



HENRY McMASTER  
ATTORNEY GENERAL

October 8, 2008

J. Garrett Jackson, A.A.E., Executive Director  
Greenville-Spartanburg Airport Commission  
2000 GSP Drive, Suite 1  
Greer, South Carolina 29651

Dear Mr. Jackson:

We received your letter requesting an opinion of this Office concerning whether or not the Greenville-Spartanburg Airport District (the "District") should be taxed on property it owns, but which is leased to a private party. You informed us that the District acquired the property in 2003 and all buildings on the property have been removed with the exception of a 50,000 square foot building leased by the District to Satterfield Woodworking, Inc., a cabinet builder. You state:

Satterfield built this building years ago and was operating the cabinet business there when the District acquired the property as a small tract that was surrounded by District owned property. The property was needed for the future expansion of the District's runway infrastructure.

The South Carolina Department of Revenue has been billing the District for taxes on the building and the roads on the property that provide access to that building since its purchase . . .

It is our belief that this property which is owned by the District is exempt from taxation as provided for in SC ST SEC 55-11-180. All rental income from this property goes into the operation of the Greenville-Spartanburg Int'l Airport.

Thus, you ask our opinion as to the tax status of the property in question. In addition, if we determine that the property is exempt from taxation, you ask whether or not taxes previously collected should be refunded to the District.

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### **Law/Analysis**

The Legislature created the District through its enactment of the provisions in sections 55-11-110 et seq. of the South Carolina Code (1992 & Supp. 2007). As you mentioned in your letter, section 5-11-180 of the South Carolina Code (1992) exempts the District's property from taxation. This provision states:

Property and income of the District shall be exempt from all taxes levied by the State, county or any municipality, division, subdivision or agency thereof, direct or indirect.

S.C. Code Ann. § 5-11-180. Accordingly, we must determine whether this provision exempts property owned by the District, but leased to a private party, from property tax.

As our Supreme Court recently stated in Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 609, 663 S.E.2d 484, 488 (2008)(citations and quotations omitted):

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. The court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation.

Moreover, our courts will not add words to a statute which would give it a different meaning. Independence Ins. Co. v. Independent Life & Acc. Ins., 218 S.C. 22, 34, 61 S.E.2d 399, 405 (1950).

Section 12-37-220 of the South Carolina Code (2000 & Supp. 2007) contains the general list of property exempt from property taxes. In several sections of this provision, the Legislature exempts property owned by certain types of entities including property owned by the State and its political subdivisions. S.C. Code Ann. § 12-37-220(A)(1) (2000). However, this provision requires that such property be "used exclusively for public purposes . . ." Thus, for instance, if a county were to lease property to a private entity operating for profit and not performing a public purpose, this property would not be exempt from property tax as it is not being used exclusively for public purposes. Moreover, we note other provisions within section 12-37-220 exempting certain types of property. See, eg., S.C. Code Ann. §§ 12-37-220(5) (exempting property of veteran organizations); 12-37-220(6) (exempting property owned or used by and occupied by the YWCA, YMCA, or Salvation Army); 12-37-220(7) (exempting property owned or occupied by the Boy Scouts of America or Girl Scouts of America). However, each of these provisions require the property be used for the organization's purposes in order to receive the exemption.

Section 55-11-180, as cited above, does not specify that the District must use its property for a public purpose in order to qualify for the exemption. In addition, section 5-11-180 does not specify that in order to be exempt such property must be used exclusively by the District. Accordingly, we cannot read such requirements into section 55-11-180. Based on the plain language used in this provision, we gather the only requirement for property to be exempt is that it be owned by the District. Thus, we surmise that because the District owns the building used by Satterfield Woodworking, a court could find such property is exempt from property tax pursuant to section 55-11-180.

As we determined the property in question to be exempt from property tax, you also ask us to address whether taxes previously collected should be refunded. Chapter 60 of title 12 of the South Carolina Code, the South Carolina Revenue Procedures Act, governs property tax protest, appeal, and refund procedures. In particular, section 12-60-2150 of the South Carolina Code (2000) specifies the requirements for taxpayers seeking a refund of property taxes previously paid. Subsection (A) of this provision allows taxpayers to seek a refund of property taxes due to an exemption by filing a claim for such a refund with the South Carolina Department of Revenue. S.C. Code Ann. § 12-60-2150(A). However, as this provision notes, such claims must be filed within the time of limitation established under section 12-54-85(F) of the South Carolina Code. Id. Section 12-54-85(F)(1) of the South Carolina Code (Supp. 2007) provides:

Except as provided in subsection (D), claims for credit or refund must be filed within three years from the time the return was filed, or two years from the date the tax was paid, whichever is later. If no return was filed, a claim for credit or refund must be filed within two years from the date the tax was paid. A credit or refund may not be made after the expiration of the period of limitation prescribed in this item for the filing of a claim for credit or refund, unless the claim for credit or refund is by the taxpayer or determined to be due by the department within that period.

As no return is required to be filed, a claim for refund by the District must be made within two years of the date the tax was paid. Furthermore, section 12-54-85(F)(2) limits the amount of the claim to “the portion of the tax paid during the two years immediately preceding the filing of the claim.” S.C. Code Ann. 12-54-85(F)(2). Therefore, the District may only seek to recover property tax paid within the last two years. In addition, we point out that the District must follow the guidelines set forth in the Revenue Procedures Act in seeking a refund.

### **Conclusion**

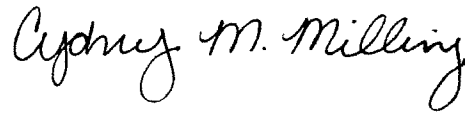
Section 55-11-180 of the South Carolina Code states that all property of the District is exempt from taxation. Because this provision does restrict the use of such property, we believe a court could find that property owned by the District, but leased to a private party, is exempt from

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property tax. As such, the District may seek a refund of taxes previously paid on such property. However, the District must adhere to the limitations and follow the provisions of the Revenue Procedures Act in seeking a refund.

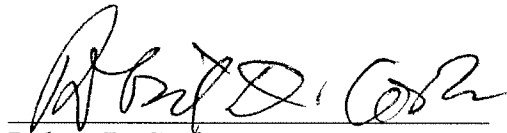
Very truly yours,

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