



ALAN WILSON
ATTORNEY GENERAL

June 7, 2012

The Honorable Deborah A. Long
Representative, District No. 45
414-A Blatt Building
Columbia, South Carolina 29201

Dear Representative Long:

On behalf of your constituent, you have submitted a request for an opinion of this Office concerning the fair market value of real property for the purposes of calculating *ad valorem* tax. Specifically, you have inquired whether this Office “has instructed county tax assessors” not to allow changes in the fair market value for tax purposes where the value of the property at issue has decreased since the most recent countywide reassessment. In addition, your constituent notes as follows: “I have noticed in the past that if a property sells for more [than] the assessed value that the county automatically ups the appraised value. However, if the property sells for less than the assessed value then nothing changes.”

In this opinion, we will address both of these concerns. As an initial matter, however, we must note that the advice of this Office concerning the current status of the law should not be construed as a comment on the wisdom of the underlying policy. Like the county tax assessors themselves, this Office is bound by the terms of the relevant statutes. Only the General Assembly has the power to alter the current tax structure in order to address your constituent’s concerns. *See, e.g.*, S.C. Const. art. X, § 6 (“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.”).

Analysis

Change in value in a non-reassessment year

Section 12-37-3140 of the South Carolina Code (Supp. 2011) provides in relevant part 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.

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

....

(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.

As section (A)(1) of the above-quoted statute makes clear, the fair market value that will be used to calculate *ad valorem* taxes on real property is fixed at certain dates unless one of the statutory conditions triggers a change in that value. *Accord* Letter to the Honorable Donald C. Smith, Op. S.C. Att’y Gen. (Jan. 29, 2007) (“[T]he Assessor, in the absence of one of the recognized exceptions, may only reassess property in a reassessment year.”).

Moreover, pursuant to section 12-43-215 of the South Carolina Code (2000 & Supp. 2011), “[w]hen 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.” (Emphasis added). Thus, the appeal of a value determined during countywide appraisal may not rely upon evidence regarding changes in market conditions after that time.

For these reasons, we concluded in an opinion of this Office dated June 9, 2010, that “[a]djustors must follow State law and refrain from creating unauthorized systems of valuation to compensate for the downturn in the market.” Letter to The Honorable Alan D. Clemmons, Op. S.C. Att’y Gen. (June 9, 2010) (enclosed with your request). As noted at the outset, it is within the power of the General Assembly to alter these statutes if it so desires.

Change in value at the time of a sale

Section 12-37-3130 of the South Carolina Code defines an “assessable transfer of interest” as “a transfer of an existing interest in real property that subjects the real property to appraisal.” Section 12-37-3150(A) enumerates several types of assessable transfer of interest, and section 12-37-3160(A) empowers the Department of Revenue to promulgate regulations to further clarify this term. Pursuant to section 12-37-3140(E), “changes in value resulting from assessable transfers of interest occurring in a property tax year are first subject to property tax in the following tax year” Accordingly, your constituent is correct that the value used to calculate *ad valorem* taxes can increase as the result of a sale of property, provided the sale constitutes an assessable transfer of interest and no other provision prevents or limits such increase. *See, e.g.*, S.C. Code Ann. § 12-37-3135 (exempting for certain eligible properties a portion of any such increase).

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As to a scenario in which a property is marketed for sale at an amount less than the current value used in assessing property taxes but has not yet sold at that lesser amount, we find no statutory provision allowing for a change in the value used for taxation. Rather, section 12-37-3150(A) provides, in relevant part:

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

(Emphasis added).

Nevertheless, once an assessable transfer of interest occurs, section 12-37-930 would demand that the resulting appraisal reflect a reasonable estimate of the then-current value of the property. *Id.* (“All property must be valued for taxation at its 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.”).

Conclusion

Section 12-37-3140 defines the times at which the fair market value of real property will be determined for the purpose of imposing an *ad valorem* tax. Assessors lack the authority to defy the clear mandates of statute in order to accommodate property owners who suffer a decrease in the value of their property. Likewise, this Office must base its advice upon the statutes as written. We are aware of no relevant change in the law since the June 9, 2010, opinion you enclosed with your request.

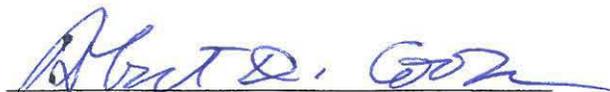
As your constituent has noted, an assessable transfer of interest will trigger a new appraisal of the relevant property. This new appraisal should reflect the current fair market value of the property, unless an exemption applies.

Very truly yours,



Dana E. Hofferber
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General