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Honorable Freda P. Roberts
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Taxation -- Ad Valorem Taxes -- Appeals

Where Board of Equalization sets value of property after time when taxes normally become delinquent, taxpayer is allowed 30 days from date of Board's action in which to file notice of appeal in circuit court and either pay taxes or file supersedeas bond.

Dear Mrs. Roberts:

Your request for an Opinion dated December 28, 1982 is in pertinent part as follows:

A taxpayer has appealed 1982 ad valorem tax due on October 1, 1982, and delinquent after December 31, 1982, to the County Board of Equalization.

Due to the number of hearings held, the board has not completed its decision on some appeals. The taxpayer in question may not be notified of the board's decision until some time after January 1, 1983.

The taxpayer has stated that he may want to appeal the board's decision to circuit court. His question is, will he be allowed to pay taxes after the board's decision and then appeal to circuit court, or will he lose his right of appeal if taxes are not paid by December 31, 1982?

The procedure to be followed in appealing rulings from the Board of Equalization is contained in §40-3-25, Code of Alabama 1975. This section provides that:

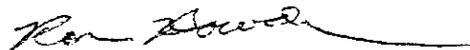
When an appeal is taken, the taxpayer shall pay the taxes due as fixed for assessment for the preceding tax year before the same becomes delinquent; and, upon failure to do so, the court upon motion ex mero motu must dismiss the appeal, unless at the time of taking the appeal the taxpayer has executed a supersedeas bond with sufficient sureties to be approved by the clerk of the circuit court in double the amount of taxes. . . .

The above quoted section contemplates that the Board's decision will be reached prior to the time that the tax becomes delinquent. Obviously, if the Board reaches its decision after the time when the taxes normally become delinquent, the taxpayer cannot, at the time of taking his appeal from the ruling of the Board, pay the taxes before they become delinquent for the simple reason that the taxpayer cannot know the correct amount of taxes to pay until the Board has reached its decision. Since the statute governing appeals from decisions of the Board of Equalization makes no provision for the situation which you describe and since this situation arose through no fault of the taxpayer, it is my opinion that he should be allowed to pay his taxes after the Board's decision without losing his right of appeal to the circuit court. Since the taxpayer is granted 30 days from the final decision of the Board fixing the valuation of his property in which to take an appeal under normal circumstances, this same time period should be allowed to the taxpayer under the present circumstances. It is my opinion, therefore, that the taxpayer is allowed 30 days from the time when the Board makes its decision in which to file his appeal and either pay his taxes or file a supersedeas bond in double the amount of said taxes.

Sincerely,

CHARLES A. GRADDICK
Attorney General

By-



RON BOWDEN
Assistant Attorney General

RB:ccc