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62706

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FILE NO. S-873

**TAXATION:**

County Collector Distribution of  
Proceeds of Sale of Real Estate  
which was Acquired by County at  
Tax Sale

Honorable Howard L. Hood  
State's Attorney, Jackson County  
Courthouse  
Murphysboro, Illinois 62966

Dear Mr. Hood:

I have your letter wherein you state:

"It has been brought to the attention of my office by the County Treasurer of Jackson County that a special tax sale deposit has been maintained by that office for several years.

This deposit of funds apparently accumulated from a 'County property sale' held by the Jackson County Board. The property sold was forfeited real estate from several of the annual tax sales held by the Treasurer's office to dispose of delinquent real estate taxes (Ch. 120, Section 705 et seq.).

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Apparently, the County was issued a Tax Certificate of Purchase for each parcel and subsequently petitioned for tax deeds pursuant to Chapter 120, Section 744 et seq. The aforementioned sale was held shortly after receiving the tax deeds.

Specifically my questions are:

1. Is the County Treasurer and Collector required to distribute the funds derived from the 'property sale' to the various County taxing units?
2. If so, is the distribution in the same ratio as existed for the taxing bodies for the year in which the property was forfeited or the year in which the property was sold?
3. If the answer to question one (1) is no, then do the funds go into the County's General Fund?"

Under the Revenue Act of 1939 (Ill. Rev. Stat. 1973, ch. 120, par. 482 et seq.), the county collector is authorized, pursuant to section 225 of said Act (Ill. Rev. Stat. 1973, ch. 120, par. 706), to make application for the sale of lands for delinquent taxes. Such sale is commonly referred to as the annual tax sale. Every tract or lot offered at public sale and not sold for want of bidders is forfeited to the State of Illinois unless released from sale by withdrawal from collection. (Ill. Rev. Stat. 1973, ch. 120, par. 727.) Forfeiture

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merely means that the property becomes liable to certain collection methods.

Section 216d of the Revenue Act of 1939 (Ill. Rev. Stat. 1973, ch. 120, par. 697d, as amended by Public Act 78-1128, sec. 50), provides:

"Whenever any tract of land or lot is offered for sale under any of the provisions of this Act, the County Board of the County in which the same is located, in its discretion, may bid therefor, in the name of the said County as trustee for all taxing districts, including the State, having an interest in the taxes or special assessments for the nonpayment of which said tract of land or lot is sold. The presiding officer of the county board, with the advice and consent of the County Board, may appoint some officer or person to attend such sales and bid on its behalf. The County shall apply on the bid the unpaid taxes and special assessments due upon the tract of land or lot and no cash need be paid. The County shall take all steps necessary to acquire title to the tracts of land or lots so purchased and may manage and operate the property so acquired. When a county, or other taxing district within the county, is a petitioner for a tax deed no filing fee shall be required on the petition and the county as tax creditor and as trustee for other tax creditors, or other taxing districts within the county shall not be required to allege and prove that all taxes and special assessments which become due and payable after the sale to the county have been paid. The lien of taxes and special assessments which become due and payable after a sale to a county shall merge in

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the fee title of the county, or other taxing district within the county, on the issuance of a deed and such taxes and special assessments together with the taxes and special assessments included in the tax sale to the county shall share pro rata in the proceeds of the sale of the property by the county.

The County may sell or assign the tracts of land or lots so acquired, or the certificate of purchase thereto, and the proceeds of said sale or assignment shall be distributed to the taxing districts, including the State of Illinois, in proportion to their respective interests therein.

At annual tax sales pursuant to the provisions of Section 225 of this Act, a County may bid only in the absence of other bidders." (Emphasis added.)

Thus, the county may purchase any tract of land offered for sale under any of the provisions of the Act, may petition for tax deeds, and may sell or assign the tracts of land so acquired.

As indicated in your letter, the property in question was offered for sale at the annual tax sale and subsequently forfeited. The county then acquired tax deeds to the property and, shortly thereafter, a sale was held. Therefore, in regard to your first question, it is my understanding that the "property sale", to which you refer, is a sale held pursuant to section 216d of the Revenue Act of 1939, supra.

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Your first question is answered by the express language of section 216d of the Revenue Act of 1939, supra, under which the proceeds from property sold pursuant to said section must be distributed to all taxing districts, including the State, having an interest in the taxes or special assessments for the nonpayment of which said tract of land or lot is sold. 1962 Op. Atty. Gen., 263.

In regard to your second question, section 216d of the Act, supra, specifically provides that the proceeds shall be distributed to the taxing districts, including the State of Illinois, "in proportion to their respective interests therein". It is therefore necessary to ascertain the interests of the various taxing districts for purposes of the distribution of proceeds pursuant to section 216d of the Act.

As to taxing districts other than the county, it is my opinion, for the reasons which follow, that the interest of said districts is in the principal amount of levied taxes and special assessments. Such a construction is supported by the context of the word "taxes" in section 216d of the Act.

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Section 1 of the Act (Ill. Rev. Stat. 1973, ch. 120, par. 482) sets forth a general definition for the word "taxes" by providing in pertinent part:

"§ 1. The words and phrases following, whenever used in this Act, shall be construed to include in their meaning the definitions set opposite the same in this Section, whenever it shall be necessary to the proper construction of this Act.

\* \* \*

(11) Tax — Taxes — Any tax, special assessments or costs, interest or penalty imposed upon property.

\* \* \* "

However, the word "taxes", wherever it appears in section 216d, is used in conjunction with the phrase "special assessments" so as to indicate the use of that word to mean the principal amount of levied taxes.

For example, said section expressly provides that the county may bid in its own name as trustee for all taxing districts having an "interest in the taxes or special assessments" for the nonpayment of which said tract of land or lot is sold. Thus, the interest of a taxing district, other than the county, is in the taxes and special assessments levied on its behalf and not penalties, interest or costs.

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Moreover, such a construction is in accord with the case of People v. Nash, 364 Ill. 224. In that case, a question arose as to the meaning of statutory language, now contained in section 224 of the Revenue Act of 1939 (Ill. Rev. Stat. 1973, ch. 120, par. 705), which fixed the rate of interest on due and unpaid taxes and further provided that all such collections on account of interest shall be paid into the county treasury to be used for county purposes. The court held that the phrase "all such collections on account of interest" must be construed to cover the interest and penalties collected, both before and after forfeiture, so that all such amounts must go into the county treasury.

More importantly, for taxing districts other than the county, the court further noted, in dictum, that a consideration of the statutes concerned with the distribution of tax monies demonstrated a clear legislative intent that only the principal of the tax levied is to be distributed to the various taxing bodies other than the county. While this statement was dictum, it is entitled to consideration since it is particularly relevant to your question.

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The county, as a taxing district, clearly has an interest in the principal amount of taxes levied on its behalf. The only question is whether penalties, interest and costs must be taken into account as part of the county's interest for purposes of determining its proportionate share of the proceeds. It should be noted that the interest referred to here is not true interest but rather a penalty on unpaid taxes. People ex rel. Johnson v. Peacock, 98 Ill. 172.

Nash, supra, specifically dealt with the question of interest. While the question actually decided in that case was whether penalties collected after forfeiture were to be paid to the county, it was apparently conceded by both parties to the case that collected interest or penalties prior to forfeiture belong exclusively to the county. The statutory language at issue in Nash has not been changed since that case was decided. Section 224 of the Revenue Act of 1939, supra, provides in pertinent part:

"§ 224. Except as herein otherwise provided for counties containing 1,000,000 or more inhabitants, \* \* \* all real estate upon which the first installment of taxes for years subsequent to the year 1950 remains unpaid on the first day of June



annually shall be deemed delinquent as to such first installment and except as may be provided pursuant to Section 224.1, and such unpaid first installment shall bear interest after the first day of June annually at the rate of 1% per month until paid or forfeited; and all real estate upon which the second installment of taxes remains due and unpaid on the first day of September, annually, shall be deemed delinquent as to such second installment, and such unpaid taxes as to such second installment shall bear interest after the first day of September, at the rate of one per cent per month until paid or forfeited. All taxes assessed upon personal property remaining due and unpaid, shall, in counties having a population of less than 1,000,000, bear interest after the first day of June, annually, except that unpaid taxes assessed upon personal property for the year 1950, shall bear interest after the first day of 1951, and in counties of 1,000,000 or more population, shall bear interest after the first day of May, at the rate of one per cent per month until paid; parts or fractions of a month shall be reckoned as a month. And all such collections on account of interest shall be paid into the county treasury to be used for county purposes. \* \* \* \* (Emphasis added.)

Nash has not been overruled in subsequent cases. In People v. Kamm, 48 Ill. App. 2d 447, a suit was filed to foreclose a tax lien on certain property. The foreclosure decree found that the principal of tax due totaled \$266,317.65 plus accrued penalties, interest and costs totaling \$277,853.64.

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After the foreclosure sale which brought \$175,000, the county treasurer retained in the county treasury more than \$100,000 for fees, commissions, penalties, interest and costs, and distributed less than \$75,000 of the \$175,000 to the various taxing bodies, including the county. The municipalities involved filed an intervening petition in the suit alleging that the distribution was illegal and contended that when the total amount collected is not sufficient even to pay the principal of the taxes levied, there is nothing available for interest and penalties. It was argued on behalf of the county that the accrued penalties and interest, as charged on the books of the county, acquire a lien, at least equal to that of the principal of taxes, and when a collection is made, the amount received must be prorated on the basis of these figures for principal of taxes and interest and penalties.

The court cited the language of section 224 of the Revenue Act of 1939, supra, which provides that "all such collections on account of interest shall be paid into the county treasury to be used for county purposes". Particular emphasis was placed on the fact that the language refers to "collections" and not mere bookkeeping accruals.

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In discussing the Nash case, the court noted that the holding in that case only applied to "collections" on account of interest. It was further noted that neither the Nash case nor any other case supported the view that the amount to be paid into the county treasury is to be based on the accrued interest and penalties as shown by the books even though none of these additional amounts have been realized by any type of collection.

Accordingly, the court held that, apart from the county's own tax levy and the compensation for services fixed by law, the only additional sums due and payable to the county treasury must be collected over and above the principal of levied taxes, and if there is no excess, then there is nothing more to be paid to the county treasury. In addition, there was dictum to the effect that, when collections by foreclosure of tax liens suffice to pay fees and commissions of county officers and all levied taxes, any excess remaining goes to the county.

Your letter does not indicate whether the proceeds of sale exceeded the principal amount of levied taxes. It is therefore assumed, for purposes of this opinion, that the proceeds of sale were less than the principal amount of levied taxes.

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The holdings of Nash and Kamm did not concern the problem of costs. People v. Anderson, 380 Ill. 158, specifically dealt with the problem of costs where property is sold at a foreclosure sale for less than the principal amount of levied taxes, penalties, interest and costs. In that case, the total delinquency for both general taxes and special assessments was \$63,833.06. The sale price at the foreclosure sale was \$3,553. Costs of the foreclosure proceeding in the sum of \$228.38 were deducted from the sale price. In addition, costs and redemption fees for prior years' tax sales amounting to \$2,275.40 were also deducted from the amount of the sale. The remaining balance of \$1,049.22 was distributed pro rata to the various taxing districts.

As to costs for previous years' tax sales, the court concluded that there was no statutory provision which authorized such costs to be deducted from the amount of money realized in the foreclosure sale. In this connection, the court stated at pages 169, 170:

"\* \* \* To allow the previous costs to be deducted from the amount of money realized in the foreclosure sale would violate not only the provision of the statute for the pro rata distribution of the funds realized from such sale, but would also permit the

lien of the county to be superior to the lien of the other taxing bodies, for we have frequently held that fees earned by county officers belong to the county. (Jones v. O'Connell, 266 Ill. 443; People v. Witzeman, 268 id. 508.) Thus by deducting from the amount of the foreclosure sale the costs accruing in the previous tax sales would give a priority to the county over the other taxing bodies by the amounts earned from the county clerk and the county collector.

It is anticipated that if a foreclosure of a tax lien is sought under the statute the sale of the property may realize less than the full amount of tax, interest, penalties and costs accruing against each several tract. (French v. Toman, 375 Ill. 389.) With the statute clear that the lien to be foreclosed is one which includes the amount of the tax as well as the amount of the costs, and the provision that the amount realized must be distributed pro rata, it is apparent the legislature never intended there should be built up a prior lien for costs incurred in previous tax sales, which could easily consume the entire amount realized from the sale.

\* \* \* "

The court went on to make the general statement that, since the entire amount due for taxes, costs and penalties is considered as one lien, the amount of costs may only participate in the sum realized on the same pro rata basis as other taxing bodies. The actual decision, however, was a reversal of that portion of the decree which allowed the collector to recover

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costs and redemption fees assessed upon prior tax sales of the same property. The portion of the decree which allowed the collector to deduct, prior to distribution, the costs of the immediate foreclosure proceeding was allowed to stand.

In Anderson, it was not made clear how costs of previous years' tax sales are distinguishable from costs of the immediate foreclosure proceeding. The Kamm court cited the Anderson case and its discussion of costs but expressed doubt as to its meaning. In any event, the facts contained in your letter do not indicate what, if any, costs were involved in the sale therein described and when said costs accrued. Therefore, no opinion is expressed as to the problem of costs in the context of the distribution of the proceeds of a sale held pursuant to section 216d of the Act.

You ask whether the ratio for purposes of distribution is that which existed in the year of forfeiture or that which existed in the year of sale. The year in which the forfeiture, foreclosure, or sale occurred is irrelevant in determining the ratio for distribution. Section 216 of the Revenue Act of 1939 (Ill. Rev. Stat. 1973, ch. 120, par. 697) provides that the taxes

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that may accrue upon real property shall be a prior and first lien upon such property from and including the first day of January in the year in which the taxes are levied until the same are paid or until the property is sold pursuant to any of the provisions of the Act. Said section further provides in pertinent part:

"\* \* \* In proceedings to foreclose the tax lien on any real property, or in petitions to enforce the same, the amount due on the collector's books against the said property shall be prima facie evidence of the amount of taxes against the said real property."

Section 222 of the Revenue Act of 1939 (Ill. Rev. Stat. 1973, ch. 120, par. 703) provides:

"§ 222. If the tax or assessment on property liable to taxation is prevented from being collected for any year or years, by reason of any omission, erroneous proceeding or other cause, the amount of such tax or assessment which such property should have paid may be added to the tax on such property for any subsequent year, in separate columns designating the year or years."

Thus, the years for which the taxes and special assessments are not paid and the principal amount of taxes and special assessments accrued in those years is controlling in fixing the distribution ratio.

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It should be noted that, while neither Nash nor Kamm arose under section 216d of the Revenue Act of 1939, both cases involved the distribution of proceeds of a sale under said Act and the interest of the various taxing districts in said proceeds. Both Nash and Kamm are therefore pertinent to the question of the distribution of the proceeds of sale pursuant to section 216d of the Act.

Since it is assumed that the proceeds of sale were less than the principal amount of levied taxes, Kamm would appear to be controlling as to the county. Under Kamm, interest or penalties would not be taken into account in determining the county's proportionate share on the ground that, where the proceeds of sale are less than the principal amount of levied taxes, nothing has been "collected" as interest or penalties. The proportionate share of the proceeds for the county as a taxing district would be based on the principal amount of taxes levied on its behalf and the compensation for services fixed by law. Since the facts in your letter do not indicate whether there were any costs, no opinion is expressed as to whether costs would be taken into account in determining the county's share of the proceeds of a



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sale held pursuant to section 216d of the Act where such proceeds are less than the principal amount of levied taxes.

As to taxing districts other than the county, the proportionate share of the proceeds for said taxing districts would be based on the principal amount of taxes and special assessments levied on behalf of said bodies. Interest, penalties, and costs would not be taken into account in determining the proportionate share of taxing districts other than the county in the proceeds of a sale pursuant to section 216d of the Act.

Very truly yours,

A T T O R N E Y   G E N E R A L