~~Indicates Matter Stricken~~

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COMMITTEE AMENDMENT AMENDED AND ADOPTED

February 9, 2010

**H. 3272**

Introduced by Reps. Cooper, Merrill, Erickson, Herbkersman, Chalk, Duncan, Long, Sottile, Daning, Lowe, Bowen, Harrison, Horne, A.D. Young, Limehouse, R.L. Brown, Clemmons, Edge and Wylie

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Read the first time April 23, 2009.

**A** **BILL**

TO AMEND SECTION 12‑37‑3140, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DETERMINING THE FAIR MARKET VALUE OF REAL PROPERTY FOR PURPOSES OF THE SOUTH CAROLINA REAL PROPERTY VALUATION REFORM ACT, SO AS TO POSTPONE THE IMPLEMENTATION OF THE TRANSFER VALUE OF A PARCEL OF REAL PROPERTY UNIMPROVED SINCE THE LAST COUNTYWIDE REASSESSMENT PROGRAM UNTIL THE TIME OF IMPLEMENTATION OF THE NEXT COUNTYWIDE REASSESSMENT PROGRAM AND TO REQUIRE THE FIFTEEN PERCENT LIMIT ON INCREASES IN VALUE TO BE CALCULATED SEPARATELY ON LAND AND IMPROVEMENTS; TO AMEND SECTION 12‑37‑3150, AS AMENDED, RELATING TO THE TIME AN ASSESSABLE TRANSFER OF INTEREST OCCURS, SO AS TO REVISE THE PENALTY FOR FAILURE TO PROVIDE NOTICE OR FAILURE TO PROVIDE ACCURATE NOTICE TO THE ASSESSING AUTHORITY OF BUSINESS ENTITY TRANSFERS; TO AMEND SECTION 12‑43‑220, AS AMENDED, RELATING TO THE CLASSIFICATION AND VALUATION OF PROPERTY FOR PURPOSES OF THE PROPERTY TAX, SO AS TO PROVIDE RESIDENTIAL REAL PROPERTY HELD IN TRUST DOES NOT QUALIFY AS A LEGAL RESIDENCE UNLESS A NAMED INDIVIDUAL BENEFICIARY UNDER THE TRUST OCCUPIES THE RESIDENCE AS THAT NAMED BENEFICIARY’S LEGAL RESIDENCE AND THAT INDIVIDUAL BENEFICIARY’S NAME APPEARS ON THE DEED TO THE RESIDENCE AND REQUIRE SOCIAL SECURITY NUMBERS OF APPLICANTS FOR THE LEGAL RESIDENCE ASSESSMENT RATIO; AND TO AMEND SECTION 40‑60‑35, RELATING TO CONTINUING EDUCATION REQUIREMENTS FOR ASSESSORS, SO AS TO REVISE THE REQUIREMENT.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. A. Article 25, Chapter 37, Title 12 of the 1976 Code is amended by adding:

“Section 12-37-3135. (A) When a parcel of real property and improvements thereon subject to the six percent assessment ratio provided pursuant to Section 12‑43‑220(e) and which is currently subject to property tax undergoes an assessable transfer of interest in property tax year 2010, there is allowed an exemption of an amount of fair market value of that parcel sufficient to eliminate any increase in fair market value as determined in the appraisal at the time of the assessable transfer of interest over the property tax value. The fair market value to which the cap on increases in fair market value imposed pursuant to Section 12-37-3140(B) applies is the fair market value as it may be reduced by the exemption allowed by this section. The exemption allowed by this section applies at the time value as determined by an assessable transfer of interest applies.

(B)(1) When a parcel of real property and improvements thereon subject to the six percent assessment ratio provided pursuant to Section 12‑43‑220(e) and which is currently subject to property tax undergoes an assessable transfer of interest after property tax year 2010, there is allowed a twenty percent exemption of fair market value of that parcel as determined in the appraisal at the time of the assessable transfer of interest. The fair market value to which the cap on increases in fair market value imposed pursuant to Section 12‑37‑3140(B) applies is the fair market value as it may be reduced by the exemption allowed by this section. The exemption allowed by this section applies at the time the value as determined by an assessable transfer of interest first applies.

(2) Notwithstanding subitem (1) of this subsection, if the exemption provided in subitem (1) would reduce the fair market value of a parcel of real property and improvements thereon below the fair market value of the parcel as previously carried on the books of the property tax assessor, the exemption provided in subitem (1) does not apply and the fair market value shall be the fair market value of the parcel as previously carried on the books. However, if the fair market value of the parcel as determined in the appraisal at the time of the assessable transfer of interest is lower than the fair market value of the parcel as previously carried on the books, the exemption provided in subitem (1) does not apply and the fair market value shall be the fair market value determined pursuant to Section 12-47-140(A)(1)(b).

(C) The exemptions allowed by this section continue to apply until the parcel next undergoes an assessable transfer of interest. However, the parcel remains subject to changes in value as determined in a periodic countywide appraisal and equalization program and the limit on the increases in such values pursuant to Section 12‑37‑3140(B).

(D) The exemptions allowed by this section do not apply to the fair market value of additions or improvements made to the parcel not previously subject to property tax.

(E) The exemptions provided in this section do not apply unless the owner of the property or the owner's agent notifies the county assessor that the property will be subject to the six percent assessment ratio provided pursuant to Section 12‑43‑220(e) before January thirty-first for the tax year for which the owner first claims eligibility for the exemption. No further notifications are necessary from the current owner while the property remains subject to the six percent assessment ratio.

(F) The exemptions allowed by this section shall no longer be effective if the property does not remain subject to the six percent assessment ratio provided pursuant to Section 12‑43‑220(e) for at least five tax years following the assessable transfer of interest. If the property does not maintain the exemption allowed by this section, in the first tax year which the exemption does not apply, the fair market value of the property shall be increased to the fair market value as determined in the appraisal at the time of the assessable transfer of interest plus any increase attributable to Section 12-37-3140(B).

(G) For purposes of this section, ‘fair market value’ means the fair market value of real property and improvements to real property determined by appraisals of the property tax assessor based on initial appraisals and periodic reappraisals conducted pursuant to Section 12‑43‑217.

(H) For purposes of this section, ‘property tax value’ means the fair market value as it may be adjusted pursuant to Section 12-37-3140(B).”

B. Section 12‑37‑3140(A)(1)(b) of the 1976 Code, as last amended by Act 57 of 2007, is further amended to read:

“(b) subject to Section 12‑37‑3135, December thirty‑first of the year in which an assessable transfer of interest has occurred;”

C. This section applies for real property transfers after 2009. Property tax assessors shall conform the values of parcels of real property which underwent an assessable transfer of interest in 2010 before the effective date of this act, to the fair market value of these parcels as that value may have been adjusted to reflect the provisions of Section 12-37-3135 of the 1976 Code, as added by this act. No refund is allowed on account of values adjusted as provided in this section.

SECTION 2. A. Section 12‑37‑3150(B) of the 1976 Code, as last amended by Act 57 of 2007, is further amended to read:

“(B) An assessable transfer of interest does not include:

(1) transfers not subject to federal income tax in the following circumstances:

(a) 1033 (Conversions‑Fire and Insurance Proceeds to Rebuild);

(b) 1041 (Transfers of Property Between Spouses or Incident to Divorce);

(c) 351 (Transfer to a Corporation Controlled by Transferor);

(d) 355 (Distribution by a Controlled Corporation);

(e) 368 (Corporate Reorganizations); or

(f) 721 (Nonrecognition of Gain or Loss on a Contribution to a Partnership).

Number references in the above subitems are to sections of the Internal Revenue Code of 1986, as defined in Section 12‑6‑40;

(2) a transfer of that portion of property subject to a life estate or life lease retained by the transferor, until expiration or termination of the life estate or life lease;

(3) a transfer through foreclosure or forfeiture of a recorded instrument or through deed or conveyance in lieu of a foreclosure or forfeiture, until the redemption period has expired;

(4) a transfer by redemption by the person to whom taxes are assessed of property previously sold for delinquent taxes;

(5) a conveyance to a trust if the settlor or the settlor’s spouse, or both, convey the property to the trust and the sole present beneficiary of the trust is the settlor or the settlor’s spouse, or both;

(6) a transfer for security or an assignment or discharge of a security interest;

(7) a transfer of real property or other ownership interests among members of an affiliated group. As used in this item, ‘affiliated group’ is as defined in Section 1504 of the Internal Revenue Code as defined in Section 12‑6‑40. Upon request of the applicable property tax assessor, a corporation shall furnish proof within forty‑five days that a transfer meets the requirements of this item. A corporation that fails to comply with this request is subject to a civil penalty as provided in Section 12‑37‑3160(B);

(8) a transfer of real property or other ownership interests among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled. Upon request by the applicable property tax assessor, a corporation, partnership, limited liability company, limited liability partnership, or other legal entity shall furnish proof within forty‑five days that a transfer meets the requirements of this item. A corporation, partnership, limited liability company, limited liability partnership, or other legal entity that fails to comply with this request is subject to a civil penalty as provided in Section 12‑37‑3160(B); ~~or~~

(9) a transfer of an interest in a timeshare unit by deed or lease; or

(10) a transfer of an undivided, fractional ownership interest in real estate in a single transaction or as a part of a series of related transactions, if the ownership interest or interests conveyed, or otherwise transferred, in the single transaction or series of related transactions within a twenty‑five year period, is not more than fifty percent of the entire fee simple title to the real estate;

(11) a transfer to a single member limited liability company, not taxed separately as a corporation, by its single member or a transfer from a single member limited liability company, not taxed separately as a corporation, to its single member, as provided in Section 12‑2‑25(B)(1);

(12) a conveyance, assignment, release, or modification of an easement, including but not limited to:

(a) a conservation easement, as defined in Chapter 8 of Title 27;

(b) a utility easement; or

(c) an easement for ingress, egress, or regress;

(13) a transfer or renunciation by deed, release, or agreement of a claim of interest in real property for the purpose of quieting and confirming title to real property in the name of one or more of the existing owners of the real property or for the purpose of confirming or establishing the location of an uncertain or disputed boundary line;

(14) the execution or recording of a deed to real property for the purpose of creating or terminating a joint tenancy with rights of survivorship, provided the grantors and grantees are the same;

(15)(a) a conveyance by deed, distribution under a will, or by intestate succession of real property, subject to the special four percent assessment ratio pursuant to Section 12-43-220(c), to a child or children of the grantor or decedent;

(b) a conveyance to a trust of real property, subject to the special four percent assessment ratio pursuant to Section 12-43-220(c), and the sole present beneficiary or beneficiaries of the trust is a child or children of the settler; or

(16) a transfer of no more than a fifth of an interest in real property by an individual or individuals to another individual or individuals.”

B. Section 12-37-3150(A)(8) of the 1976 Code is amended to read:

“(8) a transfer of an ownership interest in a single transaction or as a part of a series of related transactions within a twenty‑five year period in a corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity if the ownership interest conveyed is more than fifty percent of the corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity. This provision does not apply to transfers that are not subject to federal income tax, as provided in subsection (B)(1), including, but not limited to, transfers of interests to spouses. The corporation, partnership, sole proprietorship, limited liability company, limited liability partnership, or other legal entity shall notify the applicable property tax assessor on a form provided by the Department of Revenue not more than forty‑five days after a conveyance of an ownership interest that constitutes an assessable transfer of interest or transfer of ownership under this item;”

C. This section applies for real property transfers after 2009.

SECTION 3. Section 6‑1‑320(A), as last amended by Act 116 of 2007 of the 1976 Code, is further amended to read:

“(A)(1) Notwithstanding Section 12‑37‑251(E), a local governing body may increase the millage rate imposed for general operating purposes above the rate imposed for such purposes for the preceding tax year only to the extent of the increase in the average of the twelve monthly consumer price indices for the most recent twelve‑month period consisting of January through December of the preceding calendar year, plus, beginning in 2007, the percentage increase in the previous year in the population of the entity as determined by the Office of Research and Statistics of the State Budget and Control Board. If the average of the twelve monthly consumer price indices experiences a negative percentage, the average is deemed to be zero. If an entity experiences a reduction in population, the percentage change in population is deemed to be zero. However, in the year in which a reassessment program is implemented, the rollback millage, as calculated pursuant to Section 12‑37‑251(E), must be used in lieu of the previous year’s millage rate.

(2) There may be added to the operating millage increase allowed pursuant to item (1) of this section any such increase, allowed but not previously imposed, for the three property tax years preceding the year to which the current limit applies.”

SECTION 4. A. Section 12‑37‑251(E) of the 1976 Code is amended to read:

“(E) Rollback millage is calculated by dividing the prior year property ~~tax revenues~~ taxes levied as adjusted by abatements, additions, and nulla bona returns by the adjusted total assessed value applicable in the year the values derived from a countywide equalization and reassessment program are implemented. This amount of assessed value must be adjusted by deducting assessments added for property or improvements not previously taxed, for new construction, ~~and~~ for renovation of existing structures, and assessments attributable to increases in value due to an assessable transfer of interest.”

B. This section takes effect for rollback millage calculated for property tax years beginning after 2009.

SECTION 5. (A) There is created the Index of Taxpaying Ability Study Committee. The committee shall be composed of eight members, all appointed pursuant to subsection (B). The committee shall examine the index of taxpaying ability and its relationship to Education Finance Act resources available to the individual school districts in support of the education foundation program required by the State. The committee shall also examine the manner in which the index is calculated and the impact of this act and other property tax measures on the calculation.

(B) The committee shall be composed of:

(1) four members appointed by the President Pro Tempore of the Senate; and

(2) four members appointed by the Speaker of the House of Representatives.

(C) No later than January 1, 2011, the committee shall prepare and deliver a report and recommendation to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, the Chairman of the Senate Education Committee, and the Chairman of the House Education and Public Works Committee.

(D) Members of the study committee shall serve without compensation for per diem, mileage, and subsistence.

SECTION 6. Section 12-37-3130(1) of the 1976 Code is amended to read:

“(1) ‘Additions’ or ‘improvements’ mean an increase in the value of an existing parcel of real property because of:

(a) new construction;

(b) reconstruction;

(c) major additions to the boundaries of the property or a structure on the property;

(d) remodeling; or

(e) renovation and rehabilitation, including installation.

Additions or improvements do not include minor construction or ongoing maintenance and repair of existing structures. This issuance of a permit is not de facto proof of an addition or improvement and is not conclusive evidence of an assessable transfer of interest. The repair or reconstruction of a structure damaged or destroyed by a disaster, to include, but not limited to, construction defects, defective materials, fire, wind, hail, flood, and acts of God, is not an addition or improvement to the extent that the structure as repaired or reconstructed is similar in size, utility, and function of the structure damaged or destroyed, and the rebuilding or reconstruction is begun within eight years after determination of the damage or destruction. Construction of facilities in a home that make the home handicap accessible is not an addition or improvement if the utility and function of the structure remains unchanged. The installation of a fire sprinkler system in a commercial or residential structure when the installation is not required by law, regulation, or code is not an addition or improvement if the utility and function of the structure remains unchanged.”

SECTION 7. Subarticle 9, Article 9, Chapter 60, Title 12 of the 1976 Code is amended by adding:

“Section 12-60-2570. For any appeal or protest brought pursuant to this subarticle for an appraisal resulting from an assessable transfer of interest due to a conveyance by deed, if the county assessor determines the fair market value of a parcel of real property and improvements thereon is higher than the consideration given for the interest in the parcel, the county assessor shall have the burden of proof of showing that the higher fair market value is appropriate. This section only applies when the assessable transfer of interest was an arms-length transaction. In determining whether a transaction is an arms-length transaction, it should be considered whether both the seller and the buyer are willing, are not acting under compulsion, are reasonably well informed of the uses and purposes for which the property is adapted and for which the property is capable of being used, or any other factor.”

SECTION 8. Article 25, Chapter 37, Title 12 of the 1976 Code is amended by adding:

“Section 12-37-3180. (A) If this article effects the valuation of a parcel of real property in which a licensed real estate broker, as defined in Section 40-57-30(3), is acting in his capacity as a real estate broker to sell the property, the real estate broker must notify the purchaser of the real property in writing, before the signing of the contract, of the estimated property tax in the year in which an increase attributable to this article would first apply. The estimate shall be based on the most recent millage rate and using the assessment ratio that the purchaser intends to claim. The notice must state which year’s millage rate was used in the calculation. The notice must be in a clear and conspicuous place on the seller disclosure statement in large bold print. The purchaser must sign directly underneath the notice stating that he has been made aware of the estimated property tax.

(B) Any real estate broker failing to meet the requirements of subsection (A) shall be investigated pursuant to Section 40-57-150 and is subject to disciplinary action thereof. There may be no cause of action against a real estate broker for incorrectly estimating the property tax unless the real estate broker was grossly negligent or intentionally misleading in making the estimate.”

SECTION 9. Except where otherwise provided, this act takes effect upon approval by the Governor.

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