



ALAN WILSON
ATTORNEY GENERAL

January 14, 2021

The Honorable Gil Gatch
Member
South Carolina House of Representatives
420 Trolley Road
Summerville, SC 29485

Dear Representative Gatch:

We received your letter requesting an opinion of this Office concerning property tax assessments. From your letter, we understand you have the following specific questions you ask us to address:

- 1) When the owner of a tract of land, not acquired during that year through an Assessable Transfer of Interest (ATI), subdivides it into fewer than ten parcels while making no improvements but retaining ownership, does that trigger a new assessment or reassessment of each lot;
- 2) If so, do property tax "cap values" remain and transfer proportionally;
- 3) Conversely, were an owner of contiguous tracts of land with identical ownership to re-plat both properties abandoning the lines between them to create one tract, does that trigger a new assessment or reassessment; and
- 4) If so, would property "cap values" remain and transfer in the aggregate; and
- 5) If a tract of land is acquired through an ATI and then subdivided later the same year with no change of ownership, should the property be reassessed as the larger tract, the smaller parcels or both?

Law/Analysis

Article X, section 1, of the South Carolina Constitution (2009) provides for the taxation of property of various classifications based on the property's "fair market value." Article X, section 6 of the South Carolina Constitution (2009) states "[t]he General Assembly is authorized, by general law, to define 'fair market value' and to define when property has been improved or when losses have occurred to change the value of the real property." In Section 12-37-930 of the South Carolina Code (2014), the General Assembly defined "fair market value" as the property's "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.” By section 12-43-217 of the South Carolina Code (2014), the General Assembly called for a county-wide reassessment of property every five years. Aside from a county-wide reassessment, the General Assembly requires appraisal of real property when improvements or additions are made to the property or when an assessable transfer of interest occurs. An “assessable transfer of interest” (“ATI”) is defined under section 12-37-3130(4) of the South Carolina Code (2014) as a “transfer of an existing interest in real property that subjects the real property to appraisal.” Section 12-37-3150(A) of the South Carolina Code (2014) provides an ATI includes, but is not limited to the following:

- (1) a conveyance by deed;
- (2) a conveyance by land contract;
- (3) a conveyance to a trust, except if:
 - (a) the settlor or the settlor’s spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor’s spouse, or both; or
 - (b) the settlor or the settlor’s spouse, or both, conveys property subject to the special four percent assessment ratio pursuant to Section 12-43-220(c) and the sole present beneficiary or beneficiaries is the child or children of the settlor or the settlor’s spouse, but a subsequent conveyance of this real property by the beneficiary child or children is not exempt from the provisions of this section;
- (4) a conveyance by distribution from a trust, except if the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both;
- (5) a change in the sole present beneficiary or beneficiaries of a trust, except a change that adds or substitutes the spouse of the sole present beneficiary;
- (6) a conveyance by distribution under a will or by intestate succession, except if:
 - (a) the distributee is the decedent’s spouse; or
 - (b) the distributee is the child or children of the decedent, the decedent did not have a spouse at the time of the decedent’s death, and the property is subject to the special four percent assessment ratio pursuant to Section 12-43-220(c), but a subsequent conveyance of this real property by the distributee child or children is not exempt from the provisions of this section;

(7) a conveyance by lease if the total duration of the lease, including the initial term and all options for renewal, is more than twenty years or the lease grants the lessee a bargain purchase option. As used in this item, “bargain purchase option” means the right to purchase the property at the termination of the lease for not more than eighty percent of the property’s true cash value at the termination of the lease. This item does not apply to personal property or that portion of the property not subject to the leasehold interest conveyed;

(8) a transfer of an ownership interest in a single transaction or as a part of a series of related transactions within a twenty-five year period in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than fifty percent of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. This provision does not apply to transfers that are not subject to federal income tax, as provided in subsection (B)(1), including, but not limited to, transfers of interests to spouses. The corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the applicable property tax assessor on a form provided by the Department of Revenue not more than forty-five days after a conveyance of an ownership interest that constitutes an assessable transfer of interest or transfer of ownership under this item. Failure to provide this notice or failure to provide accurate information of a transaction required to be reported by this subitem subjects the property to a civil penalty of not less than one hundred nor more than one thousand dollars as determined by the assessor. This penalty is enforceable and collectible as property tax and is in addition to any other penalties that may apply. Failure to provide this notice is a separate offense for each year after the notice was required;

(9) a change of use of agricultural real property which subjects it to the rollback tax;

(10) a change of use of real property when classification of property changes as a result of a local zoning ordinance change; or

(11) the passage of twenty years since the later of the base year or the last assessable transfer of interest for real property owned by a publicly-held entity whose stock, shares, or other ownership interests are traded on a regulated exchange, a pension fund, or other similar entity.

An assessable transfer of interest resulting in the appraisal required pursuant to this article occurs at the time of execution of the instruments directly resulting

in the transfer of interest and without regard as to whether or not the applicable instruments are recorded. Failure to record instruments resulting in a transfer of interest gives rise to no inference as to whether or not an assessable transfer of interest has occurred.

Section 12-37-3150(B) specifies what an ATI does not include:

- (1) transfers not subject to federal income tax in the following circumstances:
 - (a) 1033 (Conversions-Fire and Insurance Proceeds to Rebuild);
 - (b) 1041 (Transfers of Property Between Spouses or Incident to Divorce);
 - (c) 351 (Transfer to a Corporation Controlled by Transferor);
 - (d) 355 (Distribution by a Controlled Corporation);
 - (e) 368 (Corporate Reorganizations); or
 - (f) 721 (Nonrecognition of Gain or Loss on a Contribution to a Partnership).

Number references in the above subitems are to sections of the Internal Revenue Code of 1986, as defined in Section 12-6-40;

- (2) a transfer of that portion of property subject to a life estate or life lease retained by the transferor, until expiration or termination of the life estate or life lease;
- (3) a transfer through foreclosure or forfeiture of a recorded instrument or through deed or conveyance in lieu of a foreclosure or forfeiture, until the redemption period has expired;
- (4) a transfer by redemption by the person to whom taxes are assessed of property previously sold for delinquent taxes;
- (5) a conveyance to a trust if the settlor or the settlor's spouse, or both, convey the property to the trust and the sole present beneficiary of the trust is the settlor or the settlor's spouse, or both;
- (6) a transfer for security or an assignment or discharge of a security interest;

(7) a transfer of real property or other ownership interests among members of an affiliated group. As used in this item, "affiliated group" is as defined in Section 1504 of the Internal Revenue Code as defined in Section 12-6-40. Upon request of the applicable property tax assessor, a corporation shall furnish proof within forty-five days that a transfer meets the requirements of this item. A corporation that fails to comply with this request is subject to a civil penalty as provided in Section 12-37-3160(B);

(8) a transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. Upon request by the applicable property tax assessor, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof within forty-five days that a transfer meets the requirements of this item. A corporation, partnership, limited liability company, limited liability partnership, or other legal entity that fails to comply with this request is subject to a civil penalty as provided in Section 12-37-3160(B);

(9) a transfer of an interest in a timeshare unit by deed or lease;

(10) a transfer of an undivided, fractional ownership interest in real estate in a single transaction or as a part of a series of related transactions, if the ownership interest or interests conveyed, or otherwise transferred, in the single transaction or series of related transactions within a twenty-five year period, is not more than fifty percent of the entire fee simple title to the real estate;

(11) a transfer to a single member limited liability company, not taxed separately as a corporation, by its single member or a transfer from a single member limited liability company, not taxed separately as a corporation, to its single member, as provided in Section 12-2-25(B)(1);

(12) a conveyance, assignment, release, or modification of an easement, including, but not limited to:

(a) a conservation easement, as defined in Chapter 8, Title 27;

(b) a utility easement; or

(c) an easement for ingress, egress, or regress;

(13) a transfer or renunciation by deed, release, or agreement of a claim of interest in real property for the purpose of quieting and confirming title to real property in the name of one or more of the existing owners of the real property

or for the purpose of confirming or establishing the location of an uncertain or disputed boundary line;

(14) the execution or recording of a deed to real property for the purpose of creating or terminating a joint tenancy with rights of survivorship, provided the grantors and grantees are the same; or

(15) a transfer of a fractional interest between family members for zero monetary consideration, or a de minimis monetary consideration, whereby both the grantor and the grantee owned an interest in the property prior to the transfer. For purposes of this item, a family member includes a spouse, parent, brother, sister, child, grandparent, or grandchild.

S.C. Code Ann. § 12-37-3150(B).

In your first question, you state the owner subdivided property, which had not been acquired during the year, into less than ten parcels. You also informed us that the owner did not make improvements to the property and retained ownership of all of the subdivided parcels. You question whether this scenario would trigger a new assessment or reassessment of each lot.

Section 12-37-3150(A) does not appear to address this situation in the list of ATIs. Nor does section 12-37-3150(B) specifically exclude this scenario from being considered an ATI. However, because section 12-37-3150(A) specifically states the list of situations that are ATIs is not all inclusive, we must defer to the rules of statutory interpretation to determine whether the subdivision of property as you describe would be an ATI.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id. at 233, 509 S.E.2d at 262 (citing Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992).

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

From both the definition of “assessable transfer of interest” in section 12-37-3130(4) and the list of assessable transfers of interest found in section 12-37-3150(A), it is clear for an ATI to occur, there must be a transfer of an interest or a change in the use of the property. Your letter indicates the property owner did not convey the property, but simply subdivided it, maintaining ownership both before and after the subdivision of the property. You also do not indicate a change in use of the property. We do not believe the General Assembly intended for these circumstances to amount to an ATI. Therefore, based solely on the information provided to us, we are of the opinion that a new assessment or reassessment would not be triggered.

With that being said, we would like to note that the General Assembly charged the Department of Revenue with promulgating regulations to implement these provisions and specifically “providing for those circumstances that constitute a change in the beneficial ownership of real property or an assessable transfer of interest not evidenced by transfer of fee simple title.” S.C. Code Ann. § 12-37-3160(A) (2014). To our knowledge, the Department of Revenue has not issued regulations addressing the scenario you describe. However, should the Department of Revenue issue such a regulation in the future, we would defer to such guidance.

Next, you inquire as to whether the property tax “cap values” remain and transfer proportionally. Because we do not believe subdividing property without a conveyance or change in use is an ATI, we need not answer this question. However, we note that according to section 12-37-3140(B) of the South Carolina Code (2014):

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 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.

(emphasis added). Accordingly, should a court determine an ATI occurred, the fifteen percent cap would not apply to the reassessed property in the year of the transfer.

You also ask if an owner of two contiguous plats with identical ownership were to re-plot the properties eliminating the border between them, would such actions trigger a reassessment. Based on the reasoning presented above and because again it does not appear under these facts that a conveyance or change in use occurred, we do not believe it would trigger a reassessment.

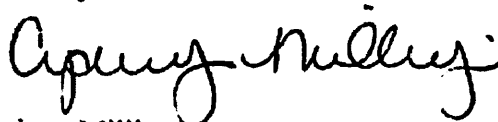
Lastly, you inquire as to whether property acquired through an ATI and then subdivided in the same year with no change in ownership would trigger a reassessment. Once more, without a change in ownership or change in use of some sort, we do not believe an ATI would occur.

The Honorable Gil Gatch
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Conclusion

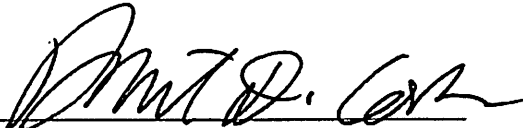
You question whether a subdivision of property alone without any change in ownership or change in use amounts to an ATI triggering a reassessment of the property. Section 12-37-3150 specifies instances which are and are not an ATI for purposes of reassessment, but does not specifically address the situation you present. Based on our understanding of the intent of the General Assembly in enacting this provision, we believe a reassessment of property is triggered when a conveyance or change in use of the property occurs. As such, we do not believe an owner who subdivides property without a conveyance or change in use triggers an appraisal of such property. Similarly, we do not believe an owner of two contiguous tracts who re-plats the properties to create one property creates an ATI. Nor do we believe a property owner who owns property which has already been acquired through an ATI and later subdivides the property would trigger another ATI.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General