



ALAN WILSON
ATTORNEY GENERAL

August 9, 2013

The Honorable Michael E. Reed
Edgefield County Assessor
129 Courthouse Square, Suite 109
Edgefield, South Carolina 29824

Dear Mr. Reed:

Attorney General Alan Wilson has referred your letter of April 24, 2013 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issues (as stated in your letter):

- 1) *A S.C. licensed builder created a LLC. Deeded to this new LLC were over ten lots that came from other builders and individuals. The lots were originally platted and recorded after January 1, 2001 in the same subdivision. All those who deeded their lots to the new LLC became members of the new LLC with an interest in it. All of the lots deeded to the new LLC that came from builders did not receive any lot discounts, provided to builders between the dates December 31, 2008 and before January 1, 2012. Most of the lots had sold two to four times since they were developed and before they ended up in the new LLC. Some were sold to end users (individuals or families planning to build on them) who sold their lots back to the developer or to one of the builders. Would the lots qualify for the multiple lots discount?*
- 2) *An individual or an entity in the business of residential development acquires ten or more lots in the same subdivision. The lots were bought from a lending institution who acquired the lot by a deed in lieu of foreclosure. The lots were originally platted and recorded after January 1, 2001 in the same subdivision. The lots had a multiple lot discount for 4 years until acquired by the lending institution. The lots were denied the discount for the 2011 tax year because they were sold to the lending institution. The denial at the time was based on 12-43-224(2) "ten or ore unsold lots" and 12-43-225(A) "discounted value applied for five property tax years or until the lot is sold." Would the lots qualify for the multiple lots discount?*

Short Answers: Based on the facts as given, this Office does not believe the taxpayer in either scenario would qualify for the discount.

Law/Analysis:

As you provide in your letter, South Carolina Code § 12-43-224 states:

Notwithstanding the requirement that real property is required by law to be appraised at fair market value for ad valorem tax purposes, when undeveloped acreage is surveyed into subdivision lots and the conditional or final plat is recorded with the appropriate county official, the county assessor shall appraise each lot as an individual property and then discount his gross actual market value estimate of the developer's lot holdings under the following conditions:

1. The discount rate shall include only:
 - (a) typical interest rate as charged by developers within the county to purchasers of lots when the purchase is financed by the developer or, in the absence of financing by the developer, the typical interest rate charged by local savings & loan institutions for mortgages on new homes.
 - (b) the effective tax rate for the tax district that the lots are located in.
2. The developer has ten or more unsold lots within the homogeneous area on the December 31 tax control date.
3. The assessor shall determine a reasonable number of years for the developer to sell the platted lots, however the estimate shall not exceed seven years.

Each of these components shall be based on identifiable factors in determining "The Present Worth of Future Benefits" based on the discounting process.

Platted lots shall not come within the provisions of this section unless the owners of such real property or their agents make written application therefore on or before May 1st of the tax year in which the multiple lot ownership discounted value is claimed.

The application for the discounted value shall be made to the assessor of the county in which the real property is located, upon forms provided by the county and approved by the department and a failure to so apply shall constitute a waiver of the discounted value for that year.

No lots platted and recorded not receiving the discount provided in this section on December 31, 2011, may receive the discount provided in this section.

S.C. Code § 12-43-224 (1976 Code, as amended). South Carolina Code § 12-43-225 states:

(A) For subdivision lots in a plat recorded on or after January 1, 2001, a subdivision lot discount is allowed in the valuation of the platted lots only as provided in subsection (B) of this section, and this discounted value applies for five property tax years or until the lot is sold or a certificate of occupancy is issued for the improvement on the lot, or the improvement is occupied, whichever of them elapses or occurs first. When the discount allowed by this section no longer applies, the lots must be individually valued as provided by law.

(B) To be eligible for a subdivision lot discount, the recorded plat must contain at least ten building lots. The owner shall apply for the discount by means of a written application to the assessor on or before May first of the year for which the discount is initially claimed. After initially qualifying for the discount provided in this section, no further application is required, unless ownership of the property changes. A property owner may make a late application for the discount provided in this section until the thirtieth day following the mailing of the property tax bill for the year in which his

discount is claimed provided the application is in writing and accompanied by a one hundred dollar late application penalty, payable to the county treasurer for deposit to the county general fund. The value of each platted building lot is calculated by dividing the total number of platted building lots into the value of the entire parcel as undeveloped real property.

(C) If a lot allowed the discount provided by this section is sold to the holder of a residential homebuilder's license or general contractor's license, the licensee shall receive the discount through the first tax year which ends twelve months from the date of sale if the purchaser files a written application for the discount with the county assessor within sixty days of the date of sale.

(D)(1) For lots which received the discount provided in subsection (B) on December 31, 2011, there is granted an additional three years of eligibility for that discount in property tax years 2012, 2013, and 2014, in addition to any remaining period provided for in subsection (B). If ten or more lots receiving the discount under this item are sold to a new owner primarily in the business of real estate development, the new owner may make written application within sixty days of the date of sale to the assessor for the remaining eligibility period under this item.

(2) For lots which received the discount provided in subsection (C) after December 31, 2008, and before January 1, 2012, upon written application to the assessor no later than thirty days after mailing of the property tax bill, there is granted an additional three years of eligibility for that discount in property tax years 2012, 2013, and 2014. If a lot receiving the additional eligibility under this item is transferred to a new owner primarily in the business of residential development or residential construction during its eligibility period, the new owner may apply to the county assessor for the discount allowed by this item for the remaining period of eligibility, which must be allowed if the new owner applied for the discount within thirty days of the mailing of the tax bill and meets the other requirements of this section.

S.C. Code § 12-43-225.

Before we examine these particular questions, a background in tax interpretations would be helpful. Usually when one thinks of tax interpretation, he usually thinks of the long-recognized rule of statutory interpretation that any ambiguity in the imposition of a tax must be interpreted in favor of the taxpayer. Op. S.C. Atty. Gen., 1967 WL 12119 (April 28, 1967). However, there is another principle in tax interpretation applicable here. It says that any ambiguity regarding a tax exemption should be strictly scrutinized and that any such ambiguity should be resolved against the exemption and in favor of the tax. Op. S.C. Atty. Gen., 1979 WL 42729 (January 2, 1979) (citing Chronicle Publishers, Inc. v. South Carolina Tax Commission, 244 S. C. 192, 136 S.E.2d 261(1964)).

1) Under the scenario described above in Issue #1, would this taxpayer qualify for the multiple lot discount?

This Office is going to presume in this scenario the new LLC applied for the multiple lot discounts. Lindsey v. S.C. Tax Com., 302 S.C. 274, 395 S.E.2d 184 (1990). The South Carolina Department of Revenue put out a regulation concerning discounts for subdivided lands. It is this Office's longstanding policy (as it is in the courts) to defer to the administrative agency charged with the regulation concerning the subject matter. As this Office stated in a previous opinion, "as a general matter, it is well recognized that administrative agencies possess discretion in the area of effectuating the policy established by the Legislature in the agency's governing law. As our Supreme Court has recognized, 'construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons.' Op. S.C. Atty. Gen., October 20, 1997, quoting Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146, 148 (1986). The Courts have stated that it is not necessary that the administrative agency's construction be the only reasonable one or even one the court would have reached if the question had initially arisen in a judicial proceeding. III. Commerce Comm. v. Interstate Commerce Comm., 749 F.2d 825 (D.C.Cir. 1984). Typically, so long as an administrative agency's interpretation of a statutory provision is reasonable, we defer to that agency's construction." Op. S.C. Atty. Gen., 2006 WL 269609 (January 20, 2006). "Where the administrative interpretation has been formally promulgated as an interpretative regulation or has been consistently followed, this required deference is highlighted and the administrative interpretation is entitled to great weight." Op. S.C. Atty. Gen., 1990 WL 482427 (May 1, 1990) (citing Marchant v. Hamilton, 279 S.C. 497, 309 S.E.2d 781 (1983)). Therefore, let us examine the regulation by the South Carolina Department of Revenue pertaining to these statutes. The regulation says:

Code Sections 12-43-224 and 12-43-225 of the South Carolina Code of Laws provides a discount from market value for subdivided land.

For purposes of Code Sections 12-43-224 and 12-43-225, a subdivision is a tract of land which has been divided by a developer into separate parcels or lots with suitable streets, roadways, open areas, and appropriate facilities for development as residential, commercial or industrial sites that have been surveyed and a plat recorded with the appropriate county official.

A developer is someone who owns 10 or more building lots which are offered for sale in a subdivision on December 31 of the year immediately preceding the calendar year in which the developer wishes the discount to apply.

In order for the provisions of Sections 12-43-224 and 12-43-225 of the Code to apply, the owners of such real property or their agents must make written application before May 1st of the tax year in which the multiple lot ownership discount value is claimed. The application shall be made to the County Assessor upon forms provided by the county and approved by the Department. The failure to apply is treated as a waiver of the discount for that year.

Code Section 12-43-224 allows the current fair market value of the land to be discounted because the subdivided parcels will be sold over a period of years. The discount rate consists of the appropriate interest rate and effective tax rate. This rate is used to discount the value over the period it will take to sell the lots. Code Section 12-43-225 allows a further discount to the value of the land. This further discounted value is determined by dividing the total number of platted building lots into the value of the

entire parcel as undeveloped property and subtracting the result from the value of each lot as determined under Code Section 12-43-224. The difference between the value of each parcel as undeveloped property and the value of each parcel determined under Code Section 12-43-224 is then subtracted from each lots already discounted value under Code Section 12-43-224.

S.C. Code Regs. 117-1840.3 (2004) (emphasis added).

The regulation clarifies that, in addition to S.C. Code § 12-43-224, § 12-43-225 provides for a “further discount” for subdivided lands. Id. S.C. Code § 12-43-224 applies to subdivided lots recorded by December 31, 2011, while S.C. Code § 12-43-225 applies to plats recorded on or after January 1, 2001. Based on the facts as presented, this Office is going to presume the taxpayer is applying for the multiple lot discount pursuant to S.C. Code § 12-43-225 not S.C. Code § 12-43-224. Since the regulation appears clear and unambiguous, this Office will not look further to determine the meaning of the language in the regulation. This Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006).

However, the language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. S.C. Tax Commission, 292 S.C. 411, 357 S.E.2d 6 (1987). As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute’s interpretation must be “practical, reasonable, and fair” and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a “sensible construction,” and a “literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose.” U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)).

Based on the information provided, on the one hand the taxpayer appears to comply with some of the requirements of S.C. Code § 12-43-225. He owns more than ten lots, the plat was recorded after January 1, 2001, and, assuming he applied before May 1 of the year, the taxpayer could qualify. However, the regulation states the intent of S.C. Code § 12-43-225 is to provide “a further discount” to S.C. Code § 12-43-224. S.C. Code Regs. 117-1840.3 (2004). This would imply qualification for S.C. Code § 12-43-224 is found in S.C. Code § 12-43-225. Additionally, the intent appears to be a discount to the initial taxpayer who subdivides the land based on the five year limitation. The fact that that the discount applies until the lot is sold or occupied would imply this is only for the initial developer, not for a subsequent purchaser. S.C. Code § 12-43-225(A). Therefore, based on a plain reading of the statute and the fact that these lots have already been “sold,” this Office believes the taxpayer would not qualify for the discount.

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2) Under the scenario described above in Issue #2, would this taxpayer qualify for the multiple lot discount?

Again, this Office is going to presume in this scenario the new LLC applied for the multiple lot discounts. Lindsey v. S.C. Tax Com., 302 S.C. 274, 395 S.E.2d 184 (1990). Without knowing all of the background information or whether the taxpayer filed for the multiple lot discount pursuant to S.C. Code § 12-43-224 or § 12-43-225, it appears the denial was proper based on the plain language of the statute. If the taxpayer applied for the discount pursuant to S.C. Code § 12-43-224, the taxpayer should be denied the discount due to the fact that the subdivision was not receiving the discount on December 31, 2011. The last sentence of S.C. Code § 12-43-224 is very clear when it says “[n]o lots platted and recorded not receiving the discount provided in this section on December 31, 2011, may receive the discount provided in this section.” Likewise, if the taxpayer filed for the multiple lot discount pursuant to S.C. Code § 12-43-225, they would not qualify pursuant to Section (A), which limits the tax discount “until the lot is sold.”

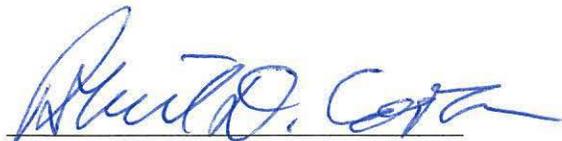
Conclusion: This Office is only issuing a legal opinion in regards to the above analyses. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General