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ALAN WILSON
ATTORNEY GENERAL

April 5, 2013

The Honorable Timothy L. Nanney
Register of Deeds, Greenville County
301 University Ridge, Suite 1300
Greenville, South Carolina 29601

Dear Mr. Nanney,

You have requested an opinion of this Office as to whether the South Carolina Department of Revenue (the "DOR") may collect a submission/handling fee for the electronic recording of documents pursuant to S.C. Code 12-53-45 (Supp. 2012) in addition to the standard recording fee for such documents. You state that "[i]n order to electronically record tax lien documents it may be necessary for [the DOR] to include a submission/handling fee along with the standard recording fee to facilitate the transmission of the document through the electronic recording system in the various counties currently accepting electronic documents." Furthermore, you seek clarification as to whether "legislation would be required in order to allow [the DOR] to collect this fee to facilitate compliance with this statute"

Law/Analysis

As recently enacted by Act No. 135 of 2012, S.C. Code § 12-53-45 provides:

When filing documents relating to the enforced collection of taxes due this State with county clerks of court and registers of deeds, the department¹ shall file those documents electronically if the clerk of court or register of deeds accepts electronic filings.

As for the costs and fees that the DOR may collect in relation to the collection of taxes, § 12-53-40 states:

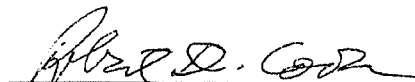
Notwithstanding another provision of law, there is added as costs to each warrant or tax execution collected, served, or recorded by a duly authorized representative of the department an amount equivalent to five percent of the total of the warrant or tax execution or the sum of three dollars, whichever is greater and, in addition, a sum equal to the fee provided in Section 8-21-310(20).² These costs, together with the costs of storage, advertising, and sale,

¹ See § 12-2-10 ("As used in this title 'department' means the South Carolina Department of Revenue").

² Pursuant to § 8-21-310(20)(a), the county clerk of court, register of deeds, or treasurer may collect a ten dollar fee "for filing and enrolling and satisfying executions or warrants for distraint for the ... South Carolina Department of Revenue"

Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Deputy Attorney General

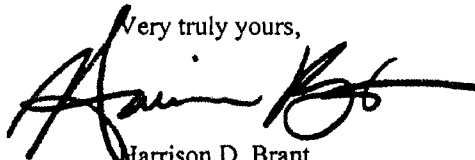
Mr. Nanney
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must be deducted from proceeds of sale before payment of prior liens or claims. Fees charged by clerks of court for the recording and satisfaction of warrants for distraint or tax executions issued by the department must be paid by the State Treasurer on proper warrant from the department from funds appropriated by the General Assembly.

§ 12-53-40 (emphasis added).

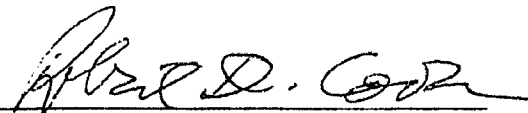
Our Supreme Court has held that costs and fees "are in the nature of penalties, and the statutes granting them have always been strictly construed." State v. Wilder, 198 S.C. 390, 18 S.E.2d 324, 325 (1941) (citation omitted). In addition, other authorities have recognized that "[f]ees are collectible only to the extent authorized by law, and in this connection, statutes providing for fees are strictly construed and will not be extended beyond their letter." 67 C.J.S. Officers § 385; see also § 8-21-15(A) ("No state agency ... initially may set a fee for performing any duty, responsibility or function unless the fee for performing the particular duty, responsibility, or function is authorized by statutory law and set by regulation"). Here, § 12-53-40 only allows the Department to charge the a fee for the recording of a tax lien equal to five percent of the total warrant or tax lien or three dollars, whichever is greater. Furthermore, nothing in § 12-53-45 indicates the Department may impose an additional fee in situations where documents "relating to the enforced collection of taxes due this State" are filed electronically as opposed to in paper form. Applying the aforementioned rule of strict construction, it is our opinion that the fees and costs the Department may impose for the recording of warrants of distraint or tax liens are limited to the amounts stated in § 12-53-40. Therefore, we believe additional legislation is necessary to allow the Department to impose an additional fee for the electronic recording of such documents.

Very truly yours,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General