



ALAN WILSON  
ATTORNEY GENERAL

September 23, 2013

The Honorable Todd K. Atwater  
Member, House of Representatives  
P. O. Box 1056  
Lexington, South Carolina 29071

Dear Representative Atwater:

Attorney General Alan Wilson has referred your letter of August 2, 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.

**Issue:** May a builder (who is the property owner) file a late application for a fee in order to apply for the multiple lot discount pursuant to South Carolina Code § 12-43-225?

**Short Answer:** This Office believes a court would likely conclude that a builder who is the property owner may file a late application with the late fee for the multiple lot discount pursuant to S.C. Code § 12-43-225.

**Law/Analysis:**

By way of background, 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 (1976 Code, as amended) (emphasis added).

Before we examine these particular questions, a background in tax interpretations would be helpful. Usually when one thinks of tax interpretation, one may recall 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. The rules of statutory interpretation dictate that any ambiguity regarding a tax exemption should be strictly scrutinized and 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)).

This Office is going to presume in this scenario the builder is the property owner and applied for the multiple lot discount. Lindsey v. S.C. Tax Com., 302 S.C. 274, 395 S.E.2d 184 (1990). This Office has previously answered a similar question concerning the multiple lot discount. In a 2013 opinion, this Office stated:

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. Ill. 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)).

Op. S.C. Atty. Gen., 2013 WL 4497164 (August 9, 2013). **Therefore, implementing a plain reading of the statute, as long as the person making the late application is a “property owner” and pays the late fee, they are eligible to apply for the multiple lot discount pursuant to S.C. Code § 12-43-225.**

Additionally, this interpretation is consistent with the legislative intent, which reads:

AN ACT TO AMEND SECTION 12-43-225, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MULTIPLE LOT DISCOUNTS, SO AS TO PROVIDE THAT APPLICATION FOR THE DISCOUNTED RATE ONLY MUST BE MADE IN THE FIRST YEAR, TO PROVIDE THAT IF APPLICATION FOR THE DISCOUNTED RATE IS LATE, THE ASSESSOR STILL SHALL GRANT THE DISCOUNT IF ALL OTHER REQUIREMENTS ARE MET AND A LATE APPLICATION PENALTY IS PAID, AND TO PROVIDE AN ADDITIONAL THREE YEARS OF ELIGIBILITY IN CERTAIN CIRCUMSTANCES; ...

2012 S.C. Acts No. 179 (emphasis added).<sup>1</sup> **However, notwithstanding that a builder (as the property owner) is eligible to apply late for the multiple lot discount, he must still meet the other requirements under the statute.** Nevertheless the amendment should not be confused with the “grace” period otherwise in the statute, such as in S.C. Code § 12-43-225D(1) and D(2) which discuss the three additional years of eligibility and only allow sixty days after the date of the sale and thirty days from the mailing of the property tax bill, respectively. Without knowing the specific facts of the builder’s application, in the event of an inconsistency in the statute, the later-in-time intent of the legislature would control. Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943). In this situation the amendment was passed during the 2011-2012 session and specifically allowed for an extension “in this section” for a discounted rate as long as all the other requirements were met. 2012 S.C. Acts No. 179. “In this section” would likely mean Title 12, Chapter 43, Article 3 and Section B. Thus, based on a plain reading if there is a conflict, it is very likely a court will find the amendment would only apply to Section B. Id.

**Conclusion:** While this Office believes it is very likely a court will find the 2012 S.C. Acts No. 179 amending S.C. Code § 12-43-225 only applies to Section B, as long as the property owner meets all the requirements of the statute, he should be eligible to file a late application along with the late fee to apply for the multiple lot discount pursuant to S.C. Code § 12-43-225. However, this Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this

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<sup>1</sup> The 2012 amendment’s (S.C. Act 179) note says: The 2012 amendment in subsection (A), in the first sentence, deleted “and notwithstanding the provisions of Section 12-43-224,” following “January 1, 2001,” and deleted the comma following “or until the lot is sold”; rewrote subsection (B); in subsection (C), substituted “licensee shall receive the discount” for “discount continues” and “within sixty days of the date of sale” for “by May first of the year for which the applicant is claiming the discount”; and added subsection (D). S.C. Code Ann. § 12-43-225 (1976 Code, as amended).

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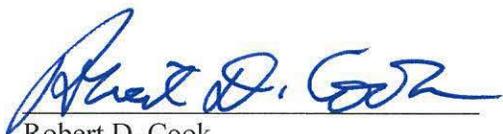
is only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,



Anita Smith Fair  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General