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SPRINGFIELD

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FILE NO. S-317

TAXATION:
Payment - Priority

Honorable William V. Hopf
State's Attorney
DuPage County
Wheaton, Illinois 60187

Dear Mr. Hopf:

I have your recent letter in which you state:

"The County Collector of DuPage County relies upon Paragraph 675 of Chapter 120 of the Illinois Revised Statutes of 1969, wherein it is cited:

'In the payment of real or personal property taxes or any installment of real property taxes, the collector shall first apply such payments to interest (including interest added upon forfeiture to real property taxes) and costs, and after the payment of interest and costs such payments shall be applied upon the total tax of real or personal property upon which the payments are made.'

and the Attorney General's Opinion 317, 1962, analyzing that section of the Statute, in the situation where a delinquent tax payer makes payment.

A conflict has arisen in the collection of personal property taxes where the tax has been reduced to judgment in some years and not in others due to lack of service, and the taxpayer has tendered the Collector the amount of the Judgment and costs demanding thereby a Satisfaction of Judgment. The collector, based upon the above Statute and Attorney General's Opinion, contends that he may apply this payment as he sees fit, and refuses to issue a satisfaction.

"Do you believe that the Attorney General's Opinion #317 is applicable to a Judgment, or must the Collector accept the amount of the Judgment and issue satisfaction."

Among other things, Opinion No. 317 which was issued by this office on June 13, 1962, holds that the County Collector must apply taxes received in accordance with the above quoted provision of Paragraph 675 of Chapter 120, 1969 Illinois Revised Statutes.

At page 20, Volume 50 of Corpus Juris Secundum is found the following:

"A claim or demand which is put in suit and passes to final judgment is merged or swallowed up in the judgment; and this rule applies to a

final decree in a court of equity. The judgment extinguishes the original cause of action, which loses its vitality and cannot thereafter be litigated, either as a cause of action or as a set-off or counterclaim, unless a statute otherwise provides, and the rights of the parties are governed by the judgment. Moreover, as a general rule all the peculiar qualities of the claim are merged in the judgment which then stands on the same footing as all other judgments." (Emphasis added)

The Court stated in Doerr v. Schmitt, 375 Ill.

470, 472:

" * * * 'The general rule is, that by a judgment at law or a decree in chancery, the contract or instrument upon which the proceeding is based becomes entirely merged in the judgment. By the judgment of the court it loses all of its vitality and ceases to bind the parties to its execution. Its force and effect are then expended, and all remaining legal liability is transferred to the judgment or decree. Once becoming merged in the judgment, no further action at law or suit in equity can be maintained on the instrument.' This rule was reaffirmed in Peoria Savings Loan and Trust Co. v. Elder, 165 Ill. 55, and has never been departed from. The same rule is stated by Freeman in his treatise on judgments, fifth edition, volume 2, section 546, in this language: 'Courts, in order to give a proper and just effect to a judgment, sometimes look behind, to see upon what it was founded, just as they would, in construing a statute, seek to ascertain the occasion and purpose of its enactment. The cause of action, though it may be examined to aid in interpreting

the judgment, can never again become the basis of a suit between the same parties. It has lost its vitality; it has expended its force and effect. All its power to sustain rights and enforce liabilities has terminated in the judgment or decree. It "is drowned in the judgment," and must henceforth be regarded as functus officio.' It is said in Gaines v. Miller, 111 U.S. 395, 28L. ed. 466, that where a judgment is obtained for money the demand is merged in the judgment and a suit cannot be brought on the claim for the money but the only remedy is to enforce the judgment or bring another suit on the judgment. * * * *

The foregoing quoted provision in Paragraph 675, Chapter 120, Illinois Revised Statutes 1969, does not mention any priority of payment between a judgment for taxes, and taxes.

As a general rule, a debtor who owes a creditor on a number of accounts may, in making a partial payment, specify the particular account to which the payment will apply. Village of Winfield v. Reliance Ins. Co., 64 Ill. App. 2d 253. In the absence of a specific statutory provision to the contrary, I am of the opinion that the judgment debtor may direct the County Collector to apply his payment to the judgment and related costs, and he would then be entitled to a release of judgment pursuant to Paragraph 68a of Chapter 77, 1969 Illinois Revised Statutes.

Very truly yours,

A T T O R N E Y G E N E R A L