

South Carolina Department of Revenue Issues Decision Regarding 2019 Tax Sale

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The South Carolina Department of Revenue's Government Services Division has issued a [Decision](#) giving South Carolina counties guidance regarding the 2019 tax sale in the wake of the South Carolina Supreme Court's [opinion](#) in *Mercury Funding v. Chesney*. SCDOR's guidance is directed at counties trying to determine how to conclude the tax sale process for properties sold in 2019. The guidance likely impacts the portfolios of tax sale buyers who participated in the 2019 tax sale. The practical impact of the SCDOR guidance could expose counties to the threat further litigation if they try to administratively void tax sales before issuing tax deeds.

Act 174 and the Chesney Opinion

Under South Carolina law before [Act 174](#), delinquent taxpayers and other interested parties had one year from the date of the tax sale to redeem real property. Act 174 extended that redemption period for an additional year, but only for real property sold at the 2019 tax sale. When Act 174 was enacted on September 30, 2020, some counties had already begun the process of notifying delinquent taxpayers and other interested parties of the approaching end of the redemption period as required by law.^[1]

Petitioner Mercury Funding bought property at the 2019 tax sale impacted by the extended redemption period and asked the South Carolina Supreme Court to declare Act 174 unconstitutional. The Court agreed with Mercury Funding, ruling the way the extended redemption period was passed violated the South Carolina Constitution. The Court declined to give any guidance as to how the counties should proceed in the tax sale process.

SCDOR's Guidance

To fill this void, SCDOR issued its guidance on July 21, 2021, which concludes that the counties should proceed as follows:

1. For counties that had not issued redemption notices before Act 174 was enacted, those counties should immediately issue the redemption notices and proceed expeditiously with the

tax sale process.

2. For counties that had already issued redemption notices before Act 174 was enacted, those counties should immediately issue the tax deeds.
3. As an alternative, a county may choose to void the sale of any property that had not been redeemed under S.C. Code Ann. § 12-51-150. However, the SCDOR guidance further notes that if the redemption notice is issued, then the defaulting taxpayer receives statutory notice, and the public interest in protecting private property rights has been fulfilled.

While the guidance gives counties the alternative option of voiding the bids of properties purchased at the 2019 tax sale, the guidance suggests that there is no reason for a county to do so because the issuance of a redemption notice satisfies the statutory requirements and public policy concerns. Moreover, voiding the bids could expose those counties to the threat of additional litigation by tax sale purchasers. Those purchasers have an incentive to challenge the county's decision to void tax sales because such a decision drops the potential interest rate return from 12% to the actual interest earned, which is roughly that of a savings account. This can completely undercut a portfolio's yield. More importantly, however, this option leaves the *ad valorem* taxes unpaid, leaving the shortfall to be borne by other taxpayers in the county.

By contrast, the first option in SCDOR's guidance—notice and issuing the tax deed—appears to satisfy the statutory requirement of S.C. Code Ann. § 12-51-120 of providing notice of the right to redeem neither more than 45 nor less than 20 days before the redemption period expires. From a liability standpoint, this option seems to be the more conservative approach because it ensures that *ad valorem* taxes are collected by the county, while also avoiding the potential lawsuit from the tax sale bidder. This option also protects delinquent taxpayers and interested parties impacted by the issuance of the tax deed because it leaves open the possibility that the validity of the tax sale can be raised in a subsequent quiet tax title action, the statutory procedure already in place so that “rights, titles, interests, claims or liens may be adjudicated” by the Court following a tax sale.[2] Should a court later declare the tax sale to be invalid in light of the potential confusion caused by Act 174, then the court's opinion can be conditioned on the payment of the taxes and reimbursement of the bid and interest to the tax sale purchaser.[3]

Practical Considerations

Thus, counties wishing to avoid future litigation potentially holding them liable for payment of redemption interest might consider the SCDOR's first option to be the better course of action. That option balances the needs of counties to collect tax revenue while ensuring that delinquent taxpayers and other interested parties have options to protecting their rights to properties sold at the 2019 tax sale.

A. Parker Barnes, III also contributed to this article.

[1] S.C. Code Ann. § 12-51-120.

[2] S.C. Code Ann. § 12-61-20.

[3] See *Key Corp. Capital, Inc. v. Cty. of Beaufort*, 373 S.C. 55, 62, 644 S.E.2d 675, 679 (2007) (analyzing South Carolina law and characterizing remedy of the “setting aside of the tax sale” as

being “tantamount to a redemption which triggered” the statutory redemption process); see also S.C. Code. Ann. § 12-61-40 (permitting order to be conditioned upon payment of taxes).

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