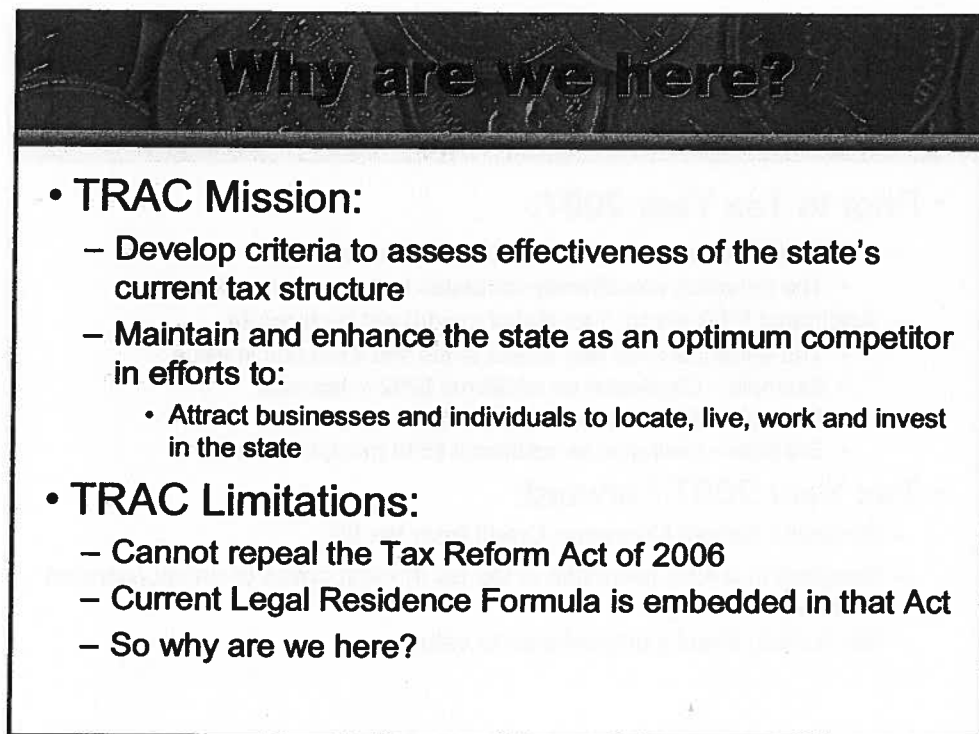


TRAC 2010  
Legal Residence Overview

June 8, 2010  
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**Why are we here?**

- **TRAC Mission:**
  - Develop criteria to assess effectiveness of the state's current tax structure
  - Maintain and enhance the state as an optimum competitor in efforts to:
    - Attract businesses and individuals to locate, live, work and invest in the state
- **TRAC Limitations:**
  - Cannot repeal the Tax Reform Act of 2006
  - Current Legal Residence Formula is embedded in that Act
  - So why are we here?

## Attracting Business

### • Attracting Businesses

- Real Property owned by businesses is assessed and taxed at a higher rate
  - Assessment is 50% higher than owner occupied homes and the School Operating Tax millage is paid only by 6% properties
  - Businesses argue that shifts the tax burden to them and perceive the change as unfriendly to business.
  - Preventing or reducing Legal Residence “gaming” can help ameliorate the negative impact on businesses.
  - Legal Residence game playing affects School Districts negatively thus impacting the quality of education in the state.
  - A good public education system is key to attracting business.

## The way we were

- Prior to Tax Year 2007:
  - 4% vs. 6% resulted in 1/3 reduction in Assessment
    - The reduction was *directly* correlated to the property value
  - Additional PTR (Prop. Tax Relief credit) set by formula
    - The additional relief was limited to the first \$100,000 in value
    - Example – Charleston an additional \$292 in tax relief
    - Example – Anderson an additional \$386 in tax relief
    - Example – Lexington an additional \$540 (max) in tax relief
- Tax Year 2007 Forward:
  - Removed School Operating Credit from tax bill
  - Resulted in a 48% reduction in tax bill in most areas of unincorporated Charleston County
  - Not limited, directly proportional to value

## Increased LR Applications

- **TY 2006 – Prior to Law Change:**
  - 4% Residences 34.0% of Tax Base
  - 6% Residences 60.3% of Tax Base
  - 6% Commercial 5.7% of Tax Base
- **TY 2008 – 2 Years after Law Change:**
  - 4% Residences 37.1% of Tax Base
  - 6% Residences 57.4% of Tax Base
  - 6% Commercial 5.5% of Tax Base
- **Change in two years**
  - 9% more of the tax base is at 4%, 6% Residential has declined 4.8%
  - The change is well in excess of inflation plus growth
  - 6% Commercial is relatively unchanged

## Enforcement Problems

- **Primary problems in enforcement:**
  - Deeding a small percent interest (1%, typically) to allow legal residence to be claimed.
  - A Person who owns a home in two separate counties in South Carolina and claims both houses as 4%
  - A Person who owns a home in South Carolina and home in another state (typically the spouse claims 4% here)
  - Spouses who claim to be separated, but are not divorced and each claims 4% on a residence
  - Married spouses who title one home in the husbands name and one home in the wife's name and claim 4% on each home
  - Married couples who each previously owned a home who now rent one of the homes out

## Deeding a % Interest

- Deeding a small percent interest (1% typically) to allow legal residence to be claimed
  - **LEGAL RESIDENCE: SECTION 12-43-220** The legal residence and not more than five acres contiguous thereto, *when owned totally or in part* in fee or by life estate and *occupied by the owner of the Interest.....*
  - **HOMESTEAD EXEMPTION: SECTION 12-37-250 (J)** The homestead tax exemption must be granted ...to a person who owns a dwelling *in part in fee or in part for life* when the person satisfies the other conditions of the exemption. The amount of the exemption must be determined by *multiplying the percentage* of the fee or life estate *owned by the person by the full exemption.*
  - **ISSUE:** Legislative Intent is unclear– an expansion of the statute (LY 2009) allowed children over 18 to qualify if claimed on parents tax return. It may be the legislature's intent that % interest owners fully qualify. If not: congruence with homestead statute is recommended.

## A home in 2 counties

- A person who claims a home in two separate counties
  - **LEGAL RESIDENCE: SECTION 12-43-220** "Under penalty of perjury I certify that: ..... (B) that neither *I nor any other member of my household* is residing in or occupying any other residence which *I* or any member of my immediate family has qualified for *the special assessment ratio allowed by this section.*"
  - **ISSUE:** The statute is clear - this is illegal.
  - **SOLUTION:** a statewide data base that contains social security numbers of all owners with 4% and the associated property identification, the year approved, etc. Assessor's would be required to send data to DOR monthly, and conflicts would be run monthly
  - **CURRENT SOLUTION:** Scrub against Income tax files – cumbersome, income tax files run 18 months behind.

## A home in another State

- A person who has a home in another state and claims to be domiciled here.
  - **ISSUE:** We have no way of knowing where they were last domiciled, names are too often similar to allow reliable use of LexisNexis Accurint and other search engines.
  - **SOLUTION:** A requirement that they provide their last address and provide some form of verification that they lived at that address in the recent past. Verification could be income tax return filed from that address, W-2, lease, old car registration, etc.
  - Requirement for last address aids with use of Lexis, use of DMV files, and in search for other state exemptions.

## A home in another State

- A person who has a home in another state and claims to be domiciled here, typically spouses.
  - **ISSUE:** the certification in Section 12-43-220 is inconsistently worded.
    - (A) the residence which is the subject of this application is ***my legal residence*** and where ***I*** am domiciled at the time of this application and that ***I*** do not claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and (B) that neither ***I nor any other member of my household*** is residing in or occupying any other residence which ***I or any member of my immediate family*** has qualified for ***the special assessment ratio allowed by this section.***
    - Section A is all about "I", that is a loophole for spouses, Section B is about household members but is specific to the 4% ratio, not *similar* ratios.
  - **SOLUTION:** congruent wording so that both sections refer to the members of the *household*, not just "*I*".
  - **SOLUTION:** Spouses by law could be declared to be living together.
  - **RELATED:** Prior discussion about providing last address and support.

## Separated Spouses

- A married couple file a separate support agreement with the court. They are not separated, have no intention of divorcing.
  - **LEGAL RESIDENCE: SECTION 12-43-220** that neither *I nor any other member of my household* is residing in or occupying any other residence which I or any member of my immediate family has qualified for *the special assessment ratio allowed by this section.*"
  - (iii) For purposes of sub item (ii)(B) of this item, "a member of my household" means: (A) the owner-occupant's spouse, except when that spouse is **legally separated** from the owner-occupant...
  - **SOLUTION:** Allow them to each qualify but only for 50% of the benefit. This reduces it's attractiveness. There could be a time limit on the dual filing. Upon divorce they could claim the 2 year refund for the whole amount.
  - **RELATED:** Works best with social security number data base. Will not eliminate "games" but will limit impacts.

## Spouses own property

- A married couple each own a house individually. They each file for the exemption.
- Married couples who each previously owned a home now rent one house out.
  - **SOLUTION:** A social security number data base scrubbed once a year against income tax records.
  - **CURRENT:** Scrub against income tax records on request, either individually or on county wide file.
  - **RELATED:** Death certificates are sent to counties annually for removal of homestead. Require that marriage certificate filings including social security numbers be sent to DOR to run against the Social Security Number data base (send monthly- run quarterly).

## Summary

- **Legislative Intent is not always clear.**
  - Recent history has included actions that broadened the exemption
  - 14 day rule
  - Allowing children over 18 claimed on tax return to file for 4%
- **Loopholes in the Law allow for gaming of the system.**
- **Inconsistency in statutory language allows for *legal* dual residency**

## Summary

- **An easily searchable statewide data base containing:**
  - Names, social security numbers, dates of birth, tax map numbers and mailing addresses of all people receiving 4%.
  - Assessors would be required to submit monthly reports on all new applicants or changed applications.
  - Require SCDOR, SCDMV and SC Voter Registration to participate.
- **Require DMV to allow Assessor's access to DMV files:**
  - Require that DMV files have the date driver's license is initially obtained,
  - The date of all address is changes on driver's license and car registration files.
  - The date a name is changed on the file and the previous name
- **Require Marriage License data to be provided to DOR and disseminated as death certificates are currently.**
- **Revise DOR income tax forms to separate boxes for non- resident and part year resident. Follow up questions should be made part of the form if Part year resident is checked.**

