

**South Carolina Association of Counties**

**Testimony Before the SC Taxation Realignment Commission  
September 21, 2010**

Attached are the summaries of the South Carolina Association of Counties (SCAC) testimony from both the June 8, 2010 hearing and July 21, 2010 hearing for inclusion in the Taxation Realignment Commission (TRAC) record on the web page.

SCAC, the SC Forestry Association and the SC Farm Bureau have been meeting on the various proposed changes regarding the agricultural use valuation and will meet to hopefully finalize those mutually agreed upon points for changes. We expect to bring you a practical solution or improvement upon the abuses brought to TRAC's attention in earlier hearings.

The South Carolina Association of Counties has heard numerous points brought before the Taxation Realignment Commission in previous hearings and undoubtedly more items in this hearing which in various combinations could have dramatic impacts upon other taxpayers, the stability of the system, current bond obligations, and services which are funded through those taxes. SCAC asks that we be allowed to testify on TRAC's proposals when the various issues are selected to ensure that all aspects of these points are brought before TRAC and that members of TRAC are made aware of the probable results of any changes.

**South Carolina Association of Counties**

**Proposed Code Changes Summary from Testimony  
SC Tax Realignment Commission  
June 8, 2010**

**I. Legal Residence / 4% Assessment Ratio – Section 12-43-220(c)**

**A. Multiple properties receiving legal residence ratio - in-state residents**

Amend the legal residence assessment ratio application to require the social security number of the applicant and the members of their household. This would allow for computer file comparisons of property in all counties. Using the social security number provides a unique identifier which avoids the problems of:

- two spouses with different last names,
- property titled in a maiden name and another titled in their married name,
- an individual titling property in two different variations of their full name.

Section 12-43-220(c)(2)(i) could be amended to add the underlined sentence and would read:

To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. Additionally, the taxpayer must provide his social security number and the social security number of all members of his household. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

**B. Multiple properties receiving legal residence ratio - couples claiming residency in more than one state**

There have been a number of applications for legal residence assessment ratio where one spouse is claiming legal residency in South Carolina and the other spouse claims residency in another state. The law only allows a couple where both spouses are South Carolina residents to claim one legal residence.

The certification on legal residence application needs to uniformly require that neither the applicant nor their spouse claim legal residence in another state.

Section 12-43-220(c)(2)(ii) could be amended to add the underlined words and delete the words stricken and would read:

(ii) This item does not apply unless the owner of the property or the owner's agent applies for the four percent assessment ratio before the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. In the application the owner or his agent must certify to the following statement:

'Under penalty of perjury I certify that:

(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 neither I do not nor another member of my household claim to be a legal resident of a jurisdiction other than South Carolina for any purpose, unless my spouse and I are separated; 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.'

### **C. Definition of legally separated**

South Carolina law really has no status of "legally separated." It is a phrase used in practice to refer to couples divorcing under the one year's living separate and apart. It appears in a number of cases that some couples are only "separated" for property tax purposes to receive the legal residence assessment ratio. The code needs a definition of the term or some showing of the status to prevent gaming of the system.

The Code could be amended to add a provision as follows:

Section 12-43-222. For purposes of Section 12-43-220, "separated" or "legally separated" means:

(a) the separation has been approved by a judge of a court of competent jurisdiction or a separation agreement has been filed with a court of competent jurisdiction, or

(b) the individual claiming the legal residence assessment ratio provided for in Section 12-43-220 has filed an affidavit with the assessor that their spouse no longer resides in the dwelling, their whereabouts are unknown and they do not file a joint income tax return with their spouse.

### **D. Many multiple legal residence parcels are the result of failure to notify the assessor of qualifying a new residence for the legal residence assessment ratio**

Often we find that a person or couple have two properties with the legal residence assessment ratio because they purchased a new home and simply forgot or did not know to notify the assessor that they had moved from the original legal residence. This could be remedied to some extent by allowing the assessor to periodically require owners to resubmit an application for legal residence.

This could be achieved by adding a provision to the Code as follows:

Section 12-43-226. Notwithstanding any other provision of law, the county assessor may require a taxpayer to re-qualify for the special four percent assessment ratio set forth in Section 12-43-220(c) for all or a portion of the parcels of real estate then receiving the special four percent assessment ratio. However, no property owner may be required to re-qualify more than once every three years.

## **II. Agricultural Use Valuation - Section 12-43-232**

The current law provides two different classifications of properties which may qualify for this special valuation. The first class is timberland and the second is non-timberland or row crops. The great majority of the questionable cases arise under the timberland category. This stems from the differences between the requirements applicable to each classification.

The following suggested changes were not discussed with other interested groups prior to testifying, but will be discussed with them to determine if these can be made mutually agreeable solutions.

- Change the definition of “agricultural real property” in Section 12-43-230(a) to make the percentage of the parcel used for agricultural purposes to a percentage greater than 50%, perhaps as high as 90% to make allowance for portions unusable for agriculture, such as wetlands or a ravine.
- Apply the percentage of use for agriculture rule in Section 12-43-230(a) to each non-contiguous parcel being qualified for the timberland classification. This would prevent an owner who has a true timber parcel from adding smaller parcels which are not actively used for timber purposes.
- Develop a definition or set of criteria to apply to the “management plan” which timberland is required to have. There are certainly industry models or criteria for active commercial tree farming which could be used to exclude parcels which are not “actively devoted to growing trees for commercial use” as Section 12-43-232(1)(a) requires. Currently there is no definition in the Code.
- Put an exclusion in the Code for parcels of land which are subject to deed restrictions or covenants which preclude commercial forestry practices. There have been several cases where the parcel being claimed as timberland was subject to a deed restriction which prohibited or required special permission for cutting of trees above a certain size. This would prevent residential lots in a subdivision being claimed as timberland.
- Require timberland parcels to meet the same 10 acre size threshold applied to row crop parcels.

- Update the minimum gross income threshold of a \$1,000.00 for a parcel less than ten acres to qualify as row crop agricultural use property. This income level is about twenty years old and should be re-examined.
- Allow for periodic requalification in the same manner as is suggested above for legal residence property.

**South Carolina Association of Counties**

**Summary from Testimony and Proposed Code Changes  
SC Tax Realignment Commission  
July 21, 2010**

**I. Dealer License Tags – Section 156-3-2320 et seq.**

**A. Fiscal Impact Background**

According to DMV there are 18,367 dealer tags issued in the state.

According to the BEA, the average car property tax bill is \$140.00. The average value of a vehicle with a dealer tag is most likely considerably higher than the statewide average. Assume a \$20,000.00 vehicle with an assessment ratio of 6% and that gives an assessed value of \$1,200.00. Assume further a millage rate of 200 mills (.200) and the tax bill would be \$240.00

The total fiscal impact of dealer license tags would be \$4,408,080.00

**B. Distribution of Dealer Tags Background**

All figures below use figures submitted to DMV at the June 29, 2010 meeting.

11,892 of the 18,637 tags were issued to dealers selling fewer than 500 cars per year.

That equals 64.75% of the tags.

5,106 of the 18,637 tags were issued to dealers selling less than 100 cars per year.

That equals 27.40% of the tags.

**C. Potential Revision of Formula**

There are plenty of anecdotes of vehicles not in any shape to be sold being driven with dealer tags, cars which do not appear to be on a dealer's lot at any time being driven with dealer tags and so on. It is also unusual to make a drive of any distance without seeing a car with a dealer tag.

Given the generous formula of 2 dealer tags for the first 20 sales and 1 additional tag for each additional 15 sales and the fact that nearly two-thirds of the tags are to dealers with what would appear to be low sales, perhaps the formula should be revised.

One revision to consider would be 2 tags for the first 100 and an additional tag for every additional 50 sales.

**D. Penalties for Misuse – Section 56-3-2325**

The statute provides that a person who misuses a dealer tag is subject to a \$300.00 dollar fine, forfeiture of the dealer tag, or both.

There is no specific reference to payment of property taxes which would have otherwise been payable and the statute should explicitly require payment of property taxes on the vehicle or vehicles upon which the misused dealer tag was used.

## **II. Property Tax Exemptions**

**A. There are 62 specific exemptions from the property tax found in Section 12-37-220(A) and (B).**

**B. There are other specific exemptions found elsewhere in the Code of Laws:**

TRAC has taken testimony on both the dealer tag exemption and the bank personal property exemption. Another exemption is for tractor trailers or trailers used by eighteen wheelers. Section 12-37-2860.

**C. There are also special valuation rules which by their operation, essentially exempt a portion of the property subject to the special valuation rule from taxation.**

Examples include:

Agricultural use valuation system, which TRAC has considered.

Multiple lot discount for land platted for building lots. Section 12-43-225.

Built, but unsold completed homes. Section 12-37-220(B)(51).

Homeowners association common property. Section 12-43-227.

In state tractor trailer rigs, based upon the number of miles travelled in state. Section 12-37-2810, et seq.

The 15% cap on valuation increases due to periodic reassessment.

**D. The cost of these exemptions and special valuation rules are unknown**

There is no estimate of the cost or value of each of these exemptions.

In order to value the real property exemptions, it would cost a significant amount of time and money because all real estate is deemed unique.

In many cases, despite the BEA's best efforts to estimate the cost of a proposed exemption, the estimate of the fiscal impact of a proposed exemption appears to be vastly different than the amount which the exemption actually costs.

One recent example is the exemption for speculative or completed but unsold homes found in Section 12-37-220(B)(51). During legislative debate, the estimated total fiscal impact was approximately \$1 million. In the first year of implementation, there

were several counties which had property in excess of \$1 million each which was claimed for exemption under Section 12-37-220(B)(51).

As TRAC has discovered through examination of other property tax exemptions (bank personal property), classifications (4% legal residence), and special valuations which effectively function as a partial exemption (agricultural use valuation), there is usually a constituency for the current law which can put forth some rationale for the current law or at least the concept of the current law. However the devil is in the details. This is evident from the examples of abuses of the agricultural use valuation, the 4% legal residence ratio, and dealer tags TRAC has already discussed. SCAC encourages TRAC to make recommendations along the lines of earlier testimony on these items.

SCAC encourages TRAC to examine these other property tax exemptions or the parameters of qualifying for the exemptions currently in the Code. In particular we suggest the following for closer study:

- The exemption for eighteen wheeler trailers
- The accelerated depreciation schedule for eighteen wheeler rig valuation
- The exemption of eighteen wheeler rigs located or based in this state but registered in another state.
- The various definitions of low income housing tied to several different provisions
- The definition of income for the homeowners association common property valuation.

SCAC is also willing to provide additional testimony and research on any other areas of the property tax or other local taxation areas.