

# PROPERTY REDEMPTION

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This chapter describes the process of redeeming property purchased at a tax sale in summary. It is the purchaser's responsibility to ensure they handle this part of the levy process correctly, but you as Levying Officer should have an understanding of how redemption works. Because the purchaser may ask you various questions regarding property redemption, it is recommended that you give them a brief synopsis of the process and refer them to the appropriate O.C.G.A. statutes.

The purchaser should always consult with their attorney if they have further questions, as we are not charged with giving legal advice to those who purchase property at tax sales. It is best left to the person's legal counsel to determine what course of action the purchaser should take regarding redemption, and to ensure the new owner follows the proper procedures.

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### **Notes:**

### **Handling Property Redemptions**

It is the responsibility of the purchaser to foreclose the right of redemption on property bought at a tax sale. The Tax Commissioner should be familiar with this process to assist the purchaser, enhance future tax sales and assist when the county purchases property at a tax sale. The O.C.G.A. statutes 48-4-40 through 48-4-48 provide the complete process. The following is a condensed version of these codes:

When real property is sold under a tax execution, the taxpayer or any person having a right, title, interest in, or lien upon the property may buy it at any time within 12 months from the date of sale by paying the redemption price. The property may be redeemed at any time after this period until the tax sale purchaser terminates the right to do so by giving proper notice. The 12 month time limitation does not begin to run, however, until the purchaser pays the dollar amount he or she bid. The purchaser is not prohibited from consenting to redemption after the statutory period expires, and may as a matter of grace grant such a privilege.

#### **48-4-42.**

The amount required to be paid for redemption of property from any sale for taxes as provided in this chapter, or the redemption price, shall with respect to any sale made after July 1, 2002, be the amount paid for the property at the tax sale, as shown by the recitals in the tax deed, plus any taxes paid on the property by the purchaser after the sale for taxes, plus any special assessments on the property, plus a premium of 20 percent of the amount for the first year or fraction of a year which has elapsed between the date of the sale and the date on which the redemption payment is made and 10 percent for each year or fraction of a year thereafter. If redemption is not made until more than 30 days after the notice provided for in Code Section 48-4-45 has been given, there shall be added to the redemption price the sheriff's cost in connection with serving the notice and the cost of publication of the notice, if any. All of the amounts required to be paid by this Code section shall be paid in lawful money of the United States to the purchaser at the tax sale or to the purchaser's successors.

After 12 months from the date of sale, the purchaser can forever bar redemption of the property by having notice of such foreclosure served upon the delinquent taxpayer, the occupant, if any, and upon all persons having recorded any right, title, interest in, or lien on the property in the county where the land is located. Such notice cannot be served until after the end of the 12-month period.

The purchaser must write an original notice in accordance with a form shown in the statutes and provide a copy for each person to be served. The purchaser is to deliver these, together with a list of persons to be served, to the sheriff of the county in which the land is located. The purchaser must deliver the information not less than 45 days before the date set in the notice for termination of the right of redemption.

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Within 15 days, the sheriff must serve a copy of the notice upon all persons on the list residing in the county and make an entry of such service on the original notice. Leaving a copy of the notice at the residence of any person required to be served is sufficient service. If the sheriff makes an entry that he or she has been unable to serve the notice on any person, the purchaser must immediately have it published in the official county newspaper once a week for two consecutive weeks. This constitutes service.

Upon payment of the sheriff's costs, the original notice must be returned to the purchaser. The notice and entries on it may be recorded on the deed records in the Superior Court Clerk's Office where the land is located.

When property is redeemed, the purchaser must make a quitclaim (release of claim) deed to the delinquent taxpayer, reciting, among other things, who paid the redemption money. The redemption of property gives back the title conveyed by the tax sale, subject to all liens existing at the time of the sale, to the taxpayer.

If redemption is made by a creditor of the taxpayer or person having an interest in the property, the amount expended by either constitutes a first lien on it and must be paid prior to any other claims on the property. However, it is necessary that the quitclaim deed has been properly recorded in the Superior Court Clerk's Office.

The purchaser may sell the property before the redemption period expires. However, the person buying from the purchaser acquires the defeasible (which can be annulled) title of the purchaser, subject to the right of the delinquent taxpayer to redeem it within the period prescribed by law.

Although, as noted above, the purchaser receives only a defeasible title before the redemption period expires, the purchaser acquires sufficient interest in the property to render him or her liable for taxes due on it.

The purchaser is not entitled to rents and profits arising from the property during the redemption period.

A title under a tax deed properly executed at a valid and legal sale prior to July 1, 1989 shall ripen by prescription after a period of seven years from the date of execution of that deed.

A title under a tax deed executed on or after July 1, 1989, shall ripen by prescription after a period of four years from the date of execution of that deed.

A tax deed which has ripened by prescription pursuant to any provision of this code section shall convey, when the defendant in Fi. Fa. is not laboring under any legal disability, a fee simple title to the property described in that deed, and that title shall vest absolutely in the grantee in the deed or in the grantee's heirs or assigns. In the event the defendant in Fi. Fa. is laboring under any legal disability, the prescriptive

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term specified in this code section shall begin from the time the disabilities are removed or abated.

Notice of foreclosure of the right to redeem property sold at the tax sale shall not be required to have been provided in order for the title to such property to have ripened.

### **Using Relevant Law**

*O.C.G.A. 48-4-40*

#### **48-4-40. Persons entitled to redeem land sold under tax execution; payment; time.**

Whenever any real property is sold under or by virtue of an execution issued for the collection of state, county, municipal, or school taxes or for special assessments, the defendant in fi. fa. or any person having any right, title, or interest in or lien upon such property may redeem the property from the sale by the payment of the redemption price or the amount required for redemption, as fixed and provided in Code Section 48-4-42:

(1) At any time within 12 months from the date of the sale; and

(2) At any time after the sale until the right to redeem is foreclosed by the giving of the notice provided for in Code Section 48-4-45.

(Orig. Code 1863, § 820; Code 1873, § 898; Code 1882, § 898; Civil Code 1895, § 909; Civil Code 1910, § 1169; Code 1933, § 92-8301; Ga. L. 1937, p. 491, § 2; Code 1933, § 91A-430, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 9.)

### **JUDICIAL DECISIONS**

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#### **General Consideration**

**Editor's notes.** - In light of the similarity of the provisions, decisions under former Code 1873, § 898; former Code 1882, § 898; former Civil Code 1895, § 909; former Civil Code 1910, § 1169; and former Code 1933, § 92-8301, are included in the annotations for this Code section.

**Effect of subsequent executions.** - It is not necessary for those seeking and entitled to redeem to tender the amount of tax fi. fas. issued subsequently to the sale. *LaRoche v. Kinchlo*, 154 Ga. 547, 114 S.E. 706 (1922) (decided under former Civil Code 1910, § 1169).

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**Sale under both tax fi. fa. and judgment.** - Though there is incompatibility in selling land under both a tax fi. fa. and a fi. fa. founded on the judgment of a court at the same time, the sale is not void. The result is to annex to the sale as against both fi. fas. the statutory incident of redemption. The property is redeemable by refunding the whole amount paid by the purchaser, with the statutory premium thereon, but not by refunding a less amount measured by the taxes due. *Clower v. Fleming*, 81 Ga. 247, 7 S.E. 278 (1888) (decided under former Code 1882, § 898).

**No redemption in case of drainage district assessment.** - The right of redemption is not given where land is sold under execution issued for an assessment to meet interest or principal, or the cost of draining the land in a drainage district. *Sigmon-Reinhardt Co. v. Atkins Nat'l Bank*, 163 Ga. 136, 135 S.E. 720 (1926) (decided under former Civil Code 1910, § 1169).

**Intervention to redeem where intervention previously denied on other grounds.** - Judgment sustaining a general demurrer (now motion to dismiss) to an intervention seeking to cancel tax deeds, which intervention is on grounds that the levy was excessive and that an interest less than the fee was conveyed, will not bar subsequent intervention by owner within redemption period, seeking to redeem the property as provided by law. *Forrester v. Lowe*, 192 Ga. 469, 15 S.E.2d 719 (1941) (decided under former Code 1933, § 92-8301).

**Section makes no exception in favor of minors** for redeeming property sold under a tax execution. *Dawson v. Dawson*, 106 Ga. 45, 32 S.E. 29 (1898) (decided under former Civil Code 1895, § 909).

**Cited in** *Southerland v. Bradshaw*, 252 Ga. 294, 313 S.E.2d 92 (1984); *Funderburke v. Kellet*, 257 Ga. 822, 364 S.E.2d 845 (1988).

### **Persons Who May Redeem**

**Corporations.** - No construction, however liberal, which could be given this section granting the privilege of redeeming land sold for taxes to the owner thereof, can inure to the benefit of a party, if the owner be a corporation, and it a mere stockholder therein. *Carver Cotton Gin Co. v. Barrett & Caswell*, 66 Ga. 526 (1881) (decided under former Code 1873, § 898).

**Wife, who is a beneficiary of a homestead estate** sold under tax fi. fa. against the husband can redeem the property. *Lamar v. Sheppard*, 80 Ga. 25, 5 S.E. 247 (1887) (decided under former Code 1882, § 898).

**A trustee in bankruptcy, as a creditor of a bankrupt, can redeem** land sold under tax fieri facias if he desires. *In re Rogers & Williams*, 3 F. Supp. 116 (S.D. Ga. 1933) (decided under former Code 1933, § 92-8301).

**Lienholders acquiring interest subsequent to tax sale.** - Section 48-4-45 does not provide that the interest must have been held at the time of the tax sale. The section requires notice to lienholders who exist at the time of any attempted foreclosure of the right of redemption. Therefore, such lienholders are not barred from the right of redemption by reason of having acquired their interest subsequent to the tax sale. *Leathers v. McClain*, 255 Ga. 378, 338 S.E.2d 666 (1986).

### **Redemption Period**

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**When time begins to run against owner.** - The year for redemption of property sold for taxes runs from the date of the sale and not from the time when the sheriff's deed is recorded. *Boyd v. Wilson*, 86 Ga. 379, 12 S.E. 744 (1890) (decided under former Code 1882, § 898).

**Tender after the time allowed by law** for redemption under a tax sale is without efficacy, and an allegation thereof should be stricken on demurrer (now motion to dismiss). *Allen v. Gates*, 145 Ga. 652, 89 S.E. 821 (1916) (decided under former Civil Code 1910, § 1169).

**Redemption after expiration of period with permission of purchaser.** - Although this section affords a positive right to redeem only within the specified period, it does not inhibit the purchaser from according redemption after the period has expired, as matter of grace. *Union Cent. Life Ins. Co. v. Bank of Tignall*, 182 Ga. 233, 185 S.E. 108 (1936) (decided under former Code 1933, § 92-8301); *Caffey v. Parris*, 186 Ga. 303, 197 S.E. 898 (1938) (decided under former Code 1933, § 92-8301).

**Power of court of equity to allow redemption after expiration of period.** - After statutory redemption period has expired, right to redeem is gone, and there is no power even in a court of equity to authorize redemption of the property in such cases. *Boroughs v. Lance*, 213 Ga. 143, 97 S.E.2d 357 (1957) (decided under former Code 1933, § 92-8301).

### **Tender and Payment**

**Requirements as to tender on offer to redeem.** - A tender on an offer to redeem property from taxes not only must be in due time and manner, but be continuous, with a continuous offer to pay; and if such continuity is not otherwise shown, at least bringing money into court on filing suit is necessary in place of continuous offer by pleading. *Durham v. Crawford*, 196 Ga. 381, 26 S.E.2d 778 (1943) (decided under former Code 1933, § 92-8301).

**Sale not complete until purchase money paid.** - Relative to the right of the owner to redeem the land, the sale will not be considered as complete until payment of the purchase money by the bidder. The owner has 12 months from the time of such payment within which to tender the money to the purchaser for the purpose of redemption. *Wood v. Henry*, 107 Ga. 389, 33 S.E. 410 (1899). See also *Cason v. United Realty & Auction Co.*, 158 Ga. 584, 123 S.E. 894 (1924) (decided under former Civil Code 1910, § 1169).

**Deposit with clerk of unendorsed draft as tender.** - Under requirement either that continuous good tender be made or that actual money be paid into court, mere deposit with clerk of draft drawn on bank of another state, payable to order of defendant and unendorsed, would not suffice as tender on offer to redeem property from taxes; because draft was not endorsed; because its payment could be stopped or refused, and because there was no showing that plaintiff had funds sufficient for payment of draft on deposit with drawee bank. *Durham v. Crawford*, 196 Ga. 381, 26 S.E.2d 778 (1943) (decided under former Code 1933, § 92-8301).

**To whom tender made where purchaser at sale has conveyed property to another.** - Tender on offer to redeem property from tax sale ineffective where it is made to purchaser at tax sale instead of to purchaser's grantee, after grantee had paid the full tax money and consideration to purchaser, and person offering to redeem knew of such status of the property. *Durham v. Crawford*, 196 Ga. 381, 26 S.E.2d 778 (1943) (decided under former Code 1933, § 92-8301).

**Payment or tender of redemption amount as prerequisite to equitable relief.** - Under maxim that "he who would have equity must do equity", not only must the party seeking equitable relief from a tax sale have paid or tendered sum due to the other party, but he must have done so before filing of suit, unless tender, or offer to restore be excused upon some equitable ground. *Durham v. Crawford*, 196 Ga. 381, 26 S.E.2d 778 (1943) (decided under former Code 1933, § 92-8301).

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**Effect of nonpayment of purchase money by bidder.** - As to right of owner to redeem land which has been sold at tax sale, sale is not to be considered as complete until payment of purchase money by bidder. *Zugar v. Scarbrough*, 186 Ga. 310, 197 S.E. 854 (1938) (decided under former Code 1933, § 92-8301).

**Deduction of sale taxes from credits to which tax collector entitled as payment.** - Where purchaser at tax sale was represented at sale by the county tax collector, who, instead of paying amount of bid to the sheriff, merely paid sheriff's costs and advertising fee and, in an adjustment of his account as tax collector, settled with county commissioners by deducting taxes from credits to which he was entitled, there was no such payment of purchase money as to cause period of redemption to commence. *Zugar v. Scarbrough*, 186 Ga. 310, 197 S.E. 854 (1938) (decided under former Code 1933, § 92-8301).

**Effect of failure to pay or settle excess proceeds of sale.** - Fact that "excess" was never paid to sheriff or settled in any manner furnishes grounds that tax sale was not complete, relative to owner's right to redeem. *Zugar v. Scarbrough*, 186 Ga. 310, 197 S.E. 854 (1938) (decided under former Code 1933, § 92-8301).

**Failure to allege payment or tender before filing action to redeem.** - Where one seeking in a court of equity to redeem property sold for taxes admits stated amounts to have been paid for the property at the sale, but fails to allege payment or tender of such amounts before filing such action, petition should be dismissed on demurrer (now motion to dismiss). *Forrester v. Lowe*, 192 Ga. 469, 15 S.E.2d 719 (1941) (decided under former Code 1933, § 92-8301).

The allegation that within one year after a tax sale the redeemer tendered to one who had taken title under the purchaser at the tax sale the amount of the purchase price of the property at the sale plus ten percent interest thereon from date, is subject to special demurrer (now motion to dismiss) where it does not show the amount of the purchase price or of the tender. *Allen v. Gates*, 145 Ga. 652, 89 S.E. 821 (1916) (decided under former Civil Code 1910, § 1169).

**Allegation that person to whom tender was made refused it** and stated that it was unnecessary to make any further tender of any kind, as he would not surrender the property save at the end of litigation, is sufficient to show a waiver of further tender, but does not supply the deficiencies in the allegations that there had been an actual tender of amounts, alleged in an indefinite way, the plaintiffs relying on actual tender as well as waiver. *Allen v. Gates*, 145 Ga. 652, 89 S.E. 821 (1916) (decided under former Civil Code 1910, § 1169).

### **Title to, and Rights in, Property Pending Redemption**

**Effect on title of redemption or failure to redeem.** - Purchaser at tax sale acquires a defeasible title, under which he is entitled to a deed from the officer selling the property, and can convey his own defeasible title to another person, subject only to the right of redemption. If amount required for redemption is paid or sufficiently tendered, such payment or tender reverts title in the owner, but otherwise, at expiration of redemption period, title becomes absolute in purchaser or his grantee. *Durham v. Crawford*, 196 Ga. 381, 26 S.E.2d 778 (1943) (decided under former Code 1933, § 92-8301).

Upon tender by owner under this section for the purpose of redeeming his property from a tax sale, purchaser's inchoate, qualified, or defeasible estate terminates. *Bowman v. Poole*, 212 Ga. 261, 91 S.E.2d 770 (1956) (decided under former Code 1933, § 92-8301).

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Where no redemption is made during the time in which redemption is authorized, purchaser acquires under the tax deed an absolute and unconditional title to the land sold. Thereupon the owner and all other parties authorized by law to redeem lose their redemption rights and cease to have any interest in the land. *Forrester v. Lowe*, 192 Ga. 469, 15 S.E.2d 719 (1941) (decided under former Code 1933, § 92-8301).

**State of title held by sale purchaser or his grantee pending period of redemption.** - Purchaser at a tax sale may convey the property before expiration of redemption period, in which case vendee acquires the inchoate or defeasible title which passed to his vendor under the tax sale, subject to right of owner to redeem within time prescribed by this section. *Braswell v. Palmer*, 191 Ga. 262, 11 S.E.2d 889 (1940) (decided under former Code 1933, § 92-8301).

**Effect of redemption by cotenant on rights of other cotenants.** - If cotenant redeemed property by payment of redemption money to the purchaser at tax sale, such redemption did not divest other cotenant of title to his interest in the property. The effect of the redemption would be to restore title to the same owners who held it before the tax sale. *Andrews v. Walden*, 208 Ga. 340, 66 S.E.2d 801 (1951) (decided under former Code 1933, § 92-8301).

**Right of possession pending redemption.** - During the time allowed for redemption, a purchaser's title is inchoate and he does not have the right to be put in possession of the property. *Elrod v. Owensboro Wagon Co.*, 128 Ga. 361, 57 S.E. 712 (1907) (decided under former Civil Code 1895, § 909).

**Rights concerning rents pending redemption.** - Since rents accruing within 12 months after a tax sale may not be used to supplement cash tendered in redemption, and a purchaser at a tax sale is not entitled to rents, issues, and profits accruing between the time of his purchase and the redemption of the property, rent for the premises after the legal sale, not paid by the tenant purchaser, is recoverable up to the time his deed became absolute. *Beckham v. Lindsey*, 22 Ga. App. 174, 95 S.E. 745 (1918) (decided under former Civil Code 1910, § 1169).

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** - 30 Am. Jur. 2d, Executions, §§ 522-550. 72 Am. Jur. 2d, State and Local Taxation, §§ 988-1030.

**C.J.S.** - 85 C.J.S., Taxation, §§ 841-885.

**ALR.** - Constitutionality of statute extending period for redemption from judicial or tax sale, or sale upon mortgage foreclosure, 1 ALR 143, 38 ALR 229, 89 ALR 966.

Effect of purchase by cotenant in possession of common property at foreclosure sale thereof, 6 ALR 297, 54 ALR 874, 85 ALR 1535.

Effect of imprisonment to extend time for redemption from judicial, execution, or tax sale, 18 ALR 531.

Right after redemption from tax sale or forfeiture to maintain action for trespass committed between sale or forfeiture and redemption, 33 ALR 302.

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Necessity and sufficiency of statement in notice of application for tax deed, or notice or redeem from tax sale, as regards time for redemption, 82 ALR 502.

Judgment as lien on judgment debtor's equity of redemption in land sold for taxes, 91 ALR 647.

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Right and remedy of mortgagee who for protection of his security pays taxes on, or redeems from tax sale of, mortgaged property, 123 ALR 1248.

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Right of true owner to recover proceeds of sale or lease of real property made by another in the belief that he was the owner of the property, 133 ALR 1443.

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Retroactive application, to previous sales, of statutes reducing period of redemption from tax sales, as unconstitutional impairment of contract obligations, 147 ALR 1123.

Sufficiency of tax redemption notice which includes more than one tax assessment for which land was sold, or more than one tract of land, 155 ALR 1198.

Statutes providing for refund to purchaser at invalid tax sale as applicable where sale antedated the statute, 157 ALR 399.

Right of person under disability to redeem from tax sale, 159 ALR 1467.

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What constitutes "execution" of tax deed beginning or ending period for redemption from tax sale, 166 ALR 853.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 ALR2d 1021.

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Effect of certificate, statement (or refusal thereof), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property, 21 ALR2d 1273.

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Applicability of tax redemption statutes to separate mineral estates, 56 ALR2d 621.

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What judgment creditors, other than the one on whose execution the sale was made, may redeem from execution sale, 58 ALR2d 467.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 ALR4th 447.

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*O.C.G.A. 48-4-41*

### **48-4-41. Redemption by creditor without lien.**

If the property is redeemed by a creditor of the defendant in fi. fa. who has no lien, the creditor shall have a claim against the property for the amount advanced by him in order to redeem the property if:

- (1) There is any sale of the property after the redemption under a judgment in favor of the creditor; and
- (2) The quitclaim deed is recorded as required by law.

(Ga. L. 1898, p. 85, § 4; Civil Code 1910, § 1171; Code 1933, § 92-8303; Code 1933, § 91A-432, enacted by Ga. L. 1978, p. 309, § 2.)

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** - 30 Am. Jur. 2d, Executions, § 527.

**C.J.S.** - 85 C.J.S., Taxation, § 844.

**ALR.** - Rights or interests covered by quitclaim deed, 44 ALR 1266, 162 ALR 556.

Right of mortgagor or purchaser of equity of redemption to defeat lien of mortgage by acquisition of title at sale subsequent to mortgage for nonpayment of taxes, or of assessment for local improvement, 134 ALR 289.

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*O.C.G.A. 48-4-42*

### **48-4-42. Amount payable for redemption.**

48-4-42.

The amount required to be paid for redemption of property from any sale for taxes as provided in this chapter, or the redemption price, shall with respect to any sale made after July 1, 2002, be the amount paid for the property at the tax sale, as shown by the recitals in the tax deed, plus any taxes paid on the property by the purchaser after the sale for taxes, plus any special assessments on the property, plus a premium of 20 percent of the amount for the first year or fraction of a year which has elapsed

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between the date of the sale and the date on which the redemption payment is made and 10 percent for each year or fraction of a year thereafter. If redemption is not made until more than 30 days after the notice provided for in Code Section 48-4-45 has been given, there shall be added to the redemption price the sheriff's cost in connection with serving the notice and the cost of publication of the notice, if any. All of the amounts required to be paid by this Code section shall be paid in lawful money of the United States to the purchaser at the tax sale or to the purchaser's successors.

(Ga. L. 1937, p. 491, § 2; Code 1933, § 91A-436, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 822, § 1; Ga. L. 1984, p. 1016, § 1; Ga. L. 1996, p. 1022, § 1; Ga. L. 1997, p. 458, § 1.)

**The 1996 amendment**, effective July 1, 1996, deleted former subsection (a), relating to certain amounts payable for redemption; deleted the subsection (b) designation; substituted "The amount" for "In cases where a county, municipality, or other political subdivision purchases property at a tax sale, the amount" at the beginning; and substituted "the purchaser's successors" for "his successors" at the end.

**The 1997 amendment**, effective July 1, 1997, inserted "plus any taxes paid on the property by the purchaser after the sale for taxes," in the first sentence.

**Law reviews.** - For article surveying recent legislative and judicial developments in Georgia's real property laws, see 31 Mercer L. Rev. 187 (1979).

### **JUDICIAL DECISIONS**

**Editor's notes.** - In light of the similarity of the provisions, decisions under Ga. L. 1937, p. 491, § 2, are included in the annotations for this Code section.

**One purpose of the 10 percent penalty** is to make the purchaser whole for the use of his money during the time it is tied up in the property. *Southerland v. Bradshaw*, 255 Ga. 455, 339 S.E.2d 579 (1986).

**Purpose of requirement that payment be made to purchaser or his heirs.** - By the terms of this section, a prerequisite to redemption is that amounts required for redemption must be paid to purchaser, or his heirs, successors, or assigns in lawful money of the United States. The intent and purpose of this payment is to fully compensate the owner for what he paid plus a penalty. This purpose is defeated if payment is made to just anyone in the chain, for the owner at the time is alone entitled to such payment. *Herrington v. Old S. Inv. Co.*, 222 Ga. 428, 150 S.E.2d 623 (1966) (decided under Ga. L. 1937, p. 491, § 2).

**Computation of time period for which premium is due.** - By establishing the reference points of this section as "each year or fraction of a year which has elapsed between the date of the sale and the date on which the redemption payment is made", the General Assembly has demonstrated its intention to compute the time period for which a 10 percent premium is due as a 12-month year running from the date of sale. *Southerland v. Bradshaw*, 255 Ga. 455, 339 S.E.2d 579 (1986).

**Failure to pay or tender to proper party as bar to action to redeem.** - Where proper tender would have been to the holders under the security deed, failure to pay or tender to them the required amount for redemption is a bar to the prosecution of action to redeem. *Herrington v. Old S. Inv. Co.*, 222 Ga. 428, 150 S.E.2d 623 (1966) (decided under Ga. L. 1937, p. 491, § 2).

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**Cited in** *Southerland v. Bradshaw*, 252 Ga. 294, 313 S.E.2d 92 (1984); *Leathers v. McClain*, 255 Ga. 378, 338 S.E.2d 666 (1986).

### RESEARCH REFERENCES

**Am. Jur. 2d.** - 30 Am. Jur. 2d, Executions, §§ 533, 534. 72 Am. Jur. 2d, State and Local Taxation, § 841. *Leathers v. McClain*, 255 Ga. 378, 338 S.E.2d 666 (1986).

**C.J.S.** - 85 C.J.S., Taxation, §§ 872-877.

**ALR.** - Statutes providing for refund to purchaser at invalid tax sale as applicable where sale antedated the statute, 157 ALR 399.

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*O.C.G.A. 48-4-43*

#### **48-4-43. Effect of redemption.**

When property has been redeemed, the effect of the redemption shall be to put the title conveyed by the tax sale back into the defendant in fi. fa., subject to all liens existing at the time of the tax sale. If the redemption has been made by any creditor of the defendant or by any person having any interest in the property, the amount expended by the creditor or person interested shall constitute a first lien on the property and, if the quitclaim deed provided for in Code Section 48-4-44 is recorded as required by law, shall be repaid prior to any other claims upon the property.

(Ga. L. 1898, p. 85, § 3; Civil Code 1910, § 1170; Code 1933, § 92-8302; Code 1933, § 91A-431, enacted by Ga. L. 1978, p. 309, § 2.)

### JUDICIAL DECISIONS

**Editor's notes.** - In light of the similarity of the provisions, decisions under Ga. L. 1898, p. 85, § 3 and former Code 1933, § 92-8302 are included in the annotations for this Code section.

**"Lien" construed.** - As used in this section, "lien" comprehends also title under deeds for security of debt. *Union Cent. Life Ins. Co. v. Bank of Tignall*, 182 Ga. 233, 185 S.E. 108 (1936) (decided under former Code 1933, § 92-8302).

**Applicability after statutory redemption period expired.** - This section is equally applicable where property is redeemed after statutory period has expired. *Union Cent. Life Ins. Co. v. Bank of Tignall*, 182 Ga. 233, 185 S.E. 108 (1936) (decided under former Code 1933, § 92-8302); *Caffey v. Parris*, 186 Ga. 303, 197 S.E. 898 (1938) (decided under former Code 1933, § 92-8302).

**Applicability of this section to property sold for federal taxes.** - This section does not apply only to tax sales by the state or some subdivision thereof. While provisions of federal statutes control as to manner in which property may be redeemed after sale for federal taxes, once the redemption has become effective, the effect of the redemption as to other liens on the property is determined by state statutes. *Lowe v. City of Atlanta*, 221 Ga. 477, 145 S.E.2d 534 (1965) (decided under former Code 1933, § 92-8302).

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**Effect of redemption by cotenant on rights of other cotenants.** - If cotenant redeemed property by payment of redemption money to purchaser at tax sale, such redemption does not divest other cotenant of title to his interest in the property. The effect of the redemption would be to restore title to the same owners who held it before the tax sale. *Andrews v. Walden*, 208 Ga. 340, 66 S.E.2d 801 (1951) (decided under former Code 1933, § 92-8302).

**Purchase by trustee in breach treated as redemption.** - Where in consequence of a trustee's breach of duty an estate is sold for taxes, he cannot, even after the expiration of the redemption period, acquire a title from the purchaser at the tax sale, good against his cestui que trust. In equity the reconveyance will be treated as a correction of the wrong, leaving the property impressed with the original trust. *Bourquin v. Bourquin*, 120 Ga. 115, 47 S.E. 639 (1904) (decided under Ga. L. 1898, p. 85, § 3).

Where a trustee allowed trust property to be sold for taxes, but purchased the property individually after the time for redemption had passed, the effect was a reversion of the interest of the cestui que trust, who was then entitled to redeem the land at subsequent tax sale. *Bourquin v. Bourquin*, 120 Ga. 115, 47 S.E. 639 (1904) (decided under Ga. L. 1898, p. 85, § 3).

**Effect against sale purchaser with independent title.** - Where land is redeemed no better title is acquired than the person redeeming had before, and if the purchaser at the tax sale has an independent title, it is not divested by the redemption. *Elrod v. Owensboro Wagon Co.*, 128 Ga. 361, 57 S.E. 712 (1907). See also *Morrison v. Whiteside*, 116 Ga. 459, 42 S.E. 729 (1902) (decided under Ga. L. 1898, p. 85, § 3).

**Effect of sale and redemption on restrictions as to use of property.** - Whether or not a restriction of land to use as a park might ordinarily be extinguished by a valid sale of the land under a municipal execution for paving assessments, where owner of the property at time of sale under execution merely redeems it, the effect of such redemption is to place title back into such owner, subject to the restriction. *Caffey v. Parris*, 186 Ga. 303, 197 S.E. 898 (1938) (decided under former Code 1933, § 92-8302).

**Cited in** *Leathers v. McClain*, 255 Ga. 378, 338 S.E.2d 666 (1986).

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** - 30 Am. Jur. 2d, Executions, §§ 538-545.

**C.J.S.** - 85 C.J.S., Taxation, §§ 886-890.

**ALR.** - Judgment as lien on judgment debtor's equity of redemption in land sold for taxes, 91 ALR 647.

Deed from purchaser of tax title to former owner or lienor as a conveyance of a new title or a redemption, as regards rights or liens of third persons subordinate to tax lien, 106 ALR 887.

Right and remedy of mortgagee who for protection of his security pays taxes on, or redeems from tax sale of, mortgaged property, 123 ALR 1248.

Statutes providing for refund to purchaser at invalid tax sale as applicable where sale antedated the statute, 157 ALR 399.

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Rights and remedies of owner against holder of invalid tax title respecting rents and profits or use and occupation, 173 ALR 1179.

Applicability of tax redemption statutes to separate mineral estates, 56 ALR2d 621.

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*O.C.G.A. 48-4-44*

### **48-4-44. Quitclaim deed by purchaser.**

(a) In all cases where property is redeemed, the purchaser at the tax sale shall make a quitclaim deed to the defendant in fi. fa., which deed shall recite:

(1) The name of the person who has paid the redemption money; and

(2) The capacity in which or the claim of right or interest pursuant to which the redemption money was paid.

(b) The recitals required by this Code section shall be prima-facie evidence of the facts stated.

(Ga. L. 1898, p. 85, § 5; Civil Code 1910, § 1172; Code 1933, § 92-8304; Code 1933, § 91A-433, enacted by Ga. L. 1978, p. 309, § 2.)

### **JUDICIAL DECISIONS**

**Editor's notes.** - In light of the similarity of the provisions, decisions under Ga. L. 1898, p. 85, § 5 and former Civil Code 1910, § 1172 are included in the annotations for this Code section.

**Section inapplicable to sale for drainage assessments.** - Where land is sold under execution issued for an assessment to meet interest, principal, or costs of draining the land in a drainage district, the vendee will not be required to execute and deliver a quitclaim deed. *Sigmon-Reinhardt Co. v. Atkins Nat'l Bank*, 163 Ga. 136, 135 S.E. 720 (1926) (decided under former Civil Code 1910, § 1172).

**That purchaser does not yet have deed is no defense to demand for deed.** - It is no defense to a demand for a deed under this section to answer that the purchaser has not yet had the selling officer make a deed to him. *Elrod v. Owensboro Wagon Co.*, 128 Ga. 361, 57 S.E. 712 (1907) (decided under Ga. L. 1898, p. 85, § 5).

**Cited in** *Leathers v. McClain*, 255 Ga. 378, 338 S.E.2d 666 (1986).

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** - 30 Am. Jur. 2d, Executions, §§ 539, 540.

**C.J.S.** - 85 C.J.S., Taxation, §§ 895-918.

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**ALR.** - Rights or interests covered by quitclaim deed, 44 ALR 1266, 162 ALR 556.

Statutes providing for refund to purchaser at invalid tax sale as applicable where sale antedated the statute, 157 ALR 399.

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*O.C.G.A. 48-4-45*

### **48-4-45. Notice of foreclosure of right to redeem; time; persons entitled to notice.**

(a) After 12 months from the date of a tax sale, the purchaser at the sale or his heirs, successors, or assigns may terminate, foreclose, divest, and forever bar the right to redeem the property from the sale by causing a notice or notices of the foreclosure, as provided for in this article:

(1) To be served upon all of the following persons who reside in the county in which the property is located:

(A) The defendant in the execution under or by virtue of which the sale was held;

(B) The occupant, if any, of the property; and

(C) All persons having of record in the county in which the land is located any right, title, or interest in, or lien upon the property;

(2) To be sent by registered or certified mail to each of the persons specified in subparagraphs (A), (B), and (C) of paragraph (1) of this subsection who resides outside the county in which the property is located, if the address of that person is reasonably ascertainable; and

(3) To be published, if that tax sale occurs on or after July 1, 1989, in the newspaper in which the sheriff's advertisements for the county are published in each county in which that property is located, which publication shall occur once a week for four consecutive weeks in the six-month period immediately prior to the week of the redemption deadline date specified in the notice.

(b) Nothing contained in this Code section shall be construed to require that any notice be sent to or served upon any person whose right, title, interest in, or lien upon the property does not appear of record in the county in which the land is located.

(c) The heirs of any deceased owner of any land entitled to notice pursuant to this Code section shall be served by the sheriff or notified as provided in this article.

(Ga. L. 1937, p. 491, § 2; Code 1933, § 91A-434, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1391, § 1.)

**The 1989 amendment**, effective July 1, 1989, substituted "foreclosure, as provided for in this article" for "foreclosure to be served as provided for in this article upon" at the end of the introductory language in subsection (a); redesignated existing paragraphs (1) through (3) of subsection (a) as subparagraphs (a)(1)(A) through (a)(1)(C) and made a related stylistic change; added the introductory

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language in paragraph (1) of subsection (a); added paragraphs (2) and (3) of subsection (a); and substituted "sent to or served upon" for "given to" in subsection (b).

**Law reviews.** - For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986).

### **JUDICIAL DECISIONS**

**Editor's notes.** - In light of the similarity of the provisions, decisions under Ga. L. 1937, p. 491, § 2, are included in the annotations for this Code section.

**Computation of time.** - This section requires that 12 months shall have elapsed before the right to redeem property shall be foreclosed and before notice of the right to foreclose the right shall be served. *Wallace v. President St.*, 263 Ga. 239, 430 S.E.2d 1 (1993).

**Lienholders acquiring interest subsequent to tax sales not barred from redemption.** - This section does not provide that the interest must have been held at the time of the tax sale. The section requires notice to lienholders who exist at the time of any attempted foreclosure of the right of redemption. Therefore, such lienholders are not barred from the right of redemption by reason of having acquired their interest subsequent to the tax sale. *Leathers v. McClain*, 255 Ga. 378, 338 S.E.2d 666 (1986).

**Power of court of equity to allow redemption after expiration of period.** - After the statutory redemption has expired, right to redeem is gone, and there is no power even in a court of equity to authorize redemption of the property in such cases. *Boroughs v. Lance*, 213 Ga. 143, 97 S.E.2d 357 (1957) (decided under Ga. L. 1937, p. 491, § 2).

**Cited in** *Funderburke v. Kellet*, 257 Ga. 822, 364 S.E.2d 845 (1988).

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** - 30 Am. Jur. 2d, Executions, § 536. 72 Am. Jur. 2d, State and Local Taxation, §§ 1010-1020.

**C.J.S.** - 85 C.J.S., Taxation, § 852.

**ALR.** - Who entitled to notice necessary to perfect tax title, 54 ALR 756, 169 ALR 686.

Necessity and sufficiency of statement in notice of application for tax deed, or notice to redeem for tax sale, as regards time for redemption, 82 ALR 502.

Tax title or deed as subject to attack for want of notice of application for tax deed or of expiration of redemption period, where a statute makes tax deed conclusive evidence of matters preliminary to its issuance or limits attack thereon to specified grounds or exempts deed from attack for procedural irregularities or omissions, 134 ALR 796.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 ALR2d 1021.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 ALR4th 447.

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*O.C.G.A. 48-4-6*

**48-4-46. Form of notice of foreclosure of right to redeem; service; time; return and record; waiver.**

(a) The notice provided for in Code Section 48-4-45 shall be written or printed, or written in part and printed in part, and shall be in substantially the following form:

Take notice that:

The right to redeem the following described property, to wit:

\_\_\_\_\_ will expire and be forever foreclosed and barred on and after the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

The tax deed to which this notice relates is dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and is recorded in the office of the Clerk of the Superior Court of \_\_\_\_\_ County, Georgia, in Deed Book \_\_\_\_\_ at page \_\_\_\_\_.

The property may be redeemed at any time before the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by payment of the redemption price as fixed and provided by law to the undersigned at the following address: \_\_\_\_\_.

Please be governed accordingly.

\_\_\_\_\_

(b) The purchaser at the tax sale or his heirs, successors, or assigns, as the case may be, shall make out an original notice in substantially the form prescribed in subsection (a) of this Code section and one copy of the notice for each person to be served with the notice. The purchaser shall deliver the notice and the copies together with a list of the persons to be served to the sheriff of the county in which the land is located not less than 45 days before the date set in each notice for the expiration of the right to redeem. Within 15 days after delivery to him, the sheriff shall serve a copy of the notice personally or by deputy upon each of the persons included on the list furnished him who reside in the county. The sheriff shall make an entry of the service on the original copy of the notice. Leaving a copy of the notice at the residence of any person required to be served with the notice shall be a sufficient service of the notice.

(c) If the sheriff personally or by deputy makes an entry that he is unable for any reason to effect service upon any person required to be served, the person who requested that the service be made

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shall forthwith cause a copy of the notice to be published once a week for two consecutive weeks in the newspaper in which the sheriff's advertisements for the county are published, unless that notice is being published as provided in paragraph (3) of subsection (a) of Code Section 48-4-45. Either publication shall operate as and for all purposes shall be treated as service upon all persons as to whom the sheriff has made an entry that he has been unable to effect service.

(d) Each original notice together with the entry of the sheriff on the notice shall be returned to the person by whom the service was requested upon the payment of the sheriff's costs as provided by law. Any original notice together with the entries on the notice may be filed and recorded on the deed records in the office of the clerk of the superior court of the county in which the land is located.

(e) Service of notices as provided in this Code section may be waived in writing by any person required or entitled to be served with the notice.

(Ga. L. 1937, p. 491, § 2; Code 1933, § 91A-435, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1982, p. 3, § 48; Ga. L. 1989, p. 1391, § 2.)

**The 1989 amendment**, effective July 1, 1989, in subsection (c), inserted the language beginning ", unless that notice" at the end of the first sentence and substituted "Either" for "The" at the beginning of the second sentence.

### **JUDICIAL DECISIONS**

**Constitutionality.** - The notice to persons outside the county under § 48-3-9(b) and subsections (b) and (c) of this Code section are not in accord with the requirements of due process, because an owner of a security deed or mortgage who lives outside the county in which the land is located will only receive published notice of the foreclosure of the right to redeem. *Funderburke v. Kellet*, 257 Ga. 822, 364 S.E.2d 845 (1988).

**Responsibility of purchasers.** - Purchasers of a business were required to establish a fund sufficient to cover unpaid taxes regardless of the existence of other claims superior to the state tax execution. *Collins v. Lesters, Inc.*, 225 Ga. App. 405, 484 S.E.2d 62 (1997).

**Cited in** *Southerland v. Bradshaw*, 252 Ga. 294, 313 S.E.2d 92 (1984); *Dixon v. Conway*, 262 Ga. 709, 425 S.E.2d 651 (1993).

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** - 30 Am. Jur. 2d, Executions, § 536. 72 Am. Jur. 2d, State and Local Taxation, §§ 1010-1020.

**ALR.** - Tax title or deed as subject to attack for want of notice of application for tax deed or of expiration of redemption period, where a statute makes tax deed conclusive evidence of matters preliminary to its issuance or limits attack thereon to specified grounds or exempts deed from attack for procedural irregularities or omissions, 134 ALR 796.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 ALR2d 1021.

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Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 ALR4th 447.

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*O.C.G.A. 48-4-7*

### **48-4-47. Tender of redemption price before action to cancel tax deed.**

(a) After notice to foreclose the right of redemption as provided for in this article has been given, no action shall be filed, allowed, sanctioned, or maintained for the purpose of setting aside, canceling, or in any way invalidating the tax deed referred to in the notice or the title conveyed by the tax deed unless and until the plaintiff in the action pays or legally tenders to the grantee in the deed or to his successors the full amount of the redemption price for the property, as provided for in this article.

(b) Subsection (a) of this Code section shall apply unless it clearly appears that:

(1) The tax or special assessment for the collection of which the execution under or by virtue of which the sale was held was not due at the time of the sale; or

(2) Service or notice was not given as required in this article.

(Ga. L. 1937, p. 491, § 2; Code 1933, § 91A-437, enacted by Ga. L. 1978, p. 309, § 2.)

### **JUDICIAL DECISIONS**

**Editor's notes.** - In light of the similarity of the provisions, decisions under Ga. L. 1937, p. 491, § 2, are included in the annotations for this Code section.

**Effect of plaintiff's financial inability to make tender.** - Plaintiff's financial inability to make the tender of the amount owed does not alter the requirements of this section. *Ayer v. Lamar County*, 194 Ga. 712, 22 S.E.2d 606 (1942) (decided under Ga. L. 1937, p. 491, § 2).

**Cited in** *Southerland v. Bradshaw*, 252 Ga. 294, 313 S.E.2d 92 (1984).

### **RESEARCH REFERENCES**

**Am. Jur. 2d.** - 72 Am. Jur. 2d, State and Local Taxation, § 841.

**C.J.S.** - 85 C.J.S., Taxation, § 877.

**ALR.** - Necessity of recording tax deed to protect title as against interest derived from former owner, 65 ALR 1015.

Tax title or deed as subject to attack for want of notice of application for tax deed or of expiration of redemption period, where a statute makes tax deed conclusive evidence of matters preliminary to its issuance or limits attack thereon to specified grounds or exempts deed from attack for procedural irregularities or omissions, 134 ALR 796.

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*O.C.G.A. 48-4-48*

### **48-4-48. Ripening of tax deed title by prescription.**

(a) A title under a tax deed properly executed at a valid and legal sale prior to July 1, 1989, shall ripen by prescription after a period of seven years from the date of execution of that deed.

(b) A title under a tax deed executed on or after July 1, 1989, but before July 1, 1996, shall ripen by prescription after a period of four years from the execution of that deed. A title under a tax deed properly executed on or after July 1, 1996, at a valid and legal sale shall ripen by prescription after a period of four years from the recordation of that deed in the land records in the county in which said land is located.

(c) A tax deed which has ripened by prescription pursuant to any provision of this Code section shall convey, when the defendant in *fi. fa.* is not laboring under any legal disability, a fee simple title to the property described in that deed, and that title shall vest absolutely in the grantee in the deed or in the grantee's heirs or assigns. In the event the defendant in *fi. fa.* is laboring under any legal disability, the prescriptive term specified in this Code section shall begin from the time the disabilities are removed or abated.

(d) Notice of foreclosure of the right to redeem property sold at a tax sale shall not be required to have been provided in order for the title to such property to have ripened under subsection (a) or (b) of this Code section.

(Ga. L. 1949, p. 1132, § 1; Code 1933, § 91A-438, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1989, p. 1391, § 3; Ga. L. 1996, p. 783, § 1.)

**The 1989 amendment**, effective July 1, 1989, rewrote the Code section.

**The 1996 amendment**, effective July 1, 1996, in subsection (b), inserted "but before July 1, 1996," in the first sentence and added the second sentence.

### **JUDICIAL DECISIONS**

**Editor's notes.** - In light of the similarity of the provisions, decisions under Ga. L. 1949, p. 1132, § 2-A, are included in the annotations for this Code section.

**If levy of tax execution is excessive, sale held under levy is void.** *Craig v. Arnold*, 227 Ga. 333, 180 S.E.2d 733 (1971).

**This section is not intended to exempt property sold for taxes from taxation** for seven years after it was so sold or until it was redeemed. It simply provides a method for perfecting title to property sold under an execution for taxes. *Patterson v. Florida Realty & Fin. Corp.*, 212 Ga. 440, 93 S.E.2d 571 (1956).

**Cited in** *Moultrie v. Wright*, 266 Ga. 30, 464 S.E.2d 194 (1995).

### **RESEARCH REFERENCES**

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**Am. Jur. 2d.** - 30 Am. Jur. 2d, Executions, § 540.

**C.J.S.** - 2 C.J.S., Adverse Possession, §§ 1-24 et seq.

**ALR.** - Necessity of actual possession to give title by adverse possession under invalid tax title, 22 ALR 550.

Necessity of recording tax deed to protect title as against interest derived from former owner, 65 ALR 1015.

Statute limiting period for attack on tax title as affecting remaindermen in respect of a tax sale during life tenancy, 124 ALR 1145.

Time limitation for attack on tax title as affected by defective description of property in the assessment or the tax deed, 133 ALR 570.

Payment, tender, or deposit of tax as condition of injunction against issuance of tax deed upon ground that it had become barred by lapse of time or that the property had been redeemed, 134 ALR 543.

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