Brief Overview and Current Status of Property Taxes in South Carolina

General Information

Property taxes are taxes assessed on real and certain types of personal property located within a territory on a specified date in proportion to the property's value, or in accordance with some other reasonable method of apportionment.[1] The obligation to pay property taxes is absolute, unavoidable, and not based upon any voluntary action of the person assessed or upon any particular use made of the property.[2] A property tax is measured by the amount of property owned by a taxpayer on a given day and not by the total amount owned by him during the year.[3] The definition of property includes the right of ownership; therefore, no tax can be imposed on the right of ownership that is not also a property tax.[4] Personal property taxes may apply to automobiles, durable goods, inventory, and intangible assets such as stocks and bonds.

Early History of Property Taxes in South Carolina

During colonial times, all property was taxed at a fixed rate per acre, regardless of the quality, type, or use of the property.[5] Even then arguments arose about the correct method of taxing property. The colonial Governor Glen argued that taxation should be in proportion to the value of the land, and others argued for maintaining the status quo fixed rate, which favored the low-country rice plantation owners at the expense of the up-country landowners.[6] After the Revolutionary War, the South Carolina General Assembly, in 1784, set up taxable rates in proportion to the value of the property and this continued until 1815.[7] However, this method became inaccurate because of changing economic conditions, such as the development of the up-country and the decline of the rice industry.[8] By 1843, even the South Carolina Supreme Court commented on how arbitrary the taxation system was, and that the classification of lands did not indicate the real value. See *Martin v. Tax Collector of St. Luke's Parish*, 1 Speers 343 (S.C. 1843).

Constitutional Conventions

The provisions from the 1865, 1868, and 1895 state constitutions provide the starting point for the transition from the 18th century classification system to modern property taxes in South Carolina. In 1865, at the South Carolina Constitutional Convention, the classification system was abolished and taxation at the actual value standard was adopted.[9] After the adoption of the 1865 Constitution, South Carolina treated real property as one classification for tax purposes, stating:

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[1] 71 Am. Jur. 2nd State and Local Taxation § 21 (May 2004).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] William J. Quirk and William W. Watkins, *A Constitutional History of the Property Tax in South Carolina*, 26 S.C. Law Rev. 397 (December 1974).
[6] *Id.*
[7] *Id*.
[8] *Id*.
[9] *Id*.

"All taxes upon property, real or personal, shall be laid upon the actual value of the property taxed."[10] In 1866, to implement the provisions of the 1865 Constitution, the legislature passed a law that taxed real estate at 30 cents per $100 of value. However, despite the restrictions the 1865 Constitution placed on taxation of personal property, personal property was taxed at different rates based on statutory classification of the personal property, i.e.: Capital stock: 50 Cents per $100 value; Manufactured articles: $1.00 per $100 value; Liquor: $10 per $100 value. The 1868 Constitution corrected this loophole, clarifying that classification by the use of different rates was prohibited, and stating: "The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation."[11] The 1868 Constitution also included the first express exemptions from property tax for property used for municipal, education, literary, scientific, religious, or charitable purposes.[12]

The one-class property tax system was followed for over a 100-year period, with no established segregation of tax sources between the state and counties. After 1938, the state discontinued use of the property tax for state revenues, instead "relying upon excise taxes, income taxes, and the like." *Parker v. Bates*, 216 S.C. 52, 56 S.E. 2d 723, 726 (1949). However, South Carolina continued the one-class property tax system in authorizing or imposing taxes to meet county expenses, as evidenced from the county supply bills enacted from 1868 to 1972.[13] For example, in 1920, a tax of 11 mills was levied on all taxable property in Berkeley County for county purposes.[14]

South Carolina Property Taxes Today

In 1972, the General Assembly enacted a law that directed the S.C. Tax Commission to apply a 9.5% assessment ratio on manufacturer's property. This legislation led to the S.C. Supreme Court decision in *Holtzwasser v. Brady*, 262 S.C. 481, 205 S.E.2d 701 (1974), in which the court upheld the provision, stating that "[w]e find nothing in our Constitution that prohibits the General Assembly of this state from classifying property according to its use so long as such classification is reasonable and not arbitrary, and the tax imposed is uniform on the same class of property."[15].

As a result of the *Holtzwasser* decision, the 1975 General Assembly passed Act 208, which provided for assessment ratios to be equal and uniform throughout the state, and, for the first time, for property subject to ad valorem taxes to be classified into four different groups.[16]

In 1976, the General Assembly enacted a Joint Resolution proposing to amend Article X of the S.C. Constitution to provide for assessments of the fair market value (FMV) of the property, as follows, and that the ratios could be changed by the General Assembly, but only with the approval of at least 2/3 membership of each house:

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[10] *Id*.
[11] Article IX, Section 1, 1868 S.C. Constitution.
[12] Article IX, Section 1, 1868 Constitution.
[13] Because counties did not have authority to levy taxes, they relied upon county supply bills passed yearly by the state legislature to provide funds for county expenses.
[14] William J. Quirk and William W. Watkins, *A Constitutional History of the Property Tax in South Carolina*, 26 S.C. Law Rev. 397 (December 1974).
[15] *Holtzwasser* at 704.
[16] (1) manufacturing property - assessed at 10.5% of the fair market value (FMV) of the property; (2) inventories of business establishments, power driven farm machinery and equipment - assessed at 6% of the FMV (motor vehicles used by farmers for farming - assessed at 5% and all other farm machinery and cattle exempt); (3) residential property - assessed between 2.5% and 4% of FMV; and (4) agricultural real property actually used for farming - assessed at 4% of FMV.

(1) manufacturing property: 10.5%; (2) real and personal property owned and leased by companies who transport property or people (RRs, private carlines, airlines): 9.5%; (3) residential property: 4%; (4) agricultural real property used for farming: between 4% and 6%; (5) all other real property 6%; (6) inventories of businesses: 6%; (7) farm machinery and equipment: 5%; and (8) all other personal property: 10.5%.[17] The constitutional amendment, which was approved and ratified, also set forth the specific properties that would be exempt.[18]

As of 2005, each class of property is assessed at a ratio unique to that type of property (see chart below). The assessment ratio is applied to the fair market value of the property to determine the assessed value of the property.[19] Each county and municipality then applies its millage rate to the assessed value to determine the tax due.[20] The millage rate is equivalent to the tax per $1,000 of assessed value (for example, if the millage rate is 200 mills and the assessed value of the property is $1,000, then the tax on that property is $200).[21]

The following are the 2005 current assessment ratios from the Department of Revenue website:

Manufacturing Property	10.5% of fair market value
Utility Property	10.5% of fair market value
Railroads, Private Carlines, Airlines and 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

Manufacturing, utility, railroads, carlines, airlines, and business personal property are assessed by the Department of Revenue, while the county assessor assesses all other property.[22] All businesses are required to file a business personal property return with the Department of Revenue annually. These returns are due on the last day of the fourth month following the close of the tax year and no extensions are granted.[23] In addition, municipalities may levy taxes on property situated within the limits of the municipality in order to pay for municipal services provided. Individuals, corporations, and partnerships owning property within the state pay property taxes.[24]

South Carolina law also provides for a number of property tax exemptions. These include property owned by particular organizations, certain personal effects, farm equipment, some business inventory, and other specific exemptions.[25]

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[17] By Act 10 of 2001, Art. X, § 1 was amended so that the assessment ration on personal motor vehicles is being reduced by .75% yearly until it reaches a 6% assessment ration in 2007.
[18] S.C. Const. Art X, § 1.
[19] South Carolina Department of Revenue, *Property Tax Information*, at http://www.sctax.org/Tax+Information/property/prop.html.
[20] *Id.*
[21] *Id*.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] S.C. Const. Art X, § 3.

Fees-in-Lieu of Taxes

The fee-in-lieu of taxes provision for certain manufacturing and commercial industries investing in South Carolina originated in the 1980's as a means to encourage recruitment of large capital-intensive businesses and to offset the negative perception out-of-state businesses had about the property tax structure in South Carolina. The 1967 Industrial Revenue Bond Act was challenged, but was upheld by the S.C. Supreme Court as constitutional. See *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967) (bonds issued pursuant to the Act would be payable only from the revenues derived from the industrial projects built by the bond proceeds). The act was again challenged in 1988 when it was amended to provide an alternate method of paying the fee-in-lieu of taxes for companies investing at least $85 million,[26] and Richland County entered into an agreement with Union Camp negotiating a fee-in-lieu of taxes in connection with a proposed $700 million expansion. This agreement was challenged as unconstitutional for violating the uniformity provisions in Article X of the South Carolina Constitution and the equal protections clauses of the South Carolina and United States Constitutions. The Supreme Court upheld the constitutionality of the amended provisions, finding that, because the property in question was being transferred to Richland County and because the property subject to the negotiated fee was being used for public purposes, it was exempt from *ad valorem* taxes, and did not need to meet the uniformity requirements of the South Carolina Constitution. Further, the Court found that the provisions did not violate the equal protection clauses of the S.C. or U.S. Constitutions because the classification scheme created by Section 4-29-67 was rationally related to its legislative purpose of attracting large capital-intensive industries to South Carolina. *Quirk v Campbell*, 302 S.C. 148, 394 S.E.2d 320 (1990).

Impact Fees

Impact fees, also called assessments for improvements to localities, are aimed at assisting communities in addressing the fiscal "impact" of growth.[27] South Carolina courts have upheld the principle that special assessments are constitutionally permitted charges and are not considered as taxes. In *J.K. Construction, Inc. v. Western Carolina Regional Sewer Authority*, 336 S.C. 162, 519 S.E.2d 561 (1999), the South Carolina Supreme Court upheld the validity of a fee charged by a water and sewer authority, by concluding that the charge was based on the following factors: (1) the required payment primarily benefited those who must pay because they would receive a special benefit or service as a result of improvements made with the proceeds; (2) proceeds from the required payments were dedicated solely to capital improvement projects and were not placed in a general fund to be spent on the authority's ongoing expenses and maintenance, which is a hallmark of a tax; (3) the revenue generated by the required payment would not exceed the cost of capital improvements to the system; (4) the water and sewer authority uniformly imposed the required payment upon those who must pay; and (5) the water and sewer authority intended to classify the payment as a charge. In *Ford v. Georgetown County Water & Sewer District*, 341 S.C. 10, 532 S.E.2d 873 (2000), the court reasoned that "[u]nlike taxes, charges and assessments are similar in that a person receives something specific in exchange for payment of a charge and/or assessment." Further, following the precedent of *J.K. Construction*, the court held that "imposing a new account fee, while perhaps not the only way to raise such funds, is a reasonable and legitimate method of accruing the funds."[28]

[26] S.C. Code Ann. § 4-29-67.
[27] Bradford W. Wyche, *An Overview of Land Use Regulation in South Carolina*, 11 Southeastern Envtl. L.J. 183 (Spring 2003).
[28] *Ford* at 875.

For many years in South Carolina, impact fees were used primarily to cover the easily quantifiable costs of water and sewer infrastructure.[29] Controversies surrounding local governments' attempts to extend the fees to services that were more difficult to quantify or usually only imposed after referenda approval, such as fees for schools, roads, police, and fire protection, led to the enactment of the South Carolina Development Impact Fee Act,[30] which limited how governmental entities could impose impact fees. Although water and wastewater utilities are exempt from most of the provisions of this act, these utilities are required to have a capital improvement plan and to issue a report explaining how the fee was established and how it will be collected. In general, only governmental entities that have adopted a capital improvement plan in accordance with Section 6-1-960 may impose impact fees, and those impact fees that result in "greater than incidental benefits" to property owners or developers are prohibited.[31] The limitations of the act make it more difficult for local governments to address development-related problems through the use of impact fees.

Tax Study Committee and Reports

In conclusion, in the last decade, there have been numerous tax study committees appointed who have studied and suggested revisions to property tax statutes and other tax provisions. The following include a few that resulted in either a report or draft of legislation:

1. 1993-94 - Legislature set up an ad hoc committee on tax structure. Result was 1995 Act No. 145, Part II, § 119B (Residential Property Tax Relief). This became S.C. Code Ann. § 12-37-251 (exempted the first $100,000 of homeowners' property from being included in local property tax assessments for schools - state was to reimburse local school districts for exempted funds).

2. 1999 - Legislative Audit Council (LAC) report - *A Limited-Scope Review of the Residential Property Tax Relief Program*. Completed as a result of a 1997 request from legislators to review the accuracy of property tax reimbursement requests from counties to state as a result of the 1995 legislation. The LAC report found that the state did not have adequate controls to ensure that property tax reimbursements were calculated and spent in accordance with state law and that the reimbursement process was unnecessarily complex.

3. 1999 Act 100, Part III, § 1 - Legislature authorized the creation of a Local Government Study Committee to be undertaken by the Comptroller General with the mission to develop a local government funding reform plan to address the needs of local government for a stable and diverse funding system accountable to the taxpayers and to ensure an equitable sharing of the tax burden. The Committee met six times and depended upon a Technical Work Group to compile studies to assist the Committee in its decision-making process. Based on a set of seven criteria (stability, balance and diversity, equity, accountability, adequacy or sufficiency, ease of administration and compliance, and revenue neutrality), in its December 2000 Report, the Committee made 28 findings and recommendations that included defining state and local government roles and structure, advocating fiscal economy for school districts, limiting local government debt, suggesting partnerships between state and local government for economic development, and replacing the 15% cap with an income tax circuit breaker.

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[29] See Wyche, *supra*; *J.K. Construction, Inc. v. Western Carolina Regional Sewer Authority*, 336 S.C. 162, 519 S.E.2d 561 (1999); and *Hagley Homeowners Assn. v. Hagley Water Sewer and Fire Auth.,* 326 S.C. 67, 485 S.E. 2d 92 (1997).

[30] 1999 Act No. 118; S.C. Code Ann. §§ 6-1-910, *et seq*.

[31] Wyche, *supra*, footnote 192.

4. 2002 House Ad Hoc Tax Study Committee appointed by Speaker Wilkins. Proposed H. 3065 in 2003, which would have allowed counties to implement a 20% cap on the growth in assessed value at the time of reassessment. In 2004, Governor Sanford vetoed the bill, and in 2005, the House sustained the veto.

5. 2002 Act No. 334, § 18, now codified as S.C. Code Ann. § 2-41-10, *et seq*., established the Joint Committee on Taxation. Composed of 9 members (3 Senators, 3 Representatives, and 3 members of the business community, one being a CPA), the Committee's mission is to study the revenue laws of South Carolina, to recommend changes in the basic tax structure, and to make a report and recommendations to the General Assembly and the Governor by June 30, 2006.

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