



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 3, 2023

Bryant W. Clark, Esq.
Attorney, Holmes County Board of Supervisors
Post Office Box 179
Lexington, Mississippi 39095

Re: Correction of Ad Valorem Tax Error and/or Omission for Nonprofit Corporation

Dear Mr. Clark:

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

Background

According to your request, Northside Haven Association, Inc. (“Association”) is a nonprofit corporation with 501(c)(3) tax-exempt status. The Association is exempt from ad valorem taxation pursuant to Mississippi Code Annotated Section 27-31-1(dd). Around June 2019, the Association was still operating and functioning but temporarily closed due to renovation, reorganization, and the severe illness of key personnel. This resulted in Holmes County (“County”) sending a notice of revocation of tax-exempt status to the Association. However, after the Association and the County consulted, the Association’s 2019 ad valorem tax-exempt status was reinstated. Accordingly, there was no official revocation, and the Association did not receive notice of any revocation.

Nonetheless, through error and/or omission, 2020 ad valorem taxes were assessed against the Association, and eventually, the 2020 taxes were sold at an August 2021 tax sale. The Association contends that it never received notice that any taxes were owed prior to 2023. In 2023, the Association received notice that the 2020 taxes were sold at the tax sale and were delinquent. The Association received tax-exempt status for 2021, 2022, and 2023.

Questions Presented

1. May the board of supervisors or the tax assessor correct the 2020 assessment against the Association?

2. May the board of supervisors or tax assessor correct the tax exemption revocation mistake, void the tax sale, and exempt the Association from having to pay the 2020 taxes?

Brief Response

1. Although Section 27-35-143(1) gives the board of supervisors the power to amend tax assessments in certain circumstances, based on the information provided in your opinion request, the amendment period set forth in Section 27-35-143(1) has passed for this matter.
2. Please see the response to your first question. Whether the Association was exempt from paying 2020 taxes pursuant to Section 27-31-1(dd) is a mixed question of fact and law; therefore, this office may not confirm such exemption via official opinion. Beyond this, Section 27-43-3 is the only authority that specifically addresses voiding a tax sale; it provides that a tax sale “shall be void” when the requisite notice requirements for the expiration of the redemption period as set forth in Section 27-43-3 are not satisfied.

Applicable Law and Discussion

To begin, this office may only opine upon prospective questions of state law and may not opine upon mixed questions of fact and law. Miss. Code Ann. § 7-5-25. Whether the Association was exempt from 2020 ad valorem taxes pursuant to Section 27-31-1(dd) is a mixed question of fact and law, and therefore this office may not confirm the Association’s 2020 ad valorem tax-exempt status.

Nonetheless, Section 27-35-143(1) provides the circumstances in which a tax assessment may be changed. Relevant to this opinion request, Section 27-35-143(1)(m) provides:

The board of supervisors of each county shall have power, upon application of the party interested, or by the assessor on behalf of such party, or otherwise as prescribed in Sections 27-35-145 through 27-35-149, to change, cancel or decrease an assessment in the manner herein provided at any time after the assessment roll containing such assessment has been finally approved by the Department of Revenue, and, except as otherwise provided in subsection (2) of this section, prior to the last Monday in August next, under the following circumstances and no other:

. . .

(m) When the property has been assessed as subject to state taxes and is exempt; or when the property has been assessed as subject to county and district taxes and is exempt from such taxes.

Based on the information provided in your opinion request, the amendment period set forth in Section 27-35-143(1) has passed for this matter. Accordingly, it is the opinion of this office that neither the board of supervisors nor the tax assessor may change, cancel, or decrease the Association’s 2020 ad valorem tax assessment.

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Regarding whether the tax assessor or board of supervisors may void the subject tax sale, the only statutory authority that specifically addresses “voiding” a tax sale is Section 27-43-3, which provides that a tax sale “shall be void” when the requisite notice requirements for the expiration of the redemption period as set forth in Section 27-43-3 are not satisfied. Prior opinions of this office have also indicated that when a board of supervisors makes the requisite factual determinations, it may declare a tax sale void by order spread upon the minutes. *See* MS AG Op., *Yancey* at *1 (Aug. 4, 2000) (“The governing authorities may make the factual determination and may spread upon the minutes that the tax sale was void.”); MS AG Op., *Slover* at *1 (May 29, 2015) (“A board of supervisors may void a tax sale by order spread upon the minutes.”); *see also* Miss. Code Ann. § 19-3-40(1) (granting broad authority to boards of supervisors “to adopt any orders, resolutions or ordinances with respect to county affairs, property and finances, for which no specific provision has been made by general law and which are not inconsistent with the Mississippi Constitution, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi.”)

Beyond the scope of your request and for informational purposes only, in the instance the subject tax sale is voided, 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 . . . 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 . . . vacant and exempt land, and the purchase paid for the redemption of lands erroneously sold for taxes.

See also Rankin Cnty. Bd. of Supervisors v. Lakeland Income Prop., LLC, 241 So. 3d 1279, 1291 (noting “Section 27-73-7 contains no requirement that an objection be made” for an individual, firm, or corporation to receive a refund); MS AG Op., *Nowak* at *1 (Mar. 13, 2023) (opining “a tax collector, upon order from the board of supervisors, may refund taxes paid in error”); *but see Rankin Cnty. Bd. of Supervisors*, 241 So. 3d at 1292 (citing Miss. Code Ann. §§ 15-1-49, 27-73-7) (“[T]he refund potential of Section 27-73-7 is limited by the [three-year] statute of limitations enumerated in Section 15-1-49.”).

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/ Maggie Kate Bobo

Maggie Kate Bobo
Special Assistant Attorney General