



ALAN WILSON
ATTORNEY GENERAL

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Dear Mr. Holly and Mr. Harmon:

Attorney General Alan Wilson has referred your letters regarding the implementation of 2018 Act No. 223 to the Opinions section. This opinion will address both letters in order to promote consistency and avoid confusion. Mr. Holly's letter asks the following:

The General Assembly passed Act 223 in May of 2018 (the "Act"). The Act was signed by the Governor May 18, 2018 and takes effect January 1, 2020. The Act substantially changes the laws on the certificating and taxation of watercraft. In essence, the certificating (or registration) of watercraft is moving from a three-year to an annual renewal, and the taxation of watercraft by counties is moving from an arrearage basis to a prospective basis based on the month of registration.

The transition in making these changes set forth in the Act presents issues that the provisions of the Act may not address or address clearly. County auditors and other officials, the Department of Natural Resources, and the Department of Revenue have consulted with each other on various implementation issues, but have not reached a consensus on all of those issues. One issue that has arisen is whether a county may tax watercraft for tax year 2019 based on the schedule and procedures established by existing laws that have not been expressly repealed or suspended for that tax year. ...

Currently, watercraft are billed for taxes in the fall of each year following completion of the tax books by the county auditor by September 30 (S.C. Code Sections 12-39-150, 12-45-70). Payment is due on those tax bills by January 15 of the following year pursuant to S. C. Code Section 12-45-180. This tax billing is in arrears based on property owned by the taxpayer as of December 31 of the

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prior year. S.C. Code Sections 12-37-900, 905. Please also note S.C. Code Section 12-37-710 requires annual returns of personal property by owners; Section 12-39-150 requires the county auditor annually to deliver to the county treasurer the list of all taxable personal and real property in the county by September 30; and Section 12-39-180 requires the county auditor to determine the rate or amount of taxes to be levied on all real and personal property each year.

S.C. Code Section 50-23-370 on certifications for watercraft is amended by Section 5.A of the Act to convert to a one year certification period from a three year period for watercraft. Amended Section 50-23-370(B)(1) contains the introductory phrase: "Beginning January 1, 2020."

Section 5.B of the Act states:

(A) Beginning January 1, 2020, the provisions of SECTION 5.A of this act will be phased in over a three-year period as certificates of number expire. Any certificate of number awarded prior to January 1, 2020, will remain in effect for the full three year term unless terminated or discontinued by the Department of Natural Resources. Certificates of number awarded after January 1, 2020, will become effective on an annual basis. Full implementation of SECTION 5.A of this act begins on December 31, 2022.

(B) It is the intent of the General Assembly that the provisions of this act result in only one tax payment due per boat, boat motor, or watercraft in any twelve-month period. All interpretation and implementation of this act should be consistent with this intent.

Also see S.C. Code Section 12-37-715.

Section 9 of the Act states: "This act takes effect January 1, 2020."

Section 8 of the Act adds five new sections to Chapter 37 of Title 12 of the S.C. Code on the annual taxation of watercraft. New Sections 12-37-3200 and 3210 establish a new tax year for each watercraft based on the month in which a certification is required by S.C. Code Section 50-23-370, which is amended in Section 5.A of the Act. The new sections also establish the prospective billing of

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taxes for watercraft. Based on Section 9 of the Act, these provisions are not effective until January 1, 2020.

The Act does not contain a provision repealing or suspending existing laws that conflict with the Act or state that its provisions are to be applied retroactively.

This leads to the issue of the meaning of Section 5.B.(B) of the Act quoted above within the context of the entire Act. Depending on the correct legal interpretation of that provision, it may or may not create a conflict between tax years 2019 and 2020. For tax year 2019, the last year of billing for taxes in arrears, the bills would be issued around the end of September 2019. Depending on the certification month, the same watercraft could possibly be billed again for taxes in early 2020 based on its month of certification renewal, but S.C. Code Sections 12-37-3200 and 3210 in Section 8 of the Act have created a new tax year for prospective billing for the watercraft. The aforesaid payments would be made in two different tax years.

We respectfully request an opinion on the following related questions:

1. Does the Act preclude counties from following existing law to tax watercraft for the 2019 tax year based on ownership as of December 31, 2018?
2. Do the Act's effective date of January 1, 2020 and other provisions in the Act allow for 2019 tax billing to be completed in the usual manner, while tax billings commencing January 1 2020, will be carried out under the new structure created by the Act?

Mr. Harmon's letter asks the additional question:

Under SC Code Ann. § 12-37-224(B), a boat may qualify as a residence and be assessed at the residential rate of 4% for a primary residence or 6% for a secondary residence. While the Act adds 12-37-3240 which specifies that the provisions of this article do not apply to a boat classified as a primary or secondary residence, does that provision mean only the taxation provisions do not apply to residential boats (i.e. the provisions of "this article"), while the changes to the registration and issuance of certificates of number by the SCDNR do apply?

Law/Analysis

It is this Office's opinion that a court likely would hold that 2018 Act No. 223 (the "Act") does not preclude counties from following existing law to bill watercraft for the 2019 tax year. As the request letter notes, Section 9 of the Act states that it does not take effect until January 1, 2020. The 2018 South Carolina Code Supplement reflects this delayed effective date. For example, Section 5.A. of the Act amended S.C. Code Ann. § 50-23-370 which governs the certificate of number renewal process. The 2018 Supplement to Title 50 explains that the amended statutory language is "effective January 1, 2020," while the current statutory language of Section 50-23-370 remains "effective until January 1, 2020." S.C. Code Ann. § 50-23-370 (Supp. 2018). Although the Act was ratified on May 14, 2018 and signed by the Governor on May 18, 2018, its effective date was set roughly a year and half after passage, presumably to give state agencies and local officials sufficient time to implement new regulatory guidance and procedures. Until the Act becomes effective, any statutes which were amended by the Act must be followed as they are currently codified in the South Carolina Code of Laws. Further, any statutes which were added by the Act do not become effective until January 1, 2020 and should not be read to create a conflict with statutes and regulations which are currently effective.

The additional questions raised in the request letters suggests there is some ambiguity regarding how state administrative agencies and local governing bodies will transition from the current certificate of numbers and property tax billing system for boats, boat motors, and watercraft that bills in arrears to the new prospective system. If the Act can reasonably be implemented by one of several methods, it is this Office's long standing policy to defer to the administrative agency's selection as long as the decision is based on a reasonable interpretation of the statutes and regulations that it administers. See Op. S.C. Att'y Gen., 2013 WL 3133636 (June 11, 2013). In Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env'tl. Control, 411 S.C. 16, 34, 766 S.E.2d 707, 718 (2014), the South Carolina Supreme Court explained why this deference is warranted, "[W]e give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations." The Court further identified when our state courts will not defer to the administering agency as follows:

[T]he deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. We defer to an agency interpretation unless it is "arbitrary, capricious, or manifestly contrary to the statute."

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411 S.C. at 34–35, 766 S.E.2d at 718. The South Carolina Department of Natural Resources is the agency charged with administering Sections 1 through 7 of the Act concerning certificates of number for boats, boat motors, and watercraft. See S.C. Code Ann. § 50-1-5(2) (“Department” means the South Carolina Department of Natural Resources). Similarly, the South Carolina Department of Revenue is charged with administering Section 8 of the Act concerning assessments and payment of property taxes for boats, boat motors, and watercraft. See S.C. Code Ann. §§ 12-4-10 (“The South Carolina Department of Revenue is created to administer and enforce the revenue laws of this State ...”); 12-4-310 (“The department shall: (2) formulate and recommend legislation to enhance uniformity, enforcement, and administration of the tax laws, and secure just taxation and improvements in the system of taxation.”); 12-4-320 (“The department may: (1) make rules and promulgate regulations, not inconsistent with law, to aid in the performance of its duties. The department may prescribe the extent, if any, to which these rules and regulations must be applied without retroactive effect; ...”). Therefore, this Office will likewise defer to SCDNR’s interpretation and implementation of Sections 1 through 7 and SCDOR’s interpretation and implementation of Section 8, unless they are “arbitrary, capricious, or manifestly contrary to the statute.” Kiawah Dev. Partners, II, supra. To the extent that this Office can provide guidance on implementing the Act, please note that it is with the caveat that it is offered in the absence of agency guidance and this Office would defer to agency guidance if it is subsequently issued.

Both request letters raise issues regarding how to switch to prospective billing which ends on the month a certificate of number expires and, at the same time, comply with the statement of legislative intent that the Act only result in “one tax payment due per boat, boat motor, or watercraft in a twelve-month period.” 2018 Act No. 223, § 5.B(B). Mr. Holly’s letter notes that the current statutory scheme directs tax payments for watercraft are “due and payable between the thirtieth day of September and the fifteenth day of January after their assessment in each year.” S.C. Code Ann. § 12-45-70. If payment is not made within that period, delinquency penalties are applied. S.C. Code Ann. § 12-45-180(A) (“When the taxes and assessments ... are not paid before the sixteenth day of January or thirty days after the mailing of tax notices, whichever occurs later, the county auditor shall add a penalty of three percent on the county duplicate and the county treasurer shall collect the penalty.”). According to Section 8 of the Act, the new tax year for “boats, boat motors, and watercraft ... begins with the last day of the month in which a certificate of number ... is issued and ends on the last day of the month in which the certificate of number expires or is due to expire.” S.C. Code Ann. § 12-37-3200. As Mr. Holly’s letter explains, switching to the new tax year billing system may or may not create a conflict with the statement that the Act is intended to only result in one tax payment due in any twelve-month

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period and at the same time requiring county auditors to generate a bill in September 2019 and possibly bill again for certificates of number that expire before September of 2020.

The request letters essentially ask this Office to interpret the Act and endorse specific billing practices to work around the issues raised therein. As stated above, this Office defers to the interpretations of the SCDNR and SCDOR regarding the statutes that they administer. If the administrative agencies interpret the Act and find there is a conflict, they may petition our state courts for a declaratory judgement or seek legislative clarification. In the event that declaratory judgement is sought, our state courts would rely on the rules of statutory construction to determine if there is a conflict and, if so, how to resolve it. Statutory construction of the South Carolina Code of Laws requires 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). The Supreme Court of South Carolina has stated, however, that where the plain meaning of the words in a statute "would lead to a result so plainly absurd that it could not have been intended by the General Assembly... the Court will construe a statute to escape the absurdity and carry the [legislative] intention into effect." Duke Energy Corp. v. S. Carolina Dept of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) ("[C]ourts are not confined to the literal meaning of a statute where the literal import of the words contradicts the real purpose and intent of the lawmakers."). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). Our courts have adopted the "last legislative expression rule" to resolve when conflicting provisions are found within the same statute or legislation. Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 571, 703 S.E.2d 197, 201 (2010).

In the consideration of conflicting provisions in a statute, the great object to be kept in view is to ascertain the legislative intent, and a construction which best secures the rights of all the parties affected has been held to be the proper construction. In accordance with the principle that the last expression of the legislative will is the law, where conflicting provisions are found in the same statute, or in different statutes, the last in point of time or order of arrangement prevails. State v. Lewis, 141 S.C. 207, 139 S.E. 386; State v. Brown, 154 S.C. 55, 151 S.E. 218; 59 C.J. § 596, p. 999. However, this is purely an arbitrary rule of

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construction and is to be resorted to only when there is clearly an irreconcilable conflict, and all other means of interpretation have been exhausted.

Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22, 24 (1943). Courts will “attempt to harmonize ... two ostensibly at-odd provisions before analyzing whether or not” a conflict exists. Grazia, *supra*.

Section 5.B(B) unambiguously states the General Assembly’s intent that the Act only results in one tax payment due per boat, boat motor, or watercraft in any twelve-month period. If the tax payment provisions in Section 8 cannot be implemented to conform with Section 5.B(B), a court may well hold they are in conflict. If a court holds Section 5.B(B) irreconcilably conflicts with Section 8, then, according to the last legislative expression rule, the tax payment and assessment provisions in Section 8 would likely prevail as the last in point of order of arrangement. Again, as the Feldman Court cautioned, this rule is resorted to only after all other means of interpretation have been exhausted.

Finally, we address Mr. Harmon’s question about Section 12-37-3240 which asks, “Does that provision mean only the taxation provisions do not apply to residential boats (i.e. the provisions of “this article”), while the changes to the registration and issuance of certificates of number by the SCDNR do apply?” The plain language of Section 12-37-3240 states “[t]he provisions of this article do not apply” to two specific categories of boats, boat motors, or water craft. These two categories are (1) those which are exempt from ad valorem taxation under Section 12-37-220(B)(38)(a), having an assessed value of not more than fifty dollars, and (2) those classified as a primary or secondary residence pursuant to Section 12-37-224(B). Section 12-37-3240 is one of the statutes added by Section 8 of the Act as “Article 26” of Chapter 37, Title 12 to the South Carolina Code. It seems clear that “this article” is intended to refer to Article 26. The statute makes no reference to any other section of the Act or specific statutes. Therefore, it is this Office’s opinion that a court likely would find Section 12-37-3240 is only intended to provide an exception from the tax payment and assessment provisions in Article 26.

Conclusion

As discussed more fully above, it is this Office’s opinion that a court likely would hold that 2018 Act No. 223 (the “Act”) does not preclude counties from following existing law to bill watercraft for the 2019 tax year. Although the Act was ratified on May 14, 2018 and signed by the Governor on May 18, 2018, its effective date was set roughly a year and half after passage, presumably to give state agencies and local officials sufficient time to implement new regulatory

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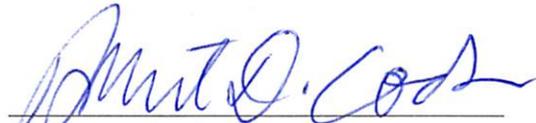
guidance and procedures. Until the Act becomes effective, any statutes which were amended by the Act must be followed as they are currently codified in the South Carolina Code of Laws. The additional questions raised in the request letters suggests there is some ambiguity regarding how state administrative agencies and local governing bodies will transition from the current certificate of numbers and property tax billing system for boats, boat motors, and watercraft that bills in arrears to the new prospective system. If the Act can reasonably be implemented by one of several methods, it is this Office's long standing policy to defer to the administrative agency's selection as long as the decision is based on a reasonable interpretation of the statutes and regulations that it administers. See Op. S.C. Att'y Gen., 2013 WL 3133636 (June 11, 2013). If the administrative agencies interpret the Act and find there is a conflict, they may petition our state courts for a declaratory judgement or seek legislative clarification.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



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