

November 27, 2007

The Honorable James G. Fickling
Barnwell County Auditor
Post Office Box 711
Barnwell, South Carolina 29812

Dear Mr. Fickling:

Thank you for your letter requesting an opinion of this Office concerning the interpretation of the term “school operating millage” as used in sections 12-37-251 and 11-11-156 of the South Carolina Code. In your letter, you provided us with the following information:

In preparation for referenced tax relief beginning in 1995, several legislative workshops were sponsored during July 1995, by the office of Comptroller General and the Department of Revenue. During such workshops, handouts were given entitled “Implementation Plan for the Residential Property Tax Exemption Program”. . . .

According to the referenced statute, an exemption applies against tax millage imposed for school operations. A major question at that time and also today is what does the term school include; public schools, vocational schools, technical schools, career centers, public libraries or junior colleges, etc.

Along with your request, you included a copy of one of the handouts referenced in your letter and alerted us to the fact that it indicates that an opinion was sought from this Office. You now ask for a copy of this opinion or if no such opinion exists, you “ask for your opinion as to what school operations millage is to be included with the school exemption and reimbursement, both relevant to S.C. Code Section 12-37-251 and now 11-11-156.”

Law/Analysis

The Legislature originally enacted section 12-37-251 as part of tax reform legislation included in the 1995 appropriations act. 1995 S.C. Acts 900. This statute created a homestead exemption excluding certain real property from property taxes. *Id.* As originally enacted, this provision stated that “[t]he exemption applies against millage imposed for school operations . . .,”

but that the exemption did not apply to taxes levied for “bonded indebtedness and payments pursuant to lease-purchase agreements for capital construction.” Id. (emphasis added).

In our research, we were unable to locate an opinion dealing with the interpretation of this statute either in 1995 or any subsequent year. Thus, we must presume that we did not issue such an opinion. However, we discovered a South Carolina Department of Revenue information letter issued in 1995 and a revenue ruling issued in 1996 discussing the meaning of the term “school” as used in section 12-37-251 of the South Carolina Code.

In its information letter issued November 7, 1995, the Department of Revenue (the “Department”) focused on the portion of section 12-37-251 stating “Property classified pursuant to Section 12-43-220(c) is exempt from property taxes levied for other than bonded indebtedness and payments pursuant to lease purchase agreements for capital construction. The exemption applies against millage imposed for school operations” The Department employed the rules of statutory interpretation, particularly the principle that statutes should be construed as a whole, to interpret the term “school” used in section 12-37-251. Looking to another subsection of section 12-37-251, the Department noted the Legislature’s referral to school districts when describing who receives the reimbursement for the estimated school tax revenue lost due to the exemption. The Department deduced “[s]ince total school revenues lost as a result of the exemption are to be reimbursed to the school districts, the Department believes ‘school’ must relate to ‘school districts.’” Thus, the Department looked to the definition of “school district” provided by section 59-1-160. Based on this definition, “the Department . . . concluded that the term ‘school’ as used in Code Section 12-37-251, means grades K through 12. The term does not include colleges, junior colleges, or public libraries.”

Subsequently, the Department issued a revenue ruling pertaining to the same issue of what is meant by the term “school” in section 12-37-251. S.C. Rev. Rul. 96-6 (June 12, 1996). Again, the Department considered the fact that another provision in section 12-37-251 refers to school districts when discussing reimbursement. Id. Employing the definition of school district found under section 59-1-160, the Department found “the term ‘school’ as used in Code Section 12-37-251 means a school district’s provision of free education to students in kindergarten through grade 12, including district and area vocational schools. The term does not include colleges, junior colleges, or public libraries.” Id.

Courts, as well as this Office, generally give great deference to interpretations of statutes by an administrative agency charged with its interpretation. Georgia-Carolina Bail Bonds, Inc. v. County of Aiken, 354 S.C. 18, 26, 579 S.E.2d 334, 338 (Ct. App. 2003); Op. S.C. Atty. Gen., March 20, 2007. “Where an agency is charged with the execution of a statute, the agency’s interpretation should not be overruled without cogent reason.” Nucor Steel, a Div. of Nucor Corp. v. South Carolina Pub. Serv. Comm’n, 310 S.C. 539, 543, 426 S.E.2d 319, 321 (1992). Accordingly, we give great deference to the Department’s interpretation of the term “school” used in section 12-37-251 and will not veer from this interpretation unless of we find a compelling reason to do so.

Since the Department issued its revenue ruling in 1996, the Legislature amended section 12-37-251 several times, including amendments limiting the exemption to the first \$100,000 of the property's value. 1996 S.C. Acts 2874. In 2006, the Legislature enacted the Property Tax Reform Act of 2006 (the "Act"). 2006 S.C. Acts 3133. Just prior to the enactment of the Act, section 12-37-251 stated:

(A)(1) The Trust Fund for Tax Relief must contain an amount equal to the revenue necessary to fund a property tax exemption of one hundred thousand dollars based on the fair market value of property classified pursuant to Section 12-43-220(c) calculated on the school operating millage imposed for tax year 1995 or the current school operating millage, whichever is lower, excluding taxes levied for bonded indebtedness and payments pursuant to lease purchase agreements for capital construction. The 1995 tax year school operating millage or the current school operating millage, whichever is lower, is the base year millage for purposes of calculating the amount necessary to fund the Trust Fund for Tax Relief in accordance with this section. However, in years in which the values resulting from a countywide reassessment and equalization program are implemented, the base year millage must be adjusted to an equivalent millage rate in the manner that the Department of Revenue shall prescribe. Funds distributed to a taxing district as provided in subsection (B) of this section must be used to provide a uniform property tax exemption for all property in the taxing district which is classified pursuant to Section 12-43-220(c), excluding taxes levied for bonded indebtedness and payments pursuant to lease purchase agreements for capital construction.

(2) Notwithstanding the provisions of this subsection, a school district whose operating millage falls below the 1995 school year operating millage may request to receive tax relief based on the 1995 operating millage, or equivalent millage rate, if one of the following conditions are met:

(a) the current operating millage per pupil plus the current debt service millage is equal to or less than the total millage per pupil for 1995;

(b) the operating millage per pupil for the 1995 tax year reduced by the amount by which the total millage per pupil for all purposes in the current year exceeds the total millage per pupil for the 1995 tax year but not below the actual operating millage per pupil for the current year.

The Department of Revenue is responsible for certifying that the conditions are met based on the latest completed fiscal year data of the requesting district.

Any funds received by an eligible school district in excess of its current millage under this subsection may be used by the district to pay bonded indebtedness.

(B)(1) A school district must be reimbursed from revenues credited to the Trust Fund for Tax Relief for a fiscal year, in the manner provided in Section 12- 37-270, for the revenue lost as a result of the homestead exemption provided in this section. Ninety percent of the reimbursement must be paid in the last quarter of the calendar year on December first. From funds appropriated in the Trust Fund for Tax Relief, the department shall make the calculations and distributions required pursuant to this subsection. If amounts received by a school district pursuant to this subsection are insufficient to reimburse fully for the base year operating millage, the local school board, within its authority, shall decide how to make up the shortfall, if necessary. Amounts received by a district in excess of the amount necessary to reimburse the district for the base year operating millage must first be used to reduce any operating millage imposed since the 1995 base year, and must next be used for school debt service purposes. Any funds remaining may then be retained by the district.

(2) School districts must be reimbursed on a per capita basis, but a district may not receive as a reimbursement for a fiscal year an amount less than the actual reimbursement amount it received in fiscal year 1998-99. If amounts credited to the Trust Fund for Tax Relief for a fiscal year pursuant to item (1) of this subsection are insufficient to pay the full amount of the reimbursements provided by this item, then all amounts credited to the trust fund for a fiscal year for this reimbursement in excess of the amount of the reimbursements paid pursuant to this section in fiscal year 1998-99 must be allocated only to those districts receiving less than the full per capita reimbursement, and this allocation must be on a per capita basis among only those counties receiving some part of this allocation.

(3) Operating millage levied in a county for alternative schools, career and technology centers, and county boards of education whether or not levied countywide or on a school district by school district basis in a county also is considered school operating millage

to which the property tax exemption provided by this section applies. County treasurers shall consider these operating millages in determining revenue lost when making disbursements to school districts from trust funds for tax relief funds under this section.

(C) Notwithstanding any other provision of law, property exempted from property taxation in the manner provided in this section is considered taxable property for purposes of bonded indebtedness pursuant to Sections 14 and 15 of Article X of the Constitution of this State, and for purposes of computing the “index of taxpaying ability” pursuant to Section 59-20-20(3).

(D) [Blank]

(E) Rollback millage is calculated by dividing the prior year property tax revenues by the adjusted total assessed value applicable in the year the values derived from a countywide equalization and reassessment program are implemented. This amount of assessed value must be adjusted by deducting assessments added for property or improvements not previously taxed, for new construction, and for renovation of existing structures.

(F) The exemption allowed by this section is conditional on full funding of the Education Finance Act and on an appropriation by the General Assembly each year reimbursing school districts an amount equal to the Economic Research Section of the Budget and Control Board estimate of total school tax revenue loss resulting from the exemption in the next fiscal year.

S.C. Code Ann. § 12-37-251 (Supp. 2006). Thus, like the version of section 12-37-251 enacted in 1995, this provision also provides for a property tax exemption on the school operating millage.

As the Department pointed out in its information letter and revenue ruling, this version of section 12-37-251 references school districts several times in discussing reimbursements paid as a result of lost revenue due to the homestead exemption. Thus, we would also presume that school operating millage means millage imposed by or on behalf of school districts, as the statute calls specifically for reimbursements based on this amount. Furthermore, as the Department pointed out, section 59-1-160 of the South Carolina Code (2004) defines the term “school district” as “any area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and the area of which constitutes a complete tax unit.” Based on this analysis, we agree with the Department’s interpretation that “school,” as used in section 12-37-251, includes “fee education to students in kindergarten through 12, including

district and area vocational schools” and “does not include colleges, junior colleges, or public libraries.” S.C. Rev. Rul. 96-6 (June 12, 1996).

Furthermore, since the Department’s revenue ruling in 1996, the Legislature added subsection (B)(3), specifically stating that school operating millage includes those taxes levied for “alternative schools, career and technology centers, and county boards of education” Id. Therefore, along with the Department’s interpretations of what is included in the millage exempt from tax under section 12-37-251, the Legislature clarified additional types of millage included under this provision. Consistent with the Department’s interpretation of section 12-37-251 in 1996 and the plain wording of section 12-37-251 as provided by the Legislature, we opine that the use of the term “school” in this provision refers to fee education offered to students in kindergarten through twelfth grade, school districts and boards of education, vocational schools, alternative schools, and career and technology centers.

Nonetheless, in 2006, as part of the Act, the Legislature made significant amendments to section 12-37-251, including repealing subsections (A), (B), (C), (D), and (F). Additionally, the Legislature enacted section 12-37-220(B)(47)(a) of the South Carolina Code (Supp. 2006) exempting owner-occupied residential property “from all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt.” In addition, the Act added sections 11-11-155 and 11-11-156 of the South Carolina Code (Supp. 2006) establishing the Homestead Exemption Fund and calling for reimbursements for school districts from this fund to account for the property tax exemption on owner-occupied residential property.

Subsequent to the passage of the Act, the Legislature amended both of sections 11-11-155 and 11-11-156 in 2007. 2007 S.C. Acts No. 57; 2007 S.C. Acts No. 110; 2007 S.C. Acts No. 116. Currently, section 11-11-156 states:

(A)(1) Beginning with fiscal year 2007-2008, school districts of this State must be reimbursed from the Homestead Exemption Fund in the manner provided in this subsection. The reimbursement due a school district for fiscal year 2007-2008 and thereafter consists of three tiers. The tier one reimbursement is an amount equal to the amount received by the district pursuant to the provisions of Section 12-37-251 as those provisions applied for fiscal year 2006-2007. The tier one reimbursement is fixed at the fiscal year 2006-2007 amount and continues into succeeding fiscal years at this fixed amount. The tier two reimbursement is the amount to be received by the district pursuant to the provisions of Section 12-37-270 for fiscal year 2006-2007 for the school operating millage portion of the reimbursement for the homestead exemption allowed pursuant to Section 12-37-250. The tier two reimbursement is fixed at this fiscal year 2006-2007 amount and continues into succeeding fiscal years

at this fixed amount. The tier three reimbursement is derived from the revenue of the tax imposed pursuant to Article 11, Chapter 36 of Title 12, and for fiscal year 2007-2008, consists of an amount equal dollar for dollar to the revenue that would be collected by the district from property tax for school operating purposes imposed by the district on owner-occupied residential property for that fiscal year as if no reimbursed exemptions applied, plus an amount that a district may have received in its fiscal year 2006-2007 reimbursements pursuant to Section 12-37-251 in excess of the computed amount of that exemption from school operating millage for that year, reduced by the total of the district's tier one and tier two reimbursements.

(2) Beginning in fiscal year 2008-2009 a school district shall receive in reimbursements the total of what it received in fiscal year 2007-2008 plus the tier three reimbursement increases provided for in item (3). The tier three reimbursement increases of the several school districts as provided in item (3) for any year must be aggregated and the reimbursement increase a particular school district shall receive for that year must be equal to an amount that is the school district's proportionate share of such funds based on the district's weighted pupil units as a percentage of statewide weighted pupil units as determined annually pursuant to the Education Finance Act. For purposes of the reimbursement increases school districts receive under this subsection based on weighted pupil units determined pursuant to the Education Finance Act, an additional add-on weighting for students in poverty of 0.20 must be included in the weightings provided in Section 59-20-40(1)(c) of the 1976 Code. The weighting for poverty shall provide additional revenues for students in kindergarten through grade twelve who qualify for Medicaid or who qualify for reduced or free lunches, or both. Revenues generated by this weighting must be used by districts and schools to provide services and research-based strategies for addressing academic or health needs of these students to ensure their future academic success, to provide summer school, reduced class size, after school programs, extended day, instructional materials, or any other research-based educational strategy to improve student academic performance.

(3)(a) Beginning with the fiscal year 2008-2009 reimbursements, these tier three reimbursements must be increased on an annual basis by an inflation factor equal to the percentage increase in the previous year of the Consumer Price Index, Southeast Region, as published by the United States Department of Labor, Bureau of Labor Statistics plus the percentage increase in the previous year in the population of the State as determined by the Office of Research and Statistics of the State Budget and Control Board. Distribution of these reimbursement increases must be as provided in this subsection.

(b) If the total increase provided pursuant to subitem (a) of this item is less than four percent, then to the extent revenues are available in the Homestead Exemption Fund, the CPI/population increase provided pursuant to subitem (a) of this item is further increased, not to exceed a total of four percent.

(4) The percentage of population growth in any year for any school district entitled to reimbursements from the Homestead Exemption Fund must be based on estimates for such growth in the county wherein the school district is located as determined by the Office of Research and Statistics of the State Budget and Control Board. Where the school district encompasses areas in more than one county, the population growth in that entity must be the average of the growth in each county weighted to reflect the existing population of the school district in that county as compared to the existing population of the school district as a whole.

(5)(a) No later than December thirty-first of each year, the Office of Research and Statistics of the State Budget and Control Board shall provide each school district with a preliminary estimate of the district's reimbursements from the Homestead Exemption Fund for the fiscal year beginning the following July first. A final estimate must be provided to each district by February fifteenth. The February fifteenth forecast may be adjusted if the Office of Research and Statistics determines that changing conditions have affected the forecast.

(b) The Department of Revenue shall pay the reimbursements provided pursuant to this subsection to the county treasurer for the credit of each school district in the county. The reimbursement must be paid on the application of the county treasurer according to the following schedule:

(i) ninety percent of the tier one reimbursement must be paid in the last quarter of the calendar year no later than December first. The balance of the tier one reimbursement must be paid in the last quarter of the fiscal year that ends June thirtieth following the first tier one reimbursement date;

(ii) tier two reimbursements must be paid on the same schedule as the second tier one reimbursement;

(iii) tier three reimbursements must be paid in nine equal monthly installments based on one-tenth of the Office of Research and Statistics estimate, beginning not later than October fifteenth. A final adjustment balance payment must be made before the closing of the state's books for the fiscal year.

(6) To the extent revenues in the Homestead Exemption Fund are insufficient to pay all reimbursements to a school district required by this subsection (A) and subsection (B), the difference must be paid from the state general fund. However, no general fund revenues may be used to achieve the distribution provided pursuant to item (3)(b) of this subsection.

(7) Operating millage levied in a county for alternative schools, career and technology centers, and county boards of education whether or not levied countywide or on a school district by school district basis in a county also is considered school operating millage to which the reimbursements provided for in this section apply.

(8) Reimbursements to a school district under this subsection must be considered in the computation of the required Education Improvement Act maintenance of local effort.

(B)(1) After the required reimbursements to school districts in a county have been made from the Homestead Exemption Fund for any year pursuant to subsection (A), a county, if the districts in that county have not together received a total of at least two million five hundred thousand dollars in tier three reimbursements, must receive an additional disbursement from the Homestead Exemption Fund to bring the total reimbursements to the districts in that county to at least two million five hundred thousand dollars. This additional disbursement must be paid to the county for disbursement to the school districts located within that county. These distributions under this subsection to any district in the county must be equal to the one hundred thirty-five day average daily membership of the district divided by the total average daily membership of all students in the districts in the county times the required amount of funds to bring the total reimbursements to the school districts in that county to at least two million five hundred thousand dollars.

(2) If a school district encompasses more than one county, the one hundred thirty-five day average daily membership of the students from that county attending schools of the district must be used to compute the distributions required by this subsection.

(3) The distributions to a county and then to a school district under this subsection must be considered to be outside of the Education Finance Act and must not be considered when computing the maintenance of local effort required of that district under the Education Improvement Act.

(C) When determined, any balance in the Homestead Exemption Fund remaining at the end of a fiscal year after the payments to school districts and counties pursuant to subsections (A) and (B) of this section must be segregated within the Homestead Exemption Fund and remitted in the next fiscal year to counties in the proportion that the population of the county is to the total population of the State. Population data must be as determined in the decennial United States Census and the most recent update to that data as determined by the Office of Research and Statistics of the State Budget and Control Board. Revenues received by the county must

be used to provide a property tax credit against the property tax liability for county operations on owner-occupied residential property classified for property tax purposes pursuant to Section 12-43-220(c). The credit is an amount determined by dividing the total estimated revenues credited to the county during the applicable fiscal year by the number of parcels in the county eligible for the credit. Credit that exceeds the tax due on a parcel must be reallocated in a uniform amount to remaining parcels with a property tax liability for county operations. The distributions under this subsection are not an obligation of the state general fund if sufficient funds are not available to make such distributions from the Homestead Exemption Fund.

(D) Notwithstanding another provision of this section, in the case of a redevelopment project area created pursuant to Chapter 6, 7, or 12 of Title 31, the reimbursements provided pursuant to this section for the property tax exemption allowed by Section 12-37-220(B)(47) must include full payment to the city or county creating the redevelopment project area for amounts that would have been payable to the special tax allocation fund created pursuant to that chapter if no such exemption existed.

2007 S.C. Acts No. 57; 2007 S.C. Acts No. 116. This provision appears similar to section 12-37-251. However, it accounts for the changes in the homestead exemption under the Act.

In your letter, you question what is included in the term school when referring to the school operating millage now exempt under the Act and eligible for reimbursement under section 11-11-156. Given our reading of section 11-11-156 and its similarities to section 12-37-251, we are of the opinion that the term school includes the same items we interpreted it to include under section 12-37-251. First, section 11-11-156 makes numerous references to “school districts” when explaining who receives reimbursement under this provision. Thus, just as the Department found and we agree, the school operating millage from which certain property owners are exempt would be that imposed for “fee education to students in kindergarten through 12, including district and area vocational schools.” In addition, section 11-11-156(A)((7), like section 12-37-251(B)(3), specifically states that the operating millage “levied in a county for alternative schools, career and technology centers, and county boards of education whether or not levied countywide or on a school district by school district basis in a county also is considered school operating millage to which the reimbursements provided for in this section apply.” Thus, we believe these additional items are also included as part of school operating millage.

Conclusion

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Giving great weight to the Department's interpretation and based on our own analysis, we believe school operating millage as referred to in section 12-37-251 includes millage imposed for the purpose of funding education for kindergarten through twelfth grade, school districts and school boards, vocational schools, career and technology centers, and alternative schools. The Legislature significantly amended this provision as part of the 2006 Property Tax Reform Act and eliminated most of its provisions. By the same legislation, the Legislature added sections 11-11-155 and 11-11-156 of the South Carolina Code. Section 11-11-156, similar to section 12-37-251, provides for reimbursement of school districts through the Homestead Exemption Fund. In reading this provision, we interpret millage received for school operating purposes under this provision to mean the same thing as school operating millage referred to in section 12-37-251. Thus, school operating millage for purposes of section 11-11-156 includes millage levied for funding education for kindergarten through twelfth grade, school districts and school boards, vocational schools, career and technology centers, and alternative schools.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

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