ALAN WILSON
ATTORNEY GENERAL

March 18, 2014

The Honorable Sean M. Bennett
Senator, District No. 38
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Bennett:

Attorney General Alan Wilson has referred your letter dated December 21, 2013 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue: Would the current owner of a property have standing to challenge a real property tax assessment on his property even though he did not own the property "as of December thirty-first of the year preceding the tax year" pursuant to South Carolina Code Section 12-37-610?[1]

Short Answer: Yes, this Office believes a court will find a current property owner has standing to challenge the property tax assessment on his property.[2]

Law/Analysis:
South Carolina Code Section 12-37-610 provides that:

> 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.

[1] While your question asks the meaning of "preceding" within S.C. Code Section 12-37-610, this Office is going to answer your question as if you are ultimately asking whether the new taxpayer has standing to challenge an assessment pursuant to the statute.

[2] Please note the issue of standing is completely distinct from the merits of such a challenge to an assessment. While this Office may be opining on our legal opinion of the law, this Office in no way asserts any such right to a tax refund or any merits thereto. This Office does not opine on the merits of a tax appeal as that is a factual determination beyond the scope of an opinion. This Office only issues legal opinions. Op. S.C. Atty. Gen., 1996 WL 599391 (September 6, 1996) (citing Op. S.C. Atty. Gen., 1983 WL 182076 (December 12, 1983)). While the taxpayer may have standing, there are many other statutes a taxpayer may have to comply with in order to challenge an assessment. See, e.g., S.C. Code §§ 12-60-1750, 12-60-2110, 12-60-2510, 12-60-2910, et al.

S.C. Code 12-37-610 (1976 Code, as amended).

South Carolina case law recognizes three ways in which a party may achieve standing. The three ways are:

1) by statute;
2) through "constitutional standing" and
3) through the public importance exception.

Bodman v. State, 403 S.C. 60, 742 S.E.2d 363 (2013). This Office wrote a previous opinion in 2011 on a similar question concerning a taxpayer's standing to appeal an assessment. In that opinion we stated:

> 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.

Op. S.C. Atty. Gen., 2011 WL 3346432 (July 20, 2011).

This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). However, in 2013 the South Carolina Court of Appeals issued an decision which addressed the same issue. That case concluded that a new purchaser at a foreclosure sale (one who purchased the taxable property after December 31 of the preceding year) had standing to appeal the assessment of the property taxes. Taylor v. Aiken Co. Assessor, 402 S.C. 559, 741 S.E.2d 31 (Ct. App. 2013). The case gave standing to the new purchaser based on the definition of a property taxpayer pursuant to statute (specifically S.C. Code § 12-60-30(22)). However, the court went on to say that even if there were no standing based on the statute, the statutory interpretation gave constitutional standing based on the intent of the legislature to avoid an absurd result. Id. Quoting from the case:

> Relying upon section **12–37–610** of the South Carolina Code (Supp.2012), the A[dministrative]L[aw]C[ourt] determined that Taylor [the purchaser at the foreclosure sale] was "not the person legally liable for payment of the taxes for the year 2010." Thus, the ALC reasoned that "he [wa]s not the 'property taxpayer' as defined by the statute."

As recognized by the ALC, our resolution of this issue hinges on whether Taylor is a "property taxpayer" as defined by the applicable sections of the South Carolina Code. If Taylor is a property taxpayer, he has standing as a matter of statutory right. *See Freemantle v. Preston,* 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012).

...

The South Carolina Revenue Procedure Act ("SCRPA") ... provides that "[i]n years when there is no notice of property tax assessment, the property taxpayer may appeal the fair market value ... and the property tax assessment of a parcel of property at any time." S.C.Code Ann. § 12–60–2510(A)(4) (Supp.2012). Under the SCRPA, "'[p]roperty taxpayer' means 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." S.C.Code Ann. § 12–60–30(22) (Supp.2012).

As noted above, the relevant question is whether Taylor is a property taxpayer. We are mindful that "[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." *Sloan v. Hardee,* 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). In doing so, we must give the words found in a statute their "plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* at 498, 640 S.E.2d at 459. Additionally, under South Carolina law, "[r]evenue laws are generally construed in favor of the taxpayer and against the taxing authority." *Clark v. S.C. Tax Comm'n,* 259 S.C. 161, 169, 191 S.E.2d 23, 26 (1972) (internal quotation marks omitted).

Looking to the plain and ordinary meaning of the SCRPA's provisions, we find that section 12–60–2510(A)(4) allows a property taxpayer to appeal the fair market value and resulting assessment of property at any time in years when a new countywide assessment is not taking place. Turning to the language of section 12–60–30(22), we interpret the definition of property taxpayer to include individuals fitting into two categories: (1) "a person who is liable for ... any property tax imposed by this title"; and (2) "a person ... whose property or interest in property[ ] is subject to ... a property tax imposed by this title." S.C.Code Ann. § 12–60–30(22).

In the instant case, we find that Taylor qualifies as a property taxpayer under this second category as a person whose property is subject to the property tax. Pursuant to section 12–49–10 of the South Carolina Code, unpaid property taxes become a lien upon the real property at the time when they are assessed. *See* S.C.Code Ann. § 12–49–10 (2000) ("All taxes, assessments and penalties legally assessed ... shall be a first lien in all cases whatsoever upon the property taxed, the lien to attach at the beginning of the fiscal year during which the tax is levied."). Accordingly, Taylor's interest in the property is subject to the 2010 tax by virtue of this lien.

Therefore, giving the words of section 12–60–30(22) their plain and ordinary meaning, we find the clear and unambiguous terms of the statute provide subsequent

> property owners, whose properties are "subject to ... a property tax" by virtue of a tax lien, with the right to appeal their property's valuation and resulting tax assessment. Accordingly, **we find that Taylor, as a property taxpayer within the definition provided by section 12–60–30(22), has standing to appeal the valuation and assessment of the property purchased at foreclosure sale on September 10, 2010.**
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> **Even if we considered the statute's terms ambiguous, we find our rules of statutory construction would necessitate allowing Taylor the right to appeal.** "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 light of the intended purpose of the statute." *Sonoco Prod. Co. v. S.C. Dep't of Revenue,* 378 S.C. 385, 391, 662 S.E.2d 599, 602 (2008) (internal quotation marks omitted). The legislative intent behind section 12–60–2510(A)(3)–(4) is to provide property owners who are subject to a property tax with an avenue to appeal the valuation and resulting assessment. We find this legislative intent is defeated by interpreting this statute to afford an appeal only to property owners as of the date when the assessment was levied but to disallow appeals from subsequent owners. *See Ray Bell Constr. Co. v. Sch. Dist. of Greenville Cnty.,* 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998) ("[T]he courts will reject [a] 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."). We do not believe the General Assembly intended such a result. **Therefore, we construe the statute to provide subsequent owners, who ultimately bear the economic burden of the overvalued taxes, with the ability to appeal such an assessment.** *See id.* ("If possible, the court will construe the statute so as to escape the absurdity and carry the [legislature's] intention into effect.").
>
> Because Taylor satisfies the statutory definition of property taxpayer, section 12–60–2510(A)(4) provides him the right to appeal the assessment of his property "at any time." Accordingly, the ALC erred in finding that Taylor lacked standing to appeal the valuation and tax assessment for the 2010 tax year of the property he purchased on September 7, 2010.

Id. at 562-564, 741 S.E.2d at 33-34 (emphasis added). In regards to stare decisis, our Supreme Court has recently stated:

> "[s]tare decisis should be used to foster stability and certainty in the law, but[ ] not to perpetuate error." *Fitzer v. Greater Greenville S.C. Young Men's Christian Ass'n,* 277 S.C. 1, 4, 282 S.E.2d 230, 231 (1981), *superseded by statute on other grounds,* S.C.Code Ann. § 33–55–200 *et seq.* (2006). Stare decisis applies with full force with respect to questions of statutory interpretation because the legislature is free to correct us if we misinterpret its words. *Layton v. Flowers,* 243 S.C. 421, 424, 134 S.E.2d 247, 248 (1964).

McLeod v. Starnes, 396 S.C. 647, 655, 723 S.E.2d 198, 203 (2012). Because your question addresses the same statute and a comparable set of facts, this Office believes a court will likely follow the Taylor

decision pursuant to the doctrine of stare decisis.[3] Moreover, one other principle that should be noted is the long-recognized rule of statutory interpretation that any ambiguity in the imposition of a tax must be interpreted in favor of the taxpayer. Op. S.C. Atty. Gen., 1967 WL 12119 (April 28, 1967); Bodman v. State, 403 S.C. 60, 742 S.E.2d 363 (2013) (citing Clark v. S.C. Tax Comm'n, 259 S.C. 161, 191 S.E.2d 23 (1972)). Finally, as was noted by the Taylor court, independent of the question of statutory standing, constitutional standing would also likely be found for the same reasons listed above in the Taylor case.[4] As our U.S. Supreme Court has stated:

> Of course, a taxpayer has standing to challenge the collection of a specific tax assessment as unconstitutional; being forced to pay such a tax causes a real and immediate economic injury to the individual taxpayer.

Hein v. Freedom From Religion Foundation, Inc., 551 U.S. 587, 599 (2007).

Conclusion: Therefore, in regards to your question on S.C. Code Section 12-37-610 concerning a taxpayer's standing, it is for all of the reasons listed above this Office believes a court will likely follow the finding in the Taylor case to find a property owner who acquires the property after December 31 of the preceding tax year also has standing to appeal an assessment. However, this Office is only issuing a legal opinion based on the current law at this time. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair

Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

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[3] However, it should be noted that in early of 2013 the Supreme Court of South Carolina held that real property tax liability was determined based on the owner as of December 31st of the preceding year, regardless of subsequent sales or transfers. Hampton Friends of Arts v. S.C. Dept. of Revenue, 401 S.C. 372, 737 S.E.2d 628 (2013).

[4] It is also worth noting that most standard real property contracts and deeds would have language assigning all rights to the new owner. Theoretically, the new property owner could take a copy of the recorded deed with the assignment language in it to the assessor's office and use that as a basis to contest the assessment. This Office believes a court could also find the new taxpayer has standing to challenge the assessment based on such an assignment of rights, assuming the new purchaser met all other requirements for such a challenge. However, some rights have to be specifically assigned in the deed. See, e.g., Op. S.C. Atty. Gen., 1966 WL 12332 (November 17, 1966) (citing Carol v. Davis, 128 S.C. 40, 121 S.E. 601 (1924)) (holding damages for the taking of land must be specifically assigned and do not automatically pass to a subsequent grantee).