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February 14, 1995

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Dear Mr. Horton:

You have asked a series of questions that relate to Act No. 443, 1994 S.C. Acts. The following sets forth the Act, states the questions presented, provides a summary of our opinion, and concludes with a detailed discussion of each question answered.

I. The Language of the Act

Act 443, 1994 S.C. Acts as codified at 12-45-75 states the following:

Section 12-45-75. (A) The governing body of a county may by ordinance allow a taxpayer to elect to pay all ad valorem taxes on real property located in the county in installments. No installment election is allowed for taxes paid through an escrow account.

The ordinance must specify the installment due dates and it may provide for installments due and payable before January fifteenth, but the final installment due date must be January fifteenth. The ordinance may provide for a service charge of not more than two dollars on installment payments. For purposes of payment and collection, these service charges are deemed property taxes. The ordinance may not provide penalties for late installments.

(B) The governing body of a county may by ordinance provide a discount on all ad valorem taxes on real property located in the county paid in advance of the January fifteenth due date. The ordinance may provide a range of discounts that vary according to the length of the prepayment period.

## II. Questions Presented

The questions presented are stated as follows:

1. What is the last date by which the final installment payment must be paid?
2. What is the last day for the final installment payment if January 15 falls on a Saturday, Sunday, or legal holiday?
3. May a service charge be imposed upon each installment payment or is a single service charge imposed upon the total annual payment?
4. How are the service charges distributed?
5. How far in advance of the due date may the county begin receiving taxes in installments?
6. Does the granting of a discount for early payment violate the uniformity requirements or the equal protection provisions of the South Carolina Constitution?

## III. Summary of Opinion

While a more detailed answer to each question is given in the latter portion of this opinion, in brief the opinion of this office on each question is set out here.

### A. Installment Due Date

It is the opinion of this office that the last date for an installment payment under Act No. 443, 1994 S.C. Acts, is January 15 of the year following the tax year; i.e., January 15, 1996, for the 1995 tax year. Further, the act states "the final installment due date must be January fifteenth" and does not provide for any extension. Thus, even if the January 15 installment due date falls on a Saturday, Sunday, or a legal holiday, no extension is allowed for the due date of the installment payment.

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B. Service Charges

This office also concludes that since the act authorizes "a service charge" as a single amount for "installment payments," the use of the plural "payments" means a single service charge is imposed on the election to pay in installments. Thus, only one service charge is imposed on the installment payments for the year. County government, as the party authorized to provide the installment service, is the party to receive the service charge, with such charge to be used as an offset to the expense of the installment program.

C. Discounts on Installment Payments

The earliest that a county may provide a discount on receiving taxes in installments is January 1 of the tax year. For example, for tax year 1995, the taxes have an initial due date of September 30, 1995, and a final due date of January 15, 1996. Taxes paid in installments may be paid no earlier than January 1, 1995.

D. Equal Protection and Uniformity

Here the act creates several classifications. First, the act classifies taxpayers by ownership of identified property; i.e., realty versus personalty. Second, the act classifies by the method of accumulating tax funds; i.e., escrow versus nonescrow. Finally, the act classifies by the timing in which tax payments are made; i.e., prepayment versus due-date payment. Each classification is reasonable and rationally related to accomplishing a valid legislative goal and does not violate Equal Protection. Further no violation of the uniform millage levy requirement occurs by the granting of a prepayment discount. Under the act, the amount of the discount is based on "the length of the prepayment period." The discount is, thus, related to the time value of money and is an event unrelated to the millage levy. Accordingly, no violation of the millage uniformity requirement occurs by the statute granting a discount based upon the time value of money.

IV. Discussion of Questions Raised

In order to provide you with a more detailed discussion of each of your questions, the following is presented.

A. Installment Due Date

You ask what is the last date by which the final installment payment must be paid. The act provides that the county by ordinance "may provide for installments due and payable before January fifteenth, but the final installment due date must be January fifteenth."

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While the language states the last date for an installment payment is January 15, the statute does not explain which January 15. For example, could an installment payment schedule for 1995 taxes call for payments on June 1, 1995, and the balance due on January 15, 1997?

A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E.2d 837 (1979). Here the purpose of the statute is to allow the payment of taxes prior to the normal due date. Such purpose is shown by the act's language encouraging advance payments by allowing a discount "according to the length of the prepayment period." Thus, to carry out the purpose of allowing and encouraging prepayments, the reasonable and practical construction of the act is to require the last installment payment to be no later than January 15 of the year following the tax year; i.e., January 15, 1996, for the 1995 tax year. Such a date is the last date for paying a tax without penalty under S.C. Code Ann. Section 12-45-180 (Supp. 1993).

It is, therefore, the opinion of this office that the last date for an installment payment under Act No. 443, 1994 S.C. Acts, is January 15 of the year following the tax year; i.e., January 15, 1996, for the 1995 tax year.

#### B. Extension of Due Date

You ask what is the last day for the final installment payment if January 15 falls on a Saturday, Sunday, or legal holiday. The act allows the county by ordinance to establish the installment schedule, but the act specifically states "the final installment due date must be January fifteenth." The literal language of a statute controls unless such language gives an absurd result (see Southeastern Kusan, Inc. v. South Carolina Tax Commission, 276 S.C. 487, 280 S.E.2d 57 (1981)), or the literal language defeats the intent of the statute. Gunnels v. American Liberty Ins. Co., 251 S.C. 242, 161 S.E.2d 822 (1968).

Using a January 15 due date as the final date for an installment does not give an absurd result and does not defeat the Act's intent. Rather a fixed date provides certainty of date of payment for both the taxpayer and the county, and assures the county that installment payments will be received each year on or before a fixed date without regard to day of the week upon which the 15th falls.<sup>1</sup>

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<sup>1</sup>It should be noted the act states "[t]he ordinance may not provide penalties for late installments." Thus, no penalty is imposed on the unpaid installment. Penalties may  
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The act states "the final installment due date must be January fifteenth"; therefore, it does not provide for any extension, even if the January 15 installment due date falls on a Saturday, Sunday, or legal holiday.

C. Single or Multiple Service Charges

You have asked may a service charge be imposed upon each installment payment or is a single service charge imposed upon the total annual payment. Under the act, the county ordinance may "provide for a service charge of not more than two dollars on installment payments."

While the word "a" may have different meanings depending upon the context of its use, (see Words and Phrases, "A"), the use of "a" here means "one." See Harward v. Commonwealth, 330 S.E.2d 89 (Va. 1985). Thus, while one service charge is imposed, the critical issue is what event triggers the imposition of the charge. Does each installment payment trigger a charge, or is one annual charge made for all installment payments for the tax year?

Here the act uses the words "installment payments" in the plural. The use of the plural indicates more than one. See Emerson Electric Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118, 120 (1986). The triggering event, therefore, is not each payment, but rather is the event of electing to make "installment payments." Thus, while it is not entirely free from doubt, the General Assembly most likely intended one service charge for the multiple installment payments. To impose more than one charge, the General Assembly could easily have said "a service charge . . . on each installment payment."

We conclude that since the act authorizes "a service charge" as a single amount for "installment payments," the use of the plural "payments" means a service charge is

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<sup>1</sup>(...continued)

arise, however, under Section 12-45-180 for the annual taxes that remain unpaid by the due date set in Section 12-45-180. That section states that "when any portion of the taxes . . . are not paid before the sixteenth of January . . ." a penalty is imposed unless such date falls on a Saturday, Sunday, or legal holiday, in which case the due date is extended to the end of the second business day immediately following which is not a Saturday, Sunday, or legal holiday. Thus, while no penalty can be imposed on a late installment payment, a penalty may be imposed on the portion of the annual taxes that remain unpaid by the penalty date set in Section 12-45-180.

imposed on the election to pay in installments. Thus, only one service charge is imposed on the installment payments for the year.

#### D. Distribution of Service Charges

You ask how the service charges are distributed. The act allows the county to impose a service charge but does not address the distribution of the service charge.<sup>2</sup> A service charge is typically imposed to cover the expense associated with the service being rendered. See for example, Pure Oil Co. v. State, 12 So.2d 861 (1943). In the absence of any explicit language, a reasonable inference is that the fee is distributed to the entity providing the service.

Here the act specifically authorizes the county governing body to elect the installment method. Thus, the county government is to receive the service charge, and such charge is to be used as an offset to the expense of the installment program.

#### E. Earliest Date For Installment Payment

You ask how far in advance of the due date may the county begin receiving taxes in installments. Under the statute, the county "may by ordinance provide a discount on all ad valorem taxes on real property located in the county paid in advance of the January fifteenth due date." The issue, thus, becomes which January fifteenth, the current tax year or any year in the future. For example, could a taxpayer pay estimated 1998 property tax by paying installments of equal portions in 1995, 1996, 1997, 1998, and the last installment on January fifteenth, 1999.

The act requires that the installment be paid in advance of the due date; therefore, there must be a due date before a taxpayer may pay an installment of ad valorem taxes. Ad valorem taxes are not due until assessed. Town of Myrtle Beach v. Holliday, 203 S.C. 25, 26 S.E.2d 12, 13-14 (1943).

The assessed value of property forms the basis for calculating the taxes due, and such calculation is completed on an annual basis. Lee County v. Stevens, 277 S.C. 421, 289

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<sup>2</sup>The act provides that for "purposes of payment and collection, these service charges are deemed property taxes." Such allows the service charge to be paid (S.C. Code Ann. Sections 12-45-70 (Supp. 1993) and 12-45-180) and collected (S.C. Code Ann. Section 12-51-40 (Supp. 1993)) under the statutes governing taxes. The distribution of the service charge is not encompassed by such a phrase.

S.E.2d 155 (1982). The case law is supported by statutory law in that ad valorem taxes are "due and payable between the thirtieth day of September and the fifteenth day of January after their assessment in each year." S.C. Code Ann. Section 12-45-70 (Supp. 1993). Thus, the due date is an annual date.

The earliest that a county may provide a discount on receiving taxes in installments is January 1 of the tax year. For example, for tax year 1995, the taxes have an initial due date of September 30, 1995, and a final due date of January 15, 1996. Taxes paid in installments may be paid no earlier than January 1, 1995.

#### F. Equal Protection and Uniformity

You ask does the granting of a discount for early payment violate the equal protection provisions or the uniformity provisions of the South Carolina Constitution. In conducting a review of the act, we are mindful that an act must, if possible, be construed so as to render it valid, and every presumption will be made in favor of the constitutionality of a legislative enactment. A statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution. Cox v. Bates, 237 S.C. 198, 116 S.E.2d 828 (1960). Both equal protection and uniformity are addressed below.

##### 1. Equal Protection

The Equal Protection Clause is satisfied if: (1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis. Samson v. Greenville Hospital System, 295 S.C. 359, 368 S.E.2d 665 (1988). A statutory classification must be given great deference since it is a legislatively created classification which must be sustained if it is not plainly arbitrary and there is any reasonable hypothesis to support it. Samson, 368 S.E.2d at 665.

In deciding if the classification bears a reasonable relationship to the legislative purpose, a court does not need to find the classification completely accomplishes the legislative purpose with delicate precision. Duke Power Co. v. S.C. Public Service Comm., 284 S.C. 81, 326 S.E.2d 395 (1985). Rather, a court need only find that the classification is reasonable, and the fact that the classification results in some inequity does not render it in violation of the Constitution. State v. Smith, 271 S.C. 317, 247 S.E.2d 331 (1978).

Further, a court need only determine that the members of the class are treated alike under like circumstances and conditions, but there is no requirement that all classes be treated

alike. Baldwin v. South Carolina Dept. of Hwys. and Pub. Transp., 297 S.C. 232, 376 S.E.2d 259 (1989). The creation of classes is a legislative function with the prohibition being only upon the creation of irrational and unjustified classifications and there is no prohibition upon the creation of all classifications. Regan v. Taxation with Representation of Washington, 461 U.S. 540, 103 S.Ct. 1997, 76 L.Ed.2d 129 (1983). GTE Sprint Communications Corp. v. Public Service Comm'n of South Carolina, 288 S.C. 174, 341 S.E.2d 126 (1986). Rather, the General Assembly is allowed to create classes based upon its determination of what best carries out the public policy of the State.

Here the act creates several classifications. First, the act classifies taxpayers by ownership of identified property; i.e., realty versus personalty. Second, the act classifies by the method of accumulating tax funds; i.e., escrow versus nonescrow. Finally, the act classifies by the timing in which tax payments are made; i.e., prepayment versus due-date payment.

a. Realty versus Personalty

The act allows the installment election only for real property. While there may be several rational distinctions between realty and personalty which the General Assembly could have relied upon to create the different classes of realty versus personalty, the most obvious is that personalty is mobile while realty is traditionally a fixed location. The General Assembly could have determined that the mobility of personalty presented too large of an administrative problem for taxpayers and taxing authorities in determining where to pay in advance. For example, property used in business is taxable "in the county, city or town in which it is situated." See S.C. Code Ann. Section 12-37-890 (1976). A determination of where business personalty is situated depends upon the totality of facts for the tax year and is difficult to determine in advance. Real property on the other hand is easily identified as to location, and no significant problem arises as to where such property is taxable. Accordingly, there is a rational basis for the classification, and that classification furthers the legislative goal of allowing taxpayers to pay in advance and allowing taxing entities to receive tax funds in advance.

b. Escrow versus Nonescrow

The act does not allow the installment method "for taxes paid through an escrow account." The rational distinction for this classification could be that the General Assembly believed that escrow taxpayers, such as those typically covered by mortgage companies, already have the advantage of paying their taxes in installments in that such taxes are made as part of the mortgage payment. The right granted to nonescrow taxpayers to pay in installments thus is based upon a rational distinction between escrow and nonescrow taxpayers, and



is one that furthers the purpose of allowing the taxing entities to receive tax funds in advance.

c. Prepayment versus Due-Date

The act grants a discount to taxpayers who prepay their real property taxes, but no discount is granted to taxpayers who do not prepay. This classification rests upon a reasonable basis. There is a rational distinction between taxpayers who pay early versus those that pay on the due date since the prepayment taxpayers must part with their funds sooner than their nonprepayment counterparts. Further, all taxpayers within the class are treated the same in that those who pay early will receive a discount, and all due-date taxpayers will not. Finally, the classification is reasonably related to the legislative purpose. The legislative purpose is to allow the taxing authorities to receive the tax funds earlier than the due date. The granting of an incentive; i.e., the discount, encourages the prepayment of taxes and, thus, the classification reasonably accomplishes the legislative goal.

2. Uniformity

The act states "[t]he governing body of a county may by ordinance provide a discount on all ad valorem taxes on real property located in the county paid in advance of the January fifteenth due date." The issue is whether uniformity is violated where two identical real properties result in different tax liabilities due to prepaying taxes.

S.C. Const. art. X, Section 6, establishes that the "property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing the tax." The imposition of a levy is the act of the taxing jurisdiction in setting the millage. Lee County v. Stevens, supra. The uniformity requirement for the levy is satisfied if the millage rate is imposed at the same rate for all taxpayers. Celanese Corp. v. Strange, 272 S.C. 399, 252 S.E.2d 138 (1979).

Where the millage is uniformly imposed for all taxpayers within the taxing jurisdiction, the fact that a taxpayer's liability is a lesser amount than that which the millage yields does not necessarily mean uniformity is violated. Where the reduction in the tax liability is due to an event unrelated to the levy, no violation of uniformity occurs. For example, assume a levy of 100 mills yields a \$500 tax liability. Further, assume the taxpayer performs public service under a contract with the taxing entity which entitles the taxpayer to a "payment" of \$100 as a credit against property taxes. No violation of the millage uniformity occurs since the millage levy is unchanged and the tax liability differs from


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the millage-imposed amount due to an unrelated event; i.e., the public service duties of the taxpayer.

In the same manner, no violation of the uniform millage levy requirement occurs by the granting of a prepayment discount. Under the act, the amount of the discount is based on "the length of the prepayment period." The discount is, thus, related to the time value of money and is an event unrelated to the millage levy. Accordingly, no violation of the millage uniformity requirement occurs by the statute granting a discount based upon the time value of money.

Based on the above, it is the opinion of this office that the classifications created by the act do not violate the equal protection or uniformity requirements of the South Carolina Constitution.

Yours truly,



Charles Molony Condon  
Attorney General

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