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ATTORNEY GENERAL

June 28, 2011

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Dear Mr. Howell and Mr. Jones:

We received your letters requesting an opinion of our Office concerning millage rate calculations during a reassessment year. In your letters, you stated that both Beaufort County and Jasper County experienced an overall decrease in the assessed value of the property located within the counties. Thus, you both question how millage for the counties should be calculated during a reassessment year. More specifically, you question what role the rollback provisions in sections 6-1-320(A) and 12-37-251(E) of the South Carolina will play under these circumstances.

Law/Analysis

Section 6-1-320 of the South Carolina Code (Supp. 2010) sets forth a limitation on how much a local governing body may increase its millage rates from year to year. Generally, this provision limits millage rate increases to inflation and changes in population. S.C. Code Ann. § 6-1-320(A). However, this provision states that in a year of reassessment "the rollback millage, as calculated pursuant to Section 12-37-251(E), must be used in lieu of the previous year's millage rate." Id. Section 12-37-251(E) of the South Carolina Code (Supp. 2010) provides

> Rollback millage is calculated by dividing the prior year property tax revenues by the adjusted total assessed value applicable in the year the values derived from a countywide equalization and reassessment program are implemented. This amount of assessed value must be adjusted by deducting assessments added for

> property or improvements not previously taxed, for new construction, and for renovation of existing structures.

Therefore, we must determine if the same calculation is used in instances when the adjusted total assessed value decreases in a reassessment year. To make this determination, we must interpret section 12-37-251(E) using the rules of statutory interpretation.

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). 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. Id. at 233, 509 S.E.2d at 262 (citing Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)).

Hodges v. Rainey, 341 S.C. 79,85, 533 S.E.2d 578, 581 (2000).

In a recent opinion, we described our assessment of the Legislature's intent with regard to the rollback provisions as follows:

> We presume that by including a provision in section 6-1-320 requiring the use of rollback millage in reassessment year, the Legislature sought to place the tax revenues received in years of reassessment on par with tax revenues received in the year prior to the reassessment and thus, avoiding the potential of placing an enormous burden on taxpayers owning property that increased in value under the reassessment.

Therefore, we believe the Legislature intended that the calculation provided in section 12-37-251(E) is to limit the millage in years of reassessment. Additionally, the Legislature may not have considered a situation in which overall property values would decrease rather than increase, in enacting the rollback provisions.

Nonetheless, section 12-37-251(E) does not specify that this calculation applies only in years in which there is an increase in the overall assessed value of the property. Furthermore, section 6-1-320 states that the rollback calculation in section 12-37-251(E) must be used in a reassessment year without qualification. According to our Supreme Court in Independence Ins. Co. v. Independent Life & Acc. Ins. Co., 218 S.C. 22, 61 S.E.2d 399 (1950): "The purpose of

construction is to ascertain the legislative intent from the words used; and, if these are susceptible to any sensible meaning, the court cannot add to them other words which would give them a different meaning without making, instead of construing, the statute." (quotations omitted). Moreover, we do not believe the Legislature intended to penalize local governing bodies due to a reassessment. Thus, given the plain language of sections 6-1-320 and 12-37-251(E) and our understanding of the Legislature's intent in regard to these provisions, we are of the opinion that the calculation provided in section 12-37-251(E) is to be used in a reassessment year regardless of whether an increase or decrease in the overall property values within the taxing area.

We also note that last year the South Carolina Association of Counties (the "Association") came to the same determination with regard to rollback millage. In a letter dated April 30, 2010, John DeLoache, a staff attorney with the Association, advised Georgetown County that it was to use the rollback calculation provided in section 12-37-251(E) even if that calculation produced a millage rate that is higher than that in the prior year. The opinion was based partly on the Supreme Court's opinion in Angus v. City of Myrtle Beach, 363 S.C. 1, 609 S.E.2d 808 (2005). In that case, the Court held the City could not make adjustments to the rollback millage calculation not specifically provided for under the statute. Id. Therefore, the Association advised that calculation provided under section 12-37-251 must be used despite the fact that the calculation may result in a higher millage rate. As expressed above, we agree with this assessment and therefore, advise that counties use the rollback calculation provided in section 12-37-251(E) despite a decrease in the overall assessed value.

Conclusion

We believe that the Legislature enacted the rollback provisions in sections 12-37-251 and 6-1-320 to prevent taxpayers from incurring a tax liability in reassessment years which is much higher than the previous year. Traditionally, this legislation protects the taxpayer by rolling back the millage to compensate for higher property values. However, while this legislation acts to protect taxpayers, we also believe that the Legislature sought to stabilize tax bills in order to provide municipalities with a consistent stream of revenue.

While sections 12-37-251 and 6-1-320 do not specifically address the situation in which overall property values decrease, due to the mandatory language contained in section 6-1-320(A), we believe the Legislature intended for this calculation to be used in any year of reassessment, not just when overall property values increased. Furthermore, we believe this reading of sections 6-1-320 and 12-37-251 furthers the intention of the Legislature in regard to stabilizing the income generated from property taxes because the liability of the taxpayer would likely remain stagnant, with the exceptions provided for under section 6-1-320, despite an increase or decrease in the value of his or her property. Therefore, we advise, in accord with the

opinion of the Association of Counties, that counties that experience an overall decrease in property values in a reassessment year should employ the rollback calculation provided in section 12-37-251. However, this is a novel question, which our courts have not addressed. Therefore, we would advise the County to gain clarification from the courts on this matter by filing a declaratory judgment action in order to resolve this issue with finality.

Very truly yours,

Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General