

Tax collector's certificate, verification

Number: INFORMAL

Date: October 09, 2006

The Honorable George Albright
Marion County Tax Collector
Post Office Box 970
Ocala, Florida 34478-0970

Dear Mr. Albright:

As the Tax Collector for Marion County, you have asked for assistance in determining whether a tax collector's certificate can be issued pursuant to section 253.82, Florida Statutes, and rule 12D-13.067, Florida Administrative Code, when the tax collector has no records to verify payment of the property taxes on a particular piece of property.

According to your letter, an assessment for a parcel of land owned by the Trustees of the Internal Improvement Trust Fund has been included within an assessment to another taxpayer (the master parcel) since at least January 1, 1971. The Marion County Tax Collector's records reflect that property taxes have been paid by the taxpayer at least since 1989 on the master parcel. However, the records of the Marion County Tax Collector from years prior to 1989 have deteriorated to a point that they are illegible. No reservation to the Trustees of the Internal Improvement Trust Fund or deed to the Trustees was located in the chain of title of the master parcel when a private title search was performed. You ask whether, under these circumstances, you are authorized to issue a tax collector's certification pursuant to section 253.82, Florida Statutes.

Section 253.82(1), Florida Statutes, provides:

"(a) The interest of the state in any land which was acquired by the state under chapter 18296, Laws of Florida, 1937, but which is listed on a county tax assessment roll as being owned by a person other than the state and on which ad valorem taxes have been paid at least since January 1, 1971, is hereby released to such person. The rights that are released under this subsection are all rights in the land, including state-held subsurface rights.

(b) Upon request by any person, the county tax collector shall record in the official records of the county in which the land is located a certificate that the taxes have been paid since January 1, 1971, by the landowner or the landowner's predecessor in title, if in fact the taxes have been paid. Such certificate is conclusive evidence of that fact."

Section 12D-13.067, Florida Administrative Code, implements the provisions of the statute. The rule provides procedures for certifying that ad valorem taxes have been paid pursuant to section 253.82(1), Florida Statutes. The rule requires that, upon a written request by the owner of the property and a recording fee, the tax collector must search the tax rolls back to "at least January 1, 1971." [1] The tax collector shall search ad valorem tax records only, to determine if ad valorem taxes have been paid for the preceding 20 years. The rule specifically provides that "if

the search reveals that the ad valorem taxes have been paid since at least January 1, 1971, the tax collector shall prepare and record a certificate evidencing such fact."

The statute and implementing rule are clear. The tax collector may search only ad valorem tax records and must search those records back to January 1, 1971. No alternative procedure is set forth for cases in which the records of the tax collector's office have been destroyed or are otherwise unsearchable. The tax collector must be able to determine and certify that the taxes on this particular parcel have been paid since January 1, 1971.

The tax collector, though a constitutional officer, is a county administrative officer wholly dependent upon statutory authority for his or her powers and duties, as are other county administrative officers.[2] Further, with regard to the administrative rule implementing the statute, agencies have broad discretion to construe governing statutes and that construction is persuasive unless it is clearly erroneous.[3]

Therefore, it would appear that, pursuant to section 253.82(1), Florida Statutes, and the administrative rules implementing the statute, the Marion County Tax Collector may not issue a tax collector's certification for property upon which he or she cannot verify from the ad valorem tax rolls that the taxes have been paid between 1986 and 1989 by the landowner or the landowner's predecessor in title. However, it may be advisable for the tax collector to seek a definitive judicial statement of his or her powers and duties in this situation since it appears that other evidence indicates that these taxes may have been paid and the problem with the availability of records is not the result of any failure to act on the part of the taxpayer/landowner.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tfl

[1] Rule 12D-13.067(1)(a), F.A.C.

[2] See, e.g., *White v. Crandon*, 156 So. 303, 305 (Fla. 1934); *Lang v. Walker*, 35 So. 78 (Fla. 1903); 67 C.J.S. *Officers* s. 190; and Ops. Att'y Gen. Fla. 05-48 (2005); 82-72 (1982), 81-89 (1981), 81-29 (1981), 79-17 (1979) and 78-151 (1978). See also, s. 5(c), Art. II, Fla. Const., which provides that "[t]he powers, duties, compensation and method of payment of state and county officers shall be fixed by law." and s. 1(d), Art. VIII, Fla. Const.

[3] See *Office of Fire Code Official of Collier County Fire Control and Rescue Districts v. Florida Department of Financial Services*, 869 So. 2d 1233 (Fla. 2nd DCA 2004); *Velez v. Commission on Ethics, State*, 739 So. 2d 686 (Fla. 5th DCA 1999); *Republic Media, Inc., v. Department of Transportation, State of Florida*, 714 So. 2d 1203 (Fla. 5th DCA 1998); *Department of Business Regulation, Division of Alcoholic Beverages and Tobacco v. Martin County Liquors, Inc.*, 574 So. 2d 170 (Fla. 1st DCA 1991).