

SC REVENUE ADVISORY BULLETIN #02-7

SUBJECT: Assessment of Real Property in a Non-reassessment Year
(Property tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

REFERENCES: S. C. Code Ann. Section 12-43-210(B) (2000)
S. C. Code Ann. Section 12-37-90 (2000)
S. C. Code Ann. Section 12-43-217 (2001 Supp.)
S. C. Code Ann. Section 12-37-930 (2000)
Long Cove Homeowner's Association, Inc., et. al v. Beaufort County Tax Equalization Board, 327 S.C. 135, 488 S.E. 2d 857 (1997)
Belk Department Stores vs. Taylor, 259 S.C. 174, 191 S.E. 2d 144 (1972)
Smith vs. Newberry County Assessor, 2002 WL1159870 (S.C. App.)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2001)
SC Revenue Procedure #02-3

SCOPE: The purpose of a Revenue Advisory Bulletin is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Advisory Bulletin does not have the force or effect of law, and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Questions:

1. In a non-reassessment year, is a county assessor authorized to assess real property at fair market value, immediately after the sale of the property to a new party?
2. In a non-reassessment year, is a county assessor authorized to assess recently improved real property at its fair market value upon completion of the improvements?
3. Is a county assessor authorized to utilize the sales price of real property for purposes of determining the fair market value of the property for tax purposes even where other appropriate considerations indicate a fair market value that is different from the sales price?

Conclusions:

1. A county assessor is **not** authorized to assess real property at its fair market value upon the sale of the property to a new party.
2. A county assessor **is** authorized to assess recently improved real property and include the value of the improvements in the assessed value of the property once the improvements have been completed subject to assuring that the property is uniformly assessed like other similarly situated properties within the county.
3. The county assessor must take into account all appropriate considerations in determining the fair market value of real property and may not just rely on the sales price of the real property.

Discussion:

In South Carolina, the ad valorem property tax consists of three elements: value, assessment ratio, and millage. Most real property in this State is appraised to determine its value. This value is often referred to as the “appraised value”. The appraised value of the real property is then multiplied by an assessment ratio to get an assessed value. The assessed value is then multiplied by the millage rate to determine the taxes due on a particular piece of real property. The county assessor is charged with valuing and assessing real property (other than that real property statutorily required to be assessed by the Department). Section 12-43-210 of the South Carolina Code of Laws (“Code”) provides as follows:

- (A) All property must be assessed uniformly and equitably throughout the State. ...
- (B) No reassessment program may be implemented in a county unless all real property in the county, including real property classified as manufacturing property, is reassessed in the same year.

South Carolina Code Section 12-43-217 provides:

- (A) Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction. Property valuation must be complete at the end of December of the fourth year and the county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more. In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values.

Code Section 12-43-217(A), which was enacted in 1995, assures that real property will be assessed at least every five years. The question is whether existing real property may be assessed and a new value established for the property by the county assessor in years outside a year of county-wide reassessment.

South Carolina Code Section 12-37-90, provides in relevant part, as follows:

All counties shall have a full-time assessor, whose responsibility is appraising and listing all real property, whether exempted or not, except real property required by law to be assessed by the department and property owned by the federal government, state government, county government, or any of its political subdivisions and which is exempt from property taxation. If the assessor discovers that any real property required by law to be assessed by the department has been omitted, he shall notify the department that the property has been omitted and the department is required to appraise and assess the omitted property.

The assessor is responsible for the operations of his office and shall:

- c) when values change, reappraise and reassess real property so as to reflect its proper valuation in light of changed conditions, except for exempt property and real property required by law to be appraised and assessed by the department and furnish a list of these assessments to the county auditor; ...

In the opinion of the Department, this statutory provision requires the county assessor to assess real property when there has been a change in the condition of the property, not a mere change in the ownership of the property.

In *Long Cove Homeowner's Association, Inc. et. al v. Beaufort County Tax Equalization Board*, 327 S.C. 135, 488 S.E. 2d 857 (1997), the South Carolina Supreme Court looked at whether the county assessor could assess the common areas of a restricted subdivision in a year in which there was no county-wide reassessment. In determining that the assessor could not increase the value of the common areas in the year in question (a value of zero or a minimal value had been placed on the respective properties), the Supreme Court noted that:

"The statute prohibits reassessment in a non-assessment year except in limited circumstances. S.C. Code Ann. §12-41-120. ... The statute only allows an assessor, without direction from the Department, to reassess properties under the following limited circumstances: if done on a county-wide basis in a legal assessment year, S.C. Code Ann. §12-43-210(B)(Supp. 1995); if the property was omitted property, S.C. Code Ann. §12-41-120 (1976) [since repealed but the same idea is codified in Code Sections 12-4-520 and 12-37-90]; or if there was a change in conditions on the property. S.C Code Ann. 12-37-90 (Supp. 1995)."

In reaching its conclusion, the Court relied on Code Section 12-41-120 which provided, in relevant part, "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...." [emphasis added.] The provisions of Code Section 12-41-120 were repealed when Chapter 41, Title 12 (the chapter governing local boards of assessors) was repealed. In the Department's opinion, the reference to Code Section 12-41-120 was unnecessary since the Court was considering the actions of the county assessor and found that the county assessor could not assess the real property in a nonreassessment year. Instead, the Court's cite to Code Section 12-43-210(B)

which provides that “No reassessment program may be implemented in a county unless all real property in the county, including real property classified as manufacturing property, is reassessed in the same year” is relevant to limit the ability of the assessor to assess property in a nonreassessment year.

In the case of the common areas, it was not a year of reassessment, the property was not omitted from the tax rolls (it had been merely been valued at zero or at a nominal sum), and there had been no changes in the condition of the property that was the subject of the common areas. Therefore, the South Carolina Supreme Court held that the assessor and the Department could not reassess the property until the next county-wide reassessment occurred.

In Commission Decision #92-89, the Commission addressed the reappraisal of three tracts of land that had been reappraised by the county assessor. The Commission addressed whether the assessor had authority to change the value of real property when no county-wide reassessment was undertaken. The Commission concluded that the assessor had the authority to reappraise the property in a non-reassessment year when there had been a change in conditions. Namely, the tracts had obtained paved access and the tracts had acquired utilities, such as water, sewer and electricity. See also, Commission Decision #93-40 wherein the Commission found that the facts did not indicate that the subject properties had undergone significant changes sufficient to warrant a reassessment.

Code Section 12-37-90(d) requires the county assessor to “determine assessments and reassessments of real property in a manner that the ratio of assessed value to fair market value is uniform throughout the county.” Thus, the county assessor must make adjustments to the value of recently improved real property to assure that it is uniformly assessed to similar types of real property in the county and to assure that all similarly situated property is equitably assessed.

While an assessor needs to assess real property when there has been a change in the condition of the property, in the Department’s opinion, the assessor may not assess real property when the property is merely deeded to a third party, but there is no change in the condition of the property. In Commission Decision # 90-44 which involved the mere platting of property for subdivision and a subsequent sale of the platted land to a third party, the Commission stated that “it goes without saying, that deeding the subject property is not a basis for reassessment” citing *Allegheny Pittsburgh Coal Co. v. County Comm’n*, 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed 688 (1989)¹. See also, Commission Decision #93-61 providing that there was no physical change in real property and that the platting of the property or deeding of the property does not change the value or nature of the property.

¹ In *Allegheny Pittsburgh Coal Co. v. County Comm’n*, 488 U.S. 336 (1989), the county auditor in Webster County, West Virginia had revalued taxpayer’s property upon its sale to the taxpayer, but had made only minor modifications in valuing similarly situated land which had not recently been sold, resulting in gross disparities in assessed values of what were generally comparable properties. The West Virginia Constitution, like the South Carolina Constitution, established a general principle of uniform taxation. The Supreme Court held that the county’s assessment system systematically and intentionally discriminated against the taxpayer in violation of the Fourteenth Amendment Equal Protection Clause.

Accordingly, the mere sale of real property is not a change in the condition of the property and cannot result in an assessment of the property for a year outside a year of reassessment.

Lastly, the question has arisen as to whether the county assessor is authorized to utilize the sales price as the sole means of determining the fair market value of real property even where other appropriate considerations indicate a fair market value different from the sales price.

Code Section 12-37-930 provides in relevant part:

“All property must be valued for taxation at its true value in money which in all cases is the price the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used.” ... [Emphasis added]

“Sales price” is not always equivalent to value; and sales price may not always reflect the conditions to determine value required by Code Section 12-37-930. Sales price is the amount actually paid in a particular transaction. No consideration is given to the knowledge or prudent conduct on the part of the buyer or seller, degree and type of stimulus motivating either of the parties, financing terms, the use for which the property is best suited or the length of time that the property is exposed to the market. Sales price can and often does result from forces other than market forces, such as caprice, carelessness or desperation.

Value is the price that a willing buyer would purchase the property for, and the price that a willing seller would sell the property for, which would result from careful consideration by the buyer and seller of all data that reflects consideration under conditions of a fair sale.

Sales price approximates value under the following assumptions:

1. No coercion or undue influence over the buyer or seller in an attempt to force the purchase or sale.
2. Well informed buyers and sellers acting in their own best interest.
3. A reasonable time for the transaction to take place.
4. Payment in cash or its equivalent.

Property Appraisal and Assessment Administration, p. 56 (J. K. Eckert ed. 1990).

However, while other circumstances may affect the matter, sales price is ordinarily a strong indicator of the value of real property for tax purposes. *Belk Department Stores vs. Taylor*, 259 S.C. 174, 191 S.E. 2d 144 (1972); See also, *Smith v. Newberry County Assessor*, 2002 WL1159870 (S.C. App). While not conclusive, evidence of the sales price of assessed real property is to be given substantial weight on the issue of fair market value. *Belk*, 191 S.E. 2d at 146. Other circumstances that may need to be considered, other than sales price, are whether the

buyer or seller was under a compulsion to sell (See, Commission Decision #89-86 (where seller was under a compulsion to sell, sales price did not represent fair market value)); whether property was purchased under unusual circumstances (See, Commission Decision #89-88 (sales price of property purchased at an estate sale did not represent the fair market value of the property where the co-executor of the estate purchased the property)); or the seller's need to rid itself of the property (See, Commission Decision #88-250 (where the sales price for repossessed property sold by HUD was not representative of the fair market value of the real property when the property had previously sold in excess of the sales price paid on the HUD sale)). See also, *Smith v. Newberry County Assessor*, 2002 WL 1159870 (S.C. App.) where the purchasers' purchased property for sentimental reasons and were not concerned with the investment value of the property.

While sales price of real property is to be given substantial weight on the issue of fair market value, if other considerations are present, the county assessor needs to consider all relevant factors.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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