



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

November 30, 2021

Wade White, Esq.  
Attorney, Neshoba County Board of Supervisors  
501 Main Street  
Philadelphia, Mississippi 39350

Re: Authority of Board of Supervisors to Forgive Penalties for Failure to File  
Ad Valorem Tax Rendition

Dear Mr. White:

The Office of the Attorney General has received your request for an official opinion.

### **Background**

According to your request, a convenience store owner purchased neighboring property with an existing car wash in December 2015. While the convenience store owner always filed a personal property rendition and paid personal property taxes on the convenience store, he never filed a personal property rendition or paid personal property taxes on the newly acquired car wash. The personal property rendition request and personal property tax bill continued to go to the car wash's previous owner. From 2015 to 2020, no rendition was filed, and no personal property taxes were paid on the car wash. When the car wash's new owner and the tax assessor/collector learned of this, the owner paid all past due ad valorem taxes on the car wash's personal property.

### **Question Presented**

May the County Board of Supervisors (the "Board") and/or the tax assessor/collector waive the penalty for failure to file a rendition since the personal property taxes were paid once the mistake was learned?

### **Brief Response**

The penalty provided in Section 27-35-45 is mandatory. Neither the Board nor the tax assessor/collector may waive or forgive the penalty. However, if the tax assessor/collector determines that the taxpayer did submit the proper documentation or the Board determines that the tax assessor/collector did not fulfill his statutory mandates, the Board may determine that the taxpayer does not owe the penalty.

### **Applicable Law and Discussion**

Section 27-35-23 of the Mississippi Code sets forth the requirements for reporting taxable personal property, and states, in part, the following:

(1)(a) Except as may be otherwise provided for in subsection (2) of this section, the tax assessor shall call upon each person liable to taxation in his county for a list of his taxable personal property, either in person, or by leaving a copy of the prescribed tax list at his business or his usual place of residence, and it shall be the duty of each person to make out and deliver to the tax assessor, upon demand, and if not demanded, not later than the first day of April in each year, a true list of his taxable property with the true value of each article, specifying all such property of which he was possessed on the next preceding tax lien date in his own right or in the right of his wife or minor child, or as executor, administrator, guardian, trustee, agent, or otherwise, rendering separate lists of the property of each. The taxpayer shall fill in all blanks on the tax lists and show in the proper place all taxable personal property owned by him or by any person for whom he is required to give in taxable property.

Section 27-35-45 states the corresponding penalty for failure to submit a list of taxable personal property:

If any person shall fail to list for assessment, as required by law, any personal property which is taxable under the laws of the State of Mississippi, and which said person should list for assessment under the laws of the state, or shall intentionally fail to provide the tax assessor with any documentation that the tax assessor considers necessary to verify the list, the current year assessment shall be increased by ten percent (10%).

Based on a plain reading of this statute, the penalty provided therein is mandatory. MS AG Op., *Wilkinson* at \*1 (June 20, 1997) (opining that “it appears from a plain reading of the statute that [the penalty] is in fact mandatory if the tax assessor makes the determination that the schedules or documents provided by the taxpayer are insufficient”). Consistent with the Mississippi Constitution, this office has opined that neither the tax assessor nor the board of supervisors may forgive or reduce the penalty imposed by Section 27-35-45. MS AG Op., *Thaggard* at \*2 (Feb. 29, 2008).

However, while a taxpayer’s failure to comply with the personal property rendition requirement of Section 27-35-23 triggers the penalty provided in Section 27-35-45, MS AG Op., *Blackledge* at \*2 (Feb. 20, 2004), there may be circumstances where the penalty is not triggered. MS AG Op., *Thaggard* at \*1 (Feb. 29, 2008) (finding that “[t]he Tax Assessor would be authorized . . . after a challenge by the taxpayer, to review all facts and make a determination, consistent with fact, that the taxpayer did submit the proper documentation, and that the penalty is not warranted.”).

As the basis for the property owner’s failure to submit a personal property rendition or pay any personal property taxes on the car wash for the years 2015 through 2020, you state that the tax

assessor/collector sent the notice to the previous owner of the car wash. This office has opined previously, although in a different delinquent tax context, “that a property owner does not owe penalties and interest for unpaid taxes . . . when an error by the tax assessor resulted in the owner's delinquency of the tax payment.” MS AG Op., *Tutor* at \* 3 (Jan. 20, 2017). Whether the tax assessor/collector made an error is a question of fact to be determined by the Board. If the Board makes a finding that the tax assessor failed to fulfill his or her statutory obligations, the Board may find that the taxpayer does not owe the penalty. *See* MS AG Op., *Martin* at \*1 (Dec. 7, 2001).

Because the statutory language of Section 27-35-45 is clear, and on its face the penalty is mandatory, neither the Board nor the tax assessor/collector may waive or forgive the penalty. However, if the tax assessor/collector determines that the taxpayer did submit the proper documentation or the Board determines that the tax assessor/collector did not fulfill his statutory obligations, the tax assessor/collector or Board may determine that the taxpayer does not owe the penalty.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ *Misty Monroe*

Misty Monroe  
Special Assistant Attorney General