



ALAN WILSON  
ATTORNEY GENERAL

May 17, 2011

Sharon H. West, Auditor  
Office of Spartanburg County Auditor  
County Administration Building, Suite 200  
366 North Church Street  
Spartanburg, South Carolina 20303

Dear Ms. West:

We are in receipt of your letter requesting an opinion of this Office regarding an interpretation of S.C. CODE ANN. § 12-37-2270, which addresses a corporation's forfeiture of its charter as a result of failure to pay taxes. Specifically, you ask whether S.C. CODE ANN. § 12-37-2270 applies to ad valorem county taxes and whether this Office would bring an action against a corporation for the non-payment of a county tax. This opinion addresses relevant law, prior opinions, and statutory construction.

### **Law/Analysis**

South Carolina statutory law provides that

[w]hensoever any corporation chartered under the laws of this State shall refuse, neglect or omit to pay the taxes for State and county purposes, as assessed and levied upon the property of such corporation, within thirty days after the time required and permitted by law for taxes to be paid with or without penalty, as required by law, the charter of such corporation, with all the rights, privileges and franchises thereunder, shall become and be deemed forfeited and the corporate existence of such corporation shall be annulled.

In every such case the Attorney General shall bring an action against such corporation for the purpose of vacating the charter or annulling the existence of such corporation in the manner prescribed by § 15-63-30.<sup>1</sup>

S.C. CODE ANN. § 12-37-2270. With regard to your question as to whether this statutory language would include an ad valorem county tax, we turn to the meaning of ad valorem as well as the plain language of the statute. "The essential characteristic of an ad valorem tax is that the tax is levied according to the value of property, as determined by an

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<sup>1</sup> Act No. 444 repealed S.C. CODE ANN. § 15-63-30 in 1988.

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assessment or appraisal.” 71 AM. JUR.2D State and Local Taxation § 18. Further, “[t]he phrase ‘ad valorem’ means, literally, ‘according to the value,’ and is used in taxation to designate an assessment of taxes against property, real or personal, at a certain rate upon its value.” *Id.* “The words used in [a] statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” *Wortman v. Spartanburg*, 310 S.C. 1, 3, 425 S.E.2d 18, 19 (1992). As the statute pertains to “taxes for State and **county purposes**, as assessed and **levied upon the property** of such corporation,” it appears, based on the plain language of the statute, that the statute includes an ad valorem county tax. (emphasis added).

With regard to whether this Office would bring an action against a corporation for the non-payment of a county tax, this Office cannot issue an opinion as to a matter which does not raise a legal question. The enforcement policy of the Office of Attorney General is not within the scope of an opinion of this Office. Moreover, the decision as to whether to bring a lawsuit necessarily depends on the specific, individual facts and circumstances of the particular situation at issue. We would note, however, that budget cuts and revenue shortfalls have reduced funding in this Office substantially over the past several months. Accordingly, although it is beyond the scope of our authority to issue an opinion as to whether this Office would bring a lawsuit in any particular situation, we simply note that each case would necessarily turn on its specific facts and circumstances.

### Conclusion

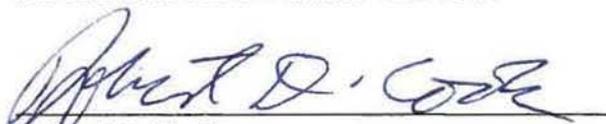
In the opinion of this Office, the plain language of S.C. CODE ANN. § 12-37-2270 would include an ad valorem county tax. Your question with regard to whether this Office would bring an action against a corporation for the non-payment of a county tax is beyond the scope of the subject matters on which this Office is authorized to issue opinions. However, we note that each individual situation would necessarily depend on its specific, individual facts and circumstances.

Sincerely,



ElizabethAnn L. Felder  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General