



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

March 13, 2023

Anthony E. Nowak, Esq.
Attorney, DeSoto County Board of Supervisors
Post Office Box 346
Hernando, Mississippi 38632

Re: Tax Refund for Erroneously Paid Property Taxes

Dear Mr. Nowak:

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

Background

According to your request, a property owner acquired title to property in 2001 and filed for homestead exemption in 2002. The homestead exemption was approved, and the homestead exemption remained in place until 2012 when the homestead exemption was deleted due to a change in the owner's mailing address. However, the property owner never vacated the property; there was simply a change in the mailing address. In 2022, the property owner turned 65 and applied for the over-65 homestead exemption, at which time the erroneous homestead deletion was noticed. As a result of DeSoto County's error, the taxpayer was assessed and paid substantially more in property taxes than should have been paid for a period of 10 years. The error was solely the result of an erroneous assessment and not the result of any mistake on behalf of the landowner.

Question Presented

May DeSoto County, on its own motion, or the county tax collector refund erroneously paid taxes for a period of time that looks back more than three years?

Brief Response

DeSoto County, on its own motion, may not refund erroneously paid taxes. The tax collector, pursuant to Mississippi Code Annotated Section 27-73-7, may refund erroneously paid property taxes. Any claim for the refund of erroneously paid taxes, however, is subject to a three-year statute of limitation.

Applicable Law and Discussion

Mississippi Code Annotated Section 27-73-7 provides, in pertinent part:

The tax collector is authorized and empowered to refund any individual, firm or corporation any ad valorem, privilege or excise tax which has been paid or collected through error or otherwise when such person, individual, firm or corporation has paid any such tax in excess of the sum properly due whether paid under protest or not. Taxes erroneously paid within the meaning of this section shall include, but not be limited to, double payment, or overpayment, or payment on state, United States, vacant and exempt land, and the purchase paid for the redemption of lands erroneously sold for taxes.

This office has previously opined that a tax collector, upon order from the board of supervisors, may refund taxes paid in error. MS AG Op., *Nowak* at *1 (Apr. 27, 2007); MS AG Op., *Myers* at *1 (Feb. 20, 1998). Section 27-73-5 sets a three-year limitation period for all suits, applications, and proceedings by taxpayers for the recovery and refund of privilege, income, and excise taxes but does not speak to ad valorem taxes. Nonetheless, this office and the Mississippi Supreme Court have opined that the general three-year statute of limitation in Section 15-1-49 applies to the potential refund set forth in Section 27-73-7, which includes ad valorem taxes. MS AG Op., *Nowak* at *2 (July 28, 2017) (“[C]laims for erroneous tax payments, except those enumerated in Section 27-73-5, are subject to . . . Section 15-1-49(1), which [also] provides for a three-year time limitation.”); *Rankin Cnty. Bd. of Supervisors v. Lakeland Income Props., LLC*, 241 So. 3d 1279, 1292 (Miss. 2018) (agreeing that for ad valorem taxes, “the refund potential of Section 27-73-7 is limited by the statute of limitations enumerated in Section 15-1-49.”)

Upon petition or application by the taxpayer, the tax collector may issue a refund after the board of supervisors “make[s] a factual finding by order on the minutes that the taxpayer was entitled to the refund” *Nowak* at *2 (July 28, 2017). The refund is limited to three years. *Id.*

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/ Gregory Alston

Gregory Alston
Special Assistant Attorney General