



ALAN WILSON
ATTORNEY GENERAL

August 18, 2015

The Honorable Wendy K. Nanney
Representative
District Number 22
124 Birnam Court
Greenville, South Carolina 29615

Dear Representative Nanney:

You have requested the opinion of this Office regarding the requirements imposed on the South Carolina Department of Revenue (“DOR”) pursuant to S.C. Code Ann. § 12-53-45 (2014); this Section relates to the electronic filing of state tax liens. It is our understanding that tax liens have been filed by the DOR in paper form to certain register of deeds offices that accept electronic filings due to compatibility issues with the XML files submitted by the DOR and the electronic recording systems used by certain registers accepting electronic files. Our analysis follows.

Law / Analysis

Prior to addressing S.C. Code Ann. § 12-53-45 (2014), a brief background regarding the DOR’s duty to impose state tax liens, how they are to be filed, as well as the implementation of electronic filing pursuant to the Uniform Real Property Electronic Recording Act is necessary to place your question into context. Pursuant to S.C. Code Ann. § 12-53-10 (2014), the:

portions of the law as have to do with the collection of unpaid taxes, penalties, interest, or cost, and the attachment, levy, and sale of properties for the purpose of enforcing the payment of such amounts which may be due the [DOR], are hereby imposed or conferred upon the [DOR], or its duly authorized representatives.

In carrying out this duty, our legislature has also spoken to the appropriate filing procedure, requiring that state tax liens be indexed and filed with the county register of deeds or the clerk of court, if a county does not have a register of deeds. See S.C. Code Ann. §§ 30-5-15 (2007) (“Notwithstanding any other provision of law, in those counties which have a register of deeds, the duties of the clerk of court for the county pertaining to indexing and filing of state tax liens are hereby devolved upon the register of deeds for the county and the register of deeds shall index and file such liens in his office in the same manner as required of the clerk of court by law”); S.C. Code Ann. § 30-5-16 (2007) (“On the effective date of §§ 30-5-15 and 30-5-16, in those counties which have a register of deeds, all current records pertaining to state tax liens shall be maintained in the office of the register of deeds unless otherwise directed by the governing body of the county concerned. . .”).

Because state tax liens are required to be indexed and filed with the register of deeds, or the clerk of court in counties that do not have a register of deeds, South Carolina's adoption of the Uniform Real Property Electronic Recording Act ("URPERA") is relevant. In 2004, the National Conference of Commissioners on Uniform State Laws promulgated the URPERA as recommended legislation for adoption by all states. D. Benjamin Beard, 10 *Hawklund UCC Series UETA* § 19:3 (2015). The URPERA authorizes registers of deeds and clerks of court to establish electronic filing systems for the recording of real property instruments in accordance with established standards. *Id.*; see also S.C. Code Ann. Regs. § 113-300(Z) (2012) (defining the URPERA). South Carolina adopted the URPERA in 2008, and thereafter, the South Carolina Secretary of State promulgated regulations for its effective implementation. See Act No. 210, 2008 S.C. Acts 2081 (codified at S.C. Code Ann. §§ 30-6-10 et seq. (Supp. 2014)); S.C. Code Ann. Regs. §§ 113-300 et seq. (2012) (regulations effective April 23, 2010). It is this Office's understanding that five county register of deeds offices in South Carolina have implemented electronic filing pursuant to the passage of the URPERA, including Beaufort, Greenville, Horry, Lexington, and Richland.

After South Carolina's enactment of the URPERA, our General Assembly spoke to the electronic filing of certain state tax liens in 2012. See Act No. 135, 2012 S.C. Acts 1596. Act No. 135, codified in the South Carolina Code at Section 12-53-45, provides as follows:

[w]hen filing documents relating to the enforced collection of taxes due this State with county clerks of court and registers of deeds, the department¹ shall file those documents electronically if the clerk of court or register of deeds accepts electronic filings.

S.C. Code Ann. § 12-53-45 (2014).

Amongst this background, we turn to our interpretation of Section 12-53-45 and necessarily point out several rules of statutory construction that are instructive in our analysis. The primary rule of statutory construction is of course to ascertain and give effect to the intent of the General Assembly. Town of Mount Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011). Furthermore, a statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 468, 638 S.E.2d 598, 606-07 (2006). It is also well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result. Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000); see also Fishburne v. Fishburne, 171 S.C. 408, 172 S.E. 426 (1932); Op. S.C. Att'y Gen., 2000 WL 1347162 (Aug. 25, 2000) ("[A]ll statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law, and so the meaning and effect of one statute must be determined with reference to that of other statutes in *pari materia* so as to construe them together into one integrated system of law"). We also note our Supreme Court's explanation that "[t]he term

¹ See S.C. Code Ann. § 12-2-10 (2014) ("As used in this title 'department' means "the South Carolina Department of Revenue").

‘shall’ in a statute means that the action is mandatory.” Johnston v. South Carolina Dep’t of Labor, Licensing, and Regulation, 365 S.C. 293, 296-97, 617 S.E.2d 363, 364 (2005) (citing Wigfall v. Tidelands Utils., Inc., 354 S.C. 100, 580 S.E.2d 100 (2003); Charleston County Parents for Pub. Schs., Inc. v. Moseley, 343 S.C. 509, 541 S.E.2d 533 (2001)).

Applying these rules, we believe that the legislature’s use of the word “shall” within S.C. Code Ann. § 12-53-45 (2014) imposes a mandatory obligation on the DOR to file state tax liens electronically if electronic filings are accepted by the applicable register of deeds office or clerk of court. It is also our belief that S.C. Code Ann. § 12-53-45 (2014) must be construed together with the URPERA because both relate to the same subject: the electronic filing of documents in land records offices, *i.e.* the office of the clerk of court or the register of deeds. As such, we look to the regulations promulgated by the Secretary of State for instruction on the requirements imposed by the URPERA for electronic filing. See S.C. Code Ann. § 30-6-40(b)(1) (Supp. 2014) (“A register. . . who implements any of the functions listed in this section shall do so in compliance with the standards promulgated through regulation by the Office of the Secretary of State”).

One requirement imposed by the regulations is that “[t]he authorized filer² and a participating register³ shall enter into a memorandum of understanding (MOU) relating to the terms and conditions of participation in the register’s electronic filing and recording program. . . .” S.C. Code Ann. Regs. § 113-315(A) (2012). Among the items that the MOU must address is the “method of transmission” for instruments to be transmitted for electronic filing. See S.C. Code Ann. Regs. § 113-325(A) (2012). Specifically, this regulation provides in part that: “[i]nstruments shall be transmitted through either a secured website or an electronic recording delivery system. The method of transmission shall be identified in the MOU signed by an authorized filer and the register.” Id. Furthermore, Regulation 113-310 specifies three acceptable “electronic recording models,” stating that:

[f]or registers that elect to offer electronic recording, authorized filers shall submit real property records for electronic filing and recordation utilizing one of three methods described below as allowed by the individual recorder. The methods are based on levels of automation and transaction structures identified in the *PRIA URPERA Enactment and E-recording Standards Implementation Guide*© utilized nationally to implement electronic recording.

S.C. Code Ann. Regs. § 113-310 (2012) (underlined emphasis added). Electronic recording model Methods One, Two and Three that are permitted are thereafter described in detail.

Regulation 113-335 also provides document formats for authorized filers, with Regulation 113-340 further specifying that “[e]lectronic recording delivery systems implemented by registers shall have the capacity at a minimum to process documents that are compatible with indexing requirements established by PRIA [Property Records Industry Association] for file

² See S.C. Code Ann. Regs. § 113-300(C) (2012) (defining “Authorized Filer” as “a party who has entered into a MOU [Memorandum of Understanding] with a register pursuant to the regulations herein”).

³ See S.C. Code Ann. Regs. § 113-300(V) (2012) (defining “Register” as “a Register of Deeds, Clerk of Court of Register of Mesne Conveyances”).

formatting and indexing.” S.C. Code Ann. Regs. §§ 113-335, 113-340 (2012). Regulation 113-340 also provides that “*PRIA eRecording XML Standard v2.4.1* is adopted by reference” and that “[t]he most current version of the PRIA indexing and document format standards may be found at the PRIA website at <http://pria.us/>.” S.C. Code Ann. Regs. §113-340 (2012).

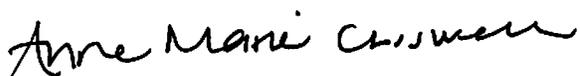
As there appears to be a compatibility issue with the files submitted by the DOR and the electronic recording delivery system being used by certain registers in our State accepting electronic filings, we believe the guidelines specified by the regulations should be followed to remedy the problem. While we have not addressed all of the regulations promulgated by the Secretary of State after the adoption of the URPERA, those highlighted above illustrate the significant amount of detail the regulations provide in regards to the procedure to be followed for electronic filing, both for authorized filers and for participating recorders.

Conclusion

Based on the foregoing analysis, it is our opinion that a Court would find S.C. Code Ann. § 12-53-45 (2014) requires the South Carolina Department of Revenue to file documents related to the enforced collection of taxes due to the State electronically if the clerk of court or register of deeds with which the documents are to be filed and indexed accept electronic filings. It is also our opinion that S.C. Code Ann. § 12-53-45 (2014) must be read in correlation with the Uniform Real Property Electronic Recording Act, as both relate to the same subject matter. Therefore, we believe the regulations promulgated by the South Carolina Secretary of State to implement the URPERA should be followed by both the South Carolina Department of Revenue and registers of deeds and clerks of court who accept electronic filings when determining the appropriate procedure for transmitting and processing state tax liens for electronic filing pursuant to S.C. Code Ann. § 12-53-45 (2014).

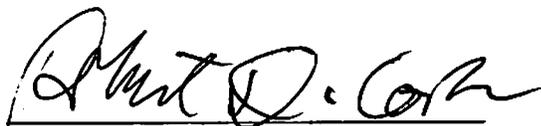
If we can assist with anything further, please do not hesitate to contact our Office.

Very truly yours,



Anne Marie Crosswell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General