



HENRY McMASTER
ATTORNEY GENERAL

June 9, 2010

The Honorable Alan D. Clemmons
S.C. House of Representatives, District No. 107
1800-A North Oak Street
Myrtle Beach, SC 29577

Dear Representative Clemmons:

We received your letter requesting an opinion of this Office concerning fair market value of real estate. You asked “how fair market value is calculated for real estate¹ under the jurisdiction of the county assessors.” As mentioned in your request, in 2006 the General Assembly passed the Property Tax Reform Act (“Act 388”), and voters subsequently approved an Amendment to Article X, § 6 of the South Carolina Constitution. You explained that there is confusion and a lack of uniformity among the assessors on calculating fair market value. This opinion will address prior opinions, legislative intent, relevant statutes and caselaw to clarify how fair market value should be calculated in a uniform manner by county assessors.

Law/Analysis

Part IV of Act 388 was codified in Article 25, Chapter 37, Title 12 of the South Carolina Code of Law of 1976. S.C. Code § 12-37-3140 explains how to determine fair market value as follows:

- (A)(1) For property tax years beginning after 2006, the fair market value of real property is its fair market value applicable for the later of:
- a) the base year, as defined in subsection (C) of this section;
 - b) December thirty-first of the year in which an assessable transfer of interest has occurred;
 - c) as determined on appeal; or
 - d) as it may be adjusted as determined in a countywide reassessment program conducted pursuant to Section 12-43-217, but limited to increases in such value as provided in subsection (B) of this section.

¹ “which has declined in value since 2007”

(2) To the fair market value of real property as determined as 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.

(B) 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. 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.

(C) For purposes of determining a “base year” fair market value pursuant to this section, the fair market value of real property is its appraised value applicable for property tax year 2007.

S.C. Code § 12-37-3140 (this statute codified 2006 Act No. 388, Part IV).

Part IV of Act 388 became effective upon ratification of amendment to Article X of the South Carolina Constitution which was ratified on April 26, 2007.

The amendment provides in relevant part:

For the tax year beginning 2007, each parcel of real property in this State shall have a maximum value for ad valorem taxes that does not exceed its fair market value. The 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.

The General Assembly shall establish, through the enactment of general law, and not through the enactment of local legislation pertaining to a single county or other political subdivision, the method of assessment of real property within the State that shall apply to each political subdivision within the State. Each political subdivision shall 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, as defined by the General Assembly, an assessable transfer of interest occurs.

South Carolina Constitution, Art X, § 6 (emphasis added).

In an opinion of this Office dated October 9, 2006, we stated as follows:

The requirement that counties uniformly assess property taxes arises from article X, section 6 of the South Carolina Constitution (Supp. 2006). . . . In section 12-43-210 of the South Carolina Code (2000 & Supp. 2005), the Legislature vested the power to assess property taxes in counties.²

Op. S.C. Atty. Gen., October 9, 2006.

Within counties, county assessors are assigned the duty of assessing property for tax purposes. A “county assessor” is defined as “a county officer or official who issues an official property tax assessment for real property.” S.C. Code § 12-60-30(5). The county assessor must uniformly assess the property in a county and determine the fair market value of real property. S.C. Code § 12-43-210(A) explains that “[a]ll property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue [SCDOR] may promulgate regulations to ensure equalization which must be adhered to by all assessing officials in the State.”

The SCDOR Property Tax Manual (2009 Edition) summarizes the fair market value rules. Section 220 explains the “Valuation of Property” and Section 221.4 explains the “Valuation of Real Property.” Specifically, Section 220 states that according to Article III, Section 29 of the South Carolina Constitution, “[a]ll taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.” Section 221.4 states that “[r]eal property . . . is appraised to determine fair market value. Usually, reassessment (reappraisal) of real property takes place every 5 years. For property tax years after 2006, any increase in the fair market value of any parcel of real property as a result of a countywide reassessment program will be limited to 15% within a 5 year period.”

In 2002, the SCDOR issued an advisory opinion on the “Assessment of Real Property in a Non-reassessment Year” which addressed the authority a county assessor has to assess real property at fair market value. SC Revenue Advisory Bulletin #02-7. The opinion cited S.C. Code § 12-37-90 which provides that “[a]ll counties shall have a full-time assessor, whose responsibility is appraising and listing real property.” S.C. Code § 12-37-90. When values change, the assessor shall, “reappraise and reassess real property so as to reflect its proper valuation in light of changed conditions . . .” S.C. Code § 12-37-90(c). SCDOR concluded that “this statutory provision requires the county assessor to assess real property when there has been a change in the condition of the property, not a mere

² “Subarticle 9 of chapter 60 of title 12 of the South Carolina Code governs the protest and appeal of property tax assessments. The provisions contained in this portion of the Code provide a means by which taxpayers may object to and contest a property tax assessment by a county assessor. S.C. Code Ann. §§ 12-60-2510 et seq. (2000 & Supp. 2005).” Op. S.C. Atty. Gen., October 9, 2006.

change in the ownership of the property.” SC Revenue Advisory Bulletin #02-7.³ This SCDOR opinion specifically addressed “whether the county assessor is authorized to utilize the sales price as the sole means for determining the fair market value of real property.” Id. SCDOR concluded that “[w]hile sales price of real property is to be given substantial weight on the issue of fair market value, if other considerations are present, the county assessor needs to consider all relevant factors.” Id.; See also, S.C. Code § 12-37-930.

In an opinion of this Office dated September 1, 1978, we concluded as follows:

Real property, such as single family dwellings⁴ that have recently been zoned commercial, are to be taxed at the prescribed percentage of such property’s fair market value.⁵ That value is defined by § 12-37-930 to be the price “the property would bring following reasonable exposure to the market, where both seller and buyer are willing, are not acting under compulsion, and are reasonably well informed as to the uses and purposes to which the property is adapted and for which it is capable of being used.”

Op. S.C. Atty. Gen., September 1, 1978 (quoting S.C. Code § 12-37-930).⁶

One should note that some assessors have decided to deny decreases in value of properties after the implementation of a county’s latest reassessment program. Taxpayers can appeal the value but the sales information available at the date of the last implementation is the only information the assessors may consider until the county completes the next reassessment program. In relevant part, S.C. Code § 12-43-215 explains the following:

³ See also, Allegheny Pittsburgh Coal Co. v. County Comm’n, 488 U.S. 336 (1989) (county assessor revalued taxpayer’s property upon sale when only minor modifications had been made, resulting in gross disparities in assessed values of comparable properties.)

⁴ S.C. Code § 12-43-215 states that “[w]hen owner-occupied residential property assessed pursuant to Section 12-43-220(c) 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.”

⁵ SCDOR’s website explains that each class of property is assigned a percentage which is used to determine the assessed value of the property for taxation purposes. <https://www.sctax.org/Tax+Information/property/prop.html>

⁶ See also, Housing Authority of the City of Charleston v. Olasov, 282 S.C. 603, 320 S.E.2d 478 (1984) (Even though addressed in the context of eminent domain, the court defines fair market value as “that price which a willing buyer will pay a willing seller, neither being under compulsion to buy or sell and both being fully informed of all uses to which the property is adopted and for which it is capable of being used.”).

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.

S.C. Code § 12-43-215.

In your request, you posed a hypothetical when asking how fair market value should be determined by county assessors:

Suppose an owner-occupied home was worth \$200,000 on December 31, 2007. Further suppose the house now has a fair market value (FMV) of \$150,000. Some assessors are taking the position that the FMV is frozen on December 31, 2007, and thus the house's FMV for tax purposes remains \$200,000.

Our Supreme Court held in Dreher v. Dreher, 370 S.C. 75, 634 S.E.2d 646 (2006), "If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and the court has no right to impose another meaning. The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." The court further explained that the "cardinal rule of statutory construction of ascertaining and effectuating the intent of the legislature." Dreher, 370 S.C. 75 (2006).

While Title 12 contains complex information, S.C. Code § 12-37-3140 is clear on its face; therefore, the language of the statute must be given its plain and ordinary meaning.

Conclusion

Article 25, Chapter 37, Title 12 of the South Carolina Code of Laws of 1976⁷ and the accompanying amendment of South Carolina Constitution, Art X, § 6 made significant changes in the assessment of property taxes. However, the only change to traditional fair market value is the cap imposed in S.C. Code § 12-37-3140(B) which limits any increase in fair market value to 15%.

Adjustors must follow State law and refrain from creating unauthorized systems of valuation to compensate for the downturn in the market. Based on the various statutes referenced above, the fair market value of the property in the hypothetical would be \$200,000, as valued at the end of the base year, 2007. If the individual appeals the value, the only information that can be considered according to S.C. Code § 12-43-215 is the market value as "existed in the year that the equalization and reassessment program was conducted." Therefore, the value will remain the same until reassessment,

⁷ Codified from 2006 Act No. 388

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which occurs every five years. One should note that under S.C. Code § 12-37-3140(B), the reassessment value cannot *increase* more than 15% which should not be of concern in this hypothetical situation since the property *decreased* in value to \$150,000.

Sincerely,

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Attorney General



By: Leigha Blackwell
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REVIEWED AND APPROVED BY:


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