



ALAN WILSON
ATTORNEY GENERAL

October 20, 2011

The Honorable Tom Young, Jr.
Representative, District 81 – Aiken County
P.O. Box 651
Aiken, South Carolina 29802

Dear Representative Young:

You have requested an opinion of this Office concerning sections 12-37-930 and 12-37-3140 of the South Carolina Code (2000 & Supp. 2010). Specifically, you have asked whether section 12-37-930 requires that property be valued for tax purposes using the “market approach,” which is also known as the sales comparison method. In addition, you have asked whether section 12-37-3140(B) requires that land and improvements be valued “as a whole,” rather than as separate portions of the total value of the property. Finally, you have asked whether improvements made subsequent to the time set forth in section 12-37-3140(A)(1) should be included in the baseline value used to calculate the fifteen percent cap on increases to the value of real property.

Law/Analysis

Valuation under section 12-37-930

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.¹

¹ For certain kinds of real and personal property, the General Assembly has prescribed a specific method for ascertaining fair market value. *E.g.*, S.C. Code Ann. § 12-37-930 (valuation methods for vehicles, watercraft, aircraft, and manufacturers’ machinery and equipment); S.C. Code Ann. § 12-37-

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. The opinion of our Court of Appeals in *Reliance Insurance Company v. Smith*, 327 S.C. 528, 531-32, 489 S.E.2d 674, 675-76 (Ct. App. 1997) (internal quotation marks omitted), provides an overview of these three approaches, each of which attempts to approximate the price an informed purchaser would be willing to pay for a particular property:

The income capitalization approach looks at property value through the eyes of a typical investor. . . . The sales comparison approach . . . assumes that an informed purchaser will pay no more for a property than the cost of acquiring an existing, or substitute property with the same utility. . . . The cost approach . . . is based on the assumption that an informed purchaser would pay no more for a property than the cost of producing a substitute property with the same utility.

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)). In certain circumstances, the sales comparison method might not be appropriate. *See Long Cove Home Owners’ Assoc.*, 327 S.C. at 142, 488 S.E.2d at 861 (“Other methods, such as cost or income, may be used to measure market value when no willing buyer exists.”); *Reliance Ins. Co.*, 327 S.C. at 533, 535, 489 S.E.2d at 676-78 (upholding the administrative law judge’s determination that “the cost approach yielded the most accurate valuation” and that “use of the income capitalization approach [for valuing a shopping center], although generally favored, was not appropriate in this case”).

For these reasons, it is the opinion of this Office that section 12-37-930 does not mandate the “market”/sales comparison method of appraisal. Rather, the proper appraisal method will depend upon the characteristics of the property at issue.

Section 12-37-3140(B) does not alter the valuation method

Article X, section 6 of the South Carolina Constitution authorizes the General Assembly to define “fair market value” and requires that “[e]ach political subdivision . . . 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 . . . an assessable transfer of interest occurs.”

225(A) (Supp. 2010) (providing the “income approach must be the method of valuation” for real property that is subject to deed restrictions promoting low income housing); S.C. Code Ann. § 12-43-215 (2000 & Supp. 2010) (“When owner-occupied residential property . . . is valued for purposes of ad valorem taxation, the value of the land must be determined on the basis that its highest and best use is for residential purposes.”). Thus, section 12-37-930 is only a default rule.

Pursuant to this authority, section 12-37-3140(B) of the South Carolina Code provides:

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. This limit must be calculated on the land and improvements as a whole. 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 [sic] 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.

You have asked whether, pursuant to section 12-37-3140(B), an assessor must determine the value of real property by considering the land and improvements “as a whole.” Specifically, you ask whether it is permissible to determine fair market value by adding together two separate values, one for the lot and one for the value of improvements to the lot.

The appraisal method to be used in determining the fair market value of real property is controlled by section 12-37-930, discussed above, unless a more specific statute or regulation applies.² Any dispute regarding whether a given valuation method is appropriate will turn on the circumstances of the particular property, and therefore, present a factual issue for the courts. See Letter to the Honorable Donald C. Smith, *supra*.

Section 12-37-3140(B) was not intended to dictate any aspect of the method for appraising real property. Section 12-37-3170(C) makes this intent explicit, stating: “Nothing in this article affects the appropriate methods of appraising real property for purposes of the property tax”³ Rather, section 12-37-3140(B) is concerned with imposing a limit on increases in fair market value, and the reference to “land and improvements as a whole” is tied explicitly to the issue of how this limit should be calculated.

Calculating the fifteen percent limit

Your final question concerns which improvements should be included in the calculation of the fifteen percent cap imposed by section 12-37-3140(B). In the opinion of this Office, improvements that become subject to tax prior to or during the fourth year of a reassessment cycle should be included in the value used to calculate the fifteen percent cap, but improvements that become subject to tax after December 31 of the fourth year should not be included.

² Notably, other law might require an assessor to value separately the land and any new improvements to the land, at least for certain purposes. See, e.g., S.C. Code Ann. § 12-37-251(E) (2000 & Supp. 2010) (concerning calculation of the “rollback millage” for the year in which a reassessment program is implemented).

³ The title of section 12-37-3170 is “[e]ffect on valuation of agricultural real property.” While subsections (A) and (B) explicitly concern only agricultural real property, subsection (C) contains no such express limitation. Adhering to the rule that statutes should be interpreted according to their plain language, we read section 12-37-3170(C) as a clarification that the General Assembly did not intend to disturb the method of valuation for any real property, whether that property is subject to the general rules of section 12-37-930 or to special valuation rules set forth by a more specific statute or regulation.

Section 12-37-3140(A) defines the term “fair market value” for property tax purposes, and subsection (A)(1) defines the time as of which fair market value must be determined. Absent an assessable transfer of interest, in general, the fair market value will be (a) the value applicable for tax year 2007; or (b) the value determined during the most recent countywide appraisal. S.C. Code Ann. § 12-37-3140(A)(1), (C); Letter to the Honorable Robert F. Everett, Op. S.C. Att’y Gen. (Nov. 29, 2006) (explaining that the value for the “base year” referred to in sections 12-37-3140(A)(1)(a) and 12-37-3140(C) is the value of property “actually employed for tax year 2007”); *see* S.C. Code Ann. § 12-43-215 (“When a property owner or an agent for a property owner appeals the value of a property assessment, the assessor shall consider the appeal and make any adjustments, if warranted, based on the market values of real property as they existed in the year that the equalization and reassessment program was conducted and on which the assessment is based.”). South Carolina Code section 12-43-217 (2000 & Supp. 2010) dictates that countywide appraisal must occur during the fourth year of every five-year cycle. *Id.* (“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 In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values.”); *id.* § 12-43-217(B) (“The postponement [of implementation] allowed pursuant to this subsection does not affect the schedule of the appraisal . . .”).

Pursuant to section 12-37-3140(A)(2), any value added by additions or improvements subsequent to the time set by subsection (A)(1) must be added to the existing fair market value of the property.⁴ *Id.* (“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.”). Thus, absent an assessable transfer of interest, the current fair market value of a property may be obtained by adding the value of any improvements completed subsequent to the most recent countywide appraisal to the value determined during that appraisal.⁵

⁴ The term “improvements” is defined by section 12-37-3130, which states in relevant part:

As used in this article:

(1) “Additions” or “improvements” mean an increase in the value of an existing parcel of real property because of:

- (a) new construction;
- (b) reconstruction;
- (c) major additions to the boundaries of the property or a structure on the property;
- (d) remodeling; or
- (e) renovation and rehabilitation, including installation.

....

Accordingly, an improvement in this context does not necessarily imply a structure; an improvement could be an increase in value due to other changes to the property as set forth in section 12-37-3130.

⁵ If the value determined during the most recent countywide appraisal was subject to a cap, the value of the improvements would be added to the capped value as required by article X, section 6 of the South Carolina Constitution and by section 12-37-3140(B), both of which limit the amount by which a property’s value can increase for tax purposes during any five year period.

Section 12-37-3140(B) concerns the calculation of a limit on the amount by which a reassessment may increase the fair market value of a property. That subsection provides, in relevant part:

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. This limit must be calculated on the land and improvements as a whole. 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

(Emphasis added). Notably, this provision requires the limit to “be calculated on the land and improvements as a whole,” and limits the permissible increase to fifteen percent above the “otherwise applicable fair market value.” Construing the term “otherwise applicable fair market value” in the context of sections 12-37-3140(A) and 12-43-217, discussed above, it appears that the value used to calculate the fifteen percent limit should include any additions or improvements that have become subject to tax since the previous reassessment. This interpretation is consistent with article X, section 6 of the South Carolina Constitution, which requires that “[e]ach political subdivision . . . 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 . . . an assessable transfer of interest occurs.” (Emphasis added).

A question arises, however, with respect to the cut-off date on which improvements should cease to be included in the “otherwise applicable fair market value” used to calculate the cap for a given reassessment cycle and should, instead, be treated as “subsequent improvements” within the meaning of section 12-37-3140(A)(2) until it becomes time to calculate the cap for the next cycle. Drawing on the overall scheme of section 12-37-3140(A) as described above, it seems clear that any improvements completed after December 31 of the appraisal year—the time at which new values are “determined”—would be “subsequent improvements” within the meaning of subsection (A)(2). There is room for question, however, with respect to the proper treatment of improvements that are complete by December 31 of the fourth year of the reassessment cycle but yet not subject to tax until the fifth year of the cycle.

Including these improvements in the calculation of the cap would render absurd results. For example, if a property was valued at \$100,000 prior to countywide appraisal and had an improvement valued at \$15,000 that was complete but not yet subject to tax by December 31 of the fourth year of the reassessment cycle, including the value of the improvement in the calculation of the fifteen percent cap would inflate that cap to \$132,250. Nevertheless, since the cap “does not apply to” improvements in the year they are first subject to tax, the property could be valued at up to \$147,250 in the fifth year of the cycle. We would reject this reading as an absurdity, as it would allow these improvements to inflate the cap without being subject to the same. This artificial inflation of the cap would contravene the General Assembly’s express intent to limit to fifteen percent the amount by which a reassessment program may increase a property’s fair market value. See *Greenville Baseball, Inc. v. Bearden*, 200 S.C. 363, 20 S.E.2d 813, 815-16 (1942) (“A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers.”); Letter to Marci Andino, Op. S.C. Att’y Gen. (June 27, 2011) (“Any statute must be interpreted with common sense,” therefore “[a] sensible

construction, rather than one which leads to irrational results, is always warranted.”).

For these reasons, we would read the term “otherwise applicable fair market value” to include only those improvements that become subject to tax prior to or during the fourth year of the reassessment cycle. Under this reading—which we understand to be consistent with the Department of Revenue’s current practice—the capped value of the property in the example above would be \$115,000 and, with the addition of the unrestricted value of the improvement, the property could be valued at not more than \$130,000 in the fifth year of the cycle. In sum, this Office would read section 12-37-3140(B) to limit the increase in value attributable to a countywide appraisal to fifteen percent above the value of the property on December 31 of the fourth year of the reassessment cycle, including any additions or improvements subject to tax on or before that date. However, the value of any improvements first subject to tax in the fifth year of the cycle should be excluded from both the calculation and the restriction of the fifteen percent cap.

Conclusion

The proper method of valuation for real property is controlled by section 12-37-930 of the South Carolina Code, unless a more specific statute or regulation applies. Section 12-37-930 permits a variety of valuation methods, and the proper method will depend upon the particular circumstances of the property at issue. Neither 12-37-930 nor 12-37-3140 dictates use of the “market”/sales comparison approach. Section 12-37-3140—rather than setting a valuation method—prescribes a method for calculating the fifteen percent cap on increases to the value of real property where those increases are attributable to a countywide appraisal and equalization program. The value of any improvements that become subject to tax by December 31 of the fourth year of the reassessment cycle—the year in which countywide appraisal is conducted—must be included in the calculation of the cap. However, this Office would exclude the value of any improvements that become subject to tax subsequent to that date from the calculation of the cap, consistent with the current practice of the Department of Revenue.

Very truly yours,



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REVIEWED AND APPROVED BY:



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