

POLICY #46

Excess Funds Claims From Tax Sales

DATED ADOPTED: 9-26-11

MINUTE BOOK: 38 Page: 17

POLICY: To establish a policy and authorization for the handling of claims and demands made against the County for excess funds after the sale of lands for the payment of unpaid taxes assessed on the lands, or against the owners of the lands for same as authorized by Chapter 10, Sale of Land, Title 40 of the Code of Alabama 1975, as amended; and to comply with the legal requirements, set forth in Chapter 12, Claims and Demands Against County, Article 11 of the Code of Alabama of 1975, as amended, for the inspection, review, auditing and the corresponding payment and registration or rejection of said claims and demands.

PROCEDURE:

1. Claim for excess funds made within three years of the date of the tax sale requires action by either the CAO or the Chairman.

When a claim is made for excess funds within three (3) years after the date of the tax sale, the following procedures shall apply:

- a. The Chief Administrative Officer (CAO) or the Chairman of the County Commission shall:
 - (1) inspect, review and audit each claim presented for payment to ensure that the claim is a valid and legally payable claim as required by law;
 - (2) examine the Certificate of Land Sold for Taxes;
 - (3) identify the person or entity assessed the taxes at the date and time of the tax sale;

- (4) request and review identification documentation (e.g. driver=s license, etc.) to confirm that the person or entity applying for the excess was the person or entity who was assessed the taxes (Aoriginal owner@);
- (5) if the claim is made by a third party on behalf of the owner as the owner=s agent or by the person legally representing such owner, then the agent or representative must also provide a verified claim for the excess funds signed by the original owner and provide a valid power of attorney from the original owner authorizing the third party to act on the original owner=s behalf;
- (6) if deemed necessary by the CAO or Chairman, consult with the county attorney with regard to legal issues related to the claim presented;
- (7) the CAO or the Chairman, if satisfied that all appropriate documentation has been presented and that the claim is otherwise a valid claim by or on behalf of the original owner, the CAO is hereby authorized to cause to be drawn or issued a warrant, check or draft made payable to the original owner of the property and given to the original owner or the agent or legal representative of the original owner as the case may be.

2. Claim for excess funds not made within three (3) years of the date of the tax sale but within thirteen (13) years of the date of the tax sale requires action by both the CAO and the Chairman.

a. The Chief Administrative Officer (ACAO@) and the Chairman of the County Commission (AChairman@) shall:

- (1) inspect, review and audit each claim presented for payment to ensure that the claim is a valid and legally payable claim as required by law - All such claims shall be verified claims that comply with the legal requirements related to same;
- (2) examine the Certificate of Land Sold for Taxes;
- (3) identify the person or entity assessed the taxes at the date and time of the tax sale;
- (4) request and review identification documentation (e.g. driver=s license, etc.) to confirm that the person or entity applying for the excess was the person or entity who was assessed the taxes (Aoriginal owner@);
- (5) if the claim is made by a third party on behalf of the owner as the owner=s agent or by the person legally representing such owner, then the agent or representative shall also provide a verified claim for the excess funds signed by the original owner and provide a valid power of attorney from the original owner authorizing the third party to act on the original owner=s behalf;
- (6) if deemed necessary by the CAO or Chairman, consult with the county attorney with regard to legal issues related to the claim presented;

(7) if the CAO **and** the Chairman shall certify in writing that they are satisfied that all appropriate documentation has been presented and that the claim is otherwise a valid claim by or on behalf of the original owner, cause the claim to be registered as a valid and allowable claim, the CAO or Chairman is hereby **ordered and authorized** to cause to be drawn or issued a warrant, check or draft **made payable to the original owner of the property** and given to the original owner or the agent or legal representative of the original owner as the case may be.

3. In addition to the forgoing, when any claim for excess funds has been, inspected, reviewed and audited as set forth hereinabove, and in consultation with the county attorney, it is the judgment of the CAO or the Chairman that additional documentation, requirements or legal actions are reasonably necessary in order to avoid potential liability or adverse consequence(s) for the county, the Chairman of the Commission is then hereby authorized, on behalf of the Commission, to impose any additional requirements (e.g. third party indemnity agreements) or to take or cause to be taken any additional actions deemed by the Chairman to be necessary to protect the interests of the county (e.g. the filing of declaratory judgment and/or interpleader actions in the Circuit Court of Houston County, Alabama) and to execute all documentation necessary to assert, settle, compromise or otherwise resolve, on behalf of the Commission, any such actions arising out of any claim for excess funds.

LEGAL AUTHORITY

ALA. CODE '11-12-4, Audit B Registration B Payment, provides, in pertinent part, as follows:

The county commission must audit all claims against the county, and every claim or such part thereof as is allowed must be registered in a book kept for that purpose and the chairman of the county commission must give the claimant a warrant on the treasury for the amount so allowed . . .

ALA. CODE ' 11-12-5, Itemization, provides in pertinent part, as follows:

No claim against the county shall be passed upon or allowed by the county commission unless it is itemized by the claimant or some person in his behalf having personal knowledge of the facts . . .

ALA. CODE '11-12-10, Review, provides, in pertinent part, as follows:

It shall be the duty of the chairman of the county commission or such other officer as is authorized by law to draw county warrants upon the county treasurer or county depository to inspect and review each claim presented for payment from the public funds of the county, irrespective of whether such claim has previously been audited and allowed by the county commission, and such officer shall examine and determine independently with reference to each of such claims whether or not the expenditure of public money of the county in payment of such claim is authorized by law and whether or not public funds of the county may be expended for the purpose or purposes shown in such claim . . .

ALA. CODE '11-12-11, Investigation; Rejection, provides in pertinent part as follows:

In making such determination with reference to the authorized expenditure of public funds of the county in payment of the claims so presented and filed for payment with the county commissioner, such officer shall make such investigation and inquiry, both as to fact and legal sufficiency, as he shall deem reasonably necessary to correctly ascertain the legal liability of the county with reference to each of the claims presented for payment.

In the event it should be determined by such officer, as a result of such investigation and inquiry, that payment of such claim or claims may not lawfully be made from the public funds of the county, he shall refuse to affix his signature to or draw warrant upon the county treasurer or county depository authorizing payment of such claim or claims from the public funds of the county.

ALA. CODE '11-12-12, Liability for Approval of Claims Not Legally Chargeable, provides as follows:

Should such officer draw a warrant upon the county treasurer or county depository in payment of a claim or claims not legally chargeable to or payable from the public funds of the county such officer shall be held jointly liable with the other members of the county commission of the county for such unauthorized or unlawful expenditure of the public funds of the county and shall bear the same responsibilities and suffer the same penalties as do the other members of the county commission of the county with reference to the unauthorized or unlawful expenditure of public funds of the county; provided, that sections 11-12-10 through 11-12-12 shall in no way affect or repeal the protection to such official or officials as provided for under written opinion of the attorney general, section 36-15- 19 and/or under written opinion of the county attorney.

ALA. CODE ' 40-10-28, Excess Funds After Sale, provides as follows:

The excess arising from the sale of any real estate remaining after paying the amount of the decree of sale, and costs and expenses subsequently accruing, shall be paid over to the owner, or his agent, or to the person legally representing such owner, or into the county treasury, and it may be paid therefrom to such owner, agent or representative in the same manner as to the excess arising from the sale of personal property sold for taxes is paid. If such excess is not called for within three years after such sale by the person entitled to receive the same, upon the order of the county commission stating the case or cases in which such excess was paid, together with a description of the lands sold, when sold and the amount of such excess, the county treasurer shall place such excess of money to the credit of the general fund of the county and make a record on his books of the same, and such money shall thereafter be treated as part of the general fund of the county. At any time within 10 years after such excess has been passed to the credit of the general fund of the county, the county commission may on proof made by any person that he is the rightful owner of such excess of money order the payment thereof to such owner, his heir or legal representative, but if not so ordered and paid within such time, the same shall become the property of the county.

ALA. CODE ' 6-5-20, Generally, provides as follows:

- a. An action must not be commenced against a county until the claim has been presented to the county commission, disallowed or reduced by the commission and the reduction refused by the claimant.
- b. The failure or refusal of such a county commission to enter upon its minutes the disallowance or reduction of the claim for 90 days is a disallowance.
- c. Proof of the fact of presentation of such claim to such county commission may be made by parole evidence.