CHAPTER 49

Enforced Collection of Taxes Generally

ARTICLE 1

Liens and Suits Generally

**SECTION 12‑49‑10.** Taxes, assessments and penalties constitute a debt due State and a first lien upon property; enforcement.

 All taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the county by the person against whom they shall be charged and such taxes, assessments and penalties shall be a first lien in all cases whatsoever upon the property taxed, the lien to attach at the beginning of the fiscal year during which the tax is levied. Such taxes shall be first paid out of assets of any estate of deceased persons or held in trust as assignee or trustee or the proceeds of any property held on execution or attachment. The county treasurer may enforce such lien by execution against such property or, if it cannot be levied on, he may proceed by action at law against the person holding such property.

HISTORY: 1962 Code Section 65‑2701; 1952 Code Section 65‑2701; 1942 Code Section 2569; 1932 Code Section 2569; Civ. C. ‘22 Section 338; Civ. C. ‘12 Section 290; Civ. C. ‘02 Section 263; G. S. 170; R. S. 220; 1881 (17) 987; 2015 Act No. 87 (S.379), Section 42, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 42, substituted “payable to the county” for “payable to the State”.

CROSS REFERENCES

Listing property of others for tax purposes when so required by law, see Section 12‑37‑740.

Necessity of proceeding against personal property before resorting to real property to satisfy lien, see Section 12‑49‑40.

Official receipts for money collected, see Section 11‑1‑10.

Payment of delinquent taxes by holders of judgment liens, see Section 15‑35‑830.

Persons liable for taxes on real estate, see Section 12‑37‑610.

Library References

Taxation 2730 to 2744.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 960 to 990.

Attorney General’s Opinions

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.

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.

Where property is listed on tax duplicate and tax paid thereon, subsequent and innocent purchaser cannot be charged with tax on addition of omitted improvements; tax due on omitted improvements is liability of owner of property on tax date for each year of omission. 1985 Op Atty Gen, No 85‑117, p 324 (October 16, 1985) 1985 WL 193854.

Taxes due on merchants’ inventory are first lien on inventory; levy and sale can be made of inventory in hands of purchaser, and action may be instituted against seller and/or purchaser for the tax. 1985 Op Atty Gen, No 85‑18, p 65 (February 26, 1985) 1985 WL 165989.

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 interest of the minor. 1983 Op Atty Gen, No 83‑78, p 124 (September 26, 1983) 1983 WL 142747.

The only known exception to enforce collection of taxes due a county by way of an execution and sale as provided for by statute is that found in Section 12‑49‑10 that makes the tax a debt. A judicial action to enforce collection could therefore be prosecuted. 1979 Op Atty Gen, No 79‑49, p 66 (March 13, 1979) 1979 WL 29055.

1. Property cannot be sold for nonpayment of taxes incurred during the estate of the life tenant after the same is ended and title has vested in the remainderman; 2. Only real property “actually occupied” by a church is exempt from taxation. 1976‑77 Op Atty Gen, No 77‑96, p 86 (April 6, 1977) 1977 WL 24438.

The lien for taxes upon a mobile home, the value of which generates the tax, is first and preferred, and follows the property when repossessed and in possession of a finance company or any other person with knowledge, actual or constructive, of the lien. 1975‑76 Op Atty Gen, No 4259, p 70 (February 11, 1976) 1976 WL 22879.

A sale of property by a municipal corporation for nonpayment of taxes is subject to outstanding liens for county taxes, and subsequent sale by the county for nonpayment of taxes affords superior title. 1974‑75 Op Atty Gen, No 4117, p 191 (September 15, 1975) 1975 WL 22413.

All property of a defaulting taxpayer is subject to execution and sale for nonpayment of ad valorem real and personal property taxes, and a first lien for such taxes exists upon the property that generates the same. 1971‑72 Op Atty Gen, No 3239, p 20 (January 3, 1972) 1972 WL 20387.

A lien for personal property taxes does not become a lien upon real property by the provisions of this section [Code 1962 Section 65‑2701] and Code 1962 Section 65‑2702. 1969‑70 Op Atty Gen, No 2894, p 137 (May 5, 1970) 1970 WL 12178.

Lien upon real property not authorized. The lien created by statute upon personal property for ad valorem taxes does not become a lien upon the real property of the owner of the personal property except where expressly made so by statute, and this section [Code 1962 Section 65‑2701] and Code 1962 Section 65‑2702 do not provide for such. 1967‑68 Op Atty Gen, No 2496, p 171 (August 20, 1968) 1968 WL 8893.

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1. Construction and application

This section [Code 1962 Section 65‑2701] applies to all taxes, assessments, and penalties against all property of the taxpayer. U. S. v. Clover Spinning Mills Co., 1965, 244 F.Supp. 796, reversed in part 373 F.2d 274.

This section [Code 1962 Section 65‑2701], which makes State taxes a first lien, was enacted February 9, 1882 (17 St. at Large, p 987). See Holmes v. Weinheimer (S.C. 1903) 66 S.C. 18, 44 S.E. 82.

2. Valid tax assessment or tax levy

It is patent that in order that the tax be a debt due the State and that the State have a first lien on the property taxed, the tax must have been legally assessed. State ex rel. Daniel v. Textile Hall Corp. (S.C. 1937) 185 S.C. 406, 194 S.E. 66.

3. Personal liability for taxes

This section [Code 1962 Section 65‑2701] constitutes taxes a debt of the person, and they no doubt could be considered personal liabilities capable of sustaining an action at law. Weatherly v Medlin, 141 SC 290, 139 SE 633 (1927). Fuller v Payne, 96 SC 471, 81 SE 176 (1914).

Amount due for taxes is a debt against the person listing the property, for which he may sued. American Sur. Co. v. Hamrick Mills (S.C. 1940) 194 S.C. 221, 9 S.E.2d 433.

It is a common assumption that a tax execution is issued against the property; such is not the case; it is issued against the defaulting taxpayer, for the assessed taxes are a debt due to the State by the owner of the property. Vallentine v. Robinson (S.C. 1938) 188 S.C. 194, 198 S.E. 197. Taxation 2836; Taxation 2841

This section [Code 1962 Section 65‑2701] applies only to taxes, and cannot be relied upon as a basis for the contention that paving assessments are to be considered personal liabilities. Weatherly v. Medlin (S.C. 1927) 141 S.C. 290, 139 S.E. 633.

4. Taxpayer’s subsequently acquired property

A taxpayer’s subsequently acquired property is subject to a first lien for ad valorem taxes. Chrysler Credit Corp. v. Lee (S.C. 1983) 278 S.C. 565, 299 S.E.2d 488. Taxation 2736

5. Life tenants and remaindermen

Under this and related statutes of this State it is well settled that the duty is on the life tenant to pay the taxes and that the interests of remaindermen are not affected by reason of the failure of the life tenant so to do; it is also well settled that no taxes may be assessed against the interests of the remaindermen during the existence of the life estate. Campbell v. Williams (S.C. 1933) 171 S.C. 279, 172 S.E. 142.

This section [Code 1962 Section 65‑2701] does not authorize the assessment of, or the attaching of a lien against, the property of the remaindermen on the sale of their interests. Taylor v. Strauss (S.C. 1913) 95 S.C. 295, 78 S.E. 883.

A life tenant is only liable for taxes accruing during his life tenancy. Trimmier v. Darden (S.C. 1901) 61 S.C. 220, 39 S.E. 373. Life Estates 18

6. Tax lien

The plain legislative intent, under this section [Code 1962 Section 65‑2701] and Code 1962 Section 65‑2702, is that personal property taxes shall constitute a lien upon the property taxes and that such lien shall attach as of the last day of the preceding year. U. S. v. Clover Spinning Mills Co. (C.A.4 (S.C.) 1966) 373 F.2d 274.

This section [Code 1962 Section 65‑2701] and Code 1962 Section 65‑2702 specifically provide that a tax assessment shall constitute a lien on the taxpayer’s personalty, whereas Code 1962 Section 10‑1711 specifically provides that a judgment shall not constitute such a lien. U. S. v. Clover Spinning Mills Co. (C.A.4 (S.C.) 1966) 373 F.2d 274.

Enforcement of lien is not a condition precedent to the validation of the tax lien. U. S. v. Clover Spinning Mills Co., 1965, 244 F.Supp. 796, reversed in part 373 F.2d 274.

A county property tax becomes a first lien on real property and attaches at the beginning of the fiscal year in which the tax is levied. Fox v. Moultrie (S.C. 2008) 379 S.C. 609, 666 S.E.2d 915. Taxation 2737

It is not essential to proceed under execution against real estate in order to perfect the statutory lien mentioned in this section [Code 1962 Section 65‑2701]. U.S. v. State (S.C. 1955) 227 S.C. 187, 87 S.E.2d 577.

If there is a valid levy the lien relates back to the beginning of the year, under this section [Code 1962 Section 65‑2701], but unless there is a valid levy there is nothing to relate back. Town of Myrtle Beach v. Holliday (S.C. 1943) 203 S.C. 25, 26 S.E.2d 12.

7. Priorities among competing claims

A sale to satisfy the lien given by this section [Code 1962 Section 65‑2701] gives the purchaser a good title as against any taxes then due a municipal corporation, unless such municipal tax is made a lien on the property by direct legislative enactment, or by action of the municipal corporation in pursuance of express legislative authority. Holmes v Weinheimer, 66 SC 18, 44 SE 82 (1903). Heine v Levee Com’rs, 86 US (19 Wall.) 655, 22 L Ed 223 (1873).

Even though State, county and city taxes and special assessments are assessed against the specific property and become liens upon it, liens of the United States have priority over such taxes and special assessments subsequently assessed. U.S. v. City of Greenville, 1941, 118 F.2d 963. Counties 193; Counties 194; Municipal Corporations 456(1); Municipal Corporations 519(1); Municipal Corporations 972(1); Municipal Corporations 975; Taxation 2431; Taxation 2730; Taxation 2736

The legislature intended that the tax lien granted under this section [Code 1962 Section 65‑2701] would be prior to all other liens. U. S. v. Clover Spinning Mills Co., 1965, 244 F.Supp. 796, reversed in part 373 F.2d 274.

The priority of mortgage liens, held by an agency of the United States, and State tax liens is governed by the principle that first in time is first in right unless abrogated by statute. U. S. v. Clover Spinning Mills Co., 1965, 244 F.Supp. 796, reversed in part 373 F.2d 274. Taxation 2738; United States 1217

Lien for personal property taxes was superior to mortgage lien of small business administration. U.S. v. Clover Spinning Mills Co., 1965, 244 F.Supp. 796.

Mortgagee with first lien priority was entitled to recover its mortgage and all associated costs and fees, including attorney fees according to terms of mortgage agreement, from proceeds of foreclosure sale before mortgagee with second lien priority could recover its mortgage, fees, and associated costs from those proceeds. BB & T of South Carolina v. Kidwell (S.C.App. 2002) 350 S.C. 382, 565 S.E.2d 316. Mortgages And Deeds Of Trust 2103; Mortgages And Deeds Of Trust 2104; Mortgages And Deeds Of Trust 2108

County tax liens which accrued after the federal tax liens by which the appellant acquired his deed were not extinguished when he purchased the real property at a federal tax sale, since Sections 12‑49‑10 and 12‑49‑20 provide that county property tax becomes a first lien on real property, and that it attaches at the beginning of the fiscal year during which the tax is levied, with nothing further required to perfect the lien. Taylor v. Mill (S.C. 1992) 310 S.C. 526, 426 S.E.2d 311.

A federal tax sale purchaser did not hold the legal title to the property he had purchased, even though his deed was recorded before that of a subsequent county tax sale purchaser and thus would take priority under the recording statute, Section 30‑7‑10, since county tax liens take priority and survive as first liens on property, even after conveyance to a federal tax sale purchaser. Taylor v. Mill (S.C. 1992) 310 S.C. 526, 426 S.E.2d 311. Internal Revenue 4789

A defaulting taxpayer whose property has been sold for taxes has title, defeasible on failure to redeem within twelve months after the tax sale. A deed by the taxpayer after the tax sale merely transfers the right to redeem. The grantee in such a sale loses any claim to the property if redemption is not made within the period established by law. Accordingly, where the original owner of property attempted to sell it three months after it had been sold at a tax sale, and no redemption was attempted either by the original owner or by his grantee until the period of redemption had expired and a tax deed was issued, the original owner’s grantee was not protected by the Recording Act, Section 30‑7‑10, and the claim of the purchaser at the tax sale had priority over the claim of the original owner’s grantee. Von Elbrecht v. Jacobs (S.C.App. 1985) 286 S.C. 240, 332 S.E.2d 568.

Federal income tax liens were inferior to specific and perfected liens of a judgment creditor and for income taxes of the State of South Carolina, and also to those taxes owing to a county and a town which had accrued prior to the filing of the Federal liens in the office of the clerk of court, where it was not shown when the assessment lists were received in the office of the collector. U.S. v. State (S.C. 1955) 227 S.C. 187, 87 S.E.2d 577.

A town charter will not be construed to give, by implication, to the municipal corporation the right to make its taxes a first lien, and thus defeat or interfere with the policy adopted by the State for the collection of its own taxes. Holmes v. Weinheimer (S.C. 1903) 66 S.C. 18, 44 S.E. 82.

Where a tax sale is had to satisfy the lien given by this section [Code 1962 Section 65‑2701], and at the time of such tax sale there was pending a suit to foreclose a mortgage on the property, the purchaser at the tax sale secures the better title as against the purchaser at the foreclosure sale subsequently conducted. Wilson v. Cantrell (S.C. 1893) 40 S.C. 114, 18 S.E. 517.

The clause in this section [Code 1962 Section 65‑2701] that the tax debt shall be a first lien on the property taxed would seem to imply that the idea in the legislative mind in using the term “lien” was that of a security for the payment of a debt, and that the language used in this section [Code 1962 Section 65‑2701] is to be construed as meaning that the lien thereby created to secure the payment of this debt should have priority over every other lien designed to secure the payment of every other debt. Shell v. Duncan (S.C. 1889) 31 S.C. 547, 10 S.E. 330.

The lien given by this section [Code 1962 Section 65‑2701] does not take priority over the inchoate right of dower which has attached before the lien arose. Shell v. Duncan (S.C. 1889) 31 S.C. 547, 10 S.E. 330.

If a sale of land under a tax lien takes place before marriage, and therefore before the inchoate dower right attaches, the tax lien enjoys priority. See Shell v. Duncan (S.C. 1889) 31 S.C. 547, 10 S.E. 330.

8. Tax sale

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

Sheriff and deputy acting in official capacity are “creditors” of tax delinquent in sale of personalty for taxes, and unrecorded agreements reserving title are void against them. Andrews v. Hurst (S.C. 1931) 163 S.C. 86, 161 S.E. 331. Taxation 2847

9. Trust

The statutes do not indicate an intent to create a “trust” for the benefit of the State in other property of an employer where he fails to perform his obligation to withhold income taxes and no fund exists. U. S. v. Clover Spinning Mills Co. (C.A.4 (S.C.) 1966) 373 F.2d 274.

10. Enforcement

The city is an integral part of the State, and in proper proceedings has a right to sue for the collection of taxes. State v Textile Hall Corp., 185 SC 406, 194 SE 66 (1937). Rothrock v Oakman, 195 SC 123, 10 SE2d 345 (1940).

The enforcement of the lien created by this section [Code 1962 Section 65‑2701] is purely administrative. U. S. v. Clover Spinning Mills Co., 1965, 244 F.Supp. 796, reversed in part 373 F.2d 274.

The statutory authority for suits for taxes and the enforcement of tax liens is found in this section [Code 1962 Section 65‑2701] and the following sections. These sections contemplate the enforcement of tax liability by the State and its political subdivisions rather than by an individual, even though he act under the authority of the court. Watson v. City of Orangeburg (S.C. 1956) 229 S.C. 367, 93 S.E.2d 20.

**SECTION 12‑49‑20.** Time when lien attaches; procedure when property is about to be removed from jurisdiction.

 As of December thirty‑first a first lien shall attach to all real and personal property for taxes to be paid during the ensuing year, and in case such property is about to be removed from the State by bankruptcy proceedings or otherwise or is about to be taken from the jurisdiction of the county before taxes are due in the county and payable for any year, the treasurer of such county shall immediately issue his execution on such property and the tax collector of the county shall proceed to collect the taxes due on such property.

HISTORY: 1962 Code Section 65‑2702; 1952 Code Section 65‑2702; 1942 Code Section 2571; 1932 Code Section 2571; 1924 (33) 944; 1957 (50) 261; 1959 (51) 350; 2015 Act No. 87 (S.379), Section 43, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 43, amended the section by substituting “tax collector of the county” for “sheriff of the county”.

Library References

Taxation 2737, 2841.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 968 to 969, 1164.

Attorney General’s Opinions

Taxes due on merchants’ inventory are first lien on inventory; levy and sale can be made of inventory in hands of purchaser, and action may be instituted against seller and/or purchaser for the tax. 1985 Op Atty Gen, No 85‑18, p 65 (February 26, 1985) 1985 WL 165989.

All property of a defaulting taxpayer is subject to execution and sale for nonpayment of ad valorem real and personal property taxes, and a first lien for such taxes exists upon the property that generates the same. 1971‑72 Op Atty Gen, No 3239, p 20 (January 3, 1972) 1972 WL 20387.

Lien can be enforced after sale of property to another. Ad valorem taxes are the liability of the owner of the property; a lien, however, attaches to the property, which can be enforced upon the property even though it has been conveyed or sold by the owner to another. 1970‑71 Op Atty Gen, No 3199, p 177 (October 11, 1971) 1971 WL 17573.

A lien for personal property taxes does not become a lien upon real property by the provisions of this section [Code 1962 Section 65‑2702] and Code 1962 Section 65‑2701. 1969‑70 Op Atty Gen, No 2894, p 137 (May 5, 1970) 1970 WL 12178.

The lien created by statute upon personal property for ad valorem taxes does not become a lien upon the real property of the owner of the personal property except where expressly made so by statute, and this section [Code 1962 Section 65‑2702] and Code 1962 Section 65‑2701 do not provide for such. 1967‑68 Op Atty Gen, No 2496, p 171 (August 20, 1968) 1968 WL 8893.

Return of new structures for taxation. A new structure must be completed for the use intended on or before December thirty‑first next preceding the taxable year to be subject to taxation and the owner must return the same for taxation between January first and March first of the taxable year. 1966‑67 Op Atty Gen, No 2237, p 39 (March 8, 1967) 1967 WL 8553.

NOTES OF DECISIONS

Perfecting lien 2

Priority 1

Tax sale 3

1. Priority

Even though state, county and city taxes and special assessments are assessed against the specific property and become liens upon it, liens of the United States have priority over such taxes and special assessments subsequently assessed. U.S. v. City of Greenville, 1941, 118 F.2d 963. Counties 193; Counties 194; Municipal Corporations 456(1); Municipal Corporations 519(1); Municipal Corporations 972(1); Municipal Corporations 975; Taxation 2431; Taxation 2730; Taxation 2736

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

County tax liens which accrued after the federal tax liens by which the appellant acquired his deed were not extinguished when he purchased the real property at a federal tax sale, since Sections 12‑49‑10 and 12‑49‑20 provide that county property tax becomes a first lien on real property, and that it attaches at the beginning of the fiscal year during which the tax is levied, with nothing further required to perfect the lien. Taylor v. Mill (S.C. 1992) 310 S.C. 526, 426 S.E.2d 311.

A taxpayer’s subsequently acquired property is subject to a first lien for ad valorem taxes. Chrysler Credit Corp. v. Lee (S.C. 1983) 278 S.C. 565, 299 S.E.2d 488. Taxation 2736

Federal income tax liens were inferior to specific and perfected liens of a judgment creditor and for income taxes of the State of South Carolina, and also to those taxes owing to a county and a town which had accrued prior to the filing of the Federal liens in the office of the clerk of court, where it was not shown when the assessment lists were received in the office of the collector. U.S. v. State (S.C. 1955) 227 S.C. 187, 87 S.E.2d 577.

2. Perfecting lien

It is not essential to proceed under execution against real estate in order to perfect the statutory lien mentioned in this section [Code 1962 Section 65‑2702]. U.S. v. State (S.C. 1955) 227 S.C. 187, 87 S.E.2d 577.

3. Tax sale

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

**SECTION 12‑49‑30.** Lien attaches to personal property subsequently acquired.

 The lien for unpaid taxes on personal property shall also attach to any personal property subsequently acquired by the delinquent taxpayer.

HISTORY: 1962 Code Section 65‑2702.1; 1957 (50) 546.

Library References

Taxation 2736.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 976 to 979.

Attorney General’s Opinions

Taxes due on merchants’ inventory are first lien on inventory; levy and sale can be made of inventory in hands of purchaser, and action may be instituted against seller and/or purchaser for the tax. 1985 Op Atty Gen, No 85‑18, p 65 (February 26, 1985) 1985 WL 165989.

The first lien on a merchant’s inventory for delinquent ad valorem taxes extends to all subsequently acquired inventory. 1982 Op Atty Gen, No 82‑53, p 58 (July 27, 1982) 1982 WL 155022.

The proceeds from personal property sold subject to a lien for county taxes may be distrained. There is authority that the lien on the property sold will, under certain circumstances, attach to the proceeds from the sale. 1975‑76 Op Atty Gen, No 4533, p 396 (November 29, 1976) 1976 WL 23150.

All property of a defaulting taxpayer is subject to execution and sale for nonpayment of ad valorem real and personal property taxes, and a first lien for such taxes exists upon the property that generates the same. 1971‑72 Op Atty Gen, No 3239, p 20 (January 3, 1972) 1972 WL 20387.

Collection of unpaid taxes due by reason of prior ownership of automobile. Unpaid taxes due by person by reason of the prior ownership of an automobile can be collected by execution upon the automobile presently owned by such person. 1968‑69 Op Atty Gen, No 2699, p 141 (July 16, 1969) 1969 WL 10699.

NOTES OF DECISIONS

Lien for ad valorem taxes 1

1. Lien for ad valorem taxes

A taxpayer’s subsequently acquired property is subject to a first lien for ad valorem taxes. Chrysler Credit Corp. v. Lee (S.C. 1983) 278 S.C. 565, 299 S.E.2d 488. Taxation 2736

**SECTION 12‑49‑40.** Property liable for distress and sale for delinquent taxes.

 All personal property subject to taxation shall be liable to distress and sale for the payment of taxes, in the manner provided in this title, and all real property returned delinquent by the county treasurer upon which the taxes shall not be paid by distress or otherwise shall be seized and sold as provided in this title. The distress and sale of personal property shall not be a condition precedent to seizure and sale of any real property under this title.

HISTORY: 1962 Code Section 65‑2703; 1952 Code Section 65‑2703; 1942 Code Sections 2570, 2785; 1932 Code Sections 2570, 2833; Civ. C. ‘22 Sections 339, 508; Civ. C. ‘12 Sections 291, 457; Civ. C. ‘02 Section 409; G. S. 280; R. S. 336; 1887 (19) 862; 1888 (20) 41; 1889 (20) 334; 1890 (20) 675; 1902 (23) 1132; 1909 (26) 76.

Library References

Taxation 2835 to 2868, 2900 to 2997.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 998, 1114 to 1119, 1160 to 1203, 1216 to 1353, 1668 to 1671, 1819.

Attorney General’s Opinions

There is no statutory requirement that property be sold jointly for city and county taxes. 1979 Op Atty Gen, No 79‑49, p 66 (March 13, 1979) 1979 WL 29055.

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. 1975‑76 Op Atty Gen, No 4551, p 422 (December 22, 1976) 1976 WL 23167.

All property of a defaulting taxpayer is subject to execution and sale for nonpayment of ad valorem real and personal property taxes, and a first lien for such taxes exists upon the property that generates the same. 1971‑72 Op Atty Gen, No 3239, p 20 (January 3, 1972) 1972 WL 20387.

NOTES OF DECISIONS

Exemptions 1

1. Exemptions

There is no exemption against execution for taxes. Oliver v. White (S.C. 1882) 18 S.C. 235.

**SECTION 12‑49‑50.** Chattel tax may be recovered by distress or suit.

 If any chattel tax shall be unpaid at the time fixed for the payment thereof or returned delinquent, as authorized by this title, the county treasurer may not only distrain property for the payment thereof, but may recover the tax, with the penalties thereon, by action at law, proceedings in attachment or other means authorized by law to be used by private individuals in the collection of debts, which action or other proceedings shall be prosecuted in the name of such treasurer and if he shall die or go out of office before the termination of such action or proceeding or the final collection of the money, or any judgment or order therein, his successor or successors may, from time to time, be substituted as plaintiffs therein.

HISTORY: 1962 Code Section 65‑2704; 1952 Code Section 65‑2704; 1942 Code Section 2786; 1932 Code Section 2834; Civ. C. ‘22 Section 509; Civ. C. ‘12 Section 458; Civ. C. ‘02 Section 410; G. S. 281; R. S. 337; 1881 (17) 1029.

Library References

Taxation 2838, 2840, 2841.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1115 to 1119, 1161 to 1162, 1164.

Attorney General’s Opinions

The proceeds from personal property sold subject to a lien for county taxes may be distrained. There is authority that the lien on the property sold will, under certain circumstances, attach to the proceeds from the sale. 1975‑76 Op Atty Gen, No 4533, p 396 (November 29, 1976) 1976 WL 23150.

NOTES OF DECISIONS

Priority of liens 1

1. Priority of liens

Lien for personal property taxes legally assessed against personal property of company by South Carolina Tax Commission was superior to mortgage lien of small business administration based on mortgages executed in connection with loans to company under Code S.C. 1962, SS 65‑2701, 65‑2702, 65‑2704. U. S. v. Clover Spinning Mills Co., 1965, 244 F.Supp. 796, reversed in part 373 F.2d 274. Taxation 2738

**SECTION 12‑49‑60.** Payment out of real estate sales proceeds.

 When any real estate shall be sold under any writ, order or proceeding in any court, the court shall, on motion of any person interested in such real estate or in the purchase or proceeds of the sale thereof, order all taxes, assessments and penalties charged thereon to be paid out of the proceeds of such sale as a lien prior to all others.

HISTORY: 1962 Code Section 65‑2705; 1952 Code Section 65‑2705; 1942 Code Section 2569; 1932 Code Section 2569; Civ. C. ‘22 Section 338; Civ. C. ‘12 Section 290; Civ. C. ‘02 Section 263; G. S. 170; R. S. 220; 1881 (17) 987.

CROSS REFERENCES

Listing property of others for tax purposes when so required by law, see Section 12‑37‑740.

Library References

Taxation 2841.

Westlaw Topic No. 371.

C.J.S. Taxation Section 1164.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Mortgages Section 137, Surplus Funds.

Attorney General’s Opinions

When a Master‑in‑Equity holds a reference on a mortgage foreclosure action he has no duty to search outside the evidence presented to him to find liens. 1981 Op Atty Gen, No 81‑32, p 52 (March 31, 1981) 1981 WL 96558.

NOTES OF DECISIONS

In general 1

Construction and application 2

Sale of decedent’s real estate 3

1. In general

Equity did not allow purchaser of property at judicial foreclosure sale to obtain a post‑sale order directing payment of unpaid property taxes and assessments from surplus funds of sale, pursuant to statute authorizing payment from surplus upon motion of interested party approved by court, where express terms of sale, established in foreclosure order, set property for sale subject to outstanding tax liens, and all bidders, including purchaser, knew that the property was being sold with the requirement that the successful bidder pay taxes. Ex parte Johnson (S.C.App. 2006) 371 S.C. 614, 640 S.E.2d 887, rehearing denied, certiorari granted. Mortgages And Deeds Of Trust 2107

Real property subject to taxes cannot be sold in foreclosure free of existing tax liens, unless provision for payment is made and they are paid. Trustees of Wofford College v. Burnett (S.C. 1946) 209 S.C. 92, 39 S.E.2d 155.

2. Construction and application

Statute authorizing payment of taxes and assessments out of proceeds of judicial foreclosure sale as first priority is not mandatory; statute does not take effect unless a timely motion is made by an interested party. Ex parte Johnson (S.C.App. 2006) 371 S.C. 614, 640 S.E.2d 887, rehearing denied, certiorari granted. Mortgages And Deeds Of Trust 2105

This section [Code 1962 Section 65‑2705] applies only to the payment of taxes where real property is sold under a foreclosure against living persons. Purdy v. Strother (S.C. 1937) 184 S.C. 210, 192 S.E. 159.

3. Sale of decedent’s real estate

In a suit to marshal the assets of a decedent’s estate, past‑due taxes on real estate were paid out of general funds in the hands of the master, and not out of the proceeds of the sale of the mortgaged premises as a lien upon such property prior to all other liens. Purdy v. Strother (S.C. 1937) 184 S.C. 210, 192 S.E. 159.

It does not make it probate judge’s duty to pay taxes out of proceeds of sale of decedent’s realty. Truesdale v. Bellinger (S.C. 1934) 172 S.C. 80, 172 S.E. 784.

Probate judge’s refusal to pay current taxes on decedent’s realty out of proceeds of realty sole to pay debts on erroneous ground that taxes were not then due was error made in judicial capacity, for which neither judge nor his surety was liable. Truesdale v. Bellinger (S.C. 1934) 172 S.C. 80, 172 S.E. 784. Judges 37

**SECTION 12‑49‑85.** Uncollectible property tax, assessment, or penalty.

 (A) If the person officially charged with the collection of ad valorem taxes on real or personal property for a county determines that the tax, assessment, or penalty is uncollectible, he shall record that determination and the reason for it on a list he maintains. At least annually he shall provide the list to the county auditor, who may remove a particular determination from the duplicate list, but the auditor shall record the removal and the reason for it as prescribed by the department.

 (B) The reasons for removal of a tax, assessment, or penalty from the duplicate list may include, but are not limited to:

 (1) insufficient property of the person charged with the uncollectible tax, assessment, or penalty to collect it;

 (2) collection of the tax, assessment, or penalty has been enjoined by a competent court.

 (C) Subject to the provisions of Section 12‑54‑85(E), the auditor and the person officially charged with the collection of ad valorem taxes shall review the list annually. If it is later determined that the tax, assessment, or penalty was improperly removed from the duplicate list or is collectible, it must be returned to the duplicate list for collection, with all penalties and interest accruing.

 (D) Upon receipt of proof satisfactory to the county assessor that a derelict mobile home, as defined in Section 6‑1‑150, has been removed and disposed of in accordance with Section 6‑1‑150, the county auditor shall remove the derelict mobile home permanently from his records and the county auditor from the current duplicate. Upon this removal, any unpaid taxes, uniform service charges, assessments, penalties, costs of collection, and any other amounts billed on the tax notice, which are due as a result of the value of the derelict mobile home, are waived. All costs of removal and disposal are the responsibility of the owner of the derelict mobile home, and may be waived only by order of the magistrates court or if a local governing body has a program that covers removal and disposal costs.

HISTORY: 1998 Act No. 442, Section 4A; 2006 Act No. 386, Section 55.U, eff June 14, 2006; 2007 Act No. 45, Section 2, eff June 4, 2007; 2015 Act No. 87 (S.379), Section 44, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 44, in (D), substituted “proof satisfactory to the county assessor” for “proof satisfactory to the county auditor”, and substituted “from his records and the county auditor from the current duplicate” for “from the duplicate list”.

Library References

Taxation 2820.

Westlaw Topic No. 371.

C.J.S. Taxation Section 1135.

**SECTION 12‑49‑90.** Collection of taxes imposed by other states; collection in other states of taxes due South Carolina.

 The courts of this State shall recognize and enforce liabilities for taxation lawfully imposed by other states which extend like comity to this State. The South Carolina Department of Revenue, with the assistance of the Attorney General, is hereby empowered to bring suit in the courts of other states to collect taxes legally due this State. The officials of other states which extend a like comity to this State are empowered to sue for the collection of such taxes in the courts of this State. A certificate by the Secretary of State that such officers have authority to collect the tax shall be conclusive evidence of such authority.

HISTORY: 1962 Code Section 65‑2708; 1963 (53) 226; 1993 Act No. 181, Section 228.

Library References

Taxation 2848.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 998, 1174 to 1203.

ARTICLE 7

Alternate Method of Sale of Personalty

**SECTION 12‑49‑910.** Levy on personalty subject to tax lien; service of process.

 The tax collector may levy upon and seize the personal property of a defaulting taxpayer by serving personally upon the delinquent taxpayer and the owner of such personal property, if it has been sold or transferred subject to the tax lien, a written notice that the specific personal property of the defaulting taxpayer has been seized pursuant to the direction and provisions of the particular delinquent tax execution. A description of such personal property as entered on the return of the taxpayer shall be a sufficient description of the personal property so seized. If the delinquent taxpayer or owner of such personal property is absent from the county or cannot be found therein, then service of such notice upon the agent, tenant, servant or employee of such delinquent taxpayer or owner of such personal property or other person in the custody, possession or control of it shall be sufficient. If the delinquent taxpayer or owner of such personal property cannot be found and there is no person in the custody, possession or control of it, such service shall be made by posting such notice on the building or at the place where said personal property is located.

HISTORY: 1962 Code Section 65‑2821; 1952 Code Section 65‑2821; 1944 (43) 1328; 2015 Act No. 87 (S.379), Section 45, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 45, amended the section by removing the sheriff from tax sale collection process.

Library References

Taxation 2838 to 2847.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1115 to 1119, 1161 to 1162, 1164 to 1165, 1167 to 1173.

Attorney General’s Opinions

A tax collector has no authority to nulla bona executions for unpaid taxes unless there is no property of the defaulting taxpayer on which the execution can be collected. 1978 Op Atty Gen, No 78‑164, p 193 (October 2, 1978) 1978 WL 22632.

There is no redemption period for personal property sold under either method of levy and sale of personality to satisfy delinquent county property taxes. (Decided under former law.) 1971‑72 Op Atty Gen, No 3421, p 299 (November 27, 1972) 1972 WL 20543.

**SECTION 12‑49‑920.** Possession gained and lien effected by service of process.

 Upon such service being made, the specific personal property of the defaulting taxpayer described in such notice of levy and seizure shall be conclusively deemed and taken to be in the exclusive possession of the tax collector and the sum due on the particular delinquent tax execution shall constitute a first lien upon the specific personal property described in such notice.

HISTORY: 1962 Code Section 65‑2822; 1952 Code Section 65‑2822; 1944 (43) 1328; 2015 Act No. 87 (S.379), Section 46, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 46, amended the section by removing the sheriff from tax sale collection process.

Library References

Taxation 2736, 2840.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 976 to 979, 1115 to 1119.

**SECTION 12‑49‑930.** Removal of or interference with seized property.

 Any person who shall remove, secrete, destroy or otherwise injure such personal property or molest, disturb or interfere with the tax collector’s possession of such personal property shall be held liable as for a conversion and be guilty of disposing of property under a lien.

HISTORY: 1962 Code Section 65‑2823; 1952 Code Section 65‑2823; 1944 (43) 1328; 2015 Act No. 87 (S.379), Section 47, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 47, amended the section by removing the sheriff from tax sale collection process.

Library References

Taxation 2868.

Westlaw Topic No. 371.

**SECTION 12‑49‑940.** Advertisement and sale of seized property.

 Unless the amount due on the delinquent tax execution shall be sooner paid, the tax collector shall, after having such personal property so seized under the delinquent tax execution advertised for sale for two weeks in a newspaper printed and circulated in the county, sell such personal property at public auction to the highest bidder for cash.

HISTORY: 1962 Code Section 65‑2824; 1952 Code Section 65‑2824; 1944 (43) 1328; 2015 Act No. 87 (S.379), Section 48, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 48, amended the section by removing the sheriff from tax sale collection process.

Library References

Taxation 2847.

Westlaw Topic No. 371.

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

**SECTION 12‑49‑950.** Mandatory bid by Forfeited Land Commission; determination of amount of bid.

 If, on the sale of such personal property, there is no bid for as much as the tax and costs then due on the delinquent tax execution, the personal property must be bid in on behalf of the forfeited land commission of the county for the amount equal to the amount of all unpaid property taxes, assessments, and charges billed on the property tax bill, and all costs which may be incurred by a taxing entity as a result of the tax delinquency including taxes levied for the year in which the redemption period begins. An assessment for purposes of this section includes, but is not limited to, amounts owed a special taxing district created pursuant to Section 4‑9‑30, and a district created pursuant to Chapter 19 of this title and amounts owed pursuant to Chapter 15, Title 6.

HISTORY: 1962 Code Section 65‑2825; 1952 Code Section 65‑2825; 1944 (43) 1328; 2005 Act No. 145, Section 50; 2015 Act No. 87 (S.379), Section 49, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 49, substituted “must be bid in on behalf of the forfeited land commission” for “must be bid in by the Forfeited Land Commission”.

Library References

Taxation 2847.

Westlaw Topic No. 371.

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

**SECTION 12‑49‑960.** Delivery of possession to purchaser.

 Upon the payment of the purchase money for such personal property, the tax collector shall deliver possession of it to the successful purchaser.

HISTORY: 1962 Code Section 65‑2826; 1952 Code Section 65‑2826; 1944 (43) 1328; 2015 Act No. 87 (S.379), Section 50, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 50, amended the section by removing the sheriff from tax sale collection process.

Library References

Taxation 2847.

Westlaw Topic No. 371.

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

**SECTION 12‑49‑970.** Article constitutes alternative remedy.

 This article shall not be construed to repeal existing tax laws, but shall be deemed and taken to be an alternative remedy for the enforcement and collection of delinquent taxes.

HISTORY: 1962 Code Section 65‑2827; 1952 Code Section 65‑2827; 1944 (43) 1328.

ARTICLE 9

Rights of Real Property Mortgagees

**SECTION 12‑49‑1110.** Definitions.

 For purposes of this article:

 (1) “Auditor” means the officer charged by law with the assessment of ad valorem taxes and assessments and with the mailing of tax notices.

 (2) “Collateral” means the mobile or manufactured home in which a lienholder holds a security interest.

 (3) “Collateral list” means a written list, including all supplements, that a lienholder provides to a tax collector pursuant to this article, listing the lienholder’s collateral that, according to the United States Postal Zip Codes shown in the lienholder’s records as the mailing address where the collateral is situate, is located within a county of this State.

 (4) “Department” means the South Carolina Department of Motor Vehicles.

 (5) “Lien” means a mortgage or a security interest.

 (6) “Lienholder” means the owner, holder, or servicing agent of a lien affecting a mobile or manufactured home as security for the payment of money.

 (7) “Mobile home” or “manufactured home” is as defined as provided in Sections 12‑43‑230(b) and 40‑29‑20(9).

 (8) “Mortgage” means a mortgage, deed of trust, or other written instrument covering or affecting real property as security for the payment of money.

 (9) “Mortgagee” means the mortgagee identified in a mortgage of record or any holder or assignee of the mortgage.

 (10) “Mortgagee list” means a written list, including all supplements, that a mortgagee provides to a tax collector pursuant to this article, showing the current name and address of the mortgagee/holder of the mortgages listed on it within a county of this State.

 (11) “Office of the register of deeds” means the office in each county where real property deeds and mortgages are recorded.

 (12) “Security interest” means an interest created by a security agreement or other written instrument covering a mobile or manufactured home for the payment of money.

 (13) “Tax collector” means the officer charged by law with the collection of delinquent ad valorem taxes, assessments, penalties, and costs.

 (14) “Tax title” means a deed for real property or a bill of sale for personal property.

 (15) “The most current” means the latest in time.

HISTORY: 2006 Act No. 238, Section 4, eff March 15, 2006; 2006 Act No. 386, Section 49.B, eff June 14, 2006; 2015 Act No. 87 (S.379), Section 51, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 51, in (14), substituted “or a bill of sale” for “and a bill of sale”.

**SECTION 12‑49‑1120.** Notice to mortgagee of tax sale.

 When real property is levied upon for taxes by the tax collector, the tax collector shall give at least forty‑five days’ written notice prior to the sale of the real property to a mortgagee contained on the mortgagee list filed with the tax collector as provided in Section 12‑49‑1150. The period of forty‑five days shall begin to run from the time the notice is personally delivered or from the date of its mailing when delivered by certified mail as provided in this article. The notice must contain a description of the real property levied upon, including the tax map number assigned by the county, the name of the owner, the year or years for which the taxes were assessed, and a statement of the amount of the taxes with the accrued costs. The notice must be delivered to the mortgagees either personally or by certified mail with return receipt requested at the address(es) shown on the most current mortgagee list for a particular mortgagee. If delivered personally, the tax collector shall obtain a signed receipt from the mortgagee. Although a separate notice must be prepared for each parcel of real property to be sold, a tax collector may enclose in the same package or envelope multiple notices to be given to the same mortgagee at the same address.

HISTORY: 2006 Act No. 238, Section 4, eff March 15, 2006.

Library References

Taxation 2948.

Westlaw Topic No. 371.

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

**SECTION 12‑49‑1130.** Form of notice.

 The form of notice required pursuant to Section 12‑49‑1120 must be substantially as follows:

 DELINQUENT TAXES

 Notice to Holder of Mortgage

 Notice is given to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as the holder of a certain mortgage recorded in the office of the\_\_\_\_\_\_\_\_\_\_ in Book \_\_\_\_\_\_\_ at Page \_\_\_\_\_\_\_, of the County of \_\_\_\_\_\_\_\_\_\_, State of South Carolina, that there are now due and unpaid taxes for the year 20\_\_\_ amounting to $\_\_\_\_\_\_\_\_\_\_, with accrued cost of $\_\_\_\_\_\_\_\_\_\_, for which a tax execution has been issued and levy made upon the following described real property owned by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and embraced within the mortgage, and that the real property will be sold unless such taxes are paid within forty‑five (45) days from the delivery of this notice as provided by law.

|  |  |  |
| --- | --- | --- |
|  |  |  |
|   | Description of the Real Property Levied Upon |   |
|   |   |   |
|   |   |   |
|   | Tax Map No.  |   |
|   | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |   |
|   | Tax Collector |   |
|   | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |   |
|   | Address |   |
|   | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

HISTORY: 2006 Act No. 238, Section 4, eff March 15, 2006.

Library References

Taxation 2948.

Westlaw Topic No. 371.

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

**SECTION 12‑49‑1140.** Record of notice.

 The tax collector shall keep a record of each notice given under Section 12‑49‑1120 that contains the date the notice was delivered, the method of delivery, the address where the notice was delivered, and the name of the addressee of the notice.

HISTORY: 2006 Act No. 238, Section 4, eff March 15, 2006.

**SECTION 12‑49‑1150.** Mortgagee list.

 To entitle a mortgagee to the notice required by Section 12‑49‑1120, a list of each mortgage located in the county as to which the notice is desired must be filed by the mortgagee with the tax collector of the county in which the real property covered by a mortgage lies on or before the fifteenth day of March of each year, on which must be shown the name and address of the mortgagee, the name of each mortgagor, and the book and page of the record where each mortgage listed is recorded and the tax map number.

HISTORY: 2006 Act No. 238, Section 4, eff March 15, 2006; 2015 Act No. 87 (S.379), Section 52, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 52, inserted “and the tax map number”.

Library References

Mortgages 91.

Westlaw Topic No. 266.

C.J.S. Mortgages Section 250.

**SECTION 12‑49‑1160.** Form of mortgagee list.

 The form of the mortgagee list for real property must be substantially as follows:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|   | Mortgagee List For |   | County |
|   | Mortgagee/Holder: |   |   |
|   | Address for Notice: |   |   |
|   |   |   |   |
|   | Date:  |   |   |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| Name of Owner(s) | Tax Map | Book | Page |
| or Mortgagor(s) | Number | of Record | Number |

HISTORY: 2006 Act No. 238, Section 4, eff March 15, 2006.

**SECTION 12‑49‑1170.** How mortgagee list may be provided to tax collector; proof.

 The mortgagee list may be provided to the tax collector through any medium acceptable to the sender and the receiver. This medium may include, but not be limited to: United States mail, hand delivery, express delivery, or e‑mail. The sender shall maintain sufficient proof that the mortgagee list and any supplement were provided to the tax collector.

HISTORY: 2006 Act No. 238, Section 4, eff March 15, 2006.

**SECTION 12‑49‑1180.** Effect of chapter on rights of mortgagee.

 (A) The rights, interest, and security of a mortgagee complying with the provisions of Section 12‑49‑1150 are not affected by a tax sale and a deed of conveyance, unless the provisions of Section 12‑49‑1120 are complied with.

 (B) Except as specifically provided in this article, the rights and remedies of a mortgagee granted elsewhere in this title are not affected by whether or not the mortgagee provides a mortgagee list of real property pursuant to Section 12‑49‑1150.

HISTORY: 2006 Act No. 238, Section 4, eff March 15, 2006.

Library References

Taxation 3067.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1489 to 1494.

**SECTION 12‑49‑1190.** Tax sale of mobile or manufactured home; service of notice.

 When a mobile or manufactured home is levied upon for taxes by the tax collector, the tax collector shall give at least forty‑five days’ written notice before the date of the tax sale to lienholders by following the procedures provided in Section 12‑49‑1220, except as otherwise provided in Section 12‑49‑1220(D). The period of forty‑ five days begins to run from the time the notice is delivered personally or from the date of its mailing. The notice must contain a description of the mobile or manufactured home levied upon, including the year, make or model, size and serial number, the name of the owner, the address and zip code where the mobile or manufactured home is located, the year or years for which the taxes were assessed, and a statement of the amount of the taxes with the accrued costs. The notice must be delivered to the lienholders, either personally or by certified mail with return receipt requested, at the addresses obtained by the tax collector by following the procedures provided for in Section 12‑49‑1220. If delivered personally, the tax collector shall obtain a signed receipt from the lienholder. Although a separate notice must be prepared for each mobile or manufactured home to be sold, a tax collector may enclose in the same package or envelope multiple notices to be given to the same lienholder at the same address.

HISTORY: 2006 Act No. 386, Section 49.A, eff June 14, 2006.

Library References

Taxation 2847.

Westlaw Topic No. 371.

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

**SECTION 12‑49‑1200.** Form of notice.

 (A) Except as provided in subsection (B), the form of the notice required by Section 12‑49‑1190 must be substantially as follows:

 “DELINQUENT TAXES

 NOTICE TO LIENHOLDER

 Notice is given to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as the holder of a certain lien on the mobile or manufactured home below described, that there are now due and unpaid taxes for the year(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the amount of $\_\_\_\_\_\_\_\_\_\_\_ with accrued costs of $ \_\_\_\_\_\_\_\_\_\_\_ for which a tax execution has been issued and levy made upon the described home owned by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The home will be sold unless the taxes are paid within forty‑five days from delivery of this notice as provided by law.

 Description of Mobile or Manufactured Home Levied Upon

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Make or Model of Mobile or Manufactured Home

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Year of Home and Full Serial Number

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Owner’s Name and Address

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Tax Collector

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Address

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.”

 (B) For liens created before January 1, 1995, the form of the notice required by Section 12‑49‑1190 must be substantially as follows:

 “DELINQUENT TAXES

 NOTICE TO LIENHOLDER

 Notice is given to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as the holder of a certain lien on the mobile or manufactured home below described, that there are now due and unpaid taxes for the year(s) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the amount of $\_\_\_\_\_\_\_\_\_\_\_ with accrued costs of $ \_\_\_\_\_\_\_\_\_\_\_ for which a tax execution has been issued and levy made upon the described home owned by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The home will be sold unless the taxes are paid within forty‑five days from delivery of this notice as provided by law.

 Description of Collateral

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 VIN Number

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Owner’s Name and Address

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Tax Collector

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Address

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.”

HISTORY: 2006 Act No. 386, Section 49.A, eff June 14, 2006.

Library References

Taxation 2847.

Westlaw Topic No. 371.

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

**SECTION 12‑49‑1210.** Records of notice; contents.

 The tax collector shall keep a record of each notice given pursuant to Section 12‑49‑1190 which must contain the date the notice was delivered, the method of delivery, the address to which the notice was delivered, and the name of the addressee of the notice.

HISTORY: 2006 Act No. 386, Section 49.A, eff June 14, 2006.

**SECTION 12‑49‑1220.** Procedures for providing notice of levy and sale.

 (A) In providing the notice of levy and sale required in Section 12‑49‑1190 relating to mobile or manufactured homes, the tax collector shall comply with the procedures provided for in subsections (B) or (C) and (D). This section does not require the tax collector to send more than one notice of levy to a single lienholder at the same mailing address that is revealed multiple times by compliance with the different procedures provided for in this section. If a single lienholder’s name at different mailing addresses is revealed or would have been revealed by compliance with the procedures provided pursuant to this section, notice of levy must be sent to the lienholder at all these mailing addresses.

 (B) For liens created before January 1, 1995, the tax collector shall provide the notice of levy and sale to the lienholders contained on the certificate of title issued by the department. To obtain the name and address of the lienholders, the tax collector shall either: (a) forward to the department a form provided below requesting the name and address of all lienholders shown on the certificate of title or (b) obtain from official department records the names and addresses of all lienholders shown on the certificate of title, to include the information listed on the form below. The delinquent tax collector may not sell the property without either a return of this form or official department records if records reflect the existence of a lienholder.

 To the Department of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

 I have been instructed by the county treasurer to levy and sell the following personal property:

 Please provide me with the lienholders’ name and address as shown on the certificate of title:

 NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 ADDRESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 DESCRIPTION OF COLLATERAL:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 VIN NUMBER:\_\_\_\_\_\_\_\_\_\_\_\_\_

 LIENHOLDER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 LIENHOLDERS’ ADDRESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 (C) For liens created on or after January 1, 1995, the tax collector shall provide the notice of levy and sale to the lienholders identified on the forms provided to the county department responsible for registering manufactured housing pursuant to the licensing and moving permit procedures provided for in Chapter 17, Title 31 or official department records if the records reflect the existence of a lienholder.

 (D)(1) In addition to complying with the procedures provided in either subsection (B) or (C), for tax years beginning January 1, 2007, and after that time, the tax collector shall send the notice of levy and sale required by this article to the lienholders at the addresses shown on the most current collateral list provided by the lienholders holding a lien on the mobile or manufactured home to the tax collector pursuant to Section 12‑49‑1230. If a lienholder’s most current collateral list, including any supplement, fails to disclose to the tax collector the lienholder’s lien on a home that is to be sold, the lienholder is not entitled to notice pursuant to this subsection. If the collateral lists of two or more lienholders show the same mobile or manufactured home as their collateral, all the lienholders must be notified of the tax sale.

 (2) If a lienholder provides the tax collector with a supplemental collateral list as described in Section 12‑49‑1230(B) after July first of any given year and the tax collector intends to sell a mobile or manufactured home shown on that supplemental list for which the lienholder could not be identified properly by the tax collector’s compliance with the procedures provided in subsections (B) or (C) and (D)(1), the tax collector shall give a newly identified lienholder or to a lienholder at the newly identified address, or both, the notice required by this subsection.

 (a) If there are sixty‑five or more days between the receipt by the tax collector of the supplemental collateral list and the date of the scheduled tax sale, the tax collector shall deliver to the newly identified lienholder or at the newly identified address, or both, the notice required by Section 12‑49‑1190 in the same manner and under the same timelines as provided in that section.

 (b) If there are fewer than sixty‑five days, but at least forty‑five days between the receipt by the tax collector of the supplemental collateral list and the date of the scheduled tax sale, the tax collector shall deliver to the newly identified lienholder or at the newly identified address, or both, the notice required by Section 12‑49‑1190 in the same manner as required pursuant to that section, except that the notice must be given no fewer than twenty days before the date of the scheduled tax sale.

 (c) If the tax sale has already occurred by the time the tax collector receives the supplemental collateral list, or if there are fewer than forty‑five days between the receipt by the tax collector of the supplemental collateral list and the date of the scheduled tax sale, the tax collector is not required to deliver to the newly identified lienholder or at the newly identified address, or both, a notice pursuant to subsection (D)(2). Except to the extent that they are entitled to receive notice pursuant to subsections (B) or (C) and (D)(1), the only notice the newly identified lienholders, or known lienholders at a newly identified address, are entitled to receive pursuant to this subitem is a notice of their right of redemption pursuant to the provisions of Chapter 51, Title 12.

HISTORY: 2006 Act No. 386, Section 49.A, eff June 14, 2006; 2015 Act No. 87 (S.379), Section 53, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 53, in (C), substituted “to the county department responsible for registering manufactured housing” for “to the county auditor”.

Library References

Taxation 2847.

Westlaw Topic No. 371.

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

**SECTION 12‑49‑1230.** Collateral lists and supplements.

 (A) By July first of each year, each lienholder may provide a written collateral list to the tax collector of each county in which the lienholder’s collateral is located. The collateral list sent to a particular county must be derived by a lienholder sorting its accounts by United States Postal Zip Codes and by sorting those zip codes by the counties that have geographical areas covered by those zip codes. The zip codes used must be those shown in the lienholder’s records as the mailing addresses where the collateral is situate. For those zip codes covering geographical areas that extend into multiple counties, the collateral list sent to all counties sharing the same zip codes must contain the information required by Section 12‑49‑1250.

 (B) Any collateral list provided by a lienholder to a tax collector after July first and no later than December thirty‑first of any year is considered a supplemental collateral list for purposes of the lienholder’s right to receive notice of a tax levy and sale pursuant to Section 12‑49‑1190 for that same calendar year.

 (C) A lienholder is not required to provide to the tax collector a collateral list annually or periodically. If a particular lienholder does not provide a collateral list to the tax collector in a timely manner for the year in which the tax collector intends to sell real property on which that lienholder holds a lien, the tax collector may rely on the most current information obtained pursuant to Section 12‑49‑1190 including, but not limited to, a collateral list from a previous year.

HISTORY: 2006 Act No. 386, Section 49.A, eff June 14, 2006.

**SECTION 12‑49‑1240.** Form of collateral list and supplement.

 The form of the collateral list and a supplement for mobile or manufactured homes must be substantially as follows:

 Collateral List For \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County

 Lienholder: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Address for Notice: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name(s) of Owner(s): Address of Home: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Other Address of Owner(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Zip Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Year of Home: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Make/Model: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Size of Home: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Full Serial Number: \_\_\_\_\_\_\_\_\_\_\_\_.

HISTORY: 2006 Act No. 386, Section 49.A, eff June 14, 2006.

**SECTION 12‑49‑1250.** Medium for delivery of collateral list and supplement.

 The collateral list and a supplement may be provided to the tax collector through a medium acceptable to the sender and the receiver. The medium may include United States mail, hand delivery, express delivery, or e‑mail, but the sender shall maintain sufficient proof that the collateral list and supplement were provided to the tax collector.

HISTORY: 2006 Act No. 386, Section 49.A, eff June 14, 2006.

**SECTION 12‑49‑1260.** Providing copies of collateral list; use of list.

 The collateral lists and supplements must be maintained by the tax collector strictly and only for the purposes provided in this article. A person in the tax collector’s office may not give, release, or provide in any form to any person or entity the original or any photographic or electronic copy of the collateral lists or a list reconstructed from the tax collector’s records which shows the owners of mobile or manufactured homes in a county and the names of the lienholders of these homes. The collateral lists must be used for the purposes only of notifying the lienholders of impending tax sales and the expiration of redemption periods. This section does not prevent a tax collector from integrating information obtained from the collateral lists into the tax collector’s records in the same manner as the tax collector integrates information in his records obtained from other sources. This section does not prevent a tax collector from providing information to a person or entity about the name of the owner and lienholder of a particular mobile or manufactured home.

HISTORY: 2006 Act No. 386, Section 49.A, eff June 14, 2006.

**SECTION 12‑49‑1270.** Rights, interests and security of lienholder.

 (A) Except as otherwise provided in Section 12‑49‑1220 or 12‑49‑1290, unless the tax collector complies with the provisions of Sections 12‑49‑1190 and 12‑49‑1220, the rights, interest, and security of a lienholder of a mobile or manufactured home is not affected by a tax sale and a transfer of title made pursuant to the tax sale.

 (B) Except as specifically provided in this article, the rights and remedies of a lienholder of a mobile or manufactured home under the terms of the security documents or as otherwise provided in this title are not affected by whether or not a lienholder provides a collateral list to the tax collector or provides information to the assessor about where and to whom tax notices must be sent.

HISTORY: 2006 Act No. 386, Section 49.A, eff June 14, 2006; 2015 Act No. 87 (S.379), Section 54, eff June 11, 2015.

Effect of Amendment

2015 Act No. 87, Section 54, in (B), substituted “provides information to the assessor” for “provides information to the auditor”.

Library References

Taxation 2847.

Westlaw Topic No. 371.

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

**SECTION 12‑49‑1280.** Circumstances not grounds for voiding tax sale.

 Notwithstanding another provision of this article, the following circumstances are not grounds for voiding a tax sale:

 (1) The tax collector complied with Section 12‑49‑1220(B) but the return from the department did not provide the name and address of the current lienholder, the lienholder’s most current collateral list that was provided to the tax collector did not reflect accurately the name and address of the lienholder for the mobile or manufactured home, the county had not been provided information about the lienholder and its address pursuant to the licensing and moving permit procedures provided for in Chapter 17, Title 31, and department records did not reflect information about the lienholder and its address.

 (2) The mobile or manufactured home appeared on collateral lists of more than one lienholder and, although the tax collector did not notify all the lienholders, he did notify the lienholders that held liens on the mobile or manufactured home at the time the notice was given, and the notice was sent to the correct addresses of the lienholders holding the liens where the owner’s account was being serviced at the time the notice was given.

 (3) The lienholder that holds the lien on the mobile or manufactured home at the time the notice was given receives the notice at the correct address of the lienholder where the owner’s account is being serviced, regardless of how the tax collector obtained the correct name and address of the lienholder.

HISTORY: 2006 Act No. 386, Section 49.A, eff June 14, 2006.

Library References

Taxation 2847.

Westlaw Topic No. 371.

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

**SECTION 12‑49‑1290.** Circumstances not defense to lienholder’s effort to void tax sale.

 Notwithstanding the provisions of this article, the following circumstances are not a defense to a lienholder’s effort to void a tax sale:

 The lienholder failed to provide the tax collector with a collateral list for one or more years, but the most current collateral list the lienholder did provide the tax collector, including any supplements described in Section 12‑49‑1220(D)(2)(a) and (b), showed that the lienholder held a lien on the particular mobile or manufactured home that was sold by the tax collector at a tax sale, or the county had been provided information about the lienholder and its address pursuant to the licensing and moving permit procedures provided for in Chapter 17, Title 31.

HISTORY: 2006 Act No. 386, Section 49.A, eff June 14, 2006.

Library References

Taxation 2847.

Westlaw Topic No. 371.

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