generally

Under South Carolina law, failure to give the required notice of a tax sale is a fundamental defect in the tax sale proceedings that renders the proceedings absolutely void. Baker v. Denton, 2014, 37 F.Supp.3d 794. Taxation 2947

Under South Carolina law, the fact that the defaulting taxpayer has actual notice of the impending tax sale is insufficient to uphold a tax sale absent strict compliance with statutory requirements. Baker v. Denton, 2014, 37 F.Supp.3d 794. Taxation 2950

Failure to give the required notice is a fundamental defect in the tax sale proceedings which renders the proceedings absolutely void. Reeping v. JEBBCO, LLC (S.C.App. 2013) 402 S.C. 195, 740 S.E.2d 504. Taxation 2947

Failure to give the required notice of a tax sale of land is a fundamental defect in the tax sale proceedings which renders the proceedings absolutely void. King v. James (S.C.App. 2010) 388 S.C. 16, 694 S.E.2d 35. Taxation 2947

Even actual notice is insufficient to uphold a tax sale of land absent strict compliance with statutory requirements. King v. James (S.C.App. 2010) 388 S.C. 16, 694 S.E.2d 35. Taxation 2950

The failure to give the required statutory notice renders the tax sale invalid. Smith v. Barr (S.C.App. 2007) 375 S.C. 157, 650 S.E.2d 486, rehearing denied. Taxation 2947

Fact that the defaulting taxpayer has actual notice of the impending tax sale is insufficient to uphold a tax sale absent strict compliance with statutory requirements. Hawkins v. Bruno Yacht Sales, Inc. (S.C. 2003) 353 S.C. 31, 577 S.E.2d 202. Taxation 2847

Any material deviation from the notice requirements will eventuate in the complete abrogation of a transaction granting title to a tax sale purchaser. Code 1976, Sections Sections 12‑51‑40, Johnson v. Arbabi (S.C.App. 2001) 347 S.C. 132, 553 S.E.2d 453, rehearing denied, reversed 355 S.C. 64, 584 S.E.2d 113. Taxation 3070; Taxation 3072(4)

Proof that the defaulting taxpayer had actual notice of the tax sale does not excuse the tax collector’s non‑compliance with statutory notice requirements. Hawkins v. Bruno Yacht Sales, Inc. (S.C.App. 2000) 342 S.C. 352, 536 S.E.2d 698, rehearing denied, certiorari granted, affirmed as modified 353 S.C. 31, 577 S.E.2d 202. Taxation 2847

The rule commanding strict construction of statutory tax sale notice provisions applies not only to matters involving real property, but also to those involving personalty. Hawkins v. Bruno Yacht Sales, Inc. (S.C.App. 2000) 342 S.C. 352, 536 S.E.2d 698, rehearing denied, certiorari granted, affirmed as modified 353 S.C. 31, 577 S.E.2d 202. Taxation 2847

Failure to give required notice of tax sale to true owner is fundamental defect in tax sale proceedings which renders proceedings absolutely void. Rives v. Bulsa (S.C.App. 1996) 325 S.C. 287, 478 S.E.2d 878. Taxation 2947

A tax deed may not be set aside on the basis of insufficient notice where notice of the tax sale exceeds the statutory notice requirements of Section 12‑49‑300. South Carolina Federal Sav. Bank v. Atlantic Land Title Co., Inc. (S.C.App. 1994) 314 S.C. 292, 442 S.E.2d 630. Taxation 2948

A county had no obligation to notify a federal tax sale purchaser that the real property in question would be sold at a county tax sale where the purchaser had failed to either notify the county that he was the grantee of the delinquent taxpayer, or record his deed. Taylor v. Mill (S.C. 1992) 310 S.C. 526, 426 S.E.2d 311. Taxation 2948

4. Sufficiency of notice

Failure of county tax collector to list the correct name of one of the two owners of the real property which was the subject of a tax sale in the newspaper advertisement about tax sale rendered the advertisement insufficient to comply with the notice requirement for valid tax sale, under South Carolina statute, which required such a newspaper advertisement to include the delinquent taxpayer’s name and the description of the property, notwithstanding that the advertisement did correctly list the name of the other owner. Baker v. Denton, 2014, 37 F.Supp.3d 794. Taxation 2951

Notice of levy posted by county tax collector on real property that was subject to tax sale was required to include specific statutory language stating that the property had been “seized by person officially charged with the collection of delinquent taxes of the county to be sold for delinquent taxes” in order to be a valid notice of levy, under South Carolina law. Baker v. Denton, 2014, 37 F.Supp.3d 794. Taxation 2952

Each failure to comply with the requisite statutory mandate for a tax sale of real property, in and of itself, is sufficient to void a tax sale, under South Carolina law. Baker v. Denton, 2014, 37 F.Supp.3d 794. Taxation 2991

Tax collector exceeded statutory notice requirements when he notified decedent’s wife of tax sale of her real property and attempted to notify the deceased husband, and thus sale would not be set aside for insufficient notice, despite the failure to notify children of the sale, where earlier probate court order had vested sole ownership of the property in the wife. Bell v. Knight (S.C.App. 2008) 376 S.C. 380, 656 S.E.2d 393. Taxation 2948; Taxation 2950

Probate court’s order leaving decedent’s wife as sole owner of real property divested decedent’s children of any interest in the property, and thus tax collector was not required to notify the children of subsequent tax sale of the property, where children were parties to probate proceedings in which order divesting them of any interest in the property was issued. Bell v. Knight (S.C.App. 2008) 376 S.C. 380, 656 S.E.2d 393. Taxation 2948

Evidence supported finding that tax office failed to properly post the statutorily required notice for tax sale on property, for the purpose of action to set aside tax sale; manager of subdivision where property was located testified that he was familiar with property, that he was familiar with a delinquent sale sign, and that he never saw a delinquent sale sign on property, and the deed of conveyance contained an incorrect identification number for property and it was unclear whether the tax office posted the delinquent sale sign on the correct property or the property assigned to the number on the deed of conveyance. Smith v. Barr (S.C.App. 2007) 375 S.C. 157, 650 S.E.2d 486, rehearing denied. Taxation 2952

Notices of delinquent personal property taxes on taxpayer’s sailboat that set artificial dates for payment of taxes failed to strictly comply with statutory requirement that taxpayer could pay delinquent taxes up to date of tax sale, where county told taxpayer that payment was due before date of advertisement for sale, and later notice advised taxpayer that payment was due prior to end of two‑week advertisement period. Hawkins v. Bruno Yacht Sales, Inc. (S.C. 2003) 353 S.C. 31, 577 S.E.2d 202. Taxation 2842

Description of personal property subject to delinquent tax sale that included taxpayer’s name, delinquent tax number, and identified property as a boat complied with statutory requirements and was sufficient to alert taxpayer to the sale of his boat, where notice complied with statutory requirements for real property, and specific information regarding the boat was available on county’s computer system by under the delinquent tax number. Hawkins v. Bruno Yacht Sales, Inc. (S.C. 2003) 353 S.C. 31, 577 S.E.2d 202. Taxation 2847

County’s levy notices which preceded tax sale of vessel were defectively worded, as they gave clear impression, contrary to statutory mandate, that taxpayer was required to pay taxes, penalties, and costs at least two weeks before “subsequent sales date,” rather than by sales date itself. Hawkins v. Bruno Yacht Sales, Inc. (S.C.App. 2000) 342 S.C. 352, 536 S.E.2d 698, rehearing denied, certiorari granted, affirmed as modified 353 S.C. 31, 577 S.E.2d 202. Taxation 2842

Tax collector’s advertisement of delinquent taxpayer’s boat for sale at public auction did not sufficiently describe boat by referring to it merely as “PP550HAWALL,” even though ad heading identified “PP” account as one involving sale of “boat.” Hawkins v. Bruno Yacht Sales, Inc. (S.C.App. 2000) 342 S.C. 352, 536 S.E.2d 698, rehearing denied, certiorari granted, affirmed as modified 353 S.C. 31, 577 S.E.2d 202. Taxation 2847

Tax sale of delinquent taxpayer’s boat was void, where county authorities failed to give proper, sufficiently‑worded notice to taxpayer of attempted levy, restrict delivery of levy notices to taxpayer personally, and properly describe boat in tax sale advertisement. Hawkins v. Bruno Yacht Sales, Inc. (S.C.App. 2000) 342 S.C. 352, 536 S.E.2d 698, rehearing denied, certiorari granted, affirmed as modified 353 S.C. 31, 577 S.E.2d 202. Taxation 2842; Taxation 2847

Tax collector failed to comply with strict statutory requirements for tax sale, thus rendering tax sale void, where notice of tax sale was not given to true owners of property, but rather was addressed to their deceased mother in care of their father, and property was assessed, advertised, levied upon, and sold in name of deceased mother rather than in name of true owners. Rives v. Bulsa (S.C.App. 1996) 325 S.C. 287, 478 S.E.2d 878. Taxation 2948

The County Tax Collector’s failure to send a notice of delinquent property taxes to the “more correct address known” constituted a material violation of Section 12‑51‑40(a) where the Tax Collector directed the notice to the property owner’s former address even though the owner had notified the County Treasurer of her new name and change of address, this information was also placed on the recorded deed to an adjacent lot which was conveyed to the owner several months before the notice was mailed, and a portion of this updated information was entered on the county tax record when the 2 lots were combined as one parcel shortly thereafter. Snelgrove v. Lanham (S.C. 1989) 298 S.C. 302, 379 S.E.2d 904.

5. Notice by mail

Delinquent tax office’s failure to use the best address to provide taxpayers with notice of delinquent property taxes, in violation of the statutory notice requirements, rendered tax sale void; tax office was put on actual notice that taxpayers were not receiving mail at their former rural address, and was provided with a new address on a returned envelop that twice noted the correct address. Reeping v. JEBBCO, LLC (S.C.App. 2013) 402 S.C. 195, 740 S.E.2d 504. Taxation 2950; Taxation 2991

Where a statute requires notice to the owner as a condition precedent to foreclosure of a tax lien, the person authorized to send the notice must exercise diligence to ascertain the correct address of the property owner; whether the authorized person has exercised diligence depends upon the particular circumstance of each case. Reeping v. JEBBCO, LLC (S.C.App. 2013) 402 S.C. 195, 740 S.E.2d 504. Taxation 2950

Legislature did not intend that levy notice for delinquent personal property tax sale be sent via “restricted delivery” mail in order to be valid, and thus, delivery by “certified mail, return receipt” was equivalent to levying by distress, where statutory requirements for levying real property required restricted delivery, but personal property referred to certified mail without specific requirement for restricted delivery. Hawkins v. Bruno Yacht Sales, Inc. (S.C. 2003) 353 S.C. 31, 577 S.E.2d 202. Taxation 2842

6. Divisibility study

Defaulting taxpayer bore the initial burden of requesting a determination of divisibility of property before the county was required to undertake a divisibility study prior to tax sale. Folk v. Thomas (S.C. 2001) 344 S.C. 77, 543 S.E.2d 556, rehearing denied. Taxation 2961

7. Limitation of actions

Assuming that two‑year statute of limitations for contesting a tax sale could act to bar claim challenging tax sale in case in which statutory notice to taxpayer was defective, tax sale purchaser withheld possession of property from taxpayer, and therefore taxpayer’s cause of action accrued when purchaser had property surveyed and informed taxpayer of her ownership. King v. James (S.C.App. 2010) 388 S.C. 16, 694 S.E.2d 35. Taxation 2991

8. Estoppel

Taxpayer, who disclaimed ownership of boat that was subject to delinquent personal property tax sale in a prior federal quiet title proceeding, was not estopped from asserting that he was owner of boat in state court proceeding to set aside tax sale, where prior action was dismissed without prejudice, and court stated dismissal was not adjudication of title. Hawkins v. Bruno Yacht Sales, Inc. (S.C. 2003) 353 S.C. 31, 577 S.E.2d 202. Estoppel 68(2)

9. Review

Master‑in‑equity’s ruling that county’s tax sale was not conducted in strict compliance with statutory requirements was the law of the case, where neither county nor tax sale purchaser appealed that ruling. King v. James (S.C.App. 2010) 388 S.C. 16, 694 S.E.2d 35. Taxation 2992

The Court of Appeals will set aside tax sales where the requisite statutory conditions have not been complied with by public officials. Hawkins v. Bruno Yacht Sales, Inc. (S.C.App. 2000) 342 S.C. 352, 536 S.E.2d 698, rehearing denied, certiorari granted, affirmed as modified 353 S.C. 31, 577 S.E.2d 202. Taxation 2991

**SECTION 12‑51‑50.** Sale of property; procedures; defaulting taxpayer or grantee with more than one item to be sold.

 The property duly advertised must be sold, by the person officially charged with the collection of delinquent taxes, at public auction at the courthouse or other convenient place within the county, if designated and advertised, on the advertised date for legal tender payable in full by cash, cashier’s check, certified check, or money order on the date of the sale. If the defaulting taxpayer or the grantee of record of the property has more than one item advertised to be sold, as soon as sufficient funds have been accrued to cover all of the delinquent taxes, assessments, penalties, and costs, further items must not be sold.

HISTORY: 1962 Code Section 65‑2815.4; 1971 (57) 499; 1985 Act No. 166, Section 5; 1997 Act No. 146, Section 1; 2000 Act No. 399, Section 3(X)(4), eff January 1, 2001; 2012 Act No. 186, Section 3, eff June 7, 2012.

Library References

Taxation 2847, 2942, 2951.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1170 to 1173, 1261, 1263, 1294.

Attorney General’s Opinions

A county must first attempt to collect delinquent property taxes pursuant to S.C. Code Ann. Section 12‑51‑40, et seq., before proceeding under the provisions of the Setoff Debt Collection Act. 1994 Op Atty Gen, No 94‑13, p 32 (February 1, 1994) 1994 WL 84319.

When property is sold for delinquent taxes the purchaser at the tax sale takes the property free of any existing mortgages. The mortgagee is entitled under ordinary circumstances only to the excess over cost and taxes. (Decided under former law.) 1974‑75 Op Atty Gen, No 4023, p 97 (April 24, 1975) 1975 WL 22320.

Subsection (3) of former Code 1962 Section 65‑2766 stated that the purchaser at a tax sale must be given a duplicate warrant showing the taxes for which the warrant was issued. 1969‑70 Op Atty Gen, No 2899, p 143 (May 14, 1970) 1970 WL 12182.

The surplus remaining after the sale of real property for nonpayment of taxes is to be held pending a proper judicial order for its disposition except in cases where written consent of the defaulting taxpayer is obtained. (Decided under former law.) 1969‑70 Op Atty Gen, No 2812, p 21 (January 6, 1970) 1970 WL 12111.

The tax collector of Pickens County was required by the provisions of subsection (5) of former Code 1962 Section 65‑2766 to disburse the excess money from a tax sale when the taxpayer consented in writing for it to be paid to the mortgagee or lienholder. 1967‑68 Op Atty Gen, No 2602, p 323 (November 7, 1968) 1968 WL 8994.

**SECTION 12‑51‑55.** Required bid on behalf of Forfeited Land Commission when property sold for ad valorem taxes.

 The officer charged with the duty to sell real property and mobile or manufactured housing for nonpayment of ad valorem property taxes shall submit a bid on behalf of the forfeited land commission equal to the amount of all unpaid property taxes, penalties, assessments including, but not limited to, assessments owed to a special taxing district established pursuant to Section 4‑9‑30, Chapter 19, Title 4, or an assessment district established pursuant to Chapter 15, Title 6, and costs including taxes levied for the year in which the redemption period begins. The forfeited land commission is not required to bid on property known or reasonably suspected to be contaminated. If the contamination becomes known after the bid or while the commission holds the title, the title is voidable at the election of the commission.

HISTORY: 1995 Act No. 90, Section 3; 1996 Act No. 431; 2000 Act No. 399, Section 3(X)(5), eff January 1, 2001; 2005 Act No. 145, Section 51, eff June 7, 2005; 2015 Act No. 87 (S.379), Section 56, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 56, twice substituted “forfeited land commission” for “Forfeited Land Commission”, and deleted the prior last sentence, relating to the requirement that funds from sale to pay taxes during redemption period.

Library References

Taxation 2847, 2970.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1170 to 1173, 1336 to 1353.

**SECTION 12‑51‑60.** Payment by successful bidder; receipt; disposition of proceeds.

 The successful bidder at the delinquent tax sale shall pay legal tender as provided in Section 12‑51‑50 to the person officially charged with the collection of delinquent taxes in the full amount of the bid on the day of the sale. Upon payment, the person officially charged with the collection of delinquent taxes shall furnish the purchaser a receipt for the purchase money. He must attach a copy of the receipt to the execution with the endorsement of his actions, which must be retained by him. Expenses of the sale must be paid first and the balance of all delinquent tax sale monies collected must be turned over to the treasurer. Upon receipt of the funds, the treasurer shall mark immediately the public tax records regarding the property sold as follows: Paid by tax sale held on (insert date). All other monies received, including any excess after payment of delinquent taxes, assessments, penalties, and costs, must be retained, paid out, and accounted for by the delinquent tax collector. Once a tax deed has been issued, the defaulting taxpayer and the owner of record immediately before the end of the redemption period must be notified in writing by the delinquent tax collector of any excess due. The notice must be addressed and mailed in the manner provided in Section 12‑51‑40(b) for taking exclusive possession of real property. Expenses of providing this notice are considered costs of the sale for purposes of determining the amount, if any, of the excess.

HISTORY: 1962 Code Section 65‑2815.5; 1971 (57) 499; 1985 Act No. 166, Section 6; 1994 Act No. 296, Section 1; 1996 Act No. 332, Section 2; 1996 Act No. 431, Section 30; 1998 Act No. 285, Section 2; 2000 Act No. 399, Section 3(X)(6), eff January 1, 2001.

Library References

Taxation 2847, 2976, 2977.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1170 to 1173, 1308 to 1313.

Attorney General’s Opinions

When property is sold for delinquent taxes the purchaser at the tax sale takes the property free of any existing mortgages. The mortgagee is entitled under ordinary circumstances only to the excess over cost and taxes. (Decided under former law.) 1974‑75 Op Atty Gen, No 4023, p 97 (April 24, 1975) 1975 WL 22320.

Subsection (3) of former Code 1962 Section 65‑2766 stated that the purchaser at a tax sale must be given a duplicate warrant showing the taxes for which the warrant was issued. 1969‑70 Op Atty Gen, No 2899, p 143 (May 14, 1970) 1970 WL 12182.

The surplus remaining after the sale of real property for nonpayment of taxes is to be held pending a proper judicial order for its disposition except in cases where written consent of the defaulting taxpayer is obtained. (Decided under former law.) 1969‑70 Op Atty Gen, No 2812, p 21 (January 6, 1970) 1970 WL 12111.

The tax collector of Pickens County was required by the provisions of subsection (5) of former Code 1962 Section 65‑2766 to disburse the excess money from a tax sale when the taxpayer consented in writing for it to be paid to the mortgagee or lienholder. 1967‑68 Op Atty Gen, No 2602, p 323 (November 7, 1968) 1968 WL 8994.

**SECTION 12‑51‑70.** Default by successful bidder; readvertisement of property.

 If the successful bidder fails to remit in legal tender within the time specified, the person officially charged with the collection of delinquent taxes shall cancel that bid and duly readvertise the same property for sale, in the same manner, on a subsequent delinquent tax sale date. The defaulting bidder is liable for no more than five hundred dollars damages upon default, which may be collected by suit by the person officially charged with the collection of delinquent taxes in the name of the taxing authority.

HISTORY: 1962 Code Section 65‑2815.6; 1971 (57) 499; 1985 Act No. 166, Section 7; 2012 Act No. 186, Section 4, eff June 7, 2012.

Library References

Taxation 2847, 2942, 2951.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1170 to 1173, 1261, 1263, 1294.

**SECTION 12‑51‑80.** Settlement by treasurer.

 The treasurer shall make full settlement of tax sale monies, within forty‑five days after the sale, to the respective political subdivisions for which the taxes were levied. Proceeds of the sales in excess thereof must be retained by the treasurer as otherwise provided by law.

HISTORY: 1962 Code Section 65‑2815.7; 1971 (57) 499; 1985 Act No. 166, Section 8; 2015 Act No. 87 (S.379), Section 57, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 57, substituted “within forty‑five days” for “within thirty days”.

Library References

Taxation 2847, 2977.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1170 to 1173, 1310 to 1313.

Attorney General’s Opinions

The Treasurer of Chester County should disburse from the proceeds of the sale of property for nonpayment of taxes the amounts due therefrom to the respective entities that levied the tax. 1987 Op Atty Gen, No 87‑41, p 113 (April 29, 1987) 1987 WL 245450.

**SECTION 12‑51‑90.** Redemption of real property; assignment of purchaser’s interest.

 (A) The defaulting taxpayer, any grantee from the owner, or any mortgage or judgment creditor may within twelve months from the date of the delinquent tax sale redeem each item of real estate 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. If prior to the expiration of the redemption period, the purchaser assigns his interest in any real property purchased at a delinquent tax sale, the grantee from the successful bidder shall furnish the person officially charged with the collection of delinquent taxes a conveyance, witnessed and notarized. The person officially charged with the collection of delinquent taxes shall replace the successful bidder’s name and address with the grantee’s name and address in the delinquent tax sale book.

 (B) The lump sum amount of interest due on the whole amount of the delinquent tax sale based on the month during the redemption period the property is redeemed and that rate relates back to the beginning of the redemption period according to the following schedule:

|  |  |
| --- | --- |
|  |  |
| Month of Redemption Period | Amount of Interest Imposed |
| Property Redeemed |   |
| First three months | three percent of the bid amount |
| Months four, five, and six | six percent of the bid amount |
| Months seven, eight, and nine | nine percent of the bid amount |
| Last three months | twelve percent of the bid amount |

 However, in every redemption, the amount of interest due must not exceed the amount of the bid on the property submitted on behalf of the forfeited land commission pursuant to Section 12‑51‑55.

 (C) If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at the delinquent tax sale within the twelve months provided in subsection (A) and after the passing of an additional twelve months, the tax deed issued is incontestable on procedural or other grounds.

HISTORY: 1962 Code Section 65‑2815.8; 1971 (57) 499; 1985 Act No. 166, Section 9; 1996 Act No. 332, Section 1; 2000 Act No. 334, Section 1, eff June 6, 2000; 2001 Act No. 89, Section 48, eff July 20, 2001; 2006 Act No. 238, Section 3.A, eff March 15, 2006.

Editor’s Note

2000 Act No. 334, Section 2, provides that the act applies to redemptions of property sold for delinquent taxes at sales held on or after the effective date of the act [June 6, 2000].

CROSS REFERENCES

Redemption of property by the owner of a mobile or modular home, see Section 12‑51‑95.

Successful purchaser’s entitlement to interest in the event real property is redeemed, see Section 12‑51‑100.

Library References

Taxation 3000 to 3053.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1354 to 1467.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Limitation of Actions Section 51, Taxation.

Attorney General’s Opinions

Discussion of how to compute the amount of time a defaulting taxpayer has to redeem property subsequent to a tax sale. S.C. Op.Atty.Gen. (August 21, 2015) 2015 WL 5157543.

Discussion of whether a successful purchaser at a tax sale is entitled to payment of interest and repayment of ad valorem taxes by the County after a tax deed is set aside by a Court. S.C. Op.Atty.Gen. (July 30, 2013) 2013 WL 4397082.

The defaulting taxpayer, not the purchaser of property sold at a distress sale, is responsible for property taxes during the redemption period following the sale. S.C. Op Atty Gen (Nov. 23, 2010) 2010 WL 4982623.

Discussion of the word “month” for purposes of computation of the twelve month redemption period. S.C. Op.Atty.Gen. (Dec. 17, 2004) 2004 WL 3058233.

Discussion of the applicability of Hawkins v. Bruno Yacht Sales, 353 S.C. 31, 577 S.E.2d 202 (2003) to delinquent tax sales conducted in 2002 by the Delinquent Tax Collector for Newberry County. S.C. Op.AttyGen. (Feb. 18, 2004) 2004 WL 439327.

The date of the “public auction tax sale” is the date the property was sold at the public auction and not the date the tax deed is issued. 1992 Op Atty Gen, No 92‑50 (September 3, 1992) 1992 WL 575656.

A municipality may enforce the payment of delinquent property taxes by execution and sale, however, a municipal tax lien is subordinate to a lien for county or state taxes; when property impressed with a municipal tax lien is sold by a county or the state, the municipality may bid at the sale to protect its lien or may pay the taxes owed the county or the state, thereby making its lien a first lien. 1989 Op Atty Gen, No 89‑126, p 342 (November 8, 1989) 1989 WL 406215.

The official charged with the sale of a mobile or modular home for nonpayment of taxes has no duty to set or determine rents due the purchaser. The official, however, should require satisfactory proof of such payments before the redemption is complete. 1988 Op Atty Gen, No 88‑59, p 167 (August 10, 1988) 1988 WL 383542.

A purchaser of real property sold by a city for non‑payment of taxes may redeem the property when the same is sold by the county at a subsequent tax sale. 1986 Op Atty Gen, No 86‑29, p 101 (March 5, 1986) 1986 WL 191991.

Interest prescribed by former Section 12‑49‑520 or by Section 12‑51‑90 must be paid as condition for redemption of land purchased by Forfeited Land Commissions. 1985 Op Atty Gen, No 85‑20, p 69 (March 7, 1985) 1985 WL 165990.

Defaulting taxpayer is responsible for payment of current taxes on property during 18 month redemption period. No statutory authority to recover taxes from owner paid by purchaser during redemption period. Purchaser of property sold for nonpayment of ad valorem taxes receives title at end of redemption period subject to lien for unpaid taxes upon property. 1984 Op Atty Gen, No 84‑27, p 67 (March 8, 1984) 1984 WL 159834.

A friend of a defaulting taxpayer whose real property was sold for failure to pay taxes thereon could not redeem the property of the defaulting taxpayer, in that former Code 1962 Section 65‑2772 extended the right of redemption to the owner or any mortgagee or judgment creditor of the owner and to no other person. 1969‑70 Op Atty Gen, No 2870, p 107 (April 3, 1970) 1970 WL 12156.

A mortgagee could redeem property covered by the mortgage that was sold for nonpayment of an ad valorem tax, provided he did so within the twelve months’ period provided for such redemption in former Code 1962 Section 65‑2772. 1967‑68 Op Atty Gen, No 2425, p 80 (February 28, 1968) 1968 WL 8828.

October 4, 1967, was the last day in which the owner, any grantee from the owner, or any mortgage or judgment creditor could redeem property sold at a tax sale on October 3, 1966. (Decided under former law.) 1966‑67 Op Atty Gen, No 2309, p 130 (August 25, 1967) 1967 WL 8619.

The owner of real property that has been sold for nonpayment of taxes has the right to redeem the same upon payment of the amount of the purchaser’s bid, plus seven percent, and the purchaser is entitled to the return of the amount of his bid, plus seven percent, regardless of the time that the property is so redeemed, provided that such redemption takes place within the twelve months’ period provided therefore. (Decided under former law.) 1965‑66 Op Atty Gen, No 2161, p 291 (September 26, 1966) 1966 WL 8610.

Defaulting taxpayer is entitled to possession of his real estate seized and sold for nonpayment of taxes during the period of one year from the date of sale of such property as is allowed for the redemption of the same. (Decided under former law.) 1965‑66 Op Atty Gen, No 2141, p 268 (August 30, 1966) 1966 WL 8593.

NOTES OF DECISIONS

In general 1

Clear title actions 4

Interest 2

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1. In general

Property owner’s purchase of property from Forfeited Land Commission, after Commission had purchased property at a tax sale, was not a redemption, and could not resurrect mortgage on property that had been extinguished by tax sale; purchase was made after expiration of redemption period, and was made at price Commission set, rather than by payment of delinquent taxes, assessments, penalties, costs, and interest. Federal Financial Co. v. Hartley (S.C. 2008) 380 S.C. 65, 668 S.E.2d 410. Taxation 2975(1); Taxation 3000

Title to property was vested in a county tax sale purchaser, even though the property had previously been sold to another at a federal tax sale, where the federal tax sale purchaser failed to timely redeem the property after the county tax sale. Taylor v. Mill (S.C. 1992) 310 S.C. 526, 426 S.E.2d 311. Internal Revenue 4862

A condominium was “real property” as defined by Section 12‑37‑10(1), rather than “personal property” as defined by Section 12‑37‑10(2), for purposes of a mortgage creditor’s right of redemption after a delinquent tax sale as established by Section 12‑51‑90, since the Horizontal Property Act (Section 27‑31‑10 et seq.) defines condominium ownership as “the individual ownership of a particular apartment,” and provides that “taxes...shall be assessed against and collected on each individual apartment,” each of which shall be carried on the tax books as a separate and distinct entity. Dibble v. Schade (S.C.App. 1992) 308 S.C. 88, 417 S.E.2d 104, rehearing denied.

2. Interest

Taxpayer was not required to pay statutory prejudgment interest on bid interest due to tax sale purchaser after taxpayer redeemed property, as sum due to purchaser was the bid interest under redemption statute; although bid interest ultimately would be paid to purchaser, redemption statute required money first pass from taxpayer through county, and according to county, the bid interest was no longer due and owing. Crusader Servicing Corp. v. County of Laurens (S.C.App. 2009) 382 S.C. 25, 674 S.E.2d 495. Interest 39(2.20)

County was not jointly and severally liable with taxpayer for paying bid interest to tax sale purchaser, following taxpayer’s redemption of property; statute required county to remit paid money to purchaser as part of the redemption process, and county was not responsible for inequity that resulted to parties, in that it was taxpayer who neglected to pay its taxes for one year, and was not as diligent as it should have been in ascertaining status of its tax exemption for other tax year, and had taxpayer paid taxes due and then sought a refund, property would not have been sold at tax sale. Crusader Servicing Corp. v. County of Laurens (S.C.App. 2009) 382 S.C. 25, 674 S.E.2d 495. Taxation 3031; Taxation 3195

County was not jointly and severally liable with taxpayer for paying bid interest to tax sale purchaser, following taxpayer’s redemption of property; statute required county to remit paid money to purchaser as part of the redemption process, and county was not responsible for inequity that resulted to parties, in that it was taxpayer who neglected to pay its taxes for one year, and was not as diligent as it should have been in ascertaining status of its tax exemption for other tax year, and had taxpayer paid taxes due and then sought a refund, property would not have been sold at tax sale. Crusader Servicing Corp. v. County of Laurens (S.C.App. 2009) 382 S.C. 25, 674 S.E.2d 495. Taxation 3031; Taxation 3195

Purchaser was not entitled to recover an interest payment on the purchase price of real property purchased at tax sale, if tax sale was set aside; statute provided a defaulting taxpayer 12 months from the date of the delinquent tax sale to redeem an item of real estate. Smith v. Barr (S.C.App. 2007) 375 S.C. 157, 650 S.E.2d 486, rehearing denied. Taxation 3203

Proper calculation of interest to redeem property sold for delinquent taxes would be addressed by Supreme Court in the interest of judicial economy, even though administrative law judge (ALJ) lacked jurisdiction; the circuit court where the case should have been brought addressed the issue. Buist v. Huggins (S.C. 2006) 367 S.C. 268, 625 S.E.2d 636. Taxation 3031

Statutory interest that taxpayer must pay on the whole amount of the delinquent tax sale bid in order to redeem the property is a flat fee and is not calculated on a per diem basis; the rate increases for redemptions later in year after tax sale. Buist v. Huggins (S.C. 2006) 367 S.C. 268, 625 S.E.2d 636. Taxation 3031

Taxpayers’ challenges to calculation of interest paid to redeem real property should have been brought in the circuit court under the Alternate Procedures Act, not before an administrative law judge (ALJ) under the Revenue Procedures Act, and, thus, the ALJ lacked jurisdiction; the taxpayers sought a refund of interest and did not challenge tax assessments or millage rates. Buist v. Huggins (S.C. 2006) 367 S.C. 268, 625 S.E.2d 636. Taxation 3031

3. Notice

Tax sale of property for failure to pay ad valorem property taxes for two tax years was valid even if tax notice for one of the tax years was retroactively voided on basis of award of tax exempt status to taxpayer for one of the tax years, such that taxpayer’s redemption of property was valid, which triggered tax sale purchaser’s statutory entitlement to 12 percent bid interest; taxpayer failed to pay undisputedly due back taxes for other tax year at issue until after tax sale, and this failure validated the tax sale. Crusader Servicing Corp. v. County of Laurens (S.C.App. 2009) 382 S.C. 25, 674 S.E.2d 495. Taxation 3031

County was not required to give mortgagee notice of tax sale and redemption period of mortgaged property before end of one‑year redemption period; rather, county was only required to give 30‑day notice before the tax title was delivered to the purchaser. Durham v. United Companies Financial Corp. (S.C. 1998) 331 S.C. 600, 503 S.E.2d 465. Taxation 3016

4. Clear title actions

The trial court properly exercised its discretion in voiding, sua sponte, a default judgment entered against the former property owner in a clear title action brought by one who had purchased the property at a delinquent tax sale where (1) the mortgage creditor, who clearly had an interest in the property by virtue of the mortgage it held, had not yet been named a party to the suit when the court signed the order of default, and (2) the purchaser suffered no prejudice since the property owner had never responded to the complaint, and as a tax sale purchaser, he had no title to the property at the time he brought the clear title action. Dibble v. Schade (S.C.App. 1992) 308 S.C. 88, 417 S.E.2d 104, rehearing denied.

The motion of a mortgage creditor to intervene, in a clear title action brought by one who had purchased the real property at a delinquent tax sale, would not be barred by laches where the motion was brought within 5 months of the action’s filing and the purchaser was not prejudiced since he had no right to title until the expiration of the redemption period. Dibble v. Schade (S.C.App. 1992) 308 S.C. 88, 417 S.E.2d 104, rehearing denied. Taxation 3160

**SECTION 12‑51‑95.** Owner of mobile or manufactured home may redeem property.

 Notwithstanding the provisions of Section 12‑51‑110, the owner or lienholder of any mobile home or manufactured home may redeem the property as provided in Sections 12‑51‑90, 12‑51‑100, and 12‑51‑120. For purposes of this chapter, “mobile or manufactured home” is defined in Section 12‑43‑230(b) or Section 40‑29‑20(9), as applicable.

HISTORY: 1988 Act No. 647, Section 1; 1994 Act No. 506, Section 13.

CROSS REFERENCES

Conditions of redemption, see Section 12‑51‑96.

Library References

Taxation 2847.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1170 to 1173.

Attorney General’s Opinions

Failure to comply with provisions of Section 12‑49‑225 by giving notice to those persons entitled thereby would preclude issuance of valid tax deed. 1991 Op Atty Gen, No 91‑19 p 64 (March 25, 1991) 1991 WL 474749.

Notice required by Section 2‑49‑225 to lienholders concerning sale of mobile home for non‑payment of taxes is mandatory. 1991 Op Atty Gen, No 91‑19 p 64 (March 25, 1991) 1991 WL 474749.

The official charged with the sale of a mobile or modular home for nonpayment of taxes has no duty to set or determine rents due the purchaser. The official, however, should require satisfactory proof of such payments before the redemption is complete. 1988 Op Atty Gen, No 88‑59, p 167 (August 10, 1988) 1988 WL 383542.

**SECTION 12‑51‑96.** Conditions of redemption.

 In order for the owner of or lienholder on the “mobile home” or “manufactured home” to redeem his property as permitted in Section 12‑51‑95, the mobile or manufactured home subject to redemption must not be removed from its location at the time of the delinquent tax sale for a period of twelve months from the date of the sale unless the owner is required to move it by the person other than himself who owns the land upon which the mobile or manufactured home is situated. In this event, the owner of the mobile or manufactured home must notify the purchaser and the delinquent tax collector of the new location of the mobile or manufactured home, which new location also must be in this State. If the owner moves the mobile or manufactured home in violation of this section, he is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both. In addition to the other requirements and payments necessary for an owner of a mobile or manufactured home to redeem his property after a delinquent tax sale, the defaulting taxpayer or lienholder also must pay rent to the purchaser at the time of redemption an amount not to exceed one‑twelfth of the taxes for the last completed property tax year, exclusive of penalties, costs, and interest, for each month between the sale and redemption. However, the monthly rental, when calculated as provided in this section, must not be less than ten dollars. For purposes of this rent calculation, more than one‑half of the days in any month counts as a whole month.

HISTORY: 1988 Act No. 647, Section 3; 1994 Act No. 506, Section 14.

Library References

Taxation 2847.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1170 to 1173.

**SECTION 12‑51‑100.** Cancellation of sale upon redemption; notice to purchaser; refund of purchase price.

 Upon the real estate being redeemed, the person officially charged with the collection of delinquent taxes shall cancel the sale in the tax sale book and note thereon the amount paid, by whom and when. The successful purchaser, at the delinquent tax sale, shall promptly be notified by mail to return the tax sale receipt to the person officially charged with the collection of delinquent taxes in order to be expeditiously refunded the purchase price plus the interest provided in Section 12‑51‑90.

HISTORY: 1962 Code Section 65‑2815.9; 1971 (57) 499; 1985 Act No. 166, Section 10; 1998 Act No. 285, Section 3.

CROSS REFERENCES

Redemption of property by the owner of a mobile or modular home, see Section 12‑51‑95.

Library References

Taxation 3053, 3193.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1458 to 1461, 1463, 1687, 1689 to 1690, 1692 to 1693, 1702 to 1711.

Attorney General’s Opinions

Discussion of whether a successful purchaser at a tax sale is entitled to payment of interest and repayment of ad valorem taxes by the County after a tax deed is set aside by a Court. S.C. Op.Atty.Gen. (July 30, 2013) 2013 WL 4397082.

The official charged with the sale of a mobile or modular home for nonpayment of taxes has no duty to set or determine rents due the purchaser. The official, however, should require satisfactory proof of such payments before the redemption is complete. 1988 Op Atty Gen, No 88‑59, p 167 (August 10, 1988) 1988 WL 383542.

Interest prescribed by former Section 12‑49‑520 or Section 12‑51‑90 must be paid as condition for redemption of land purchased by Forfeited Land Commissions. 1985 Op Atty Gen, No 85‑20, p 69 (March 7, 1985) 1985 WL 165990.

A friend of a defaulting taxpayer whose real property was sold for failure to pay taxes thereon could not redeem the property of the defaulting taxpayer, in that former Code 1962 Section 65‑2772 extended the right of redemption to the owner or any mortgagee or judgment creditor of the owner and to no other person. 1969‑70 Op Atty Gen, No 2870, p 107 (April 3, 1970) 1970 WL 12156.

A refund can only be made when the purchaser cannot be put in possession of the property because of some irregularity or noncompliance with statutory requirements, or when the tax sale is invalid for legal reasons and the purchaser is not put in actual possession of the property. (Decided under former law.) 1967‑68 Op Atty Gen, No 2447, p 105 (May 2, 1968) 1968 WL 8849.

A mortgagee could redeem property covered by the mortgage that was sold for nonpayment of an ad valorem tax, provided he did so within the twelve months’ period provided for such redemption in former Code 1962 Section 65‑2772. 1967‑68 Op Atty Gen, No 2425, p 80 (February 28, 1968) 1968 WL 8828.

October 4, 1967, was the last day in which the owner, any grantee from the owner, or any mortgage or judgment creditor could redeem property sold at a tax sale on October 3, 1966. (Decided under former law.) 1966‑67 Op Atty Gen, No 2309, p 130 (August 25, 1967) 1967 WL 8619.

The owner of real property that has been sold for nonpayment of taxes has the right to redeem the same upon payment of the amount of the purchaser’s bid, plus seven percent, and the purchaser is entitled to the return of the amount of his bid, plus seven percent, regardless of the time that the property is so redeemed, provided that such redemption takes place within the twelve months’ period provided therefore. (Decided under former law.) 1965‑66 Op Atty Gen, No 2161, p 291 (September 26, 1966) 1966 WL 8610.

Defaulting taxpayer is entitled to possession of his real estate seized and sold for nonpayment of taxes during the period of one year from the date of sale of such property as is allowed for the redemption of the same. (Decided under former law.) 1965‑66 Op Atty Gen, No 2141, p 268 (August 30, 1966) 1966 WL 8593.

NOTES OF DECISIONS

In general 1

Interest 2

1. In general

Tax sale of property for failure to pay ad valorem property taxes for two tax years was valid even if tax notice for one of the tax years was retroactively voided on basis of award of tax exempt status to taxpayer for one of the tax years, such that taxpayer’s redemption of property was valid, which triggered tax sale purchaser’s statutory entitlement to 12 percent bid interest; taxpayer failed to pay undisputedly due back taxes for other tax year at issue until after tax sale, and this failure validated the tax sale. Crusader Servicing Corp. v. County of Laurens (S.C.App. 2009) 382 S.C. 25, 674 S.E.2d 495. Taxation 3031

County officials effected “redemption” by setting aside tax sale after redemption period expired and returning property to taxpayers, and thus, officials were statutorily required to return to purchaser money it paid for property plus eight percent interest. H & K Specialists v. Brannen (S.C.App. 2000) 340 S.C. 585, 532 S.E.2d 617. Taxation 3195

A condominium was “real property” as defined by Section 12‑37‑10(1), rather than “personal property” as defined by Section 12‑37‑10(2), for purposes of a mortgage creditor’s right of redemption after a delinquent tax sale as established by Section 12‑51‑90, since the Horizontal Property Act (Section 27‑31‑10 et seq.) defines condominium ownership as “the individual ownership of a particular apartment,” and provides that “taxes...shall be assessed against and collected on each individual apartment,” each of which shall be carried on the tax books as a separate and distinct entity. Dibble v. Schade (S.C.App. 1992) 308 S.C. 88, 417 S.E.2d 104, rehearing denied.

2. Interest

Tax sale purchaser of real property that was later redeemed by the delinquent taxpayer was not entitled to statutory prejudgment interest on its bid amount for the period of time in which the county held the purchaser’s bid money while awaiting return of the tax sale receipt from the purchaser; purchaser was required to return the tax sale receipt as a condition precedent to return of the bid. Crusader Servicing Corp. v. County of Laurens (S.C.App. 2009) 382 S.C. 25, 674 S.E.2d 495. Interest 39(2.20)

County was not jointly and severally liable with taxpayer for paying bid interest to tax sale purchaser, following taxpayer’s redemption of property; statute required county to remit paid money to purchaser as part of the redemption process, and county was not responsible for inequity that resulted to parties, in that it was taxpayer who neglected to pay its taxes for one year, and was not as diligent as it should have been in ascertaining status of its tax exemption for other tax year, and had taxpayer paid taxes due and then sought a refund, property would not have been sold at tax sale. Crusader Servicing Corp. v. County of Laurens (S.C.App. 2009) 382 S.C. 25, 674 S.E.2d 495. Taxation 3031; Taxation 3195

**SECTION 12‑51‑110.** Personal property shall not be subject to redemption; purchaser’s bill of sale and right of possession.

 For personal property, there is no redemption period subsequent to the time that the property is struck off to the successful purchaser at the delinquent tax sale. Upon payment by the successful purchaser and delivery of the duplicate warrant (i.e. tax receipt) with description and notation by the person officially charged with the collection of delinquent taxes, he shall deliver to the successful purchaser the following form properly executed which is his bill of sale and right of possession:

 “Sold to \_\_\_\_\_\_\_\_\_\_ at Delinquent Tax Sale on \_\_\_\_\_\_\_\_\_\_, who is the successful purchaser of personal property sold for delinquent taxes.

|  |  |
| --- | --- |
|  |  |
|   |   |
|   | (Officer Charged with Tax Collection)”. |

HISTORY: 1962 Code Section 65‑2815.10; 1971 (57) 499; 1985 Act No. 166, Section 11.

CROSS REFERENCES

Redemption of property by the owner of a mobile or modular home, see Section 12‑51‑95.

Library References

Taxation 2847.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1170 to 1173.

Attorney General’s Opinions

The official charged with the sale of a mobile or modular home for nonpayment of taxes has no duty to set or determine rents due the purchaser. The official, however, should require satisfactory proof of such payments before the redemption is complete. 1988 Op Atty Gen, No 88‑59, p 167 (August 10, 1988) 1988 WL 383542.

There is no statutory requirement that lienholders or mortgagees be notified when personal property is levied upon and sold for nonpayment of taxes generated by reason of such property; a purchaser of personal property takes free and clear of other mortgages or liens when such property is sold for nonpayment of taxes generated by such property; personal property that customarily and generally constitutes a part of a mobile home may be levied upon and sold as a part of the mobile home for nonpayment of the taxes on the mobile home; Code 1962 Section 65‑2815.10 [Code 1976 Section 12‑51‑110] prescribes the form to be given the purchaser of personal property when such property is sold under the provisions of Article 5.1 of Chapter 22 of Title 65 [Chapter 51 of Title 12 of 1976 Code]; the purchaser is to be given possession of personal property when sold for nonpayment of taxes. 1974‑75 Op Atty Gen, No 4020, p 91 (April 21, 1975) 1975 WL 22317.

NOTES OF DECISIONS

In general 1

1. In general

A condominium was “real property” as defined by Section 12‑37‑10(1), rather than “personal property” as defined by Section 12‑37‑10(2), for purposes of a mortgage creditor’s right of redemption after a delinquent tax sale as established by Section 12‑51‑90, since the Horizontal Property Act (Section 27‑31‑10 et seq.) defines condominium ownership as “the individual ownership of a particular apartment,” and provides that “taxes...shall be assessed against and collected on each individual apartment,” each of which shall be carried on the tax books as a separate and distinct entity. Dibble v. Schade (S.C.App. 1992) 308 S.C. 88, 417 S.E.2d 104, rehearing denied.

**SECTION 12‑51‑120.** Notice of approaching end of redemption period.

 Neither more than forty‑five days nor less than twenty days before the end of the redemption period for real estate sold for taxes, the person officially charged with the collection of delinquent taxes shall mail a notice by “certified mail, return receipt requested‑restricted delivery” as provided in Section 12‑51‑40(b) to the defaulting taxpayer and to a grantee, mortgagee, or lessee of the property of record in the appropriate public records of the county. The notice must be mailed to the best address of the owner available to the person officially charged with the collection of delinquent taxes that the real property described on the notice has been sold for taxes and if not redeemed by paying taxes, assessments, penalties, costs, and interest at the applicable rate on the bid price in the total amount of \_\_\_ dollars on or before \_\_\_ (twelve months from date of sale) (date) \_\_\_\_\_\_\_\_\_\_, a tax title must be delivered to the successful purchaser at the tax sale. Pursuant to this chapter, the return of the certified mail “undelivered” is not grounds for a tax title to be withheld or be found defective and ordered set aside or canceled of record.

HISTORY: 1962 Code Section 65‑2815.11; 1971 (57) 499; 1985 Act No. 166, Section 12; 1996 Act No. 332, Section 3; 1996 Act No. 431, Section 31; 2000 Act No. 399, Section 3(X)(7), eff January 1, 2001.

CROSS REFERENCES

Redemption of property by the owner of a mobile or modular home, see Section 12‑51‑95.

Library References

Taxation 3012.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1399 to 1433.

RESEARCH REFERENCES

Encyclopedias

28 Am. Jur. Proof of Facts 3d 439, Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property.

Attorney General’s Opinions

Where the county mails a tax notice to an address which the county believes will provide notice to the property owner of the amount of taxes owed on such property, any late payment of the taxes on such property will be subject to penalty under S.C. Code Ann. Section 12‑45‑180 where the person authorized to send the notice exercised diligence to ascertain the correct address of the property owner or used an address consistent with the intentions of the property owner. 1994 Op Atty Gen, No 94‑23, p. 58 (April 5, 1994) 1994 WL 199696.

The official charged with the sale of a mobile or modular home for nonpayment of taxes has no duty to set or determine rents due the purchaser. The official, however, should require satisfactory proof of such payments before the redemption is complete. 1988 Op Atty Gen, No 88‑59, p 167 (August 10, 1988) 1988 WL 383542.

NOTES OF DECISIONS

In general 1

Best address 2

Mailing of notice 3

1. In general

One copy of joint redemption notice, mailed by county treasurer to husband and wife who held property as tenants in common, deviated from notice of redemption rights requirements, and, thus, resulted in complete abrogation of transaction that granted title to tax sale purchaser. Johnson v. Arbabi (S.C.App. 2001) 347 S.C. 132, 553 S.E.2d 453, rehearing denied, reversed 355 S.C. 64, 584 S.E.2d 113. Taxation 3017; Taxation 3070

A taxing authority’s failure to give the required notice of tax sale or redemption right is not excused regardless of whether the taxpayer received actual notice; failure to give proper notice is a fundamental defect that renders the proceedings absolutely void. Johnson v. Arbabi (S.C.App. 2001) 347 S.C. 132, 553 S.E.2d 453, rehearing denied, reversed 355 S.C. 64, 584 S.E.2d 113. Taxation 2947; Taxation 3014; Taxation 3037

Any material deviation from the notice requirements will eventuate in the complete abrogation of a transaction granting title to a tax sale purchaser. Code 1976, Sections Sections 12‑51‑40, Johnson v. Arbabi (S.C.App. 2001) 347 S.C. 132, 553 S.E.2d 453, rehearing denied, reversed 355 S.C. 64, 584 S.E.2d 113. Taxation 3070; Taxation 3072(4)

County was neither required nor empowered to notify taxpayers whose real property had been sold for delinquent taxes of the approaching end of the redemption period where the county had not elected to follow the then available alternative procedure for collecting delinquent taxes which requires the giving to taxpayers of notice as to the expiration of the redemption period. Patterson v. Goldsmith (S.C.App. 1986) 288 S.C. 551, 343 S.E.2d 661. Taxation 3014

2. Best address

County treasurer was not required to send separate notices to property owners, who lived at same address, regarding upcoming end of redemption period following tax sale for unpaid taxes, where owners were spouses with same address, address was certainly the best address available, and address to which notice was sent was only address ever given to county officials. Johnson v. Arbabi (S.C. 2003) 355 S.C. 64, 584 S.E.2d 113. Taxation 3016; Taxation 3018

After notice of right to redeem was returned to county treasurer marked that forwarding order had expired it was apparent that landowner had better address than one to which treasurer had sent notice, and therefore county treasurer’s failure to attempt to ascertain such other address constituted failure to exercise due diligence in sending notice to best address available, such that tax deed issued to purchaser of landowner’s property was voidable. Benton v. Logan (S.C.App. 1996) 323 S.C. 338, 474 S.E.2d 446. Taxation 3018

Where statute requires as a condition precedent to foreclosing a taxpayer’s rights in property sold for taxes that he should be given notice of his right to redeem, such a requirement is jurisdictional and therefore, the owner’s right of redemption cannot be cut off unless the required notice is given, and, where, the statute permits the giving of such notice by mail, the person authorized to send the notice must exercise diligence to ascertain the correct address of the property owner. Good v. Kennedy (S.C.App. 1987) 291 S.C. 204, 352 S.E.2d 708. Taxation 3014; Taxation 3018

Tax collector failed to exercise diligence and to use the best address in attempting to furnish property owner notice of close of redemption period for property sold for taxes, where the notice, which was mailed to the address obtained from the county tax assessor’s property card was returned, undelivered, to the tax collector, and the property owner had furnished the tax collector and other interested parties with his correct address, as required by Section 30‑5‑35, by placing it on his deed. Good v. Kennedy (S.C.App. 1987) 291 S.C. 204, 352 S.E.2d 708. Taxation 3018

3. Mailing of notice

Wife was husband’s “implied agent” for purposes of receiving joint redemption notice regarding tax sale of jointly owned marital home, where husband left marital home, husband’s attorney sent letter to county after husband left home stating that all future tax bills should be sent to marital home, wife delivered mail either to husband or to husband’s attorney, and husband neither filed change‑of‑address form with post office nor wrote county with another, more appropriate, address for him. Johnson v. Arbabi (S.C. 2003) 355 S.C. 64, 584 S.E.2d 113. Marriage And Cohabitation 626(4); Taxation 3018

Wife was not agent of husband, who was not living with wife, due to marital difficulties, at time she received redemption notice for property sold at tax sale; although parties were married, husband denied authorizing wife to accept certified mail on his behalf, and no other evidence indicated he permitted her to act upon his behalf regarding management of the property. Johnson v. Arbabi (S.C.App. 2001) 347 S.C. 132, 553 S.E.2d 453, rehearing denied, reversed 355 S.C. 64, 584 S.E.2d 113. Marriage And Cohabitation 626(4)

Postal regulations that allegedly precluded restricted delivery when addressee was corporation did not excuse non‑compliance with tax sale statute’s restricted delivery requirements, even though owner of record was corporation; because tax sale was required to be conducted in strict compliance with statutory requirements, attempted compliance with statutory mailing provisions was required before non‑compliance could be excused, and there was no evidence of attempt to have Post Office deliver redemption notice by restricted delivery to corporation. In re Ryan Inv. Co., Inc. (S.C. 1999) 335 S.C. 392, 517 S.E.2d 692. Taxation 3018

The party seeking to excuse non‑compliance with statutory mailing requirements pertaining to tax sales must demonstrate facts indicating attempted compliance before the court will consider the adequacy of the mailing actually accomplished. In re Ryan Inv. Co., Inc. (S.C. 1999) 335 S.C. 392, 517 S.E.2d 692. Taxation 2947

Tax sale of delinquent taxpayer’s real property and subsequent deed to purchaser were invalid where redemption notice sent to taxpayer was not sent delivery to addressee only, but rather, was sent certified mail and taxpayer’s wife who had no interest in property signed receipt. Manji v. Blackwell (S.C.App. 1996) 323 S.C. 91, 473 S.E.2d 837, rehearing denied. Taxation 3018

**SECTION 12‑51‑130.** Execution and delivery of tax title; costs and fees; overages.

 Upon failure of the defaulting taxpayer, a grantee from the owner, a mortgagee, a judgment creditor, or a lessee of the property to redeem realty within the time period allowed for redemption, the person officially charged with the collection of delinquent taxes, within thirty days or as soon after that as possible, shall make a tax title to the purchaser or the purchaser’s assignee. Delivery of the tax title to the clerk of court or register of deeds is considered “putting the purchaser, or assignee, in possession”. The tax title must include, among other things, the name of the defaulting taxpayer, the name of any grantee of record of the property, the date of execution, the date the realty was posted and by whom, and the dates each certified notice was mailed to the party or parties of interest, to whom mailed and whether or not received by the addressee. The successful purchaser, or assignee, is responsible for the actual cost of preparing the tax title plus documentary stamps necessary to be affixed and recording fees. The successful purchaser, or assignee, shall pay the amounts to the person officially charged with the collection of delinquent taxes before delivery of the tax title to the clerk of court or register of deeds and, upon payment, the person officially charged with the collection of delinquent taxes is responsible for promptly transmitting the tax title to the clerk of court or register of deeds for recording and remitting the recording fee and documentary stamps cost. If the tax sale of an item produced more cash than the full amount due in taxes, assessments, penalties, and costs, the overage must be applied to any outstanding municipal tax liens on the property. Any remaining overage belongs to the owner of record immediately before the end of the redemption period to be claimed or assigned according to law. These sums are payable ninety days after execution of the deed unless a judicial action is instituted during that time by another claimant. If neither claimed nor assigned within five years of date of public auction tax sale, the overage shall escheat to the general fund of the governing body. Before the escheat date unclaimed overages must be kept in a separate account and must be invested so as not to be idle and the governing body of the political subdivision is entitled to the earnings for keeping the overage. On escheat date the overage must be transferred to the general funds of the governing body.

HISTORY: 1962 Code Section 65‑2815.12; 1971 (57) 499; 1985 Act No. 166, Section 13; 2000 Act No. 399, Section 3(X)(8), eff January 1, 2001; 2005 Act No. 145, Section 52, eff June 7, 2005; 2006 Act No. 238, Section 2, eff March 15, 2006; 2006 Act No. 386, Sections 44, 49.C, eff June 14, 2006.

Code Commissioner’s Note

1997 Act No. 34, Section 1, directed the Code Commissioner to change all references to “Register of Mesne Conveyances” to “Register of Deeds” wherever appearing in the 1976 Code of Laws.

Library References

Taxation 3060 to 3133.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1371, 1468 to 1604.

Attorney General’s Opinions

Discussion of the use of the “Tax Sale” overage funds when other taxes are due and payable to the county. S.C. Op.Atty.Gen. (Dec. 5, 2002) 2002 WL 31958835.

In the absence of specific statutory directions the governing body may establish procedures to return overages to a defaulting taxpayer or his assignee. Such procedures must require that a request for the overage be made by the taxpayer or his assignee and further require the taxpayer or the assignee to submit sufficient identification to establish the requesting party is in fact the taxpayer or the taxpayer’s assignee. 1992 Op Atty Gen, No 92‑50 (September 3, 1992) 1992 WL 575656.

The date of the “public auction tax sale” is the date the property was sold at the public auction and not the date the tax deed is issued. 1992 Op Atty Gen, No 92‑50 (September 3, 1992) 1992 WL 575656.

The disposition of overage funds resulting from a sale of property for delinquent taxes is controlled by Section 12‑51‑130, rather than the Uniform Unclaimed Property Act. The language of Section 12‑51‑130 is clear and unambiguous in directing that the overage funds escheat to the governing body. Further, the General Assembly stated its intent in Act 166 to create an exclusive method for collecting tax. Such method provides for overage funds escheating to the taxing jurisdiction. Finally, Section 12‑51‑130, as a special statute, is construed to prevail over the more general provision of the Unclaimed Property Act. 1992 Op Atty Gen, No 92‑48 (September 2, 1992) 1992 WL 575654.

A purchaser of property at a tax sale acquires the title thereto without warranty and buys at his own risk. The tax entity is not liable for the quantity or quality of the property sold. 1987 Op Atty Gen, No. 87‑49, p 131 (May 14, 1987) 1987 WL 245458.

Penalty is due for late payment of roll‑back taxes under Section 12‑45‑180 or Section 12‑51‑130. 1985 Op Atty Gen, No 85‑50, p 153 (May 9, 1985) 1985 WL 166020.

Defaulting taxpayer is responsible for payment of current taxes on property during 18 month redemption period. No statutory authority to recover taxes from owner paid by purchaser during redemption period. Purchaser of property sold for nonpayment of ad valorem taxes receives title at end of redemption period subject to lien for unpaid taxes upon property. 1984 Op Atty Gen, No 84‑27, p 67 (March 8, 1984) 1984 WL 159834.

Under a sale of property for nonpayment of taxes under the general procedure the proceeds are held or disbursed as provided by Section 12‑49‑460(5). Under a sale authorized by the alternate procedure, Section 12‑51‑10, et seq., the funds are held or disbursed as provided by Section 12‑51‑130. 1979 Op Atty Gen, No 79‑49, p 66 (March 13, 1979) 1979 WL 29055.

A penalty or interest charge was not applicable to special assessments except where specifically provided for by statute. (Decided under former law.) 1971‑72 Op Atty Gen, No 3333, p 164 (June 27, 1972) 1972 WL 20471.

Former Code 1962 Section 65‑2803 required that the tax collector serve and take exclusive possession of the property of the defaulting taxpayer as provided in former Code 1962 Section 65‑2766. 1969‑70 Op Atty Gen, No 2899, p 143 (May 14, 1970) 1970 WL 12182.

It was not necessary for the tax collector or sheriff to accompany the purchaser to the realty for purposes of passing title or putting in possession in accordance with former Code 1962 Section 65‑2776. 1966‑67 Op Atty Gen, No 2280, p 94 (May 22, 1967) 1967 WL 8593.

Former Code 1962 Section 65‑2776 reflected the intent of the legislature that the defaulting taxpayer remain in possession of the property during the twelve months period afforded for redemption. 1965‑66 Op Atty Gen, No 2141, p 268 (August 30, 1966) 1966 WL 8593.

NOTES OF DECISIONS

In general 1

Laches 2

1. In general

The sale of property of a defaulting taxpayer is governed strictly by statute. F.C. Enterprises, Inc. v. Dibble (S.C.App. 1999) 335 S.C. 260, 516 S.E.2d 459, rehearing denied, certiorari denied. Taxation 2900

Tax sale purchaser’s interest in property was subject to previously recorded lease and purchase option, even though lien for subject taxes attached by law to property eight months prior to execution of lease and option; there was no tax delinquency when lease and option were executed and no tax sale had yet occurred, and thus, purchaser secured same rights and title in property that lessor owned at time of sale. F.C. Enterprises, Inc. v. Dibble (S.C.App. 1999) 335 S.C. 260, 516 S.E.2d 459, rehearing denied, certiorari denied. Taxation 3065

Title to property was vested in a county tax sale purchaser, even though the property had previously been sold to another at a federal tax sale, where the federal tax sale purchaser failed to timely redeem the property after the county tax sale. Taylor v. Mill (S.C. 1992) 310 S.C. 526, 426 S.E.2d 311. Internal Revenue 4862

A condominium was “real property” as defined by Section 12‑37‑10(1), rather than “personal property” as defined by Section 12‑37‑10(2), for purposes of a mortgage creditor’s right of redemption after a delinquent tax sale as established by Section 12‑51‑90, since the Horizontal Property Act (Section 27‑31‑10 et seq.) defines condominium ownership as “the individual ownership of a particular apartment,” and provides that “taxes...shall be assessed against and collected on each individual apartment,” each of which shall be carried on the tax books as a separate and distinct entity. Dibble v. Schade (S.C.App. 1992) 308 S.C. 88, 417 S.E.2d 104, rehearing denied.

2. Laches

Equitable defenses of laches and stale demand did not bar taxpayer’s action to set aside tax sale of land, even though reasonableness of taxpayer’s failure to further investigate problem with her property taxes was questionable, where lapse of time between tax sale purchaser’s assertion of ownership and taxpayer’s filing of action the next year was not of an unreasonable length, taxpayer had been advised by her attorney that her name was still on the property, there was no evidence showing purchaser had entered into any obligation or changed position based on taxpayer’s delay, and only injury claimed by county would be by operation of statute which it had failed to comply with prior to tax sale. King v. James (S.C.App. 2010) 388 S.C. 16, 694 S.E.2d 35. Taxation 2991

**SECTION 12‑51‑135.** Removal of erroneously issued warrants.

 If a warrant, which has been filed with the clerk of court in any county, is determined by the Department of Revenue to have been issued and filed in error, the clerk of court, upon notification by the Department of Revenue, must remove the warrant from its book.

HISTORY: 1985 Act No. 201, Part II, Section 49; 1993 Act No. 181, Section 231.

Library References

Taxation 2939.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1284 to 1287.

Attorney General’s Opinions

Under Section 12‑51‑135, upon notification by the Tax Commission that a warrant has been issued and filed in error, the Clerk of Court should remove the warrant from the file and all references to it in the book. 1986 Op Atty Gen, No 86‑4, p 26 (January 9, 1986) 1986 WL 191966.

**SECTION 12‑51‑140.** Notice to mortgagees.

 The provisions of Sections 12‑49‑1110 through 12‑49‑1290, inclusive, relating to notice to mortgagees of proposed tax sales and of tax sales of properties covered by their respective mortgages are adopted as a part of this chapter.

HISTORY: 1962 Code Section 65‑2815.13; 1971 (57) 499.

Code Commissioner’s Note

At the direction of the Code Commissioner, “Sections 12‑49‑1110 through 12‑49‑1290” was substituted for “Sections 12‑49‑210 through 12‑49‑300” because the latter sections were repealed.

Library References

Taxation 2948.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1261, 1294.

**SECTION 12‑51‑150.** Official may void tax sales.

 If the official in charge of the tax sale discovers before a tax title has passed that there is a failure of any action required to be properly performed, the official may void the tax sale and refund the amount paid, plus interest in the amount actually earned by the county on the amount refunded, to the successful bidder. If the full amount of the taxes, assessments, penalties, and costs have not been paid, the property must be brought to tax sale as soon as practicable.

HISTORY: 1962 Code Section 65‑2815.14; 1971 (57) 499; 1985 Act No. 166, Section 14; 2006 Act No. 386, Sections 35, 49.D, eff June 14, 2006.

Code Commissioner’s Note

At the direction of the Code Commissioner, the first sentence as amended by Section 49.D of the 2006 amendment is set forth above.

Library References

Taxation 3069, 3193.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1498 to 1506, 1687, 1689 to 1690, 1692 to 1693, 1702 to 1711.

Attorney General’s Opinions

Discussion of the applicability of Hawkins v. Bruno Yacht Sales, 353 S.C. 31, 577 S.E.2d 202 (2003) to delinquent tax sales conducted in 2002 by the Delinquent Tax Collector for Newberry County. S.C. Op.Atty.Gen. (Feb. 18, 2004) 2004 WL 439327.

NOTES OF DECISIONS

In general 1

Interest 2

1. In general

County lacked authority to void tax sale of property on basis that taxpayer was awarded tax exempt status for one of two tax years at issue after sale took place, under statute that permitted official in charge of tax sale to void sale if he discovers before tax title has passed that there is a failure of any action required to be properly performed, as statute did not provide that official in charge of conducting sale could void it because taxes were wrongfully assessed and property was tax exempt, but only addressed situations in which sale was not properly conducted. Crusader Servicing Corp. v. County of Laurens (S.C.App. 2009) 382 S.C. 25, 674 S.E.2d 495. Taxation 2991

2. Interest

Purchasers of properties at tax sale were limited to refund of purchase price without interest as remedy when the sale was voided, under statute in effect at time of the transaction, providing for a refund of “the amount paid” to the successful bidder where a tax sale was voided; court would apply presumption that Legislature’s subsequent amendment of the statute to include interest was intended to change the existing law, and equitable remedy was not warranted because the statute provided an adequate remedy at law. Key Corporate Capital, Inc. v. County of Beaufort (S.C. 2007) 373 S.C. 55, 644 S.E.2d 675. Taxation 3195

**SECTION 12‑51‑160.** Deed as evidence of good title; statute of limitations.

 In all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, is prima facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with. An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12‑51‑90(C).

HISTORY: 1962 Code Section 65‑2815.15; 1971 (57) 499; 1985 Act No. 166, Section 15; 2006 Act No. 238, Section 3.B, eff March 15, 2006.

Library References

Taxation 3129, 3133.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1575, 1580 to 1604.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cotenancies Section 33, Tax Sales and Tax Titles.

S.C. Jur. Limitation of Actions Section 51, Taxation.

NOTES OF DECISIONS

In general 1

Attorney duty 4

Cloud on title 2

Redemption 3

1. In general

Defendant family members who counterclaimed against plaintiff family members in quiet title action for adverse possession of disputed tract of land were not prohibited from challenging tax sales in excess of the applicable two year statute of limitations; due to an inexplicable switch of parcel locations, the tax sales were conducted with improper notice and incorrect property locations, which rendered them void. Taylor v. Heirs of William Taylor (S.C.App. 2017) 419 S.C. 639, 799 S.E.2d 919, rehearing denied. Taxation 2943; Taxation 2948; Taxation 2991

Two‑year statute of limitations for an action for recovery of land sold at tax sale did not apply to taxpayer’s action to set aside tax sale, because the failure of the delinquent tax office to give proper notice rendered the tax sale void. Reeping v. JEBBCO, LLC (S.C.App. 2013) 402 S.C. 195, 740 S.E.2d 504. Taxation 2991

Assuming that two‑year statute of limitations for contesting a tax sale could act to bar claim challenging tax sale in case in which statutory notice to taxpayer was defective, tax sale purchaser withheld possession of property from taxpayer, and therefore taxpayer’s cause of action accrued when purchaser had property surveyed and informed taxpayer of her ownership. King v. James (S.C.App. 2010) 388 S.C. 16, 694 S.E.2d 35. Taxation 2991

The two year limitation in statute governing actions to contest tax sale is the period in which an owner who lost title to the property through a tax sale may bring an action to recover that property. Federal Financial Co. v. Hartley (S.C. 2008) 380 S.C. 65, 668 S.E.2d 410. Taxation 3162(1)

Purpose of statute prohibiting an action for the recovery of land sold pursuant to a tax sale “unless brought within two years from the date of sale” is to create a time limit during which one who lost title to property through a tax sale, after proper notice, may attempt to regain title. Corbin v. Carlin (S.C.App. 2005) 366 S.C. 187, 620 S.E.2d 745. Taxation 3162(1)

Statute of limitations for contesting a tax sale did not bar landowner’s declaratory judgment action to quiet title to land which was later sold at tax sale, where landowner had title to the sold land, landowner paid taxes assessed against land, landowner did not know county was seeking to sell land at tax sale, and county erred in conducting tax sale. Corbin v. Carlin (S.C.App. 2005) 366 S.C. 187, 620 S.E.2d 745. Limitation Of Actions 44(4)

2. Cloud on title

Once two years have passed after the sale of property in a tax sale, the sale is not a cloud on the property’s title. Federal Financial Co. v. Hartley (S.C. 2008) 380 S.C. 65, 668 S.E.2d 410. Taxation 3162(1)

3. Redemption

Property owner’s purchase of property from Forfeited Land Commission, after Commission had purchased property at a tax sale, was not a redemption, and could not resurrect mortgage on property that had been extinguished by tax sale; purchase was made after expiration of redemption period, and was made at price Commission set, rather than by payment of delinquent taxes, assessments, penalties, costs, and interest. Federal Financial Co. v. Hartley (S.C. 2008) 380 S.C. 65, 668 S.E.2d 410. Taxation 2975(1); Taxation 3000

4. Attorney duty

Attorneys who represented client on closings concerning purchase and refinancing of property had no duty to discover whether tax deed on property clouded client’s title, where more than two years had passed from time vendor had acquired property through tax sale. Wilson v. Moseley (S.C. 1997) 327 S.C. 144, 488 S.E.2d 862. Attorney And Client 109

**SECTION 12‑51‑170.** Contract with county for collection of taxes due municipality.

 A county and municipality may contract for the collection of municipal taxes by the county. When by contract a tax due a municipality is to be collected by the county, the provisions of this chapter are exercisable by the county official charged with the collection of the delinquent taxes. He may employ, appoint, or designate others to perform or carry out the provisions of the chapter.

HISTORY: 1962 Code Section 65‑2815.16; 1971 (57) 499; 1985 Act No. 166, Section 16.

Library References

Taxation 2804.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1124, 1824.

Attorney General’s Opinions

1985 Act No. 166 repealed provisions authorizing municipality to adopt provisions of Chapter 51 of Title 12 for collection of its taxes; Chapter 51 can be used to collect municipal taxes only when municipality contracts for county to collect tax. (Decided under former law.) 1985 Op Atty Gen, No. 85‑89, p 251 (August 20, 1985) 1985 WL 166059.

The property of a minor which is subject to a lien for unpaid property taxes can be sold to enforce collection of the taxes; however, an action should be instituted, and a guardian appointed to protect the interests of the minor. (Decided under former law.) 1983 Op Atty Gen, No. 83‑78, p 124 (September 26, 1983) 1983 WL 142747.