



ALAN WILSON
ATTORNEY GENERAL

May 8, 2018

The Honorable Sean M. Bennett
Member
South Carolina Senate
P.O. Box 142
Columbia, SC 29202

Dear Senator Bennett:

Attorney General Alan Wilson has referred your letter to the Opinions section. The letter requests “an opinion regarding a county boundary line shift and the implications for assessment of rollback taxes and which county would receive rollback taxes, if there was a change in use.” The letter specifically cites to S.C. Code Ann. § 12-43-220(d)(4) which states:

Except as provided pursuant to Section 12-43-222, when real property which is in agricultural use and is being valued, assessed, and taxed under the provisions of this article, is applied to a use other than agricultural, it is subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the real property been valued, assessed, and taxed as other real property in the taxing district, in the current tax year (the year of change in use) and each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed as herein provided. If in the tax year in which a change in use of the real property occurs the real property was not valued, assessed, and taxed under this article, then the real property is subject to roll-back taxes for each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed hereunder. In determining the amounts of the roll-back taxes chargeable on real property which has undergone a change in use, the assessor shall for each of the roll-back tax years involved ascertain:

- (A) the fair market value without consideration of the standing timber of such real property under the valuation standard applicable to other real property in the same classification;

- (B) the amount of the real property assessment for the particular tax year by multiplying such fair market value by the appropriate assessment ratio provided in this article;
- (C) the amount of the additional assessment on the real property for the particular tax year by deducting the amount of the actual assessment on the real property for that year from the amount of the real property assessment determined under (B) of this section;
- (D) the amount of the roll-back for that tax year by multiplying the amount of the additional assessment determined under (C) of this section by the property tax rate of the taxing district applicable for that tax year.

Law/Analysis

It is this Office's opinion that a court would likely find the county in which real property is located when the change in use occurs would receive the roll-back taxes subject to S.C. Code Ann. § 12-43-220(d)(4) notwithstanding that the property had changed tax districts as a result of a county boundary line shift. This Office's opinion is informed by the rules of statutory interpretation which require a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Examining Section 12-43-220(d)(4) in light of the principles of statutory construction discussed above, the plain language of the statute states that the "real property which is in agricultural use" becomes subject to "additional taxes" when the property is applied to a non-agricultural use. The statute further clarifies that this additional tax is calculated as of the "current tax year (the year of change in use)" and during a roll-back period of up to five years. Subsections (A)-(D) provide a formula by which assessors are to calculate roll-back tax for each tax year. This formula requires an individual calculation for each year of the roll-back period. The additional assessment for each year is multiplied by the "the property tax rate of the taxing district applicable for that tax year." S.C. Code Ann. § 12-43-220(d)(4)(D). If there is a change in a county boundary line which results in annexing the real property to a different taxing district, for each year of the roll-back period, the statute's plain language requires the assessor to apply tax rate for the applicable taxing district. Such a change could result in using a different taxing rate from one year to the next or proration in a given year because the property could be considered to have moved between different taxing districts.

We next address the question your question of regarding which county would receive roll-back taxes as a result of a change in use of real property under S.C. Code Ann. § 12-43-220(d)(4). Section 12-43-220(d)(4) contains no suggestion of legislative intent to divide the

additional taxes between multiple counties in the case of a county boundary line shift. The statute includes a formula for calculating the amount of roll-back taxes which may require using a tax rate employed by an applicable tax district in a given year and a separate tax rate employed by a formerly applicable tax district for other years within the roll-back period. These roll-back taxes are referred to as “additional taxes” rather than “past-due taxes.” This language suggests the General Assembly did not view these taxes as being due during the tax years of the roll-back period. To the contrary, considering real property which is in agricultural use only becomes subject to the additional taxes according to Section 12-43-220(d)(4) when it is applied to a use other than agricultural, it is this Office’s opinion that a court would likely find the additional taxes are only owed to the county in which the property is located at the time of the change in use.

Please note, however, in researching this Opinion, we were unable to locate state court precedent interpreting S.C. Code Ann. § 12-43-220(d)(4) in regards to the assessment of roll-back taxes on real property that had changed tax districts as a result of a county boundary line shift. Due to the lack of judicial precedent in this state, this conclusion cannot be completely free from doubt. It may be advisable to seek more certainty by obtaining a declaratory judgment from our state courts. See S.C. Code § 15-53-20 (1976 Code, as amended).

Conclusion

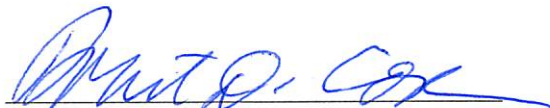
It is this Office’s opinion that a court would likely find the county in which real property is located when the change in use occurs would receive the roll-back taxes subject to S.C. Code Ann. § 12-43-220(d)(4) notwithstanding that the property had changed tax districts as a result of a county boundary line shift.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General