



ALAN WILSON
ATTORNEY GENERAL

July 20, 2011

The Honorable Wayne Welch
Dorchester County Assessor
201 Johnston Street
St. George, South Carolina 29477

Dear Mr. Welch:

We received your request for an opinion from this Office regarding appeals of real property values. You describe the situation as follows:

Property Owner A owns subject property as of December 31, 2009. Therefore, property Owner A is responsible for the property tax on subject and is sent a property tax bill in September of 2010.

In October of 2010, Owner A sells the subject property to Owner B. Owner B then appeals the valuation of the subject for the 2010 tax year.

The first question is:

Can Owner B appeal the valuation of this property for the 2010 tax year since they were not the owner as of December 31, 2009?

The second question is:

If Owner B is allowed to appeal the valuation for the 2010 tax year and the value is reduced, does the refund go to Owner A or B?

Law/Analysis

Article 9 of chapter 60 of title 12 provides the procedures by which a property owner can appeal real property tax assessments. Section 12-60-1710 of the South Carolina Code (2000), included in article 9, states: "The procedures provided in this article for appealing property tax assessments apply to all property tax assessments made for real or personal property tax purposes." Subarticle 9 of article 9 explains the procedures to be followed when the property is valued by a county assessor. Section 12-60-2510 of the South Carolina Code (Supp. 2010), contained within subarticle 9 initially explains the responsibilities of the assessor in providing notices to taxpayers regarding increases in their property's value. In addition, this section provides the timeframe in which a taxpayer may object to valuation of the assessor. Id. Sections 12-60-2510(A)(3) and (4) state as follows:

(3) In years when there is a notice of property tax assessment, the property taxpayer, within ninety days after the assessor mails the property tax assessment notice, must give the assessor written notice of objection to one or more of the following: the fair market value, the special use value, the assessment ratio, and the property tax assessment.

(4) In years when there is no notice of property tax assessment, the property taxpayer may appeal the fair market value, the special use value, the assessment ratio, and the property tax assessment of a parcel of property at any time. The appeal must be submitted in writing to the assessor. An appeal submitted before the first penalty date applies for the property tax year for which that penalty would apply. An appeal submitted on or after the first penalty date applies for the succeeding property tax year.

Section 12-60-2510 gives the "property taxpayer" the authority to object to an assessor's valuation. Thus, under the scenario you present, whether or not the purchaser may appeal a valuation depends upon whether the purchaser is considered to be the "property taxpayer." Section 12-60-30 of the South Carolina Code (Supp. 2010) provides definitions for many of the terms used in chapter 60 and defines "property taxpayer" as "a person who is liable for, or whose property or interest in property, is subject to, or liable for, a property tax imposed by this title." As you noted in your letter, section 12-37-610 of the South Carolina Code (Supp. 2010) describes the persons liable for real property taxes. This provision states:

Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the

public records for deeds of the county in which the property is located, or on the real property that, as of December thirty-first of the year preceding the tax year, he has care of as guardian, executor, or committee or may have the care of as guardian, executor, trustee, or committee.

S.C. Code Ann. § 12-37-610.

Our courts stated on numerous occasions that “the cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature.” Henry-Davenport v. School Dist. of Fairfield County, 391 S.C. 85, 88, 705 S.E.2d 26, 28 (2011). Generally, “[t]he words used in 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.” Wortman v. Spartanburg, 310 S.C. 1, 3, 425 S.E.2d 18, 19 (1992). “[S]tatutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable.” State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). Furthermore, as our Supreme Court stated in Fruehauf Trailer Co. v. South Carolina Elec. & Gas Co., 223 S.C. 320, 325, 75 S.E.2d 688, 690 (1953), “[t]he lawmaking body’s construction of its language by means of definitions of the terms employed should be followed in the interpretation of the act or section to which it relates and is intended to apply.” Thus, reading section 12-60-2510 together with 12-37-610, we believe a court would conclude that the Legislature intended for only the owner of record on December 31 of the previous year to have the authority to appeal an assessment because the owner on this date is the person liable for the tax.

However, we must note that our courts have yet to address the questions you present to us in your letter. Furthermore, we recognize that reading the statutes literal may have a significant impact on the purchaser of the property. Initially, we realize that many sellers and purchasers of property negotiate for the payment of the property taxes in the year the property is sold. Thus, in many cases at least some of the property tax liability shifts to the purchaser. Additionally, a purchaser of property most certainly will be impacted in future years. Therefore, the impact of the property tax assessment could be significant to the property purchaser, who under the literal meaning of the statutes, is without a mechanism to appeal the assessed value although he or she actually owns the property when the assessor determines its value. Moreover, the purchaser who wishes to appeal must convince the former owner to file the objection and follow through with would could be a lengthy appeal process.

As cited above, courts generally interpret statutes based upon the plain and ordinary meaning of the language used. However,

the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative

intention. If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.

Ray Bell Const. Co., Inc. v. School Dist. of Greenville County, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998). Furthermore, according to our Supreme Court, "Revenue laws are generally construed in favor of the taxpayer and against the taxing authority." Clark v. South Carolina Tax Commission, 259 S.C. 161, 191 S.E.2d 23 (1972).

An argument could be made that the Legislature did not intend for the purchaser of the property to be without an avenue to object to an assessment. Accordingly, while the provisions under subarticle 9 do not specifically provide that a purchaser in your scenario has the ability to formally object to a property tax assessment, our courts could find that the Legislature intended for the purchaser to have such authority. Our courts could read the definition of a "property taxpayer" used in section 12-60-2510 broadly to protect the purchaser's interest and avoid the situation in which the owner of the property has no way to voice an objection to the property's valuation and leaving the purchaser at the mercy of the former owner to challenge the assessment.

We find at least some support for this argument in a case decided by the Colorado Court of Appeals. In Utah Motel Associates v. Denver County Board of Commissioners, 844 P.2d 1290 (Colo. App. 1992), the Colorado Court of Appeals considered whether a purchaser of property had standing to petition the Board of Assessment Appeals for an abatement of property taxes when the purchaser purchased the property after the time of the assessment of the property tax but before the taxes were due. Under Colorado law, the property owner at the time the property is assessed is responsible for the taxes due. Thus, the Board of Assessment Appeals argued that the statute allowing taxpayers to seek relief for errors in tax assessments did not apply to the purchaser because the purchaser "did not pay the disputed taxes and, therefore, cannot be a 'taxpayer.'" Id. at 1294. The Court rejected this argument. Id.

In interpreting a statute, a reviewing court must presume that the General Assembly intended a just and reasonable result and must seek to avoid an interpretation that leads to an absurd result. People v. Pflugbeil, 834 P.2d 843 (Colo.App.1992). In addition, we are guided by the principle that "the taxing power and taxing acts are construed strictly against the taxing authority and in favor of the taxpayer." City & County of Denver v. Sweet, 138 Colo. 41, 52, 329 P.2d 441, 447 (1958).

In our view, the BOCC's interpretation of the statutes governing abatement would lead to an unjust and absurd result because it would preclude any purchaser of property after the assessment date from filing for an abatement or refund even though that purchaser

ultimately bears the economic burden of the overvalued taxes and even if, as here, the former owner no longer has any economic interest in the property. We do not believe that the General Assembly intended such a result.

Id. at 1294-95. The Court continued by citing cases from other jurisdictions including Rhode Island and New Hampshire that made similar findings. Ultimately, the Colorado Court of Appeals concluded “that taxpayer here has met its burden of demonstrating that the injury alleged was to a legally protected right and that it, therefore, has standing to seek an abatement.” Id. at 1295. Although the South Carolina statutes governing appeals of property tax assessments may differ from the Colorado statutes analyzed in Utah Motel Associates, our courts could follow the same reasoning.

Additionally, it is our understanding that at least some South Carolina county assessors allow property purchasers to appeal a property’s valuation based on the fact that the purchaser holds an interest in the property and will be impacted by the assessment. However, because our courts have yet to address the issue you present, we cannot opine definitively on this issue. Therefore, we suggest that you seek clarification from either the courts or the Legislature with regard to a purchaser’s ability to appeal the assessment.

In addition, you ask that if the purchaser is allowed to appeal, would a refund go to the original owner or the purchaser. Section 12-60-2560 of the South Carolina Code (2000) governs refunds. This provision states

[s]ubject to the limitations in Section 12-60-1750, and within the time limitation of Section 12-54-85(F), a property taxpayer may seek a refund of real property taxes assessed by the county assessor and paid, other than taxes paid on property the taxpayer claims is exempt, by filing a claim for refund with the county assessor who made the property tax assessment for the property for which the tax refund is sought.

S.C. Code Ann. § 12-60-2560(A). Thus, like section 12-60-2510 allowing “property taxpayers” to object to an assessment, this provision states that “property taxpayers” are eligible to seek refunds. Therefore, if a court interprets “property taxpayers” as including current owners of the property and thereby allowing them to appeal, then we believe a court would similarly conclude that the purchaser can claim a refund under section 12-60-2560. Contrarily, if our courts follow the literal reading of the definition of “property taxpayer” provided in section 12-37-610, we believe a court would similarly conclude that only the record owner at the end of the previous year may receive the refund.

Conclusion

The literal language contained in section 12-60-2510 read in conjunction with the definition of "property taxpayer" in section 12-60-30 provides that those persons who are liable for the property tax have the authority to appeal an assessment. Pursuant to section 12-37-610, the person owning the property as of December 31 of the previous year is responsible for the current year assessment. Therefore, reading these statutes together, a court will likely find that the only the original property owner, and not the purchaser, has the authority to object to the assessment. However, at least some support exists for the argument that the Legislature may not have intended for a property purchaser to be without recourse when they certainly have an interest in the property and are impact by the assessment. Therefore, we cannot opine definitively as to whether a purchaser is precluded from filing an appeal when they are not the record owner at that time of the assessment. Therefore, we suggest you seek clarification from the courts through a declaratory judgment action or from the Legislature.

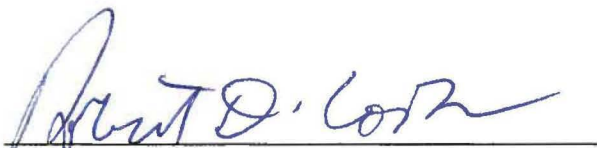
Because a court is likely to construe the term "property taxpayer" with regard to section 12-60-2510 as including only the record owner on December 31 of the previous year, we believe a court would come to the same conclusion with regard to use of this term in section 12-60-2560 with regard to who may receive a refund. Accordingly, the court would likely find that only the record owner as of December 31 of the previous year could receive the refund for taxes paid based on an incorrect assessment. Nonetheless, if a court were to interpret the term "property taxpayer" more broadly with respect to section 12-60-2510, we would similarly presume that the court would broadly define this term for purposes of section 12-60-2560 to allow a purchaser after the date of the assessment to receive a refund. Nonetheless, we believe a court should make this determination.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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