

July 1, 2008

The Honorable Stephen T. Draffin
Code Commissioner and Executive Director
South Carolina Legislative Council
Post Office Box 11489
Columbia, South Carolina 29211-1489

Dear Mr. Draffin:

We received your letter requesting an opinion of this Office concerning the interpretation of a recent amendment to section 15-41-30 of the South Carolina Code. According to your letter:

By Act 225 of 2008 (H.3816) the General Assembly amended Section 15-41-30 of the 1976 Code increasing various of the amounts of value of property (not including the homestead exemption amount) exempt from attachment, levy, and sale in a bankruptcy or other court proceeding. In Section 15-41-30(B) of the act, a biennial adjustment for inflation of these amounts is required.

Based upon this information, you desire an opinion of this Office on the following issues:

- (1) As of July 1, 2008, what values are in effect for the exemptions allowed pursuant to the dollar amounts specified in all but item (1) of Section 15-41-30(A); and
- (2) What value is in effect as of July 1, 2008, for the homestead exemption amount specified pursuant to Section 15-41-30(A)(1)?

Law/Analysis

Section 15-41-30 of the South Carolina Code (Supp. 2007) allows debtors domiciled in South Carolina to exempt certain property from attachment, levy, and sale by a court or in connection with a bankruptcy or other court proceeding. In 2006, the General Assembly amended section 15-41-30(1) pertaining specifically to homestead exemptions. 2006 S.C. Acts 2356. This amendment increased the amount of the exemption from five thousand for a single exemption and ten thousand

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for multiple exemptions residing in a single living unit to fifty thousand and one hundred thousand dollars, respectively. Id. In addition, the amendment added language requiring an increase of the exemption amount every year beginning July 1, 2007 based on the Southeastern Consumer Price Index. As amended, section 15-41-30(1) read:

(1) The debtor's aggregate interest, not to exceed fifty thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor, except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed one hundred thousand dollars. If there are multiple owners of such a living unit exempt as a homestead, the value of the exemption of each individual owner may not exceed his fractional portion of one hundred thousand dollars. Beginning on July 1, 2007, and each year thereafter, each dollar amount in subsection (1) of this section, immediately before July first, shall be adjusted to reflect the change in the Southeastern Consumer Price Index, All Urban Consumers, as published by the Department of Labor, Bureau of Labor Statistics, for the most recent year ending immediately before January first preceding July first, and to round to the nearest twenty-five dollars the dollar amount that represents this change. No later than March first of each year, the Economic Research Section of the Office of Research and Statistics of the Budget and Control Board shall publish in the State Register the dollar amounts that will become effective on each July first.

As you mentioned in your letter, the General Assembly recently amended section 15-41-30 via act 225 of 2008. As amended, this statute provides:

(A) The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding:

(1) The debtor's aggregate interest, not to exceed fifty thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor, except that the aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not

exceed one hundred thousand dollars. If there are multiple owners of such a living unit exempt as a homestead, the value of the exemption of each individual owner may not exceed his fractional portion of one hundred thousand dollars.

(2) The debtor's interest, not to exceed five thousand dollars in value, in one motor vehicle.

(3) The debtor's interest, not to exceed four thousand dollars in aggregate value in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand dollars in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in cash and other liquid assets to the extent of a value not exceeding five thousand dollars, except that this exemption is available only to an individual who does not claim a homestead exemption. The term 'liquid assets' includes deposits, securities, notes, drafts, unpaid earnings not otherwise exempt, accrued vacation pay, refunds, prepayments, and other receivables.

(6) The debtor's aggregate interest, not to exceed one thousand five hundred dollars in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) The debtor's aggregate interest in any property, not to exceed five thousand dollars in value of an unused exemption amount to which the debtor is entitled pursuant to subsection (A), items (1) through (6).

(8) Any unmaturred life insurance contract owned by the debtor, other than a credit life insurance contract.

(9) The debtor's aggregate interest, not to exceed in value four thousand dollars less any amount of property of the estate transferred in the manner specified in Section 542(d) of the Bankruptcy Code of 1978, in any accrued dividend or interest under, or loan value of, any

unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(10) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(11) The debtor's right to receive or property that is traceable to:

(a) a social security benefit, unemployment compensation, or a local public assistance benefit;

(b) a veteran's benefit;

(c) a disability benefit, except as provided in Section 15-41-33, or an illness or unemployment benefit;

(d) alimony, support, or separate maintenance; or

(e) a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless:

(i) the plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(ii) the payment is on account of age or length of service; and

(iii) the plan or contract does not qualify under Sections 401(a), 403(a), 403(b), or 409 of the Internal Revenue Code of 1954 (26 USC 401(a), 403(a), 403(b), or 409).

(12) The debtor's right to receive or property that is traceable to:

(a) an award under a crime victim's reparation law;

(b) a payment on account of the bodily injury of the debtor or of the wrongful death or bodily injury of another individual of whom the debtor was or is a dependent; or

(c) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(13) The debtor's right to receive individual retirement accounts as described in Sections 408(a) and 408A of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan. For purposes of this item, 'Internal Revenue Code' has the meaning provided in Section 12-6-40(A).

(14) The debtor's interest in a pension plan qualified under the Employee Retirement Income Security Act of 1974, as amended.

(B) Beginning on July 1, 2008, and each even-numbered year thereafter, each dollar amount in a subsection (A), items (1) through (14), immediately before July first, must be adjusted to reflect the change in the Southeastern Consumer Price Index, All Urban Consumers, as published by the Department of Labor, Bureau of Labor Statistics, for the most recent year ending immediately before January first preceding July first, and to round to the nearest twenty-five dollars, the dollar amount that represents this change. No later than March first of each even-numbered year, the Economic Research Section of the Office of Research and Statistics of the State Budget and Control Board will publish in the State Register the dollar amounts that will become effective on July first of each even-numbered year.

2008 S.C. Acts No. 225.

Pursuant to act 225, section 15-41-30 continues to provide a fifty thousand dollar (or one hundred thousand dollar, as the case may be) homestead exemption, but increased the exemption amounts for most all other types of listed property. Id. The act removed the language calling for an adjustment to the exemption amount from the portion of the statute dealing with the homestead exemption. Id. However, the amendment added similar language in subsection (B), which is applicable to all types of property listed. Id.

In order to address your first question, we must interpret subsection (B) of section 15-41-30 to determine what adjustments, if any, are necessary to the exemption amounts currently provided in subsection (A). Thus, we must employ the principles of statutory interpretation, particularly the

cardinal rule, which is to ascertain and effectuate the intent of the General Assembly. In re Hospital Pricing Litigation, King v. AnMed Health, 377 S.C. 48, 54, 659 S.E.2d 131, 134 (2008). “The legislature’s intent should be ascertained primarily from the plain language of the statute. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute’s operation.” State v. Landis, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004). Moreover, “[w]here the 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.” Pee Dee Reg’l Transp. v. S.C. Second Injury Fund, 375 S.C. 60, 62, 650 S.E.2d 464, 465 (2007).

Subsection (B) clearly provides that adjustments to the amounts set forth in subsection (A) are required “[b]eginning on July, 1 2008 . . .” S.C. Code Ann. § 15-41-30(B). Thus, based on the plain language provided in the statute, we believe the exemption amounts listed in subsection (A) must be adjusted on July 1, 2008 to reflect the change in the Southern Consumer Price Index. However, we understand some confusion arose as to whether the amounts listed in subsection (A) must be adjusted as of July 1, 2008. The General Assembly, through act 225, recently amended the exemption amounts for each type of exempted property, but subsection (B) appears to call for yet another adjustment based on the Southeastern Consumer Price Index. Furthermore, subsection (B) requires the Economic Research Section of the Office of Research and Statistics to publish the adjusted amounts in the State Register no later than the March first prior to the July first in which the adjustment become effective. According to Act 225’s legislative history, the amendments to section 15-41-30 did not become law until May 22, 2008. Thus, the Economic Research Section of the Office of Research and Statistics could not publish the adjusted amounts in the State Register by March 1, 2008. Based on these circumstances, some argue the exemption amounts listed in subsection (A) should not be adjusted on July 1, 2008, but that adjustments to these amounts should not begin until July 1, 2010.

The application of section 15-41-30, as amended, appears problematical at best. We appreciate the concern that the General Assembly may not have intended to establish exemption amounts listed in subsection (A), which became effective on May 22, 2008, only to require the adjustment of those amounts a little over a month later. In addition, we understand that due to the timing of the passage of the legislation, notice was not given regarding the adjustments to the exemption amounts on March 1, 2008. Nonetheless, in our reading of section 15-41-30(B), the language provided is clear. We found no ambiguity in words or terms used. Thus, we do not believe we can read an alternate date to begin adjusting the exemption amounts into this provision. See Independence Ins. Co. v. Indep. Life & Acc. Ins. Co., 218 S.C. 22, 34, 61 S.E.2d 399, 405 (1950) (“The purpose of construction is to ascertain the legislative intent from the words used; and, if these are susceptible to any sensible meaning, the court cannot add to them other words which would give them a different meaning without making, instead of construing, the statute.”). Only the General Assembly can change the words of a statute. Accordingly, we are of the opinion that the exemptions allowed as of July 1, 2008 are the amounts provided in subsection (A) of section 15-41-30 adjusted to reflect the Southeastern Consumer Price Index as provided in subsection (B) of section 15-41-30.

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Next, you specifically inquire as to the amount of the homestead exemption as of July 1, 2008. As explained above, the General Assembly amended that portion of section 15-41-30 both in 2006 and in 2008. In the 2008 amendment, the General Assembly removed the language from the homestead exemption provision requiring an adjustment based on the change Southeastern Consumer Price Index every year. Thus, after the passage of act 225, but prior to July 1, 2008, the exemption amount appears to be fifty thousand dollars for a single debtor or one hundred thousand dollars for a single living unit if multiple homestead exemptions are allowed. However, as of July 1, 2008, according to our analysis above, we believe the exemption amount is the amount listed in subsection (A)(1) adjusted to reflect the change in the Southeastern Consumer Price Index.

Conclusion

Based upon the plain and ordinary meaning of the literal language used in section 15-41-30(B) of the South Carolina Code, we are of the opinion that the exemption amounts allowed for the property listed in section 15-41-30(A) are the amounts provided in subsection (A) adjusted to reflect the change in the Southeastern Consumer Price Index. Accordingly, with regard to the homestead exemption, we believe the allowable amount is the amount provided in subsection (A) adjusted to reflect the change in the Southeastern Consumer Price Index.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General