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ALAN WILSON
ATTORNEY GENERAL

October 16, 2014

The Honorable Charles T. Barton
Aiken County Auditor
P.O. Box 94
Aiken, SC 29802

Dear Auditor Barton:

Attorney General Alan Wilson has referred your letter dated July 25, 2014 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issues (as quoted from your letter):

#1: *We have a number of aircraft housed at the Aiken Regional Airport, but whose ownership is either an LLC or a Corporation domiciled in another State. We interpret 12-37-890 of the State Code of Laws to provide adequate basis for taxing these aircraft. Your office has opined consistently in the past that "an airplane used primarily for business purposes with a situs in South Carolina is subject to South Carolina's personal property...even if owned by an out-of-state company". Our question relates to the phrase "used primarily for business purposes". In the absence of information to the contrary, may this office assume that the use is primarily for business, since the aircraft is in a business name?*

#2: *Our second question relates to the definition of person, found in [S.C. Code §] 12-2-20. We understand the definition, and intend to employ that definition in taxation of aircraft. Our question is, Do we correctly interpret the combination of [S.C. Code §§] 12-2-20 and 12-37-890 to provide the basis for taxation of aircraft owned by an association (club, in our case), or LLC, even if the aircraft is housed in another state?*

#3: *Our third question relates to the Auditor's right to enter premises, as defined in [S.C. Code §] 12-39-120:*

Section 12-39-120. Auditor may enter and examine buildings (except dwellings) to ascertain value.

For the purpose of enabling the auditor to determine the value of buildings and other improvements, he may enter and fully examine all buildings and structures (except dwellings), of whatever kind, which are not by law expressly exempt from taxation.

In the event an Auditor is refused entry to a building, what steps can he or she take to ensure access? Are there precedents to be cited? Should the Auditor request assistance from the County Sheriff to gain access for purposes of determining personal property to be valued?

Law/Analysis:

1) Let us examine the "an airplane used primarily for business purposes" phrase you quote in your question. That phrase was used in the November 13, 2013 opinion (Op. S.C. Atty. Gen., 2013 WL

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6210752 (November 13, 2013)) and was taken from a 1966 opinion by this Office, which quoted the 1962 Code which stated: “***All horses*** and other vehicles used in any business*** shall be returned for taxation and be taxed in the county, city and town in which it is situated. ... All other personal property shall be returned for taxation and taxed at the place where the owner thereof shall reside...” Op. S.C. Atty. Gen., 1966 WL 8614 (September 28, 1966) (quoting S.C. Code § 65-1643 (1962 Code, as amended)). The 1966 opinion went on to state 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 office, therefore, that if the aircraft are used in a business, the taxable situs thereof would be the airport; however, if the same are not used in any business, the taxable situs would be at the owner’s domicile or residence as provided for by the statute hereinabove quoted.

Id. Though the statute has been amended, it still retains the language “all horses...” but now states “...personal property used in or in connection with storehouses, manufactories, warehouses or other places of business...shall be returned for taxation... in the county, city and town in which it is situated. ... All other personal property shall be returned for taxation and taxed at the place where the owner thereof shall reside at the time...” S.C. Code § 12-37-890. Thus the intent to distinguish personal property used in connection with places of business from all other personal property remains consistent in the statute. Before we answer your question, let us examine property used in connection with a place of business. The South Carolina Department of Revenue has a definition it uses for business personal property, as found on its website. It reads:

What is Business Personal Property Tax?

Business Personal Property Tax is a property tax on the furniture, fixtures and equipment that are owned and used to operate a business. Inventory, land and building should not be included on the Business Personal Property Return.

S.C. Department of Revenue, *Business Personal Property Tax* (last visited September 30, 2014) (available at <http://www.sctax.org/Tax+Information/Property+Tax/Business+Personal+Property+FAQs.htm>). As we have previously stated:

Our state legislature has chosen the Department of Revenue to administer and collect the local sales tax. S.C. Code § 4-10-90. As this Office has previously opined, “[i]t is this Office’s longstanding policy ... to defer to [[the interpretation of] the administrative agency charged with the regulation [[of] ... the subject

matter.” Op. S.C. Attv. Gen., 2013 WL 4497164 (August 9, 2013); 2013 WL 4873939 (September 5, 2013). As this Office stated in a previous opinion:

[A]s 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. Attv. Gen., [1997 WL 783366] 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. Attv. Gen., 2006 WL 269609 (January 20, 2006). ... **However, if you find [the Department of Revenue’s] interpretation is not reasonable or believe there is a further specific legal question you would like for this Office to answer, we will be glad to opine.**

Op. S.C. Attv. Gen., 2014 WL 1809641 (April 28, 2014). While you ask if you may assume the use of such an airplane is primarily for business purposes based on the name registered to the aircraft, we would recommend using a definition supplied by the Department of Revenue along with any other additional guidelines they have as the administration agency. To answer your first question generally, there can be inherent risk in assumptions. Therefore, we recommend using guidelines by the South Carolina Department of Revenue to better make your determination rather than relying on the name the personal property is registered in as the only factor in making such a determination. In such instances where you determine the airplane is used in a business, the burden may revert to the taxpayer to prove their aircraft was not primarily used for business (notwithstanding proving situs).

2) South Carolina Code § 12-37-890 states concerning where property shall be returned for taxation:

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.

S.C. Code § 12-37-890 (1976 Code, as amended) (emphasis added). South Carolina Code § 12-2-20 states:

As used in this title and in other titles that provide for taxes administered by the department, and unless otherwise required by the context, the term:

- (1) “person” includes any individual, trust, estate, partnership, receiver, association, company, limited liability company, corporation, or other entity or group; and
- (2) “individual” means a human being.

Let us address this question as two-fold. The first question is may a club be considered a person as defined in § 12-2-20. 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)). Therefore, we will not look to other statutes to determine the meaning of a “person” but will look to a clear and unambiguous meaning. Based on a plain interpretation of the term, it would seem “other entity or group” would include a club. S.C. Code § 12-2-20.

Now let us address the other part to your question. It is our understanding you are asking whether or not S.C. Code § 12-37-890 may be used to tax an airplane with situs in your county even though it is owned by an out-of-state club, assuming a club is included in the definition of a person as defined in South Carolina Code § 12-2-20. As you referenced in your letter, we would again refer you to our November 13, 2013 opinion addressing taxation of an airplane to be read in conjunction with this opinion. See Op.

S.C. Atty. Gen., 2013 WL 6210752 (November 13, 2013). While a court may read a club as being included in the definition of a person as defined in South Carolina Code § 12-2-20, we caution you to also look at the statutory intent of § 12-37-890. As we discussed in Answer #1, we believe our Legislature has consistently made a distinction in § 12-37-890 between where a business's personal property is taxed and where all other personal property is taxed. Therefore, we believe that statutory interpretation would also apply, and, if the property is used for business purposes, it "shall be returned for taxation and taxed in the county, city and town in which it is situated" while all other personal property would be taxed at the residence of the owner if South Carolina, and if not, then at the residence of the person in charge of it. S.C. Code § 12-37-890. While we think that if a court finds "person" could include a club, we also think a court would first determine whether the personal property (in this case an airplane) is for business or nonbusiness use and that determination would govern regardless of whether "person" included a club in its definition. However, once it is determined the personal property was not used in connection with a business, then even if it is a club, if it meets the definition of "person," we believe a court will find it can be used to tax an airplane pursuant to the statutes. However, we would be remiss if we did not mention that there is a 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).

3) Before we begin to answer your third question, we must emphasize that this Office does not make factual determinations but answers legal questions. Op. S.C. Atty. Gen., 1996 WL 599391 (September 6, 1996) (citing Op. S.C. Atty. Gen., 1983 WL 182076 (December 12, 1983)). Therefore, any specific factual scenarios would either need to be answered by a court of law or followed pursuant to the advice of your county attorney or other advisor. In regards to the law, this Office has previously opined that "officers of the court, quasi-judicial officers, judges, prosecutors, executive and ministerial officials of government are immune from civil suit for acts done in performance of their official duties." Op. S.C. Atty. Gen., 2013 WL 650580 (February 6, 2013) (citing Hartline v. Carner, 141 F.Supp. 151 (E.D.S.C. 1956)). However, that opinion went on to caution that going outside the scope of one's official duties would expose one to liability including liability for trespassing. Speaking of process servers it stated:

...if, at any point a process server goes outside of the scope of his duties, the South Carolina courts are clear. In Wright v. United Parcel Service, Inc., the court held "[a]lthough entry by a person on premises of another may initially be lawful, the person becomes a trespasser when the person fails to depart after being asked by the owner to leave." Wright v. United Parcel Service, Inc., 315 S.C. 521, 445 S.E.2d 657 (1994) (citing Shramek v. Walker, 152 S.C. 88, 149 S.E. 331 (1929)). In State v. Thomas Dawson, in the concurrence the court stated "it [is] a fundamental principle of law, that if an officer commits an abuse of his authority, or an apparent abuse, and thereby trespasses upon the rights of a citizen, he may defend his rights, and cannot be convicted of any legal offence; notwithstanding the general power of the officer." State v. Thomas Dawson, 3 Hill (SC) 100, 21 S.C.L. 100, 1836 WL 1498 (Ct.App. 1836). Additionally, this Office issued an opinion stating the authority to break and enter a residence by a sheriff or magistrate's constable is for claim and delivery actions only and that does not apply to any other civil action unless specifically granted by statute. Op. S.C. Atty. Gen., 1964 WL 8341 (August 27, 1964).

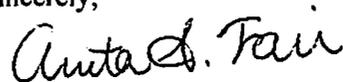
Op. S.C. Atty. Gen., 2013 WL 650580 (February 6, 2013). Thus we would caution that however you deem best to proceed to audit property that you proceed only within the scope of your official duties and

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preferably pursuant to legal advice given on a case-by-case basis with notice given, where possible, to the owner. Please note there are other statutes concerning personal property that may be helpful as a guideline. See, e.g., S.C. Code § 12-37-712 (“A marina must provide immediate access to its business records and premises to city, county, and state tax authority employees for the purpose of making a property tax assessment...”); § 12-37-760 (“If any person shall refuse or neglect to make out and deliver to the auditor a statement of personal property, as provided in this chapter, or shall refuse or neglect to make and subscribe an oath as to the truth of such statement...”), et al.

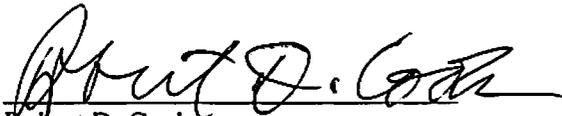
Conclusion: To answer your questions, we think a court will likely determine that you should use guidelines by the South Carolina Department of Revenue to better make your determination rather than relying on the name the personal property is registered in as the only factor in making such a determination; as long as an airplane is not used in connection with a business, then even though it is owned by an out-of-state club, a club could be included in the definition of a person as defined in South Carolina Code § 12-2-20; and that however you deem best to proceed to audit property you should proceed only within the scope of your official duties and preferably pursuant to legal advice given on a case-by-case basis with notice given, where possible, to the owner. Nevertheless, there are many other sources and authorities you may want to refer to for a further analysis of the issues you raise. For a binding determination, this Office would recommend seeking a declaratory judgment from a court on these matters, as only a court of law can interpret statutes. S.C. Code § 15-53-20, et al. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only a legal 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 S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General