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DEPARTMENT OF JUSTICE
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TAXATION – sale of land from delinquent taxes

La. Const. Art. VII, § 14, 25; La. R.S. 47:2121 et seq.; La. C.C. art. 2317

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La. Const. Art. VII, § 25 and Title 47 of the Louisiana Revised Statutes establish specific procedures for the recovery of delinquent taxes on real property. Some elements of the process are not discretionary, but others are left to local ordinances. Whether a tax debtor remains in possession has no bearing on his right to redeem the property. Until the redemption period expires, the tax debtor retains ownership of and liability for the property. In all cases involving public resource expenditure, the expenditure must comport with La. Const. Art. VII, § 14.

Dear Mr. Calabro:

You have requested an opinion from this office regarding the proper management of certain tax adjudicated properties in Assumption Parish ("the Parish"). Your request indicates that a number of properties in your Parish have been subject to the process of tax adjudication as authorized under La. R.S. 47:2196. Your request indicates that the Parish seeks guidance on applying these laws to certain properties located in your Parish.

Your request presents specific questions, restated below, regarding the application of the above principles to particular circumstances.

- A. May a governing authority waive certain expenses normally taxed upon a purchaser to encourage sales of adjudicated properties?
- B. May a governing authority release adjudicated properties to their former owners in exchange for payment of outstanding taxes, fees, penalties, and interest?
- C. Is a tax-sale purchaser or the former owner of a property responsible for maintenance of the property when the sale is complete but title has not yet been quieted?

Under certain circumstances, the actions the Parish wishes to take might constitute a prohibited donation under Article VII, Section 14 of the Louisiana State Constitution. Therefore, we recommend considering the constitutional prohibition in the context of each of these questions, and propose the following additional question:

D. Do the actions contemplated by the Parish potentially violate the constitutional prohibition against gratuitous donations of state resources?

General Principles

The State and its political subdivisions are permitted to recover delinquent taxes through the public sale of the property on which those taxes are owed.¹ The Constitution permits the recovery, or redemption, of the property by the tax debtor in exchange for payment of the debt plus additional costs and fees.² The Constitution is silent regarding procedural issues beyond certain basic temporal restrictions and valuation guidelines.³

Title 47 of the Revised Statutes supplements the Constitution with the procedures applicable to tax sales.⁴ These statutes are intended to:

[e]ncourage the return to commerce of tax sale and adjudicated properties, without unnecessary public expense, through clear procedures that allow interested persons to carry out the title search and notification procedures considered necessary under contemporary standards of due process to acquire merchantable title to those properties.⁵

Each delinquent property must be offered at a public sale, and the sale must meet certain requirements established by La. R.S. 47:2202, 2203, and 2206.⁶ A political subdivision may adopt by ordinance any specific procedure consistent with these statutes to perfect the sales of tax adjudicated properties.⁷

When a property is not sold or redeemed at a public sale, the tax collector for that political subdivision must bid on behalf of the subdivision. By the tax collector's action, the property is adjudicated to the political subdivision,⁸ and it may be offered again at public sale following such adjudication.⁹ If the property is not purchased at the tax sale, the tax debtor may redeem that property at any time within the preemptive period of three years as set by the Constitution.¹⁰ In such a case, the property will remain encumbered by any legal interest attached prior to the sale.¹¹ Liability for the property – pertaining to both tort liability and general maintenance – is retained by the tax debtor, who retains ownership for as long as the property is held in adjudicated status.¹²

¹ La. Const. art. VII, § 25(A).

² La. Const. art. VII, § 25(B).

³ La. Const. art. VII, § 25.

⁴ See La. R.S. 47:2121 *et seq.*

⁵ La. R.S. 47:2121(A)(5).

⁶ La. R.S. 47:2201.

⁷ *Id.*

⁸ La. R.S. 47:2196.

⁹ *Id.*

¹⁰ La. R.S. 47:2209; La. Const. Art. VII, § 25(B).

¹¹ *Id.*

¹² La. R.S. 47:2210.

Adjudicated status may be terminated by the political subdivision's taking ownership of the property.¹³

Neither the State nor a political subdivision may divest itself of any asset without realizing just compensation for its expense pursuant to Article VII, Section 14 of the Louisiana Constitution. Because forgiving a debt or waiving certain fees has the effect of surrendering something of value to which the State or the political subdivision is otherwise entitled, such action must be examined under this constitutional provision. This opinion outlines the analytical framework presently applied to questions arising under this article, but each governing authority must apply that analysis to the particular facts wherein an expenditure of public assets might violate the Constitution.

A. May a political subdivision waive certain expenses normally taxed upon a purchaser to encourage sales of adjudicated properties?

A political subdivision may waive certain charges normally imposed upon a purchaser of properties offered at a tax sale. The political subdivision is allowed to enact local ordinances for disposing of tax adjudicated properties within the context of Title 47 of the Louisiana Revised Statutes and the Constitution.¹⁴ La. R.S. 47:2202(A) provides three options for the sale of adjudicated properties, and each allows for the waiver of certain fees whether implicitly or explicitly. The processes available to a political subdivision under the statute are:

1. The sale may proceed with a minimum sale price established by either the total outstanding liabilities on the property;
2. The sale may proceed with a minimum sale price established relative to the property's appraised value; and
3. The property may be offered at a public sale with no established minimum.¹⁵

The first of these proposed process permits the waiver of some fees. The statute sets a minimum price based on outstanding debts, and the statutory language requires that the minimum "*shall be at least* the total amount of statutory impositions, governmental liens, and costs of sale."¹⁶ This non-discretionary language mandates the collection of the enumerated costs; but this enumeration also has the effect of suggesting that the list is exhaustive rather than illustrative. Therefore, any charges beyond the scope of statutory impositions, governmental liens, and costs of sale are, at least by inference, not required to be collected.

The other two options under the law make no mention of particular costs, and therefore those costs do not require additional consideration. A sale based on the appraised value of the property sets the minimum at a percentage of the appraisal and is silent as

¹³ La. R.S. 47:2231 *et seq.*

¹⁴ La. R.S. 47:2201.

¹⁵ La. R.S. 47:2202(A).

¹⁶ *Id.* (emphasis added).

to any additional costs.¹⁷ Likewise, offering the property to the highest bidder at a public sale allows the governing authority to moot the question of whether fees may be waived because the sale price is set only according to what a purchaser is willing to pay for a particular property.¹⁸ Under both the second and third option, the question of whether any fees may be waived never arises because the price is set without demanding the collection of any particular charge against the property.

The redemption provisions of the law applicable to tax sales provide the only other restrictions on payments required from a redeemer.¹⁹ These payments “shall include all statutory impositions accruing before the date of payment with five percent penalty and simple interest accruing at one percent per month, as well as all other sums required to be paid...,”²⁰ and “also shall include the actual costs incurred by the political subdivision for preparation and filing of redemption certificates, the cost of mail, notice, publication of notice, personal service of notice, appraisal, and costs associated with the determination of tax sale parties and their notification.”²¹ The redeemer of a property must also pay:

the actual costs incurred by the political subdivision and any acquiring person for the costs of all certified mail, notice, publication of notice, or personal services of notices in complying with the applicable provisions of law, including, without limitation, determination of tax sale parties and the notification of such persons of the sale or donation as allowed by law.²²

While not applicable to a tax sale purchaser, these redemption articles serve to illustrate the legislature’s consistent expectation with regard to nondiscretionary charges. Just as for a tax sale purchaser, a redeemer is required by law to pay statutory impositions, interest, and certain costs. The requirement that a redeemer pay *penalties* is a specific and distinct addition to the items enumerated in La. R.S. 47:2202; but, the redemption provisions are consistent with La. R.S. 47:2202 in the mandated collection of “statutory impositions” among other costs.

The legislature has provided some deference to political subdivisions in managing properties encumbered by overdue taxes. Insofar as each subdivision abides by the minimum requirements of these statutes, the procedures and incentives applied to a tax sale are left for regulation by local ordinance. Whether certain fees and costs may be waived depends on an analysis of the statutes or ordinances applicable to each, and the methods by which a property is offered for sale. By inference, according to the

¹⁷ *Id.* At the first public sale, the minimum bid is set by statute at two-thirds the appraised value of the property. This minimum decreases to one-third at the second sale.

¹⁸ *Id.* See also La. R.S. 47:2202(B), which contemplates the sale to an adjacent landowner, but only on the condition that this landowner has maintained the property for the year prior to sale. This falls outside the scope of this opinion, but illustrates another mechanism by which a subdivision may return property to private ownership.

¹⁹ La. R.S. 47:2243, 2244, and 2247.

²⁰ La. R.S. 47:2243.

²¹ La. R.S. 47:2244.

²² La. R.S. 47:2247.

principle that *inclusio unius est exclusio alterius* (the inclusion of one is the exclusion of the other), fees and costs not mandated for collection are susceptible to waiver, unless that waiver would violate Article VII, Section 14 of the Louisiana Constitution as a prohibited donation.

B. May a governing authority release adjudicated properties to their former owners in exchange for payment of outstanding taxes, fees, penalties, and interest?

When the outstanding taxes, fees, penalties, and interest owed to the political subdivision are paid, the property is “redeemed” and full and unburdened ownership of the property is restored in the former tax debtor. This is a direct application of the statutes addressing the redemption of adjudicated property, La. R.S. 47:2241-2247.

The payment of statutory impositions, interest, penalties, fees, and costs pertaining to the tax sale and adjudication of the property is the only requirement to perfecting redemption.²³ With certain restrictions, it is permissible for a third party to redeem a property on behalf of a tax debtor.²⁴ These statutes are silent with regard to the effect of any person’s remaining in possession of the property. Absent a rule to the contrary, that the tax debtor retains possession of the property does not change the analysis. Therefore, it is the opinion of this office that once redemption is perfected by the satisfaction of the tax debt, the property returns in full ownership to the tax debtor by operation of law.

C. Is a tax-sale purchaser or the former owner of a property responsible for maintenance of the property when the sale is complete but title has not yet been quieted?

A tax debtor remains the owner of the property – and therefore responsible for the property – until the redemptive period expires. Your third question focuses on one aspect of this principle, particularly, who must maintain a property that has been purchased at a tax sale. The Parish is authorized to enact ordinances of this nature under La. R.S. 33:1236(21), which delegates power to political subdivisions regarding tall grass and weeds. The Assumption Parish Municipal Code, Section 9:100 *et seq.*, addresses this issue specifically.²⁵

The Municipal Code authorizes the Parish to act to maintain the property consistent with the standards of Section 9:101 and to charge its expense to the owner, to proceed *in rem* against the property, or to impose a lien against the property.²⁶ Nevertheless, these ordinances indicate that maintenance of a property is the responsibility of the owner. This is a distinction between *who may act* and *who must pay* – the Parish may act, but the owner must pay.

²³ La. R.S. 47:2241-2247.

²⁴ La. R.S. 47:2242 and 2246.

²⁵ Code of Ordinances of Assumption Parish, Louisiana. § 9:101. “It shall be unlawful for the owner or his agent, of any residential property within the Parish of Assumption... to permit the growth of tall grass or to allow the accumulation of any trash upon the entire area of the subject property.”

²⁶ *Id.* § 9:103-9:108.

Both the Assumption Parish ordinance and La. R.S. 33:1236(21) place the burden of maintenance on an owner.²⁷ A tax debtor is not stripped of ownership by the tax sale; the tax debtor retains his ownership through the redemption period.²⁸ The tax sale purchaser does not acquire an ownership interest in the property until the redemption period has expired; but after the redemptive period expires, a tax sale title confers ownership upon a tax sale purchaser subject to all encumbrances remaining on the property.²⁹ Until a tax sale purchaser becomes vested with full ownership following the redemptive period, the tax sale purchaser holds only a stake in the accruing interest on the tax debt.

Since a tax debtor does not lose his ownership of the property itself, but retains the property subject to the encumbrance of the tax sale deed through the expiration of the redemptive period, only the tax debtor may be held liable for the upkeep of his property. Therefore, under both the Municipal Code and the Revised Statutes, the tax debtor will remain legally responsible for the property for the duration of the redemptive period. Following the redemptive period and transfer of ownership, liability for the property will attach to the new owner, whether by redemption, by acquisition through the tax sale, or by any other legal mechanism.

D. Do the actions contemplated by the Parish potentially violate the constitutional prohibition against gratuitous donations of state resources?

The Louisiana Constitution forbids the gratuitous alienation of State resources, but whether a particular action violates the Constitution must be evaluated individually by the public entity involved.³⁰ There are several factors one must consider in the determining whether the constitutional prohibition has been violated. The *Cabela's* case, the most recent landmark in the interpretation of Art. VII, § 14 by the Louisiana Supreme Court, established a framework under which to analyze particular facts.³¹ This office has consistently opined that three factors must be considered in the application of Article VII, § 14:

1. The public purpose must be consistent with a governmental interest in which the public entity has the authority to engage.
2. The alienation of the resource must not appear gratuitous on its face.
3. The public entity must have a demonstrable, objective, and reasonable expectation of receiving equivalent value for the resource alienated.³²

²⁷ *Id.* and La. C.C. art. 2317.

²⁸ La. R.S. 47:2121(C)(1).

²⁹ La. R.S. 47:2121(C)(1)-(2).

³⁰ La. Const. Art. VII, § 14(A).

³¹ *Bd. of Directors of Indus. Dev. Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Prop. Owners, Citizens of City of Gonzales*, 2005-2298 (La. 9/6/06); 938 So.2d 11.

³² La. Atty. Gen. Op. No. 12-0114, *citing* La. Atty. Gen. Op. Nos. 10-0171, 09-0271, 09-0259, 09-0251, 09-0146 and 07-0050A. See also La. Atty. Gen. Op. No. 12-0100, *citing* La. Atty. Gen. Op. No. 08-0071.

The three factors of this test demand fact-based inquiries. This office does not make determinations of fact. Therefore, this opinion will make no determination regarding whether the actions proposed by your request may violate Article VII, § 14 of the Louisiana Constitution. However, we provide here the following legal framework to assist you in determining whether a particular waiver of a fee may constitute a prohibited donation.

The first *Cabela's* factor is a question of authority to act consistent with a public purpose. As such, any governmental entity wishing to act in a particular way must look to whether that particular action has been authorized by State or local law. In prior opinions, this office has directed governmental entities to look to whether the law permits, requires, or forbids a particular action.³³ As to whether or not a "public purpose" exists, the Louisiana Fourth Circuit has understood this concept to mean that a gratuitous donation benefits the public as a whole rather than a select group of particular persons.³⁴ The Parish may reference in its analysis, for example, La. R.S. 47:2121(A), which outlines the purpose of the related legislation and highlights the merits of returning properties to commerce in an efficient manner.

The second factor considers whether the expenditure itself appears gratuitous. This office recognized that the *Cabela's* decision overruled the prior understanding that Article VII, § 14(A) was violated whenever State resources were alienated in the absence of legal obligation to do so.³⁵ The post-*Cabela's* standard has become a question of whether the alienation was "gratuitous."

The third factor applicable to a potentially prohibited gratuitous donation questions whether the governmental entity will benefit from the expenditure with an equivalent benefit. This office has stated previously that under circumstances where certain private persons will benefit directly while the public will only benefit indirectly, there was an insufficient expectation of return on the expenditure of public resources to establish the alienation was not gratuitous.³⁶ However, where the benefits received by the governmental entity alienating public resources were substantially equivalent to the value of those resources alienated, the alienation would not violate the constitutional prohibition.³⁷

Questions of valuation are fact-specific and inappropriate for further comment in this opinion, but insofar as an entity can account for a substantially equivalent *quid pro quo*, the alienation likely does not violate the Constitution. The Parish might consider in its determination prior opinions of this office which addressed the second and third factors at length. In La. Atty. Gen. Op. No. 12-0114, this office opined that a parish's providing a service on certain properties would benefit the owners of that property directly and the

³³ See La. Atty. Gen. Op. Nos. 04-0243, 92-575, and 82-379.

³⁴ *Huston v. City of New Orleans*, 2012-1171 (La.App. 4 Cir. 2/27/13); 157 So.3d 600, 613 writ denied, 2013-0695 (La. 5/17/13); 118 So.3d 381.

³⁵ La. Atty. Gen. Op. No. 06-0328.

³⁶ La. Atty. Gen. Op. No. 12-0114.

³⁷ La. Atty. Gen. Op. No. 12-0100.

community indirectly, but the indirect benefit would not outweigh the gratuity to private persons or sufficiently benefit the public on the whole to justify the expense. In contrast, in La. Atty. Gen. Op. No. 11-0117, this office noted that the purchase of properties at fair market value to create a buffer for a public utility would not be a gratuitous alienation of the parish's resources because there were significant expected benefits to the public and the parish could expect a return equivalent to its expenditure.

Conclusion

The law requires the payment of certain outstanding debts incidental to the tax sale, but the law provides several methods of conducting the sale which may not require a specific assessment of these fees. Fees that are not enumerated among those required may be permissible to waive. As applied to tax debtors, whether they remain in possession of the property or not has no effect on the process of redeeming a tax adjudicated property. Ownership of property is determinative of who may be held accountable for its maintenance, and until redemptive periods expire, ownership remains vested in the tax debtor. In all cases, the Parish must ensure that its actions account for the prohibition against gratuitous alienation of State resources and must follow the guidance established by the courts to avoid violating the Constitution.

We hope this response sufficiently answers your inquiry; however, if we may be of further assistance please do not hesitate to contact our office.

Sincerely yours,

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