

1975 WL 29637 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 28, 1975

*1 The ad valorem tax is an annual tax and a taxpayer has the right to question the ?? of the tax notwithstanding that property is to be returned and assessed every four (4) years.

A taxpayer has the right to appeal an assessment in successive years notwithstanding that the valuation and assessment is made by the assessor every fourth year.

Honorable Emily K. Jackson
County Auditor
Room 204
Courthouse
Sumter, South Carolina 29150

Dear Mrs. Jackson:

Reference is made to your letter of March 18, 1975, requesting an opinion whether a taxpayer has a right to appeal the assessor's 1975 valuation of real estate to the Tax Board of Appeals, the assessment being identical in amount to the assessment for 1974.

Section 65-1614 is applicable and requires real estate property tax returns. It states:

‘All persons who are required by law to make returns of personal property shall make full returns of all real estate and improvements thereon between the first day of January and the first day of March 1954 and at the same time in every fourth year thereafter.

Following this, a return is required only every fourth year and such would be required in 1974. Section 65-1850 requires that the township, special board of assessors, and assessors in cases where assessors are given the responsibility of such boards by statute, value and impartially assess all property. This section states, however, that the valuation and assessment of real estate shall be to those years in which the real estate is required by law to be returned. The applicable portion of this section is set out as follows:

‘But real estate shall be valued and assessed by any such board only in those years in which real estate is by law required to be returned, except that the board may, in any year, value and assess any real estate and improvements thereon which they may ascertain or discover have not previously been returned or assessed for taxation.’

Section 65-1851 provides for notice of increase in valuation and assessment where such increases exceed one hundred dollars or more than the amount returned. This section further grants taxpayers the right of appeal to the county board of equalization.

All of these sections relate to the mechanics for the valuation and assessment of property. The tax is an annual tax notwithstanding the statutes providing for valuation and assessment by the assessor every four years. An annual review of the assessment must therefore be provided. It has been said in many cases that due process requires that a taxpayer have an opportunity to be heard as to the validity and extent of the tax and his liability. In 72 Am.Jur.2d, State and Local Taxation, Section 782, it is stated that ‘A property owner must at some time have an opportunity, as a matter of right

and not of grace, to appear and be heard to one question of valuation before some tribunal which has jurisdiction to determine the true value of the property.' This statement was made on the basis of the decisions in the cases of [Security Trust and S.V. Co. v. Lexington](#), 203 U.S. 323, 51 L.Ed. 204, 27 S.Ct. 87; [Powell v. Gleason](#), 50 Ariz. 542, 74 P2d 47, 114 ALR 838; [Violett v. Alexandria](#), 92 Va. 561, 23 S.E. 909. Thus a taxpayer is insured that he can protest a tax based upon a change in value in any year.

*2 Concerning your second request for an opinion whether a taxpayer has a right to appeal an assessment in successive years, we advise again that the valuation of property may change in successive years and if due process is to be accorded it would be necessary that a taxpayer be given an opportunity to be heard in this respect. Again we predicate these remarks on our conclusion that the ad valorem tax is an annual tax which is administered annually and is charged and collected annually. Our conclusion, therefore, is that a taxpayer is guaranteed the right to appeal the valuation of his property in any year, notwithstanding the assessor's valuation is carried forward from a preceding year.

If there are any further questions concerning this opinion, please advise.

Yours very truly,

G. Lewis Argoe, Jr.
Assistant Attorney General

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