

## **CHAPTER 57-45 MISCELLANEOUS PROVISIONS**

**57-45-01. Taxes paid by occupant or tenant.** If any tax on any real estate is paid by or collected from any occupant or tenant or any other person, and such tax, by agreement or otherwise, ought to have been paid by the owner, lessor, or some other party in interest, such occupant, tenant, or other person may recover by action the amount which such owner, lessor, or party in interest ought to have paid, with interest thereon at the rate of six percent per annum, or may retain the same for any rent due or accruing from the person who paid the tax to such owner or lessor for real estate on which such tax is paid, and the same, until paid, constitutes a lien upon said real estate.

**57-45-02. Taxes paid by mortgagees or others having liens.** Any person who has a lien by mortgage or otherwise upon any real property that has been sold for taxes or on which the taxes have not been paid, may redeem from such sale, or may pay such taxes and the interest, penalty, and costs thereon, and the receipt of the county treasurer or the certificate of redemption, as the case may be, constitutes an additional lien on such land to the amount therein stated. The amount so paid and the interest thereon at the rate specified in the mortgage or other instrument must be collected with, as part of, and in the same manner as, the amount secured by the original lien.

**57-45-03. Tax commissioner to furnish list of lands added to or taken from tax rolls.** Repealed by S.L. 2005, ch. 545, § 10.

**57-45-04. Tax commissioner to collect taxes when other officer neglects.** When any tax assessed under the authority of the state, or any taxing subdivision thereof, is due and unpaid, and any state or county officer whose duty it is to enforce the payment of such tax, by the institution of legal proceedings or otherwise, neglects or refuses to take such action, the state tax commissioner shall institute such legal or other proceedings as the commissioner deems necessary for the enforcement of the payment of such taxes, or of the collection of the same, with all penalties provided by law, by the distraint of property or otherwise, and for these purposes the state tax commissioner may exercise any power conferred by law upon any state or local officer. For the carrying out of the purposes of this section, the state tax commissioner may employ such legal or other assistance as the commissioner deems necessary.

**57-45-05. Officer's refusal to perform duty - Penalty.** Every officer or employee of any political subdivision of this state who in any case knowingly refuses to perform any duty enjoined upon the officer or employee by any provision in this title, or who consents to or connives at any evasion of the provisions of this title whereby any proceeding is prevented or hindered, is guilty of malfeasance in office, and is subject to removal from office. Any person aggrieved by the failure of any officer or employee to perform the officer's or employee's duties as provided in this title may file a complaint under section 12.1-11-06. In addition, the state's attorney or any aggrieved party may proceed to obtain a writ of mandamus to compel performance by such officer or employee. Any failure of an officer or employee to do any act at the particular time specified in this title in no manner invalidates any tax levy, or any foreclosure of tax lien, or tax deed.

**57-45-06. Suits against officers defended at expense of county.** Whenever civil action is brought against any county treasurer, county auditor, or township, or district officer for performing or attempting to perform any duty authorized or decreed by any statute of this state for collection of the public revenue, such officer, in the discretion of the court before whom such action is brought, by an order made by said court and entered in the minutes thereof, may be allowed and paid reasonable fees for counsel and other expenses for defending such action, to be paid out of the county treasury.

**57-45-07. Debts of municipalities void if entailing taxation beyond the rate fixed by law.** It is unlawful for any city, county, or township officer, or for the officers of any school district, unless specially and expressly authorized by law, to contract any debt or incur any pecuniary

liability, for the payment of either the principal or interest, for which, during the current year, or any subsequent year, it is necessary to levy on the taxable property of such county, township, city or school district, a higher rate of tax than the maximum rate prescribed by law. Every contract made in contravention of the provisions of this section is null and void in regard to any obligation thereby imposed on the corporation on behalf of which such contract purports to be made. Every commissioner, officer, agent, supervisor, or member of any municipal corporation which makes or participates in making, or authorizes the making, of any such contract, must be held individually liable for its performance, and every commissioner, supervisor, director, or member of any city governing body, or other officer or agent of any such municipal corporation, present when any such unlawful contract was made or authorized to be made, must be deemed to have made, or to have participated in making, or to have authorized the making of, the same, as the case may be, unless, if present, the person dissented therefrom and entered or caused such dissent to be entered on the records of such municipal corporation.

**57-45-08. Consolidated tax account.** The office of management and budget may carry on the record of its office an account called the consolidated tax account with each county of the state in which must be listed, in appropriate columns, the taxes due the state for the years in which there are unpaid taxes five years old or older. All taxes collected by the counties for the years included in such consolidated tax accounts must be reported as collections for such accounts and must be credited to the general fund of the state.

**57-45-09. Submission to county commissioners prerequisite to actions.** No action may be brought in the courts of this state to annul any taxes or tax assessments, except special assessments for public improvements, or to recover back taxes erroneously paid, or any part thereof, until the same first has been submitted to the board of county commissioners for adjustment in accordance with the existing law, and any action brought without having been first submitted to the board of county commissioners must be dismissed without prejudice.

**57-45-10. Tender of taxes.** Whenever any action is brought to test the validity of any deed issued and delivered by the county to the purchaser of lands acquired through tax deed proceedings, the court may not proceed with the trial of such action until the party assailing the validity of such deed, within the time required by the court, shall deposit with the clerk thereof for the benefit of the county, should the deed be held invalid, the amount of all delinquent and unpaid taxes on said property, including penalty and interest, plus any taxes paid thereon by the purchaser from the county. Should said action be determined adversely to the purchaser from the county, it shall repay to the purchaser any moneys received by the county on said purchase.

**57-45-11. Limitation of action against tax deed.** Any person having or claiming title to or a lien or encumbrance upon any land, whether in that person's possession or the possession of another, or vacant or unoccupied, may commence and maintain an action against any person, county, or state claiming any title to or interest in the land, or a lien upon the land, adversely to the person by or through any tax deed, to test the validity of the tax deed, or to quiet the title to the land as against the claims of the adverse claimant, or to remove the cloud from the title arising from the tax deed. An action or defense based upon the invalidity of a tax deed may not be commenced or interposed after three years from the issuance of a tax deed unless the tax deed is void by reason of jurisdictional defects. The holder of a tax deed may maintain an action to establish the validity of the tax deed or to quiet title to the land and may demand the possession of the land.

**57-45-12. Procedure when taxes or tax lien foreclosures are declared invalid.** When any foreclosure of land for taxes is adjudged to be void, the judgment must state the reason why it is void. In all such cases, and in cases when by the mistake or wrongful act of the county treasurer or auditor, land has been foreclosed upon which no taxes were due, and in cases when taxes have been or may be paid on lands not subject to taxation, or on lands when subsequent to payment the entry has been or may be canceled, the money so paid and all subsequent taxes, penalties, and costs which have been or which may be paid must be refunded, with interest at seven percent per annum from the date of payment to the person making such payment, the person's heirs or assigns, and the same must be refunded out of the county treasury to which such money was paid, on an order from the county auditor. A pro rata

share of the money so refunded must be charged to the state and to any city, township, school district, or other taxing district which may have received any part of such void tax. Whenever any tax deed made and delivered under this title is adjudged to be void, unless the judgment declares the tax to be illegal, the tax and all subsequent taxes shall remain and be a lien upon the land, and the county auditor shall serve notice of foreclosure of tax lien on the following October first pursuant to chapter 57-28 for the full amount of taxes, penalties, and costs due thereon.

**57-45-13. Supplemental proceedings to enforce collection of state taxes.** When any tax required by law to be paid to the state has been assessed, certified, and demanded and is delinquent and remains unpaid, the officer of the state charged with the enforcement of the payment or collection of the same, within ten days after such demand, shall notify the delinquent that unless the tax is paid on or before the tenth day thereafter, it will be placed in the hands of any sheriff for collection. If the tax remains unpaid, such official, upon such date, shall certify the tax to the sheriff of any county wherein the property of the delinquent taxpayer may be located. The sheriff immediately shall proceed to collect the delinquent tax, and if it is not paid forthwith upon demand, the sheriff shall distraint sufficient property belonging to the taxpayer to pay it, including the penalty provided by law, with accrued interest at the rate of six percent per annum, and all costs of such distraint and sale. The sheriff immediately shall proceed to advertise the sale of such property by putting notices in three public places in the municipality or district where the property is taken, stating the time when and the place where the property is to be sold, the amount of the delinquent tax, penalties, accrued interest, and cost. The place of sale must be at the residence or place of business of the person whose property has been distrained, or at the place of sale of mortgaged chattels or real property within such town or district, at the discretion of the sheriff. The sale may not be less than ten days after the taking of the property, and if such tax, penalties, accrued interest, and costs are not paid at that time, the sheriff or the sheriff's deputy shall proceed to sell the property at public auction, or so much thereof as is sufficient to pay the taxes, penalties, accrued interest, and costs. Any surplus arising from the sale must be disposed of as in the case of mortgaged personal or real property, as the case may be. All moneys collected under the provisions of this chapter must be paid into the state treasury, and the state treasurer shall issue to such sheriff a proper receipt for the same.

**57-45-14. When tax may be held invalid.** An assessment or tax based thereon may not be held invalid if it is possible to determine definitely what property was assessed, the valuation fixed by the assessor, and the rate or amount of tax levied, nor may it be held invalid for any defect in form, if the person or property assessed in fact is subject to taxation, unless it appears that such irregularity resulted to the prejudice of the party objecting, and in all actions in which the validity of any tax levied comes in question, no tax may be held invalid unless it appears:

1. That the property assessed was not subject to taxation, or, in case of personal property, that the person assessed was not liable to taxation at the time such assessment was made, for the property or some part thereof assessed to that person;
2. If the tax is upon real property, that the description of the property intended to be assessed, or the valuation thereof, cannot be definitely ascertained from the assessment roll which is the basis of such tax, and if the tax is upon personal property that the assessment roll does not contain either the name of the owner nor the valuation thereof;
3. That the amount of taxes intended to be levied cannot be definitely ascertained from the official record of the proceedings of the board or officers levying the tax;
4. That the taxes have been paid; or
5. That the taxes, or some part thereof, are in excess of the amount limited by law, or for a purpose unauthorized by law, but in such case the court may not cancel the taxes, except as to such excess or as to such unlawful purpose. When taxes are declared partially void, the remainder stands as the original taxes.

**57-45-15. Fraudulent tax receipts - Penalty.** Repealed by S.L. 1975, ch. 106, § 673.