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State of South Carolina  
**Department of Revenue**  
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

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SC REVENUE RULING #95-18 (TAX)

**SUBJECT:** Redemption of Property  
(Property Tax)

**EFFECTIVE DATE:** June 7, 1995

**SUPERSEDES:** All previous documents and any oral directives in conflict herewith.

**REFERENCES:** Act No. 90, Section 3  
SC Code Section 12-51-40 (Supp. 1994)

**AUTHORITY:** SC Code Ann. Section 12-4-320 (Supp. 1994)  
SC Revenue Procedure #94-1

**SCOPE:** A Revenue Ruling is the Department of Revenue's **official advisory opinion** of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

On June 7, 1995, the governor signed into effect Act No. 90 which contains a section adding Section 12-51-55 to the South Carolina Code of Laws. This section provides:

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, and costs including taxes levied for the year in which the redemption period begins. If the property is not redeemed, the excess above the amount of taxes, penalties, and costs for the year in which the property was sold must first be applied to the taxes becoming due during the redemption period.

Several questions have arisen concerning the implications of this law. This ruling will address these questions and provide guidance as to how this statute is to be implemented. For simplicity, "taxes becoming due during the redemption period" are referred to in this ruling as "current taxes".

1.Q. This legislation provides that a bid on behalf of the forfeited land commission must include taxes levied for the year in which the redemption period begins. Notifications are required to be sent to the defaulting taxpayer (Section 12-51-40) which in some cases may be sent before the county sets its tax levy on the property for the current year. Must the "current taxes" be included in this notification?

A. Section 12-51-40 contains the specifications for the notices required for levying against property for delinquent taxes. Paragraph (a) of this section states that the officer who is executing the levy against the defaulting taxpayer shall:

. . . mail a notice of delinquent property taxes, penalties, assessments, and costs to the owner of record . . . . 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.

This section states that the notice sent to the defaulting taxpayer should include the amount of delinquent taxes but makes no mention of the taxes which will become due on the property. Hence, the notice requirements of Section 12-51-40 do not mandate the inclusion of the amount of the taxes levied for the year in which the redemption period begins. However, if the notice informs the defaulting taxpayer of the minimum bid required to purchase the property, it must include the "current taxes", or a statement making it clear that it will include the current taxes when they are determined.

2.Q. Must the advertisement required by Section 12-51-40(d) include the "current taxes" on the property?

A. Code Section 12-51-40(d) requires that the property levied upon be advertised for sale at public auction. The advertisement must include the delinquent taxpayer's name and a description of the property. There is no statutory requirement that a minimum bid amount be included in the advertisement; however, if the minimum bid amount is included in the advertisement, it must include the "current taxes", or a statement making it clear that it will include the "current taxes" when they are determined.

3.Q. If the county is late in establishing its millage for the tax year, should the tax sale be delayed until the amount of the property taxes for that year are determined?

A. As quoted above, Section 12-51-55 requires that the bid for the property levied upon must include taxes levied for the year in which the redemption period begins. Therefore, the tax sale must be delayed until the millage is decided upon and the taxes on the property can be computed.

- 4.Q. When a bid is accepted, how is the amount attributable to the "current taxes" treated?
- A. Code Section 12-51-60 requires the person officially charged with the collection of delinquent taxes to turn over the proceeds collected from the successful bidder to the treasurer after deducting expenses of the sale. The treasurer will then distribute the funds to the entities who are owed the taxes, penalties, and interest (Code Section 12-51-80). However, Section 12-51-55 states that "[i]f the property is not redeemed, the excess above the amount of taxes, penalties, and costs for the year in which the property was sold must first be applied to the taxes becoming due during the redemption period". Hence, at the end of the redemption period, if the property is not redeemed, the excess funds held by the treasurer would then be applied to the "current taxes" and distributed accordingly. Also, the taxes owed on the unredeemed property would not go into execution nor would such taxes include penalties because the acceptance of the bid presumes payment of the taxes from the bid if the property is not redeemed.
- 5.Q. Must the person redeeming the property pay eight percent interest on the entire bid amount, including the amount attributable to the "current taxes"?
- A. Code Section 12-51-90 provides that a person may redeem property within 12 months from the date of the delinquent tax sale "by paying to the person officially charged with collecting delinquent taxes, assessments, penalties, and costs, together with eight percent interest on the whole amount of the delinquent tax sale bid". Therefore, the person redeeming the property must pay eight percent of the entire bid amount, including the amount attributable to "current taxes".
- 6.Q. If the defaulting taxpayer pays the "current taxes" after the penalty date, is the penalty due even though the county holds the bidder's payment of an amount equal to these taxes?
- A. Code Section 12-45-180 provides penalties for the late payment of property taxes, requiring an additional 3% if payment is not made before January 16th, an additional 7% if payment is not made before February 2nd, and an additional 5% if payment is not made by March 17th. This section further states:

If the taxes, assessments, and penalties are not paid before the seventeenth day of the next March, the county treasurer shall issue his tax execution to the officer authorized and directed to collect delinquent taxes, assessments, penalties and costs for their collection as provided in Chapter 51 of this title and they must be collected as required by that chapter.

However, as stated above, an amount equal to the "current taxes" has been collected from the successful bidder on the property and is held by the treasurer for distribution to the taxing entities to which it is due. Hence, the question becomes have the taxes been paid when the treasurer is holding the funds from the successful bidder for future distribution.

Code Section 12-37-610 states that the owner of real property is liable to pay taxes and assessments on his property. Section 12-51-130 further states that the defaulting taxpayer is not dispossessed of the property until expiration of the redemption period provided in Section 12-51-90. In Opinion of the Attorney General, No. 84-27, p.67 (1984), the issue of redemption of property sold for nonpayment of property taxes was considered. The Opinion concluded that when property is sold for nonpayment of property taxes, the taxes accruing during the redemption period are the liability of the defaulting taxpayer. Finally, the funds the treasurer holds equal to the "current taxes" are only applied to taxes if the property is not redeemed. They are paid by the bidder and used to pay taxes on the (bidder's) property if the property is not redeemed. If the property is redeemed, the funds are refunded to the bidder along with 8% interest. Hence, the penalty due on the "current taxes" during the redemption period are the liability of the defaulting taxpayer and must be paid upon redemption.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III  
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Burnet R. Maybank, III, Director

Columbia, South Carolina  
December 21 , 1995