

Taxation, contacting delinquent taxpayer

Number: INFORMAL

Date: June 19, 2003

The Honorable Rod Northcutt
Brevard County Tax Collector
Post Office Box 2500
Titusville, Florida 32781-2500

Dear Mr. Northcutt:

You have asked whether a private company may contact a taxpayer who is delinquent in property taxes on homestead property offering assistance in resolving the issue without violating section 197.432(15), Florida Statutes.

In this instance, a firm has contacted an individual regarding delinquent taxes owed on homestead property. Tax lien certificates have been issued for the 2001 and 2002 tax years. The firm asserts that it is not an agent of the county or of the tax certificate holders, but offers to give the individual advice regarding tax liens with options and timeframes to resolve the issue. You have advised the firm that its actions may be in violation of section 197.432(15), Florida Statutes.

Section 197.432(15), Florida Statutes, states:

"Any holder of a tax certificate who, prior to the date 2 years after April 1 of the year of issuance of the tax certificate, initiates, or whose agent initiates, contact with the property owner upon which he or she holds a certificate encouraging or demanding payment may be barred by the tax collector from bidding at a tax certificate sale. Unfair or deceptive contact by the holder of a tax certificate to a property owner to obtain payment is an unfair and deceptive trade practice, as referenced in s. 501.204(1),[1] regardless of whether the tax certificate is redeemed. Such unfair or deceptive contact is actionable under ss. 501.2075-501.211. If the property owner later redeems the certificate in reliance on the deceptive or unfair practice, the unfair or deceptive contact is actionable under applicable laws prohibiting fraud."

Clearly, the plain language of the statute contemplates that a tax certificate holder or the holder's agent will not contact the owner of the property upon which the certificate is held within two years of April 1 of the year in which the tax certificate is issued. Any such contact encouraging or demanding payment within the proscribed period is deemed to be an unfair trade practice. In this instance, the firm contacting the property owner has disavowed any tax certificate holder or agent status and appears to be referring to a tax certificate issued June 1, 2001. While there are factual issues that may not be resolved by this office for purposes of rendering a legal opinion, contact by letter dated May 13, 2003, regarding a certificate issued in 2001 would appear to fall outside the prohibitions in section 197.432(15), Florida Statutes.

The correspondence you have provided refers to the potential for tax certificates issued for 2000 and 2001, with a statement that the taxes for 2002 are currently delinquent.[2] If the firm is

holding a tax certificate or acting as an agent of the holder of a tax certificate that was issued within the proscribed time, contact with the property owner within two years of April 1st of the year in which the certificate was issued encouraging payment would violate section 197.432(15), Florida Statutes. The statute, however, does not address contact by other firms or individuals who may be offering assistance to the landowner.[3]

I trust these informal comments will assist you in addressing this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] Section 501.204(1), Fla. Stat., states: "Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

[2] Apparently, the tax certificate issued June 1, 2001, is for delinquent taxes for the year 2000.

[3] There is a potential for the actions of the private company to constitute a violation of Part II, Chapter 501, Fla. Stat., even though they fall outside the prohibitions of s. 197.432(15), Fla. Stat.; such a determination, however, is highly factually specific.