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SC TECHNICAL ADVICE MEMORANDUM 89-19

TO: Mr. William F. Bray, Director
Office Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: July 5, 1989

SUBJECT: Confidentiality of Abandoned Property Records

REFERENCE: S.C. Code Ann. Section 27-17-300(1976)
S.C. Code Ann. Section 27-18-240(A) (June 8, 1988)

AUTHORITY: Code Section 12-3-170
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

Will information recorded from abandoned property reports received prior to the adoption of S.C. Code Section 27-18-240(A) be made available for public inspection?

Facts:

Prior to July 1, 1988 all abandoned property records were confidential per S.C. Code Section 12-17-300 except as provided in Sections 27-17-140 and 27-17-200. Effective July 1, 1988, Chapter 17, Title 27 was repealed. S.C. Code Section 27-18-240(A), as passed on June 8, 1988, permits the public inspection of certain information recorded by the Commission from abandoned property reports.

Discussion:

Chapter 17 of Title 27 was repealed in its entirety with the enactment of the Uniform Unclaimed Property Act (1981) as Chapter 18 of Title 27. The effective date of the repeal of Chapter 17 and the enactment of Chapter 18 was provided as follows:

This section takes effect July 1, 1988, and applies with respect to reports due pursuant to Section 27-18-180(A) of the 1976 Code added by this section no later than November 1, 1988, for the period ending June 30, 1988.

Section 27-18-240 of the new act provides:

- (A) Except as otherwise provided by this section, the administrator shall promptly deposit in the general fund of this State all funds received under this Chapter, including the proceeds from the sale of property under Section 27-18-230. The administrator shall retain in a separate trust fund an amount not less than one hundred thousand dollars from which prompt payment of claims duly allowed must be made by him. Before making the deposit, the administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurance company its number, the name of the company, and the amount due. The record must be available for public inspection at all reasonable business hours.

In Hyder v. Jones, 271 S.C. 85, 245 S.E.2d 123, 125 (1978), the South Carolina Supreme Court held that:

"In the construction of statutes, there is a presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision or clear legislative intent to the contrary. No statute will be applied retroactively unless the result is so clearly compelled as to leave no room for reasonable doubt." (emphasis added)

Because the specific language of Section 27-18-240(A) does not provide for retroactive treatment, we must look to the legislature's intent.

Section 27-18-240(A) provides for public inspection of abandoned property reports which will aid individuals in their search for abandoned property that may very well belong to them. If individuals are not allowed to inspect abandoned property reports, their efforts to locate such property will be significantly hindered. Therefore, if Section 27-18-240(A) is given prospective application only, pre-July 1, 1988 abandoned property reports will not be subject to public inspection and the efforts of those individuals searching for property contained in those reports will be hindered. This treatment of pre-July 1, 1988 reports would clearly defy the legislature's intent to aid individuals in their search for abandoned property. Thus, Section 27-18-240(A) should be given retroactive application and pre-July 1, 1988 reports should be made available for public inspection at all reasonable business hours as was clearly intended by the legislature.

Conclusion:

Section 27-18-240(A) should be given retroactive application, and information recorded from all abandoned property reports should be made available for public inspection.