ALAN WILSON
ATTORNEY GENERAL

January 10, 2020

The Honorable Bart T. Blackwell
Member
South Carolina House of Representatives
District No. 81
Post Office Box 6658
Aiken, SC 29804

Dear Representative Blackwell:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter references a prior opinion this Office issue on March 04, 2019 (attached for reference) regarding golf course valuation under S.C. Code § 12-43-365. The questions raised by your constituent appear to seek clarification to the issues addressed therein. Your constituent asks the following:

1. If an assessor determines the fair market value of golf course property utilizing an appraisal method other than the capitalized income approach, is S.C. Code § 12-43-365 applicable to other methods?

2. Upon determination of fair market value by an assessor, does S.C. Code 12-43-365 require an assessor to exclude income or expense derived from personal property when calculating the proper assessed ad valorem tax value?

3. If an assessor fails to exclude income and expenses derived from personal property in calculation affair market value and does not adjust ad valorem tax value accordingly, does this constitute a violation of S.C. Law?

Law/Analysis

The responses to the questions presented in the request letter are answered in the order presented below.

1. If an assessor determines the fair market value of golf course property utilizing an appraisal method other than the capitalized income approach, is S.C. Code § 12-43-365 applicable to other methods?

Yes. S.C. Code § 12-43-365 applies to golf course valuations and establishes what "type of property … that may be considered in the determination of fair market value for ad valorem tax purposes, regardless of the appraisal method used." Daniel Island Club v. Berkeley County Assessor, No. Docket No.: 11-ALJ-l 7-046 1-CC, 2013 WL 683563, at *6 (Feb. 7, 2013).

2. Upon determination of fair market value by an assessor, does S.C. Code 12-43-365 require an assessor to exclude income or expense derived from personal property when calculating the proper assessed ad valorem tax value?

Yes. Daniel Island Club v. Berkeley County Assessor, No. Docket No.: 11-ALJ-l 7-046 1-CC, 2013 WL 683563, at *6 (Feb. 7, 2013) ("[T]he value of tangible personal property and intangible personal property and any income or expense derived from such property, whether directly or indirectly, must not be included in the determination of fair market value of golf course real property' for ad valorem tax purposes.").

3. If an assessor fails to exclude income and expenses derived from personal property in calculation affair market value and does not adjust ad valorem tax value accordingly, does this constitute a violation of S.C. Law?

Yes. See answer to question 2 above.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

ALAN WILSON
ATTORNEY GENERAL

March 04, 2019

The Honorable Lawrence Roscoe
Horry County Government & Justice Center
1301 Second Avenue
Conway, SC 29526

Dear Mr. Roscoe:

Attorney General Alan Wilson has referred your letter to the Opinions section. The request letter reads as follows:

> **S.C. Code of Laws, Section 12-43-365 states:**
>
> (A) The value of tangible personal property and intangible personal property and any income or expense derived from such property, whether directly or indirectly, must not be included in the determination of fair market value of golf course real property for ad valorem tax purposes.
>
> (B) For purposes of this section "intangible personal property" has the same meaning as "intangible personal property" as contained in Article X, Section 3(j) of the Constitution of this State.
>
> (C) If the fair market value of golf course real property for ad valorem tax purposes is determined pursuant to the capitalized income approach, the taxpayer shall provide income and expense data for the entire golf course operation, golf cart rentals, food and beverage services, and pro shop sales on a form designed by the county assessors and golf course owners and approved by the South Carolina Department of Revenue. Any data provided by the taxpayer for this purpose is not public data and may not be disclosed except in the process of a formal appeal involving the subject real property.
>
> Questions:
>
> 1. Is there any implication in this statute that the income approach MUST be used to value golf courses?

2. Would the ordinary methods of income capitalization apply, once the income prohibited from valuation is removed per the statute?

3. Upon appeal, would the Assessor be limited to using only income statements received from the appellant specific to the individual course, or if other golf courses have submitted similar statements as required by law, could those also be used to assist in the determination of value?

4. If the answer to #3 is yes, if the resultant income from application of the statute is so low that is close to zero, or negative, must the assessor value the property another way, or reduce the assessment to zero?

5. If the application of 12-43-65 results in a value lower than the value of the land as if vacant (sold with no personality attached) must the Assessor use the lower value derived from income?

6. Would an Assessor be justified in deciding to abandon the income approach as a matter of policy in favor of another approach, being that the statute is unclear how to handle these common contingencies?

Law/Analysis

The responses to the questions presented in the request letter are answered in the order presented below. The two cases cited below have been attached for your review.

1. Is there any implication in this statute that the income approach MUST be used to value golf courses?

No. Administrative Law Judge Shirley C. Robinson explained in Daniel Island Club v. Berkeley County Assessor, No. Docket No.: 11-ALJ-17-0461-CC, 2013 WL 683563, at *6 (Feb. 7, 2013) that Section 12-43-365 does not compel an income approach to valuations.

> S.C. Code Ann. § 12-43-365 does not prescribe or preclude the use of any specific appraisal method. Rather, it provides for the type of property - golf course real property - that may be considered in the determination of fair market value for ad valorem tax purposes, regardless of the appraisal method used. The statute also sets forth a taxpayer's duty to provide income and expense data for the entire golf course operation in the event that fair market value of golf course real property for ad valorem tax purposes is determined pursuant to the capitalized income approach. S.C. Code Ann. § 12-43-365(C).

Id.

2. Would the ordinary methods of income capitalization apply, once the income prohibited from valuation is removed per the statute?

Yes. See answer to question 1.

3. Upon appeal, would the Assessor be limited to using only income statements received from the appellant specific to the individual course, or if other golf courses have submitted similar statements as required by law, could those also be used to assist in the determination of value?

S.C. Code Ann. § 12-43-365 does not appear to limit evidence an assessor may use to establish the fair market value of a property. Rather, the statute simply limits personal property, both tangible and intangible, as well as income or expense derived from such property from being included in the determination of the fair market value of golf course real property. If a taxpayer does provide income and expense data as set forth in S.C. Code Ann. § 12-43-365(C) and the assessor chooses to use an approach other than the capitalized income approach, a reviewing court may require a disclosure of the "reasoning, methodology, or computation" by which the court may evaluate such a decision. See Aiken Golf Club, Inc., v. Aiken County Assessor, No. 17-ALJ-17-0427-CC, 2018 WL 3817522, (August 2, 2018).

4. If the answer to #3 is yes, if the resultant income from application of the statute is so low that is close to zero, or negative, must the assessor value the property another way, or reduce the assessment to zero?

See answer to question 3.

5. If the application of 12-43-365 results in a value lower than the value of the land as if vacant (sold with no personality attached) must the Assessor use the lower value derived from income?

See answer to question 1.

6. Would an Assessor be justified in deciding to abandon the income approach as a matter of policy in favor of another approach, being that the statute is unclear how to handle these common contingencies?

This Office's opinions refrain from commenting on matters of policy that are left to the discretion of another officeholder or public body. See Op. S.C. Att'y Gen., 2017 WL 1717129 (April 24, 2017) (discussing the Office's longstanding policy to defer to regarding "effectuating ... policy"). As discussed above, Daniel Island Club v. Berkeley County Assessor, No. Docket No.: 11-ALJ-17-0461-CC, 2013 WL 683563, at *6 (Feb. 7, 2013) explains that S.C. Code Ann. § 12-43-365 does not require "any specific appraisal method." It seems clear that the Administrative Law Court has not interpreted S.C. Code Ann. § 12-43-365 to require an income approach for all golf course valuations.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General