



ALAN WILSON
ATTORNEY GENERAL

November 13, 2013

The Honorable Peter Tecklenburg
Charleston County Auditor
P. O. Box 614
Charleston, South Carolina 29402-0614

Dear Auditor Tecklenburg:

Attorney General Alan Wilson has referred your letter of October 9, 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: Pursuant to South Carolina Code § 12-37-890 may the Charleston County Auditor's Office charge an annual personal property tax on an airplane owned by a limited liability company (LLC) with a physical address outside of South Carolina when the airplane has an annual lease at an airport within your county and is physically at the airport in your county approximately half of a calendar year?

Short Answer: This Office does not answer factual questions, so this Office will not address any factual issues. As far as the law reads, this Office has consistently opined and believes a court will find that an business airplane with a situs in South Carolina is subject to South Carolina's personal property tax found in South Carolina Code § 12-37-890. However, proving situs is a question of fact that would require more information that is outside the scope of an opinion, such as flight logs and services provided by the taxing authority.

Law/Analysis:

South Carolina Code Section 12-37-890 (1976 Code, as amended) states:

All horses, neat cattle, mules, asses, sheep, hogs, dogs, wagons, carts and other vehicles used in any business, furniture and supplies used in hotels, restaurants and other houses of public resort, **personal property used in or in connection with storehouses, manufactories, warehouses or other places of business, all personal property on farms and merchants' and manufacturers' stock and capital shall be returned for taxation and taxed in the county, city and town in which it is situated.** All bankers' capital and personal assets pertaining to their banking business shall be returned for taxation and taxed in the county, city or town in which the

banking house is located. All shares of stock in incorporated banks located in this State shall be returned for taxation and taxed in the county, city or town in which the bank is located. All property of deceased persons shall be returned for taxation and taxed in the county where administration may be legally granted, until distribution thereof and payment may be made to the parties entitled thereto. **All other personal property shall be returned for taxation and taxed at the place where the owner thereof shall reside at the time of listing the same, if the owner reside in this State; if not, at the residence of the person having it in charge. And all real estate shall be taxed in the county, city, ward or town where it is located.** The owners of real property situate partly within and partly without any incorporated town or city shall list the part in the town or city separately from the part outside the incorporated limits thereof.

(Emphasis added).

One principle this Office is quick to cite is 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, the tax found in South Carolina Code Section 12-37-890 does not appear to be ambiguous on its face. 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)).

This Office has previously answered similar questions regarding airplanes being taxed pursuant to South Carolina Code Section 12-37-890 (formerly § 65-1643 of the 1962 Code)¹ and has consistently opined airplanes would be taxed at their situs, which generally is at the airport where the aircraft is located if the owner is located out-of-state or if the aircraft is used for business. *See, e.g., Op. S.C. Atty. Gen.*, 1979 WL 43208 (December 17, 1979); 1966 WL 8614 (September 28, 1966); 1962 WL 9752 (October 18, 1962). Otherwise, this Office has opined an airplane should be taxed at the residence or domicile of its owner if the airplane is not used for business and if the owner is a resident of South Carolina. *Id.* This Office also previously opined South Carolina could tax boats permanently docked in South Carolina with North Carolina stickers and nonresident owners because South Carolina was the situs of the personal

¹ Please note you asked a similar question to this Office in a separate letter also dated October 9, 2013. We would encourage you to read that opinion in conjunction with this one.

property. Op. S.C. Atty. Gen., 1969 WL 10675 (May 7, 1969). A 1968 opinion to your office opined a boat not used in connection with a business should be returned to where its owner resides to be taxed unless the owner lives out-of-state and thus should be taxed at its situs. However, if the personal property is used in connection with a business, it should be taxed at the location thereof. Op. S.C. Atty. Gen., 1968 WL 8821. That opinion also quoted: “[t]he modern rule is that the actual situs of visible tangible personal property and not the domicil[e] of its owner determines the place of taxation.” Id. (citing 51 Am. Jur., *Taxation*, Sec. 452, p. 467). This Office has repeatedly stated “taxation of personal property is not wholly dependent upon the owner being a legal resident of South Carolina” and vehicles are “subject to taxation by South Carolina’s local governmental entities by virtue of their ‘more or less permanent’ location in this state.” Op. S.C. Atty. Gen., 2010 WL 5578962 (December 15, 2010) (citing Ops. S.C. Atty. Gen., 2001 WL 1215462 (September 10, 2001); 1969 WL 10786 (December 2, 1969)). A 1966 opinion said that:

The South Carolina statutes therefore specify that the aircraft shall be taxed where situated if used in a business, otherwise, the same are to be taxed where the owner thereof resides. ‘The general rule is that movable property which has a value of its own, instead of being merely the evidence or representative of value, and which has a visible or substantial existence, is taxable where it is usually or permanently kept; but, in the absence of any evidence that tangible personal property has an actual or permanent situs elsewhere than in the state of the owner’s domicile, it is taxable to the owner in such state.’ 84 C.J.S., Section 115, *Taxation*.... It is the opinion of this [O]ffice, therefore, that if the aircraft are used in a business, the taxable situs thereof would be the airport....

Op. S.C. Atty. Gen., 1966 WL 8614 (September 28, 1966). This Office has also previously opined “to acquire a tax situs... in a particular taxing jurisdiction, it is enough that the property be situated there with a degree of permanence which will distinguish it from property which is there on a transitory basis. 4 A.L.R.4th 483.” Op. S.C. Atty. Gen., 1984 WL 249924 (July 10, 1984).

This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). However, let us also look to other sources for information on this issue. The Supreme Court of South Carolina previously answered a question of taxation in Charleston County concerning personal property belonging to a business located outside of South Carolina. That case stated:

There are many cases, both State and Federal, which hold that taxes, otherwise lawful, are not invalidated by reason of the fact that the resulting benefits are unequally shared. It is evident from the record that Charleston County has given to Atkinson something for which it can ask return. It has been stipulated that opportunities, benefits and protections of Charleston County and the State of South Carolina were conferred upon or afforded to Atkinson during the period that it was dredging in Charleston Harbor. We take judicial notice that these benefits included police and fire protection, medical, recreational, educational and marine facilities.

Atkinson Dredging Co. v. Thomas, 266 S.C. 361, 223 S.E.2d 592 (1976). Moreover, it may be helpful to examine the South Carolina Department of Revenue’s rulings. One such ruling (# 98-12) addressed some

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issues concerning ad valorem personal property taxes on boats located in South Carolina. That ruling went on to state that:

Property operating in interstate commerce such as trains, airlines, and boats operating on inland waters may be taxed by both the domiciliary [fn 11] state and the non-domiciliary state provided the property is taxed on an apportioned basis by the two and provided the carrier has tax situs through regular physical presence with the domiciliary and non-domiciliary states. Japan Line Ltd. V. Los Angeles County, 441 U.S. 434, 99 S.Ct. 1813, 60 L.Ed.2d 336 (1979) [fn 12]. Standard Oil Co. v. Peck, 342 U.S. 382, 72 S.Ct. 309, 96 L.Ed. 427 (1952) [fn 13].

[FN 11: See Footnotes 1 and 2 above for a discussion of domicile.]

[FN 12: A domiciliary state is allowed to tax the entire value of the property even though part of the property is absent from the state during part of the tax year provided the property has not obtained a tax situs in another state. Central R. Co. of Pennsylvania v. Com. of Pennsylvania, 370 U.S. 607, 82 S.Ct. 1297, 8 L.Ed.2d 720 (1962), rehearing denied 371 U.S. 856 (1962). The taxpayer has the burden of establishing that property has obtained tax situs in a non-domiciliary state such that multiple jurisdictions have the ability to tax the property. *Id.* Whether property has acquired tax situs and, thus, nexus in a state other than the domiciliary state is a question of fact.]

[FN 13: Boats and barges owned by an Ohio corporation and traversing the Ohio River but only occasionally stopping in Ohio for fuel or repairs were held in Standard Oil Co. v. Peck, 342 US. 382, 96 L.Ed. 427, 72 S.Ct. 309 (1952), not to be taxable by Ohio on their entire value. Stating that most, if not all, of the barges and boats which Ohio had taxed were almost continuously outside Ohio during the tax year, and that while no one vessel may have been continuously in another state during the tax year, most, if not all, of them were operating in other waters and therefore could be taxed by the several states on an apportionment basis precluded taxation of all of the property by the state of domicile since otherwise there would be multiple taxation of interstate operations and the tax would have no relation to the opportunities, benefits, or protection which the taxing state gives those operations.]

While there are many other sources and cases on information regarding personal property too numerous for this opinion, this Office believes there is sufficient precedent to tax an airplane (or other personal property) registered in a different state if that personal property meets has a situs in the jurisdiction attempting to tax it pursuant to South Carolina Code § 12-37-890.

Conclusion: This Office has consistently opined and believes a court will find that a business airplane (or other such personal property) with a situs in South Carolina is subject to South Carolina's personal property tax found in South Carolina Code § 12-37-890. Based on the information provided to this Office, without making any factual determinations, this Office believes Charleston County Auditor's Office is authorized to tax personal property such as an airplane if the County can prove the plane's situs is in South Carolina. However, proving situs is a question of fact that would require more information that is outside the scope of an opinion, such as flight logs and services provided by the taxing authority. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an

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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