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HENRY McMASTER
ATTORNEY GENERAL

October 9, 2006

The Honorable Bill Sandifer
Member, House of Representatives
112 Cardinal Drive
Seneca, South Carolina 29672

Dear Representative Sandifer:

We received your letter requesting an opinion of this Office concerning property tax assessments. You state as follows:

I would like an opinion as to what constitutes uniformity in reassessing an area. Does the County as a whole constitute uniformity or would a subdivision be considered a uniform area? The basis for this is if one-person contests their assessment and it is based on neighboring houses and how they are assessed what/if any penalty is applied to the neighboring houses? It is my assertion that those other houses would not be able to be reassessed without the entire county being reassessed at the same time. No punishment should come to those that have not asked for a reassessment on their current property tax bill. If that were the case we would have a case of whistle blowing occurring all over the state as a punitive measure.

I would also like an opinion to your interpretation of SECTION 12-39-250. Duty to correct assessments and other errors; duplicates; manner of effecting corrections; adjustments in valuation and assessment for fire damage.

I believe that this section only applies to the person who has requested a change in the status of their tax assessment and cannot be used by the auditor to raise the taxes on a comparable property.

Law/Analysis

The requirement that counties uniformly assess property taxes arises from article X, section 6 of the South Carolina Constitution (Supp. 2006). This provision states, in relevant part:

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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; provided, that on properties located in an area receiving special benefits from the taxes collected, special levies may be permitted by general law applicable to the same type of political subdivision throughout the State, and the General Assembly shall specify the precise condition under which such special levies shall be assessed.

(emphasis added). In section 12-43-210 of the South Carolina Code (2000 & Supp. 2005), the Legislature vested the power to assess property taxes in counties.

(A) All property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue may promulgate regulations to ensure equalization which must be adhered to by all assessing officials in the State.

(B) No reassessment program may be implemented in a county unless all real property in the county, including real property classified as manufacturing property, is reassessed in the same year.

S.C. Code Ann. § 12-43-210 (emphasis added).

To address your concern as to what constitutes uniformity in reassessing an area, we read the above constitutional and statutory provisions in accordance with the rules of statutory interpretation.

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 maxim that 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. Whenever possible, legislative intent should be found in the plain language of the statute itself. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.

South Carolina Dept. of Transp. v. First Carolina, 369 S.C. 150, ___, 631 S.E.2d 533, 535 (2006) (quotations and citations omitted).

In the situation provided in your letter, the county imposed the property tax. Thus, based on the language provided in article X, section 6 of the South Carolina Constitution, property tax assessment must be uniform within the county, as it is the body imposing the taxes. Section 12-43-210 (B), requiring all real property in a county to be reassessed in the same year, also emphasizes the requirement for property to be uniformly assessed in a county. Thus, in answering your initial question, the Constitution and State law require all property located in a county to be uniformly assessed and assessed at the same time.

Next, you ask whether a taxpayer's contest of the assessed value of their home may trigger a reassessment of all property in the "uniform area," or as we determined all property located in the county. In addressing this question, we find it helpful to discuss the process by which a taxpayer may contest the assessed value of his or her property.

Subarticle 9 of chapter 60 of title 12 of the South Carolina Code governs the protest and appeal of property tax assessments. The provisions contained in this portion of the Code provide a means by which taxpayers may object to and contest a property tax assessment by a county assessor. S.C. Code Ann. §§ 12-60-2510 *et seq.* (2000 & Supp. 2005). A taxpayer's objection could arise as a result of his or her receipt of notice in an assessment year from the assessor informing the taxpayer of an increase in the assessed value of his or her property or by the taxpayer's own initiative in a nonassessment year. S.C. Code Ann. § 12-60-2510 (2000 & Supp. 2005). The taxpayer's objection is initially considered by the assessor. S.C. Code Ann. § 12-60-2520 (2000). If the taxpayer and the assessor are not able to resolve the issue, the taxpayer may choose to appeal the issue to the county board of assessment appeals, then to the Administrative Law Judge Division, and onto the courts. S.C. Code Ann. § 12-60-2530 (2000).

In our review of the provisions contained in subarticle 9, we did not discover a provision indicating that the assessor, in his or her review of a taxpayer's objection, may reassess property surrounding the property under protest. Moreover, the provisions contained in subarticle 9 only appear to address the objecting taxpayer's property. Thus, we neither find evidence of the Legislature's intent to provide for the reassessment of property surrounding property subject to a taxpayer contest, nor do we find a provision giving the assessor authority to conduct such a reassessment.

Thus, we look outside of subarticle 9 to other provisions of the Code pertaining to the assessors and their authority to determine an assessor's general authority to reassess property. Section 12-37-90 of the South Carolina Code (2000) pertains to assessors and specifies their duties and responsibilities. This provision provides, in relevant part:

All counties shall have a full-time assessor, whose responsibility is appraising and listing all real property, whether exempted or not, except real property required by law to be assessed by the department and property owned by the federal government, state government,

county government, or any of its political subdivisions and which is exempt from property taxation. If the assessor discovers that any real property required by law to be assessed by the department has been omitted, he shall notify the department that the property has been omitted and the department is required to appraise and assess the omitted property.

The assessor is responsible for the operations of his office and shall:

...

(c) when values change, reappraise and reassess real property so as to reflect its proper valuation in light of changed conditions, except for exempt property and real property required by law to be appraised and assessed by the department, and furnish a list of these assessments to the county auditor;

(d) determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county;

...

(g) perform duties relating to the office of tax assessor required by the laws of this State;

(h) be the sole person responsible for the valuation of real property, except that required by law to be appraised and assessed by the department, and the values set by the assessor may be altered only by the assessor or by legally constituted appellate boards, the department, or the courts;

...

S.C. Code Ann. § 12-37-90.

According to section 12-37-90, the Legislature granted broad authority to assessors to assess real property. However, their power is not unlimited. As cited above, section 12-43-210, prohibits reassessments unless all real property in the county is reassessed in the same year. In the past, the Supreme Court recognized exceptions to this requirement. In Long Cove Home Owners' Association, Inc. v. Beaufort County Tax Equalization, 327 S.C. 135, 488 S.E.2d 857 (1997), the

Court recognized three circumstances in which an assessor may assess property: (1) if the assessment is performed on a countywide basis in a legal assessment year; (2) if the property is omitted property; and (3) if a change occurred in the condition of the property. Id. at 140, 488 S.E.2d at 860.¹

However, barring one of the exceptions, if an assessor desired to reassess property in light of information gathered during a taxpayer's contest of the assessed value of his home, the assessor may not assess just neighboring homes. In accordance with your opinion, we believe the assessor must assess every other piece of real property in the county.

In addition to section 12-43-210, we also recognize section 12-47-217 of the South Carolina Code (2000) further adds restrictions on an assessor's ability to reassess real property.

(A) Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction. Property valuation must be complete at the end of December of the fourth year and the county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more. In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values.

...

S.C. Code Ann. § 12-47-217.

In an opinion issued March 1, 2005, this Office considered the question of whether real property may be reassessed more often than every five years. Op. S.C. Atty. Gen., March 1, 2005. Relying on a prior opinion of this Office and the South Carolina Supreme Court's decision in Paris Mountain Water Co. v. Woodside, County Treasurer, 133 S.C. 383, 131 S.E. 37 (1925), both

¹The Court cited a provision of the South Carolina Code, section 12-41-120, which was later repealed by the Legislature. This provision stated "[b]ut real estate shall be valued and assessed by any such board only in those years in which real estate is by law required to be returned" Id. at 139-40, 488 S.E.2d at 860. However, we agree with a 2002 South Carolina Revenue Advisory Bulletin finding reliance upon this section is not necessary to reach the Court's conclusion in Long Cove Home Owners' Association, Inc. S.C. Rev. A.B. 02-7 (2002). We also note changes in assessment of real property due to the recently enacted property tax reform bill. Act No. 388, enacted on June 10, 2006, provides real property shall be valued as of the later of the base year, the date of a qualifying transfer, determination of a an appeal, or the performance of a countywide reassessment program. Thus, according to this legislation other circumstances may exists requiring an individualized reassessment of property.

interpreting statutes similar to section 12-47-217, we concluded a county is not authorized to conduct a reassessment of real property more than once every five years. Id. Accordingly, an assessor may only conduct a reassessment in a legally authorized year.

Although in our research we did not discover a provision specifically prohibiting an assessor from reassessing real property based on information gathered through an individual taxpayer's contest of assessed value, we believe an assessor's ability to perform such a reassessment would be difficult at the least. Pursuant to sections 12-43-210 and 12-47-217, barring a recognized exception, generally an assessor is limited to reassessing property on a countywide basis in a legally authorized assessment year.

You also inquired as to our interpretation of section 12-39-250 of the South Carolina Code (2000). This statute states:

(A) At any time before the tax is paid and upon order of the assessor or Board of Appeals, the county auditor shall correct upon the duplicate for any tax year the assessment of real property on which the valuation of the real property was so excessive as to constitute an invalid assessment. At any time prior to payment of the tax the auditor shall also correct upon the duplicate for any tax year any errors that may be discovered that were made by county or state officers. At any time during the current tax year and before payment of the tax the auditor further shall correct other errors that may appear in the duplicate. At any time before the tax is paid the auditor shall also correct other errors in the duplicate when such errors invalidate or make void the collection of the tax reflected by reason of such error. If the correction results in a reduction or withdrawal of the taxes assessed or levied, the correction shall be in the form of an abatement and a record of such correction and the reasons therefor shall be maintained in an abatement book. When any personal or real property has been entered for taxation in the wrong locality, the auditor shall correct the error at any time prior to payment of the tax and charge such tax in the correct locality. Any corrections made in the duplicate by the auditor shall be entered on both the auditor's and treasurer's duplicate, except that in the case of a reduction of any assessment or tax, the auditor may furnish the treasurer with a certificate of reduction.

(B) Notwithstanding any other provision of law, the county tax assessor or the County Board of Assessment Appeals, upon application of the taxpayer, must order the County Auditor to make appropriate adjustments in the valuation and assessment of any real

property and improvements which have sustained damage as a result of fire provided that the application for correction of the assessment is made prior to payment of the tax.

S.C. Code Ann. § 12-39-250.

In interpreting this provision, we again employ the rules of statutory interpretation. "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 the light of the intended purpose of the statute." Kiriakides v. United Artists Commc'n, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994). In addition, "[s]ections which are part of the same general statutory law of the state should be construed together and each given effect if it can be done by any reasonable construction." Glover by Cauthen v. Suitt Constr. Co., 318 S.C. 465, 458 S.E.2d 535 (1995).

Based on the wording of section 12-39-250, we gather the Legislature's intent to afford auditors broad power to correct errors as they appear on the duplicate, presuming the taxes associated with those particular pieces of property have not been paid. In addition to the correction of errors, the auditor shall under certain circumstances, correct assessments. However, section 12-39-250 places specific limitations on the auditor in this regard. Section 12-39-250 provides for the correction of assessments by the county auditor only when ordered by the assessor or Board of Appeals and prior to the payment of the taxes. Therefore, we believe the auditor generally does not have the power to correct assessments, unless these conditions are met.

In addition, we believe section 12-37-90, governing the authority of assessors, supports this conclusion. Section 12-37-90, as previously cited, clearly states assessors have sole responsibility for the valuation of property and that such valuations may be altered "only by the assessor or by legally constituted appellate boards, the department, or the courts . . ." S.C. Code Ann. § 12-37-90(h). Thus, reading section 12-37-90 in conjunction with section 12-39-250, the Legislature did not afford auditors the authority to reassess the value of real property.

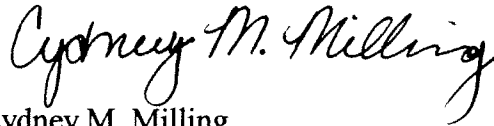
Conclusion

Based on our analysis of the relevant constitutional and statutory provisions, all property in a county must be uniformly assessed. Furthermore, in our review of the statutory provisions governing a taxpayer's contest of the assessed value of property, we did not find a provision allowing an assessor, in his or her examination of the value of that taxpayer's property, to reassess neighboring properties. However, we recognize section 12-37-90 generally affords county assessors broad authority to reassess property. Nonetheless, this authority is not unlimited, and unless certain circumstances are present, an assessor may only reassess property during a legally authorized assessment year and as part of a countywide reassessment. Therefore, we find it unlikely that an assessor would have the opportunity to reassess certain pieces of real property due to information he discovered in a taxpayer contest. Finally, we interpret section 12-39-250 as providing auditor's

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general authority to correct errors. To the contrary, based on our reading of the plain language contained in the statute, an auditor may only correct an assessment upon an order of the assessor or county board of assessment appeals prior to the payment of the tax.

Very truly yours,



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REVIEWED AND APPROVED BY:



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