



ALAN WILSON
ATTORNEY GENERAL

April 8, 2011

The Honorable Raymond E. Cleary, III
Senator, District No. 34
Suite 501, Gressette Office Building
Columbia, SC 29202

Dear Senator Cleary:

We received your opinion request regarding property tax liability for boats present in this State less than one-hundred-eighty (180) days.

S.C. Code Ann. §12-37-714 provides, in relevant part:

In addition to any other provisions of law subjecting boats and boat motors to property tax in this State:

(2) A boat, including its motor if the motor is separately taxed, which is not currently taxed in this State and is not used exclusively in interstate commerce, is subject to property tax in this State if it is present within this State for sixty consecutive days or for ninety days in the aggregate in a property tax year. Upon an ordinance passed by the local governing body, a county may subject a boat, including its motor if the motor is separately taxed, to property tax if it is within this State for ninety days in the aggregate, regardless of the number of consecutive days. Also, upon an ordinance passed by the local governing body, a county may increase the number of days in the aggregate a boat, including its motor if the motor is taxed separately, must be in this State to be subject to property tax to one hundred eighty days in a property tax year, regardless of the number of consecutive days. Upon written request by a tax official, the owner must provide documentation or logs relating to the whereabouts of the boat in question. Failure to produce requested documents creates a rebuttable presumption that the boat in question is taxable within this State. [Emphasis added].

Specifically, Horry County Code §19-10 ["Boats with situs in state; boat or motor under contract for repairs"] provides, in part:

In addition to any other provisions of law subjecting watercraft and motors to property tax in this state:

- (1) A boat, including its motor if the motor is separately taxed, which is not currently taxed in this state and is not used exclusively in interstate commerce, is subject to property tax in this state if it is present within this state for one hundred eighty (180) days in the aggregate in a property tax year. Upon written request by a tax official, the owner must provide documentation or logs relating to the whereabouts of the boat in question. Failure to produce requested documents creates a rebuttable presumption that the boat in question is taxable within this state. . . .

The Code of Ordinances, Georgetown County, South Carolina §16-101 ["Watercraft and motors tax"] also states:

[g]enerally, in addition to any other provisions of law subjecting watercraft and motors to property tax in this state: A boat, including its motor if the motor is separately taxed, which is not currently taxed in this state and is not used exclusively in interstate commerce, is subject to property tax in this state, if it is present within this state, for one hundred eighty (180) days in the aggregate in a property tax year. Upon written request by a tax official, the owner must provide documentation or logs relating to the whereabouts of the boat in question. Failure to produce requested documents creates a rebuttable presumption that the boat in question is taxable within this state.

You referenced a situation where a county auditor believes the above provisions apply only to boats that are titled to individuals.¹

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the Legislature in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts will apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Moreover, statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

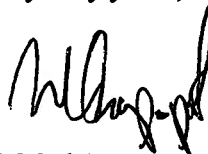
¹We note that the question on how *ad valorem* property taxes are levied on boats (watercraft) located in South Carolina is beyond the scope of this opinion request.

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As stated in prior opinions of this office, a statute should be construed to avoid an absurd result. Ops. S.C. Atty. Gen., June 15, 2004; May 20, 2004. Therefore, a statute must be interpreted with common sense to avoid unreasonable consequences. United States v. Rippetoe, 178 F.2d 735 (4th Cir. 1949). Moreover, a sensible construction, rather than one which leads to irrational results, is always warranted. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Another rule of statutory construction is that each word or phrase in a statute should be given effect, if possible, and not regarded as surplusage. Bruner v. Smith, 188 S.C. 75, 198 S.E. 184 (1938); Home Building and Loan Assn. v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1939).

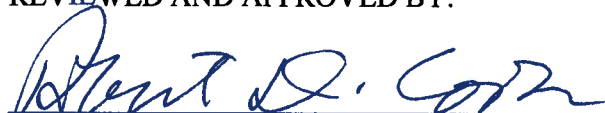
We are unaware of any case law in this State or prior opinions of this office particularly construing §12-37-714. However, as clearly specified by such statute, in our opinion, §12-37-714 should be read that a boat that is not currently taxed in South Carolina and that is not used exclusively in interstate commerce becomes taxable if it is present in South Carolina for sixty (60) consecutive days or for ninety (90) days in the aggregate in a property tax year, or by local ordinance for one-hundred-eighty (180) days in the aggregate in a property tax year, regardless of how the boat is titled.² It appears illogical that the provisions would be applicable to boats only owned by or titled to individuals.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

²We further note that §12-37-714 has been amended several times since its enactment to broaden the consideration of aggregate days in a property tax year, and to provide for an increase the number of aggregate days upon an ordinance passed by a local governing body. 2006 Acts. No. 386, §39B; 2007 Acts. No. 116, §66.A; 2008 Acts. No. 313, §9; 2010 Acts No. 279, §2.