TRAC

Property Tax Report

Draft

PROPERTY TAXES

I. ESTIMATED REVENUE COLLECTIONS

Total Property Tax Revenues ($)	FY 05	FY 06	FY 07	FY 08	FY 08 % of Total Revenue	6 YR Annual Growth Rate %	FY 08 % Change
Aggregate Revenue (Rates)	3.45 B	3.83 B	4.17 B	4.06 B	100	+4.7	-2.4
Owner Occupied (4%)	693.5 M	846.3 M	955.2 M	936.5 M	23.0	+10.6	-2.0
Agricultural—Private (4%)	23.11 M	24.15 M	24.69 M	25.11 M	.6	+2.8	+1.7
Agricultural—Corporate (6%)	5.522 M	5.517 M	5.310 M	5.078 M	.1	-1.9	-4.4
Commercial/Rental (6%)	1.17 B	1.38 B	1.57 B	1.54 B	38.0	+7.8	-1.7
Pers. Property (e.g. Vehicle, 6%)	495.7 M	466.9 M	478.2 M	437.9 B	10.8	-2.8	-8.4
Other Personal Property (10.5%)	52.87 M	57.57 M	66.56 M	69.52 M	1.7	+5.4	+4.4
Mfg. Non-Fee-In-Lieu (10.5%)	334.2 M	340.5 M	336.8 M	329.7 M	8.1	-1.9	-2.1
Utility (10.5%)	336.2 M	348.5 M	363.6 M	346.5 M	8.5	+1.2	-4.7
Business Pers. Property (10.5%)	160.1 M	160.7 M	168.4 M	168.2 M	4.1	+1.4	-0.1
Motor Carrier (9.5%)	12.91 M	14.00 M	15.38 M	15.73 M	.4	+2.6	+2.4
Fee-In-Lieu/Industrial Park	172.6 M	176.4 M	186.7 M	191.5 M	4.7	+5.8	+2.6

All Data From South Carolina Budget and Control Board: Office of Research and Statistics[1]

[1] South Carolina Budget and Control Board: http://ors.sc.gov/

II. PROPERTY TAXES IN SOUTH CAROLINA

At present, South Carolina's property tax environment epitomizes a tale of extremes. South Carolina has among the very lowest residential property taxes in the country (among the five lowest states) and *the highest* manufacturing property taxes nationally.

A. General

Property tax is generally administered, assessed and collected by local governments with assistance from the South Carolina Department of Revenue, but the Department of Revenue assesses and collects some property taxes and oversees all property tax assessments to ensure equitable and uniform assessment throughout the state Real property is subject to property taxes. Personal property that is used in business and certain personal property that is used for personal purposes such as motor vehicles, boats and airplanes are subject to property taxes. There is no state or local tax on intangible personal property or business inventories. Businesses must file a business personal property tax return with the Department of Revenue.

Approximately two-thirds of county-levied property taxes are used for support of public education. Municipalities levy a tax on property situated within the limits of the municipality for services provided by the municipality.

B. How the Tax is Calculated

Each class of property is assessed at a ratio unique to that type of property. The assessment ratio is applied to the market value of the property to determine the assessed value of the property. Each county, municipality or other taxing entity then applies its millage rate to the assessed value to determine the tax due. A mill is a unit of monetary value, equal to one-tenth of a cent, or one-thousandth of a dollar (.001). For example, if the millage rate is 200 mills and the assessed value of the property is $1,000, the tax on that property is $200. The county assessor assesses all other real property and the county auditor assesses all other personal property. A state property tax is levied on private carlines and airlines based on the average statewide millage rate.

C. Determining the Taxable Value for Property

Article X, Section 1, of the South Carolina Constitution provides for taxation by classification, but also states that within each classification "fair market value" is to be used. Article III, Section 29 of the South Carolina Constitution provides that:

> "[a]ll taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax."

In addition, SC Code §12-37-930 provides that:

> All property is to be valued "at its true value in money that is the price that the property would bring following reasonable exposure to the market where both seller and buyer are willing."[2]

D. Assessment Ratios

The following assessment ratios are applied to the value of the property to determine the assessed value for purposes of taxation:

Property Classification	Assessment Rate
Manufacturing Property	10.5% of fair market value
Utility Property	10.5% of fair market value
Railroads, Private Carlines, Airlines & Pipelines	9.5% of fair market value
Primary Residences	4.0% of fair market value
Agricultural Property (privately owned)	4.0% of use value
Agricultural Property (corporate owned)	6.0% of use value
Other real estate	6.0% of fair market value
Personal property	10.5% of income tax depreciated value
Private Passenger Vehicles	6% of fair market value for the 2008 tax year

E. Business Personal Property

All furniture, fixtures and equipment are to be reported at acquisition cost with a deduction allowed for depreciation. This category does not include inventory.

F. Fee-in-Lieu of Property Taxes

Industries investing at least $2.5 million ($1 million in some counties) in South Carolina may negotiate for a fee-in-lieu of taxes, resulting in a savings of about 40% of property taxes otherwise due.

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[2] See Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 397 S.E.2d 95 (1990); Smith v. Newberry County Assessor, 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002).

The project may be financed with industrial revenue bonds and structured as a purchase-leaseback. The county may hold title to the fee assets. Under certain fee agreements, the title remains with the company.

A company must make the minimum investment over a period of five years to qualify. A county may grant up to an additional 5 years to complete a project. An additional minimum investment may be required to be met within a certain period of time. In addition, the fee agreements may be negotiated as a fixed millage rate for the term of the fee agreement or a millage rate that varies every five years in accordance with the prior five-year average millage for the site.

The following example shows the savings from reducing the assessment ratio from 10.5% to 6%. Savings are also available from freezing the millage rate and the value of real property.

	Normal Calculation	**Fee in lieu Calculation**
Total Investment in Equipment	$100,000,000	$100,000,000
Investment Less Depreciation	$89,000,000	$89,000,000
Assessment Ratio	x 10.5%	x 6%
Assessed Value	$9,345,000	$5,340,000
Millage	x .250	x .250
Tax Due	$2,336,250	$1,335,000
Savings	**$1,001,250**	

III. A COMPARISON OF SOUTH CAROLINA'S PROPERTY TAXES

South Carolina has some of the highest national tax rates on commercial and industrial property, and the lowest tax rates on residential property. In the tables below, higher numbers indicate lower tax rates, while lower numbers indicate higher tax rates. The data below was compiled by the Minnesota Taxpayers Association (April 2010 ed.)

Property Taxes Payable 2009

Urban *Homestead*

$150,000 PROPERTY			$300,000 PROPERTY		
STATE	**CITY**	**RANK**	**STATE**	**CITY**	**RANK**
South Carolina	Columbia	49	South Carolina	Columbia	50
Georgia	Atlanta	9	Georgia	Atlanta	18
North Carolina	Charlotte	35	North Carolina	Charlotte	35

Urban *Apartment*
$600,000 Valued Property
$30,000 Fixtures

STATE	**CITY**	**RANK**
South Carolina	Columbia	19
Georgia	Atlanta	24
North Carolina	Charlotte	42

Urban *Commercial*

$100,000 PROPERTY & $20,000 FIXTURES			$1 MILLION PROPERTY & $200,000 FIXTURES			$25 MILLION PROPERTY & $5,000,000 FIXTURES		
State	**City**	**Rank**	**State**	**City**	**Rank**	**State**	**City**	**Rank**
South Carolina	Columbia	18	South Carolina	Columbia	19	South Carolina	Columbia	19
Georgia	Atlanta	29	Georgia	Atlanta	30	Georgia	Atlanta	31
North Carolina	Charlotte	48	North Carolina	Charlotte	48	North Carolina	Charlotte	48

Urban *Industrial* (50% Personal Property):

$100,000 VALUED PROPERTY $50,000 Machinery and Equipment $40,000 Inventories $10,000 Fixtures			$25 MILLION VALUED PROPERTY $12,500,000 Machinery and Equipment $10,000,000 Inventories $2,500,000 Fixtures		
STATE	**CITY**	**RANK**	**STATE**	**CITY**	**RANK**
South Carolina	Columbia	1	South Carolina	Columbia	1
Georgia	Atlanta	7	Georgia	Atlanta	20
North Carolina	Charlotte	42	North Carolina	Charlotte	43

Rural *Homestead*

$70,000 PROPERTY			$150,000 PROPERTY			$300,000 PROPERTY		
STATE	**CITY**	**RANK**	**STATE**	**CITY**	**RANK**	**STATE**	**CITY**	**RANK**
South Carolina	Mullins	30	South Carolina	Mullins	32	South Carolina	Mullins	32
Georgia	Fitzgerald	21	Georgia	Fitzgerald	20	Georgia	Fitzgerald	18
North Carolina	Edenton	32	North Carolina	Edenton	34	North Carolina	Edenton	34

Rural *Commercial*

$100,000 PROPERTY & $20,000 Fixtures			$1 MILLION PROPERTY & $200,000 Fixtures			$25 MILLION PROPERTY & $5,000,000 Fixtures		
STATE	**CITY**	**RANK**	**STATE**	**CITY**	**RANK**	**STATE**	**CITY**	**RANK**
South Carolina	Mullins	5	South Carolina	Mullins	5	South Carolina	Mullins	5
Georgia	Fitzgerald	26	Georgia	Fitzgerald	27	Georgia	Fitzgerald	27
North Carolina	Edenton	41	North Carolina	Edenton	41	North Carolina	Edenton	41

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Rural *Industrial* (50% Personal Property):

$100,000 PROPERTY $50,000 Machinery and Equipment $40,000 Inventories $10,000 Fixtures			$1 MILLION PROPERTY $500,000 Machinery and Equipment $400,000 Inventories $100,000 Fixtures			$25 MILLION PROPERTY $12,500,000 Machinery and Equipment $10,000,000 Inventories $2,500,000 Fixtures		
STATE	**CITY**	**RANK**	**STATE**	**CITY**	**RANK**	**STATE**	**CITY**	**RANK**
South Carolina	Mullins	1	South Carolina	Mullins	1	South Carolina	Mullins	1
Georgia	Fitzgerald	17	Georgia	Fitzgerald	19	Georgia	Fitzgerald	19
North Carolina	Edenton	44	North Carolina	Edenton	44	North Carolina	Edenton	44

IV. PROPERTY TAX EXEMPTIONS

A. General

State law provides over 60 property tax exemptions, as detailed below.

1. Exemptions as they relate to institutions of learning or medical services:

All property of:

1) Schools
2) Colleges and other institutions of learning except where the profits of the institutions are applied to private use the property of all charitable institutions
3) The infirmed, the disabled, the aged, children
4) Indigent persons except where the profits of the institutions are applied to private use

2. The property of all:

1) Libraries
2) Churches

3) Parsonages
4) Burial grounds

3. Exemptions as they relate to certain individuals:

The dwelling house and up to one acre of surrounding land is exempt for:

1) A Veteran who is permanently and totally disabled from a service-connected Disability
2) A former law enforcement officer who is permanently and totally disabled from a service connected disability in this State as defined in Section 23-23-10 (E)(1).
3) A former firefighter, including a volunteer firefighter who is permanently and totally disabled from a service connected disability in this State as defined in Chapter 80 of Title 40.
4) The exemption is passed to the surviving spouse of a member of the armed forces of the United States who meet the qualifications of a veteran, law enforcement officer or firefighter.
5) Qualified surviving spouse also means the surviving spouse of a member of the armed forces of the United States who was killed in action who at the time of death owned the dwelling in fee or jointly with the now surviving spouse. All criteria must be met to qualify for the exemption.
6) The law enforcement officer and firefighter must have been employed in the State of South Carolina when declared permanently and totally disabled as a result of a service connected disability.

4. Exemptions as they relate to organizations:

Nonprofit organizations involved in the following:

1) Water supply
2) Sewage disposal
3) A combination of both water supply and sewage disposal
4) American Legion
5) Veterans of Foreign Wars
6) Disabled American Veterans
7) Fleet Reserve Association
8) Marine Corps League
9) Other similar veterans' organizations
10) YMCA and YWCA
11) Salvation Army
12) Boy Scouts
13) Girl Scouts
14) Palmetto Junior Homemaker Association
15) New Homemakers of South Carolina
16) South Carolina Association of Future Farmers of America
17) New Farmers of South Carolina
18) Religious, charitable, eleemosynary, educational or literary society, corporation

19) association, when the property is held primarily for holding meetings and
20) conducting business
21) Property owned by religious, charitable, eleemosynary, educational or literary society, corporation or association, if property is acquired to construct or renovate a residential structure for sale to economically disadvantaged persons.
22) The exemption will not exceed fifty (50) acres per county and the sale *cannot* be for profit
23) Property owned by religious, charitable, eleemosynary, educational or literary society, corporation or association, extends to the real property that is held for a future use by the organization that would qualify for the exemption or held for investment by the organization in sole pursuit of the organization's exempt purposes and while held this property is not rented or leased for a purpose unrelated to the exempt purposes as defined in SC Code Section 12-37-220 (B)(16)(c).
24) Real property leased on a nonprofit basis to a(n):
25) State agency
26) County
27) Municipality or other political subdivision used for public purposes
28) the exemption does not apply to property used for office space or warehousing
29) Volunteer fire departments and rescue squads when property is used exclusively for that purpose or property leased to a department or squad by an entity itself exempt from property taxes
30) Nonprofit museums used exclusively for such purpose
31) Property of nonprofit or eleemosynary community theater companies, symphony orchestras, county and community arts councils and other similar companies, which is used exclusively for promotion of the "arts"
32) Charitable trusts and foundations if property is used for charitable purposes

5. The following exemptions as they relate to personal effects and the home:

1) Household goods and furniture used in the owner's primary home
2) Household goods and furniture used in a timeshare residential units
3) Clothing
4) A homestead exemption of $50,000 is available to residents who are 65 years of age, who are totally disabled or who are totally blind

6. The following exemptions pertain to the farm:

1) All agricultural products owned by the producer
2) Livestock and poultry
3) Farm machinery and equipment
4) Greenhouses

7. The following exemptions pertain to businesses:

1) New manufacturing facilities and additions costing at least $50,000 to existing manufacturing facilities which are not in a fee-in-lieu are exempt from the ordinary county taxes for a period of five years
2) Corporate headquarters, corporate office facilities and distribution facilities are exempt from ordinary county taxes for five years if the cost of new construction or additions is $50,000 or more and 75 or more full-time jobs are created
3) Manufacturers' inventories
4) Merchants' inventories
5) Personal property of an air carrier operating a hub in South Carolina is exempt for 10 years
6) Water, air or noise pollution equipment and facilities

8. Miscellaneous property tax exemptions:

1) Real property leased on a nonprofit basis to a state agency, county, municipality or other political subdivision used for a public purpose other than office space or warehousing
2) Property leased to and operated by the S.C. Public Service Authority for generating or transmitting electricity
3) Personal property used for public display loaned or leased on a nonprofit basis to:
    a) State agencies
    b) Counties
    c) Municipalities
    d) Other political subdivisions
4) Carnival equipment owned, leased or used by a foreign corporation or nonresident for a period of not more than six months if property tax has been paid in another state
5) Other property owned by churches if no income producing ventures are located on the property and no profit or benefit is derived by any individual
6) Nonprofit community-owned recreation facilities open to the general public
7) Personal property in transit with 'no situs' status
8) Intangible personal property

V. RECOMMENDATIONS

As stated above, South Carolina's tax system is a product of extremes: the highest taxes in the nation on manufacturers (not in a fee-in-lieu); amongst the very lowest in the nation on urban primary residences; amongst the very highest on boats and planes; perhaps the lowest in the country for a primary resident for a person over the age of 65 in an urban county. These are extremes even among the same tax type – 50th for a primary residence in Columbia; 30thth for one in Mullins. Because of the low tax base, exacerbated by ag-use valuation, our tax rates in rural counties are amongst the highest in all categories. Manufacturers in Mullins have the highest tax rate in the country; commercial has the fifth highest; and primary residences (with a value of \$70,000) 30th.

These extremes are a product of several factors: (1) assessment ratios, which are found in the South Carolina Constitution; (2) the numerous credits and exemptions granted only for primary residences, particularly those owned by persons 65 and over; and (3) the preferential status given to ag-use properties. (The latter includes a 4% assessment ratio for farms owned by individuals, and special ag-use valuation on crop and timber yields, which for some properties (typically on water) can be a very small fraction of true FMV.)

The net effect is to significantly reduce the property tax base in the county for primary residences and farms. The remaining property tax base is then shifted, via assessment ratios, to everyone else. The shift hits hardest manufacturers (as well as boats and planes) who have a 10.5% assessment ratio.

A. Manufacturers

Simply put, tax rates on manufacturers are the highest in the United States. The Minnesota Association of Taxpayer's Study has 19 rankings for industrial property. These include rural and urban; small, medium and large buildings; and small, medium and large machinery and equipment. South Carolina had the highest taxes in all 19 categories.

From an economic development competitiveness standpoint, while counties have the ability to lower the tax rates for new manufacturing facilities with fee-in-lieu, virtually every competing state has similar incentives. In addition, older facilities which predated the enactment of fee-in-lieu in 1988, many smaller manufacturing facilities, and many expansions are not in a fee-in-lieu. Indeed, non-fee-in-lieu revenue (\$329 million in FY 08) still significantly exceeds fee-in-lieu revenue (\$192 million).

Recommendation:

The General Assembly should consider a constitutional amendment lowering the assessment ratio for manufacturers or amend the fee statutes to allow existing facilities not in a fee-in-lieu to enter into one. Such changes could be done on a phased-in basis.

[Add Steelman's Proposal]

B. Second Homes and Apartments

The taxes on second homes (non-primary residences owned by residents or visitors) and apartments (which are classified as commercial) are significantly higher than primary residences. This results from (1) a higher assessment ratio (6% vs. 4%); and (2) various credits which apply only to primary residences.

This differential is amongst the highest in the country. The Minnesota Association of Taxpayers Study showed that only 5 states subsidized homeowner's rates by commercial property owners more than South Carolina (Table 19, April 2010 Study). South Carolina had the highest ratio to homestead rates (Table 20).

These stark differences combined with other recent tax changes, have significantly impacted the South Carolina real estate market. South Carolinians shopping for a second home have been chilled by the "sticker shock" of the annual taxes which would be due on a second home. REITs and other institutional investors in apartment complexes have left the South Carolina market out of concern they can no longer pass annual real property tax increases onto tenants. All of this has created the perfect storm for the South Carolina real estate market, which is depressed because of numerous other economic factors.

Summary:

The General Assembly should equalize the tax preferences for primary residences versus other residences (second homes and apartments).

C. Agricultural Real Property: Current Law

(i) General

Real property that is actually used for agricultural purposes (and meets the other requirements for agricultural real property) is classified as agricultural real property and taxed on an assessment equal to:

a. 4% of the fair market value for agricultural purposes for owners or lessees who are individuals or partnerships, and for corporations that do not have one or more of the following: (1) more than 10 shareholders; (2) a shareholder (other than an estate) that is not an individual; (3) a nonresident alien as a shareholder; and (4) more than 1 class of stock.

b. 6% of the fair market value for agricultural purposes for corporate owners or lessees, except for certain closely held corporations specified in (a) above.

In addition, SC Code §12-43-220(d) grants a special valuation, known as fair market value for agricultural purposes, for real property that is "actually used for agricultural purposes."

c. Application for Classification of Property as Agricultural Real Property:

Each new owner must apply to the county assessor for classification as agricultural real property on or before the first date taxes are due without penalty. An owner who has obtained such classification must notify the assessor of a change in use within 6 months.

(ii) Penalty for Falsifying Application:

SC Code §12-43-340 provides that it is unlawful for a person to knowingly and willfully make a false statement on the application for agricultural real property. A person making such a false statement is guilty of a misdemeanor and, upon conviction, must be fined not more than $200.

iii) Change in Use - Rollback Taxes:

When agricultural real property is applied to a use other than agricultural, it is subject to additional taxes, referred to as rollback taxes. The amount of the rollback taxes is equal to the sum of the differences, if any, between the taxes paid or payable on the basis of the fair market value for agricultural purposes and the taxes that would have been paid or payable if the real property had been valued, assessed, and taxed as other real property in the taxing district (except the value of standing timber is excluded), for the current tax year (the year of change in use) and each of the immediately preceding 5 tax years. SC Code §12-43-220(d) and 27 SC Code Regs. 117-1780.3.

Any property that becomes exempt from property taxes under SC Code §12-37-220(A)(1) (property owned by the state or a local taxing authority and used exclusively for public purposes) or SC Code §12-37-220(B)(41) (economic development property during the exemption period as provided in Chapter 44, Title 12 of the SC Code) is not subject to rollback taxes.

"Fair market value for agricultural purposes" is a special valuation that applies to real property that qualifies as "agricultural real property." The special valuation is governed by statute and by Department regulations.

(iv) Method of Valuation:

SC Code §12-43-220(d)(2)(A) defines "fair market value for agricultural purposes" as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or typical net income from timber and non-timber crops.

The fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years. SC Code §12-43-220(d)(2)(B)(i). Values derived before 1992 and based on the soil capacity of the various regions of the state are provided in Department regulations for current use.

When the use of agricultural real property changes, the property is subject to "roll back taxes" that cause a recapture of the difference in tax on the property as agricultural real property and the tax that would have been assessed if the property had not qualified as agricultural real property. The value of standing timber is not included in calculating the roll back recapture.

(v) Definition of Agricultural Real Property:

To qualify as agricultural real property, real property must be "actually used for agricultural purposes." SC Code §12-43-220(d). See also SC Commission Decision 92-77. This means that the property must be currently used for bona fide agricultural purposes. Intended or future use is not determinative. 27 SC Code Regs. 117-1780.1; SC Tax Commission Decision 92-77.

Agricultural real property is defined as "any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means." SC Code §12-43-230(a). Agricultural real property also includes a dockside facility whose primary use is the landing and processing of seafood. SC

Code §12-43-220(d)(5).

27 SC Code Regs. 117-1780.1 further defines agricultural real property. It provides 6 non-exclusive factors to be considered by county assessors in determining whether the tract in question is bona fide agricultural real property: (1) the nature of the terrain; (2) the density of the marketable product (timber, etc.) on the land; (3) the past usage of the land; (4) the economic merchantability of the agricultural product; (5) the use or not of recognized care, cultivation, harvesting and like practices applicable to the product involved, and any implemented plans thereof; and (6) the business or occupation of the landowner or lessee, provided that purchase for investment purposes does not disqualify a tract if it is actually used for agricultural purposes. The following uses of real property do not qualify as agricultural: (1) recreation; (2) hunting clubs; (3) fishing clubs; (4) vacant land lying dormant; or (5) any other similar use. Id.

It is often difficult to ascertain whether a particular parcel of land is being used for a bona fide agricultural purpose. In such instances, no single factor is determinative of the issue. Rather, all the factors listed in Regulation 117-1780.1 and all relevant facts must be viewed together to determine the classification. Id.

Except as provided in SC Code §12-43-232 (discussed in §222.3 below), the size of a parcel can be considered in conjunction with other factors in reaching an overall determination. The location of property in a residential subdivision or an area zoned for residential use is also a factor. SC Tax Commission Decision 93-37.

In cases in which the real property is committed to more than one use, one use being agricultural and the other use or uses being unrelated to agriculture, the agricultural activity must comprise the most significant use of the property for the property to be classified as agricultural real property. 27 SC Code Regs. 117-1780.1.

Agricultural real property may be used for agritourism, provided agritourism is supplemental and incidental to a primary use for agricultural purposes. SC Code §12-43-233. A lengthy, non-exclusive list of agritourism uses set forth in the statute includes such diverse uses as wineries, educational tours, on-farm food sales, farm vacations, bird watching, and crop art.

The term “agricultural real property” includes real property used to provide free housing for farm laborers provided such housing is located on a tract of land that qualifies as agricultural real property. SC Code §12-43-230(a).

(vi) Additional Requirements for Agricultural Real Property

SC Code §12-43-232 provides additional requirements that must be met in order for real property to qualify as agricultural real property. The requirements are as follows:

a. Timberland:

If the tract is used to grow timber, the tract must be 5 acres or more. Tracts of timberland of fewer than 5 acres qualify if they are contiguous to, or are under the same management system as, a tract of timberland that meets the minimum acreage requirement. Tracts of timberland of fewer than 5 acres are eligible to be agricultural real property if they are owned in combination with other tracts of agricultural real property that are not timberland but qualify as agricultural real property. Tracts of timberland must be devoted actively to growing trees for commercial use.

b. Christmas Trees:

A tract devoted to growing Christmas trees must be 5 acres or more. If the tract is fewer than 5 acres, it will qualify as agricultural real property if at least $1,000 of gross farm income was reported for at least 3 of the last 5 tax years.

c. Other Acreage:

All other tracts must be at least 10 acres or more. Tracts of fewer than 10 acres qualify as agricultural real property if they are contiguous to other tracts that total at least 10 acres when combined. Tracts that do not meet this requirement will qualify if at least $1,000 of gross farm income was reported for at least 3 of the last 5 tax years.

d. New Ownership:

A new owner may qualify a non-timberland tract of fewer than 10 acres if he earns at least $1,000 of gross farm income in at least 3 of the first 5 years of ownership. If the new owner fails this requirement, the tract is not considered agricultural real property and is subject to the rollback tax.

e. Grandfather Clause:

If neither the acreage nor the income requirements are met, the property will qualify as agricultural real property if the current owner or an immediate family member owned the property for at least the 10 years ending January 1, 1994, and the property was classified as agricultural real property for property tax year 1994. Such property must continue to be classified as agricultural real property until the property is applied to some other use or until the property is transferred to someone other than an immediate family member, whichever occurs first. “Immediate family” is defined in SC Code §12-43-232(3)(e).

f. Idle Land:

Real property idle under a federal or state land retirement program or property idle pursuant to accepted agricultural practices will be classified as agricultural real property if the property otherwise would have qualified, subject to satisfactory proof to the assessor.

g. Leased Agricultural Real Property:

In the case of rented or leased agricultural real property, the property will qualify if either the lessor or the lessee meets the above requirements.

Recommendation

TRAC recommends the General Assembly:

Increase the minimum acreage size for both timber and row crops from 5 to 10 acres;

Require assessors to consider deed and other legal restrictions on timbering in determining whether land is being used for timber production;

Increase the minimum income test for crops from $1,000 to $2,500;

Require non-contiguous tracts to directly support timber or crop use;

Require the SCDOR to issue regulations to clarify when rollback taxes are assessed;

Increase the criminal penalties for false statements on an ag use application from $200 to $1,000;

Require assessors to determine the current status every five years of ag use property, which is valued at 20% or less of FMV.

D. Legal Residence

The legal residence and not more than 5 contiguous acres, when owned totally or in part in fee simple or by life estate and occupied by the owner of the interest, is taxed based on an assessment ratio of 4%. The residence must be the domicile of the owner at some time during the tax year. Additional dwellings located on the same property (not more than 5 acres) and occupied by immediate family members of the owner will also qualify for the 4% ratio.

An individual is considered the owner of the property if he has an interest in it pursuant to an installment contract for sale with the U.S. Department of Veterans Affairs. If residential real property is held in trust and the income beneficiary of the trust occupies the property as his legal residence, the 4% ratio applies if the trustee certifies to the assessor that the income beneficiary occupies the property as a residence.

When the legal residence, including a mobile home, is located on leased or rented property, and the residence is owned and occupied by the owner, the 4% assessment ratio applies for the residence (the assessment ratio for the land is 6%). If the lessee of property upon which he has located his legal residence is liable, by law, for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed 5 acres contiguous to his legal residence, will be assessed at the 4% ratio. The 4% assessment ratio does not apply to any mobile home or residence that is rented, or to any business for profit located on the residential property.

A motor home, boat or watercraft, or trailer used for camping and recreational travel that is pulled by a motor vehicle may qualify as a legal residence if it meets the requirements set forth in SC Code §12-37-224.

A purchaser who purchases residential property with the intent that it will become his primary residence, but the property is subject to vacation rentals as provided in SC Code Title

27, Chapter 50, Article 2, for no more than 90 days, may apply for the 4% assessment ratio once the purchaser occupies the property. If the owner actually occupies the property within 90 days of acquiring ownership and otherwise qualifies, the 4% ratio will apply retroactively to the date of ownership. A taxpayer is not disqualified from receiving the 4% legal residence assessment ratio just because he rents out his legal residence for not more than 14 days during the tax year.

Generally, the residential classification is not available unless the owner of the property applies to the county assessor before the first penalty date for taxes due (January 16). As part of the application, the taxpayer must certify that neither he nor any other member of his family (which includes his spouse, unless legally separated, and his dependent children under age 18) is residing in or occupying any other residence in South Carolina that has been qualified for the 4% assessment ratio by the taxpayer or a member of his family. He must also certify that he does not claim to be a legal resident of a jurisdiction other than South Carolina for any purpose. The application may be extended by the local taxing authority for reasonable cause. A new application does not have to be filed unless there is a change in ownership. A residence that is qualified as a legal residence for any part of a year is entitled to the 4% assessment ratio for the entire year.

A motor home, boat or watercraft, or trailer used for camping and recreational travel that is pulled by a motor vehicle may qualify as a primary or secondary residence for property tax purposes if it qualifies for deduction of the interest portion of indebtedness on a qualified primary or secondary residence under the Internal Revenue Code. SC Code §12-37-224. Requirements for the relevant deduction under the Internal Revenue Code include on-board sleeping, cooking and toilet facilities. A primary residence is taxed based on a 4% assessment ratio, and secondary residence is taxed based on a 6% assessment ratio. Property that qualifies under SC Code §12-37-224 is valued in the same manner as motor vehicles.

Recommendation:

The owners of a primary residence (with a 4% assessment ratio) can have a second home (with a 6% assessment ratio) taxed as a primary residence merely by deeding a 1% interest to a child. TRAC recommends the General Assembly prorate the taxes (e.g. 1% taxed with a 4% assessment ratio and 99% with a 6% ratio.)

E. Banks

Financial Institutions

Banks and savings and loans pay an income tax in lieu of other forms of taxes, including sales, local business license taxes and taxes on personal property. The income tax on banks is a lower rate than paid by all other businesses and individuals (4.5% vs. 5 and 7%). Savings and loans pay an income tax of six percent but are exempted from it for a three-year period. Many credit unions pay no income taxes.

Recommendation:

Repeal the personal property tax exemption for banks, S&Ls and credit unions;

Equalize the property taxation of banks, S&Ls and credit unions;

F. Section by Section Summary of Exemption Recommendations

TRAC recommends the General Assembly delete or modify property tax exemptions as follows.

Section 12-11-30 Repeals personal property exemption for banks.

Section 12-13-50 Repeals the personal property exemption for savings and loans.

Section 12-37-220 Exemptions.

A(2) Limits hospital property tax exemption to hospital purposes (i.e. not office complexes.)

A(4) Charitable Trusts and Foundations must be exempt under IRC §501(c)(3).

A(7) Under current law a new manufacturing establishment (not in a fee-in-lieu) receives an automatic abatement of the county's portion of the property taxes (typically 40% of the tax bill.) There is no automatic abatement of the city or school district millage, meaning only the county receives no tax payments. The amendment abates 40% of the total tax bill.

B(10) Repeals property taxation exemption for telephone cooperatives. (Electric cooperatives pay property taxes.)

B(16)(a) Requires charitable organizations to be exempt under IRC §501(c)(3).

B(32) R&D exemption. See (A)(7).

B(35) Repeals personal property tax exemption for timeshares.

B(39) R&D exemption. Municipalities may exempt R&D under this provision. (The exemption is automatic for counties.) The amendment under B(32) would also make this automatic for municipalities.

B(45) Repeals exemption for vehicles leased to out-of-state armed service members. (There is no exemption for resident members.)

Sections 12-37-230, -235 and -240. These statutes provide that cities and counties may contract with exempt nonprofit housing corporations for payment for services. The sections are silent on how such contracts are negotiated or executed and the sections are amended to delete the contract requirement.

Section 12-37-670 New Structures. This section clarifies that new structures are subject to taxation when they are substantially completed and fit for use.

Section 12-37-712 Conforms aircraft with boats. Taxes on private passenger aircraft are amongst the highest in the United States and as a result there is substantial non-compliance and evasion in this area. This section explicitly gives the auditor authority to access airport hanger and fuel sale records to determine if taxes are owing.

Section 12-37-714 Conforms aircraft with boats. Several years ago the General Assembly provided for the proration of property taxes on boats which are here for less than a full calendar year. (Previously it was an all or nothing test.) This amendment adds aircraft.

Section 12-37-930 Historically the taxation on vehicles, watercraft and aircraft was based upon true FMV. The General Assembly, as a result of a very rare increase in value in certain SUVs enacted a 95% rule. This results in considerable administrative complexities. The amendment deletes it.

Section 12-37-950 Leases of exempt property by the private sector. South Carolina has since the 1950s required a private sector lessee of exempt property to pay the same property taxes as its competitors who lease private property. The section for a variety of reasons has never been enforced and it has accordingly been amended to include a filing requirement by a private sector entity who leases exempt property.

Section 12-37-2720 Dealer tags. This section exempts from property taxation vehicles used by a dealer's officers, employees, children and spouses for both business and personal use. The section is repealed.

Section 12-43-220(a)(c)(1) "One percent holders." TRAC received testimony that a family which owned a second home (which typically is taxed with a 6% assessment ratio) could have the home taxed as a primary residence (with a 4% assessment ratio) merely by transferring a one percent interest to, e.g., a child. This amendment would prorate the taxes in such scenario.

Section 12-43-220(E) Property taxed as agriculture use is subject to rollback taxes when the property is converted to other use (e.g., residential, commercial, etc.) The law in unclear, however, when such property is converted. This amendment requires the DOR to issue Regulations to provide guidance to assessors on this issue.

Section 12-43-220(6) Rollback taxes. The only exception to rollback taxes is when property is put into a fee-in-lieu. This amendment repeals the exception.

Section 43-232 Ag use. There has been considerable media attention regarding the misuse of Ag use (e.g. lot on front beach at Kiawah.) By way of background, there are two types of ag use qualifications: (1) timber; and (2) crops. The amendments increase the minimum acreage for timber and row crop ag use from five to ten acres and the exception for parcels of less than ten acres is tightened. The assessor can also consider whether legal restrictions would prevent commercial timbering.

Section 12-43-233 Ag use, Agritourism. Two years ago the General Assembly added a very loose exemption for "agritourism." This amendment clarifies that property exempt under the agritourism provision must meet the traditional ag-use tests.

Section 12-43-340 Ag use. The criminal penalties for making a false statement on an ag use application is increased from two hundred to one thousand dollars.

G. Dealer Tags

South Carolina Code § 56-3-2320[3] provides for an exemption for vehicles with a dealer tag:

> "The license plates, notwithstanding other provisions of this chapter to the contrary, may be used exclusively on motor vehicles owned by, assigned, or loaned for test driving purposes to the dealer when operated on the highways of this State by the dealer, its corporate officers, its employees, or a prospective purchaser of the motor vehicle."[4]

In South Carolina a dealer earns two dealer tags for the first twenty cars sold during the preceding year, and an additional dealer tag for each fifteen cars sold during that same preceding year. A vehicle with a dealer tag is *completely* exempted from property tax if the owner is the dealership, a corporate officer, or employee. There are less than 3,300 dealers in the state, but over 18,000 dealer tags. That equates to roughly 5.56 dealer tags per dealership.[5]

Dealer Size	Sales Volume	# of Dealers (% of total)	Number of Plates (% of Total)	% of Max Plates Allowed
Mega	> 3,000	18—(0.5%)	476—(3%)	4.3%
Large	1000-2999	128—(4%)	2972—(16%)	9.68%
Medium	500-999	169—(5%)	3027—(16%)	19.03%
Average	100-499	1087—(37%)	6786—(37%)	28.08%
Small	<100	1901—(58%)	5106—(28%)	85.87%

An interesting comparison is the ratio of used versus new car dealerships in the state of South Carolina versus the state of California. South Carolina has a ratio of approximately 8.77 used/new car dealerships (2500/285 used/new).[6] Compare that to California which has a ratio

[3] S.C. Code Ann. § 56-3-2320 (2008).
[4] 56-3-2320 (2008).
[5] South Carolina Dept. of Motor Vehicles: http://www.scdmvonline.com.
[6] *Id*.

4.61 used/new car dealerships (6785/1470 used/new).[7]

Another interesting fact is that California has more than nine times the population of South Carolina, but only about three times as many dealerships. This disproportionate number of dealerships per person shows that an some important incentive exists for opening dealerships in South Carolina. This ratio is important because a major area of abuse concerns individuals setting up straw dealerships, which are *used* car dealerships that meet minimum legal requirements, but do not have the legitimate intention to competitively enter the business of selling used vehicles (and avoid licensing difficulties of working with new car manufacturers). These "straw" dealerships are easy to set up because of minimum legal requirements, so the dealerships and the subsequent dealer tags granted provide a great mechanism for creating sales tax shields.

Based on estimates from the department of revenue, the average sales tax liability avoided by dealers per car is between $240 and $250. Contrast that with the DMV's figures where motor vehicle owned by the average consumer pays $140 annually.

The South Carolina Department of Motor Vehicles estimates that this tax exemption costs the state between $4 and $5 million annually.

Recommendation:

Repeal the property tax exemption for dealer tags.

H. Aircraft

Property taxes on private passenger airplanes are amongst the highest in the nation. As a result, there is considerable evasion of the taxes.

Recommendation:

The General Assembly should consider lowering the Assessment Ratio on private passenger aircraft.

The General Assembly should conform the tax treatment of aircraft to boats, thus allowing a proration of the taxes.

I. Valuation of Time Share Units

Time shares enjoy a unique tax status, including an exemption for sales and accommodation taxes. For purposes of property taxation, a time share unit operating under a

[7] California Dept. of Motor Vehicles: www.dmv.ca.gov.

vacation time sharing ownership plan, as defined in SC Code §27-32-10(7) (purchaser receives an ownership interest as well as right of use), must be valued as if the unit were owned by a single owner. However, a time share unit operating under a vacation time sharing lease plan, as defined in SC Code §27-32-10(8) (purchaser receives right of use but not ownership interest), may be valued as other income producing investment property is valued. Furniture and fixtures are exempt from personal property taxes and sales of time shares are exempt from the ATI provisions, meaning they are not revalued for tax purposes on resales.

Recommendation:

Repeal the personal property exemption for furniture and fixtures.