



ALAN WILSON
ATTORNEY GENERAL

May 25, 2012

The Honorable William M. Hixon
Representative, District No. 83
416-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Hixon:

You have submitted a request to this Office questioning the meaning of “fair market value” for the purposes of calculating the ad valorem tax on real property. In particular, you question whether there is a conflict between sections 1(3) and 6 of article X of the South Carolina Constitution with regard to the value to be used in calculating this tax. You then ask several questions regarding the proper method for determining fair market value.

Law

Article X, section 1 provides, in relevant part:

The General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property. The assessment of all property shall be equal and uniform in the following classifications:

....

(3) The legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property.

Article X, section 6 provides, in relevant part:

Except as otherwise provided in this section, the General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes For the tax year beginning 2007, each parcel of real property in this State shall have a maximum value for ad valorem taxes that does not exceed its fair market value. The General Assembly is authorized, by general law, to define “fair market value” and to define when property has been improved or when losses have occurred to change the value of the real property.

The General Assembly shall establish, through the enactment of general law . . . the method of assessment of real property within the State that shall apply to each political subdivision within the State. Each political subdivision shall value real property by a method in which the value of each parcel of real property, adjusted for improvements and losses, does not increase more than fifteen percent every five years unless, as defined by the General Assembly, an assessable transfer of interest occurs.

Notwithstanding any other provision of law, for the purposes of calculating the limit on bonded indebtedness of political subdivisions and school districts . . . the assessed values of all taxable property within a political subdivision or school district shall not be lower than the assessed values of tax year 2006.

(Emphasis added). The most recent amendment to this section was ratified in 2007. Act No. 12, 2007 S.C. Acts 39. At the same time, article III, section 29 was amended to read, in relevant part:

Taxes on personal property must be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax. Taxes on real property must be ascertained by the methods provided by the General Assembly by general law as prescribed in Article X of this Constitution.

Analysis

“A constitution is not to be construed item by item, but must be harmonized. Notwithstanding, it is apparent that where the Constitution has been amended, the provisions of the amendment control in the event of a conflict with preexisting provisions.” *Knight v. Salisbury*, 262 S.C. 565, 570, 206 S.E.2d 875, 877 (1974).

You question whether article X, section 6 “indicates that some value other than ‘fair market value’ can be used for ad valorem taxes so long as that value is less than the fair market value.” In this regard, we would read article X in harmony with itself, such that section 6 gives additional detail and qualification to section 1. Pursuant to section 1, the assessment ratio must be applied to the fair market value of the property. However, pursuant to section 6, “fair market value” has a particular legal meaning in the context of ad valorem taxation that might differ from the ordinary use of that term. This intent is apparent throughout section 6. Section 6 empowers the General Assembly to define “fair market value” and to define the time at which changes to that value will be recognized for ad valorem tax purposes. It limits the amount by which the value of property for ad valorem tax purposes can increase. Finally, it states that, for certain purposes and in certain factual scenarios, these values and/or limits might not apply. Accordingly, it is clear that the assessment ratio must be applied to the fair market value, but the term “fair market value” must be read in light of the substance given to it by the General Assembly pursuant to section 6.

We turn now to the meaning given by the General Assembly to the term “fair market value.” In this regard, we look to sections 12-37-930 (2000 & Supp. 2011) and 12-37-3140 (Supp. 2011) of the South

Carolina Code. In a recent opinion of this Office, we explained as follows:

Section 12-37-930 of the South Carolina Code provides, in relevant part:

All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.

In this context, “true value in money” means fair market value. *Long Cove Home Owners’ Assoc. v. Beaufort County Tax Equalization Bd.*, 327 S.C. 135, 142, 488 S.E.2d 857, 861 (1997) (“All real property in South Carolina must be assessed according to its ‘true value in money,’ which has been held to mean fair market value.”); *S.C. Tax Comm’n v. S.C. Tax Bd. of Review*, 287 S.C. 415, 418, 339 S.E.2d 131, 133 (Ct. App. 1985) (“[I]t is the market place value of the real property which determines its value for ad valorem taxes.”). However, section 12-37-930 permits an exercise of discretion as to the proper method for ascertaining fair market value.

Available methods for determining the fair market value of real property include, but are not limited to, the sales comparison method, the income capitalization method, and the cost method. . . . As stated in a recent opinion of this Office, the particular characteristics of a property will determine which valuation method (or methods) will provide the most reliable estimate of its fair market value. Letter to the Honorable Donald C. Smith, Op. S.C. Att’y Gen. (Jan. 29, 2007) (“[O]nly a court may decide which method is appropriate[] in a given case. . . . However, we believe a court would consider the particular circumstances surrounding the property in order to determine which method presents the most reliable indication of the property’s fair market value.”); *see also* 27 S.C. Code Ann. Regs. 117-1740.3(5) (Supp. 2010) (“The Assessor will, to the best of his or her ability, estimate the fair market value for all real property under his or her jurisdiction as of the assessment date” (emphasis added)).

Letter to The Honorable Tom Young, Jr., Op. S.C. Att’y Gen. (Oct. 20, 2011) (footnote omitted).

Section 12-37-3140, enacted as part of the South Carolina Real Property Valuation Reform Act, does not affect the proper method for appraising real property pursuant to section 12-37-930. Letter to The Honorable Tom Young, Jr., *supra*. However, it does impact the definition of “fair market value” for tax years “beginning after 2006.” Specifically, section 12-37-3140(A) provides, in relevant part:

(A)(1) For property tax years beginning after 2006, the fair market value of real property is its fair market value applicable for the later of:

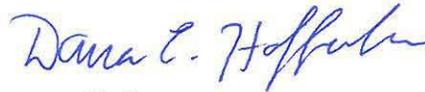
(a) the base year, as defined in subsection (C) of this section;

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- (b) December thirty-first of the year in which an assessable transfer of interest has occurred;
- (c) as determined on appeal; or
- (d) as it may be adjusted as determined in a countywide reassessment program conducted pursuant to Section 12-43-217, but limited to increases in such value as provided in subsection (B) of this section.

Section 12-37-3140(B) then sets forth the fifteen percent cap required by article X, section 6 of the state constitution.¹ In our recent letter to Representative Young, referenced above, we discussed in detail the proper interpretation of this section as it concerns the calculation of the fifteen percent cap. A copy of that letter is enclosed for your convenience, and we trust it will answer the remainder of your questions.

Very truly yours,



Dana E. Hofferber
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

¹ As you have recognized, the fifteen percent cap might result in a fair market value for ad valorem tax purposes that differs from the fair market value that would apply for other purposes.