

6254 Litway



HENRY McMASTER
ATTORNEY GENERAL

November 29, 2006

The Honorable Robert F. Everett
Cherokee County Assessor
Post Office Box 1405
Gaffney, South Carolina 29342-1405

Dear Mr. Everett:

From your letter to Attorney General Henry McMaster, we understand you seek an opinion of this Office interpreting a term used in one of the provisions of the recently enacted South Carolina Real Property Valuation Reform Act. You state:

As the recently appointed Assessor for Cherokee County, I am in the process of completing a reappraisal project with a lien date of 12/31/2006. Pursuant to section 12-43-217(A) of the South Carolina Code of laws, my county council passed an ordinance delaying implementation of the reappraisal until tax year 2008.

I seek your opinion as to what is the "base year" specified in Section 12-37-3140 of HR4449?

Law/Analysis

Section 12-43-217 of the South Carolina Code (2000) provides for the reassessment of property once every five years. However, subsection (B) of this provision also states:

A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A). The postponement ordinance applies to all revised values, including values for state-appraised property. The postponement allowed pursuant to this subsection does not affect the schedule of the appraisal and equalization program required pursuant to subsection (A) of this section.

S.C. Code Ann. § 12-43-217(B).

According to your letter, Cherokee County recently underwent a reassessment of its property pursuant to section 12-43-217. Cherokee County would have implemented these new values for tax year 2007, but the Cherokee County Council voted to postpone the implementation of the reassessments until tax year 2008. Section 12-37-3140, which is contained in act No. 388 enacted in 2006 by the General Assembly, provides:

(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;

(b) when 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.

(2) To the fair market value of real property as determined at the time provided in Item (1) of this subsection, there must be added the fair market value of subsequent improvements and additions to the property.

(B) Any increase in the fair market value of real property attributable to the periodic countywide appraisal and equalization program implemented pursuant to Section 12-43-217 is limited to fifteen percent within a five-year period to the otherwise applicable fair market value. However, this limit does not apply to the fair market value of additions or improvements to real property in the year those additions or improvements are first subject to property tax, nor do they apply to the fair market value of real property when an assessable transfer of interest occurred in the year that the transfer value is first subject to tax.

(C) For purposes of determining a 'base year' fair market value pursuant to this section, the fair market value of real property is its appraised value applicable for property tax year 2007.

In determining the meaning of "base year" in section 12-37-3140, we look to the rules of statutory interpretation. As our Supreme Court in Dreher v. Dreher, 370 S.C. 75, ___, 634 S.E.2d 646, 648-49 (2006) stated:

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and the court has no right to impose another meaning. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation.

(citations and quotations omitted).

Subsection (C) of section 12-37-3140 defines the fair market value for the base year as "its appraised value applicable for property tax year 2007." Thus, the answer to your question lies in what is meant by the "value applicable for tax year 2007." (emphasis added). One could argue because section 12-43-217 requires the reassessment of property values once every five years and because, according to your letter, 2007 is a reassessment year for the County, those values are "applicable" for 2007, regardless of County Council's decision to postpone the implementation of the revised values.

However, if we read the 2007 revised values as the only values applicable for property tax year 2007, a conflict may arise with a county's ability to postpone implementation of the newly reassessed values under 12-43-217(B). "Generally, statutes are to be construed with reference to the whole system of law of which they form a part." Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). "Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." Hodges v. Rainey, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000). Furthermore, our courts have held "[r]epeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation." Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., 368 S.C. 137, 141, 628 S.E.2d 38, 41 (2006).

Given these principles of statutory construction, we must attempt to read section 12-37-3140 together with section 12-43-217(B) to find not only that section 12-37-3140 does not repeal section 12-43-217, but also to find both operative. If we were to find the "value applicable for tax year 2007" is only the reassessed value, we would eliminate a county's ability to postpone implementation of newly reassessed values as provided for under section 12-43-217(B). This reading would not only present a direct conflict between section 12-43-217 and 12-37-3140, but

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essentially would repeal the applicability of section 12-43-217(B) in certain instances. Our desire to avoid this result prompts us to find the phrase "value applicable for tax year 2007" means the values actually employed for tax year 2007, despite the reassessment, thereby allowing counties to retain the benefit of section 12-43-217(B).

Conclusion

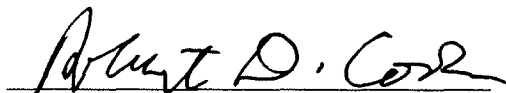
Based on our reading of sections 12-37-3140 and 12-43-217(B) applying the rules of statutory construction, we believe section 12-43-217(B) remains operative. Therefore, if a county elects to postpone the implementation of newly reassessment values under section 12-43-217(B), for purposes of the "base year" referred to in section 12-37-3140, the fair market values applicable for property tax year 2007 are those values employed for that year despite the reassessment.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General