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Property Taxes

ATIs
25% Exemption
Appeal Procedures

Presented by
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Disclaimer

Member of Charleston County Board of Assessment Appeals until 2015

Presentation is not on behalf of BAA

Topics

1) Assessed values and ATIs

2) 25% property tax exemption for commercial (6%) property

3) Appeal procedures

Assessed Value Generally

- Property taxes are paid in arrears, and property tax bills are generated and issued by the counties during the fall.

Assessed Value Generally

Components

- The tax amounts are computed by multiplying the:
  1. assessed value of the property by
  2. the assessment ratio,
  3. and then by the millage.

Assessed Value Generally

- Millages are generally set and non-appealable
- Ratios are appealable
- Assessed value is most common appealable issue

Assessed Value Generally

Millage

- The millage is set by the county annually and cannot be appealed by the taxpayer.
- A “mill” is a tenth of a cent ($0.001).
- It is shown on the tax bill as numbers, not percentages, i.e., 39.1, 98.6, 90, etc., so they must be converted for the calculation (39.1 mills = 0.0391)
- The millage is broken down into categories corresponding to how much of the tax amount goes where, and accordingly the total millage is broken down into individual “mills.”

Assessed Value Generally

Ratios

- Different types of properties have different assessment ratios:
  - Manufacturing property: 10.5%
  - Primary residences: 4%
  - Agricultural: 4%
  - Commercial: 6% (default ratio)

Assessed Value Generally

Ratios

- Ratios are appealable is property is misclassified

- Ag use is common ratio appeal

Assessed Value Generally

Assessed Value

- Assessed Value is generally the “Fair Market Value”
- §12-37-3140 says FMV determined as of December 31 of the year either:
  - During which an ATI occurs, or
  - Prior to the year in which a countywide reassessment is performed

Assessed Value Generally

Calculation

- For the tax calculation, the total millage is divided by a thousand, and that figure is used as the multiplicand in the equation.
- For example if the total millage was 269.5, and the value of a parcel of commercial real estate was $1,000,000, the property tax amount would be:

[$1,000,000 x 0.06 x 0.2695] = $16,170

Assessed Value Generally

Assessment v. Assessed Value

- “Assessment” is often confused with “Assessed Value” but they are different terms
  - Assessed Value = appraised value of property
  - Assessment = Assessed Value x Ratio

How Assessed Value Changes

Two ways

- 5 year reassessment cycle
  - automatic
  - countywide

- ATIs
  - “assessable transfer of interest”
  - triggered by event
  - sometimes called “point of sale” (misnomer)

Assessed Value Generally

Countywide Reassessment

- Generally, all property in South Carolina is reassessed every five (5) years by the counties (§12-43-217)
- Not uniform because counties are on different cycles
- Appraisals performed by computer modeling
- No human appraisal unless value is appealed

Assessed Value Generally

Countywide Reassessment

- The Countywide Reassessment process has two parts: (12-43-217)

  1. the <u>performance</u> of the reassessment, which means the actual process of valuing the properties, and

  2. the <u>implementation</u> of the reassessment, which means using the new values to compute the property taxes.

Assessed Value Generally

Countywide Reassessment

- The performance of the reassessment occurs in year 4 of the cycle,
- The implementation occurs in year 5
- Counties are given the right to enact an ordinance allowing them to delay the implementation (but not the performance) by 1 year

  12-43-217(B)

Assessed Value Generally

Example – Recent Reassessment

- Charleston County scheduled for 2010
- Performed in 2009
- Implemented until 2011
  - (extended implementation 1 year by ordinance)

Assessed Value Generally

Example – Reassessment (con't)

- During calendar year 2009 (the 4th year in the cycle), the assessor's office reappraised all of property in the county based on the property values as of **<u>December 31, 2008</u>**.

- 12/31/08: This date is called the "**<u>date of value</u>**" and is critical for property tax purposes and especially in appeals.

- However, these "new" values did not become the "assessed values" used for computing property taxes until **<u>tax year 2011</u>**.

Assessed Value Generally

15% Cap - Reassessment

- Generally, the assessed value, which is referred to by the statute as the "Fair Market Value," cannot increase by more than **15%** at the next 5 year Countywide Reassessment.

- This is referred to as the "**cap**."

- However, there is an exception to this 15% cap rule, that exception being the "assessable transfer of interest."

Assessed Value Generally

Next Reassessment - Charleston

- 2015 is the next scheduled Countywide Reassessment for Charleston County.
- The reassessment will be performed in 2014, and the new fair market value will be determined as of **December 31, 2013**.
- The reassessment will be implemented during 2015
- Fair Market Value for tax year **2015** will be the value of the property on December 31, 2013.

ATIs

Assessable Transfers of Interest

§12-37-3150

Assessed Value Generally

ATIs

- The second way the assessed value for real estate can change is through an "Assessable Transfer of Interest," which is also commonly referred to as an "ATI."

- An ATI is generally the transfer of real estate, often by purchase and sale.

Assessed Value Generally

ATIs – New FMV under §12-37-3140

- §12-37-3140 provides that the occurrence of an ATI allows the assessor to reassess the property during the year the ATI occurs to determine a new Fair Market Value used to compute the property tax

Assessed Value Generally

ATIs – New FMV under §12-37-3140

- §12-37-3140(A)(1) "For property tax years beginning after 2006, the fair market value of real property is its fair market value applicable for the later of:
  - (a) the base year, as defined in subsection (C) of this section;
  - (b) **December thirty-first of the year in which an assessable transfer of interest has occurred**;
  - (c) as determined on appeal; or
  - (d) as it may be adjusted as determined in a countywide reassessment program conducted pursuant to Section 12-43-217, but limited to increases in such value as provided in subsection (B) of this section."

Assessed Value Generally

ATIs – New FMV under §12-37-3140

- Accordingly, the occurrence of an ATI allows the assessor to determine a new Fair Market Value prior to the end of the normal 5 year Countywide Reassessment cycle.
- Importantly, the 15% cap applicable to the Countywide Reassessment does not apply if an ATI occurs

Assessed Value Generally

ATIs

- §12-37-3150 sets out what is and isn't an ATI
- "Point of sale" is misnomer because a number of occurrences that aren't "sales" constitute an ATI

Assessed Value Generally

ATIs – Included (A)

- (1) a conveyance by **deed**;
- (2) a conveyance by **land contract**;
- (3) a conveyance **to a trust**, except if:
  - (a) the settlor or the settlor's spouse, or both, conveys the property to the trust and the sole present beneficiary or beneficiaries are the settlor or the settlor's spouse, or both; or
  - (b) the settlor or the settlor's spouse, or both, conveys property subject to the special four percent assessment ratio pursuant to Section 12-43-220(c) and the sole present beneficiary or beneficiaries is the child or children of the settlor or the settlor's spouse, but a subsequent conveyance of this real property by the beneficiary child or children is not exempt from the provisions of this section;

Assessed Value Generally

ATIs – Included (A)

- (4) a conveyance by **distribution <u>from</u> a trust**, except if the distributee is the sole present beneficiary or the spouse of the sole present beneficiary, or both;
- (5) **a change in the sole present beneficiary or beneficiaries of a trust**, except a change that adds or substitutes the spouse of the sole present beneficiary;
- (6) a conveyance by **distribution under a will or by intestate succession**, <u>except if</u>:
  - (a) the distributee is the decedent's <u>spouse</u>; or
  - (b) the distributee is the <u>child or children</u> of the decedent, the decedent did not have a spouse at the time of the decedent's death, and the property is subject to the special four percent assessment ratio pursuant to Section 12-43-220(c), but a subsequent conveyance of this real property by the distributee child or children is not exempt from the provisions of this section

Assessed Value Generally

ATIs – Included (A)

- (7) a conveyance by **lease** if the total duration of the lease, including the initial term and all options for renewal, is **more than twenty years** or the lease grants the lessee a bargain purchase option. As used in this item, "bargain purchase option" means the right to purchase the property at the termination of the lease for not more than eighty percent of the property's true cash value at the termination of the lease. This item does not apply to personal property or that portion of the property not subject to the leasehold interest conveyed

Assessed Value Generally

ATIs – Included (A)

- (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. **Failure to provide this notice** or failure to provide accurate information of a transaction required to be reported by this subitem **subjects the property to a civil penalty** of not less than one hundred nor more than one thousand dollars as determined by the assessor. This penalty is enforceable and collectible as property tax and is in addition to any other penalties that may apply. Failure to provide this notice is a separate offense for each year after the notice was required;

Assessed Value Generally

ATIs – Included (A)

- (9) a change of use of agricultural real property which subjects it to the rollback tax;
- (10) a change of use of real property when classification of property changes as a result of a local zoning ordinance change; or
- (11) the passage of twenty years since the later of the base year or the last assessable transfer of interest for real property owned by a publicly-held entity whose stock, shares, or other ownership interests are traded on a regulated exchange, a pension fund, or other similar entity

Assessed Value Generally

ATIs – Included (A)

- "An assessable transfer of interest resulting in the appraisal required pursuant to this article occurs at the time of execution of the instruments directly resulting in the transfer of interest and **without regard as to whether or not the applicable instruments are recorded**. Failure to record instruments resulting in a transfer of interest gives rise to no inference as to whether or not an assessable transfer of interest has occurred"

Assessed Value Generally

ATIs – Excluded (B)

- (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)

Assessed Value Generally

ATIs – Excluded (B)

- (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**

Assessed Value Generally

ATIs – Excluded (B)

- (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

Assessed Value Generally

ATIs – Excluded (B)

- (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);

Assessed Value Generally

ATIs – Excluded (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);

**(Common control defined in §12-37-3130(6), which references IRC 267(b))*

Assessed Value Generally

ATIs – Excluded (B)

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

Assessed Value Generally

ATIs – Excluded (B)

- (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)

Assessed Value Generally

ATIs – Excluded (B)

- (12) a conveyance, assignment, release, or modification of an **easement**, including, but not limited to:
  - (a) a conservation easement, as defined in Chapter 8, 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;

Assessed Value Generally

ATIs – Excluded (B)

- (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; or

- (15) a transfer of a **fractional interest between family members for zero monetary consideration**, or a de minimis monetary consideration, whereby both the grantor and the grantee owned an interest in the property prior to the transfer. For purposes of this item, a family member includes a spouse, parent, brother, sister, child, grandparent, or grandchild

Assessed Value Generally

ATIs – Timing of Change

- When an ATI occurs, the new Fair Market Value resulting from the ATI is not used to calculate the assessed value for property tax purposes until the following year.

- Accordingly, the assessed value for property tax purposes for the year during which the ATI occurs will remain the assessed value for the year prior to the ATI

Assessed Value Generally

ATIs – Example

- A parcel of real estate in Charleston County is purchased during 2014, that purchase would constitute an ATI.

- The county will be allowed to determine a new Fair Market Value, and the date of value will be December 31, 2014.

- The 2014 tax bill ***will not*** be based on the new value. Rather, the 2014 tax bill will be computed based on the Fair Market Value as of December 31, 2013.

- The 2015 tax bill will be the first tax bill based on the new Fair Market Value resulting from the ATI, and the assessed value will be determined as of December 31, 2014.

25% Exemption

For commercial (6%) property
§12-37-3135

25% Exemption

Introduction

- The ATI law was revised in 2011, and the changes went into effect January 1, 2012.
- The new law is found in S.C. Code Ann. Section 12-37-3135.
- The intent of the change is to give purchasers of commercial real estate a break on their property taxes in order to facilitate transactions and stimulate the economy.

25% Exemption

Generally

- After an ATI, the owner can **apply** for a 25% exemption

- The exemption reduces the assessed value of property to **75%** of the reassessed value resulting from the ATI

25% Exemption

Exceptions to Exemption

- There are exceptions to the exemption, so not all properties will be eligible for the exemption

25% Exemption

Application Requirement

- **THE EXEMPTION IS NOT AUTOMATIC**
- **PURCHASER MUST FILE APPLICATION**

25% Exemption

Application Requirement

- Deadline for application is **<u>January 30 of the year following the ATI</u>**

- If application is not filed during by the deadline, the exemption is **<u>lost</u>**

25% Exemption

Application Deadline Example

Example:

- Purchase Date: September 15, 2014

- Application Deadline: **January 30, 2015**

25% Exemption

Application Requirement

- Statute doesn’t prescribe form of application, but requires that the owner notify the tax assessor of the property’s eligibility

- Various counties have their own form for the application

25% Exemption

Application Requirement

- If applying by letter to tax assessor, the following items should be included
  - The Parcel ID (aka: PIN, TMS)
  - Street address of the property
  - Date of transfer of property
  - A specific request for the 25% exemption
  - A statement that the property's assessment ratio before and after the transfer is 6%
  - A daytime phone number for owner
  - Name of owner
  - The original signature of the owner (or owner's representative)

25% Exemption

Application Requirement

- If application is made by a representative of the owner, a Power of Attorney form 2848 must be provided with the application

25% Exemption

General Calculation - Qualifying Ratios

- The exemption only applies to “commercial” real estate, which is real estate with an assessment ratio of 6% both before and after the transfer.
  - Does not apply to manufacturing (10.5%) property
  - Does not apply to primary residences (4%)
  - Does not apply to agricultural (4%) property
- It will apply to residential property if it is assessed at 6% both before and after ATI
  - However, a primary residence (4%) purchased and converted to rental property (6%) does not qualify

25% Exemption

General Calculation - ATI FMV

- The exemption allowed is equal to 25% of the “ATI Fair Market Value” of the property.

- ATI Fair Market Value is defined by the statute as: “the fair market value of a parcel…as determined by appraisal at the time the parcel last underwent an assessable transfer of interest.”

25% Exemption

General Calculation - ATI FMV

- Generally, ATI Fair Market Value could mean the purchase price of the property, because the purchase price is a good indicator of what the value would be as determined by appraisal during that year. However, it does not necessarily mean the purchase price, because the statute's language allows the county assessor's office to re-appraise the property based on its value as of December 31 of the year in which the property is transferred. This appraised value could be different from the purchase price.

25% Exemption

General Calculation – Exemption Value

- The "Exemption Value" is a term defined by the statute as the ATI Fair Market Value reduced by the exemption amount of 25%.

- Generally, the Exemption Value will be 75% of the value of the property as of December 31 of the year of transfer

25% Exemption

General Calculation – Exceptions

- There are two exceptions to the 25% exemption:
  - The Exemption Value cannot be less than the Current Fair Market Value of the property.
  - Additionally, if the ATI Fair Market Value is less than the Current Fair Market Value, the 25% exemption does not apply, and the ATI Fair Market Value becomes the assessed value for property tax purposes

25% Exemption

General Calculation – Current FMV

- Both of the exceptions are based on a determination of the “Current Fair Market Value”

- “Current Fair Market Value” is a term defined by the statute as the “fair market value of a parcel of real property as reflected on the books of the county’s assessor for the current property tax year.”

25% Exemption

Current FMV – DOR's Interpretation

- Until 2014, many if not all of the county tax assessors have taken the position that the Current Fair Market Value refers to the assessed value of the property for the year during which the purchase occurred (which is the fair market value of the property on December 31 of the year prior to the purchase.)

- Moreover, the assessors have considered that value as the Current Fair Market Value for purposes of determining the exemption regardless of the year in which the purchaser applied for the exemption, even if the application was filed late.

- However, the South Carolina Department of Revenue, has mandated that the various county assessors, take the position in 2015 that the term "Current Fair Market Value" refers to the assessed value of the property during the year immediately preceding the year in which the purchaser applies for the exemption.

25% Exemption

Current FMV – DOR's Interpretation

- This interpretation of Current Fair Market Value will essentially eliminate the exemption for all years for a purchaser that files a late application.

- This is because the "fair market value on the assessor's books" is changed to the ATI Fair Market Value for the year following the purchase.

- Accordingly, <u>for any application filed after the deadline for the **first year of eligibility**</u>, the Current Fair Market Value will equal the ATI Fair Market Value, and <u>**the exemption will be disallowed**</u> under the exceptions to the exemption.

25% Exemption

Example 1

ATI Fair Market Value:	\$ 1,500,000
Exemption Value: (75% of ATI Fair Market Value)	\$ 1,125,000
Current Fair Market Value: (Assessor's existing book value)	\$ 1,000,000

1. Exemption Value > Current Fair Market Value
2. 25% exemption applies
3. Assessed Value = Exemption Value of **$1,125,000**

25% Exemption

Example 2

ATI Fair Market Value:	$ 1,250,000
Exemption Value: (75% of ATI Fair Market Value)	$ 937,000
Current Fair Market Value: (Assessor's existing book value)	$ 1,000,000

1. Exemption Value < Current Fair Market Value
2. 25% exemption <u>does not</u> apply
3. Assessed Value = Current Fair Market Value of **<u>$1,000,000</u>**

25% Exemption

Example 3

ATI Fair Market Value:	$ 950,000
Exemption Value: (75% of ATI Fair Market Value)	$ 712,500
Current Fair Market Value: (Assessor's existing book value)	$ 1,000,000

1. ATI Fair Market Value < Current Fair Market Value
2. 25% exemption <u>does not</u> apply
3. Assessed Value = ATI Fair Market Value of **<u>$950,000</u>**

25% Exemption

Example 4 – LATE APPLICATION

ATI Fair Market Value:	$ 1,250,000
Exemption Value: (75% of ATI Fair Market Value)	$ 937,000
Current Fair Market Value: (Assessor's existing book value adjusted to ATI Fair Market Value)	$ 1,250,000

1. Exemption Value < Current Fair Market Value
2. 25% exemption <u>does not</u> apply
3. Assessed Value = Current Market Value (now ATI Fair Market Value) of **<u>$1,250,000</u>**

Property Tax Appeals

Procedure

Appeals

Generally

- Governed by the S.C. Revenue Procedures Act 12-60-10, et. seq.
- Property valued by assessor governed by 12-60-2510 through 2560
- Administrative process with appeal to ALC (administrative law court)

Appeals

Generally

- Time frames are critical
- Deadlines different in reassessment years than non-reassessment years

Appeals

Appealable issues under 12-60-2510

- FMV
- Special use value
- assessment ratio
- property tax assessment

Appeals

Appealable issues under 12-60-2510

- Other items challengeable, but under different procedure (maybe)

- Usually best to use administrative process first to ensure you exhaust administrative remedies

Appeals

Step 1: 12-60-2510

- <u>Written Notice of Objection</u>
  - Deadline for reassessment years: 90 days after assessor mails tax assessment notice
  - All other years:
    - On or before January 15
    - After January 15, only current year subject to appeal

Appeals

Step 2: 12-60-2520

- Conference with Assessor
  - Within 30 days of objection (or as soon as practical)
  - Communicate with county appraisers
  - If unresolved at conference, Assessor notifies taxpayer of right to file protest

Appeals

Step 3: 12-60-2530

- Written Protest
  - Protest is the appeal to the Board of Assessment Appeals
  - Deadline: 30 days after assessor's written response following conference

Appeals

Step 4: 12-60-2530

- Board Hearing
  - Administrative
  - Both sides present evidence
  - Board issues written decision within 15 days (permitted to decide orally)

Appeals

Step 5: 12-60-2540

- ALC
  - Either party can appeal BAA decision
  - Deadline: 30 days after date of BAA's written decision
  - De novo review
  - Can remand to BAA

Appeals

Tips

- Focus on date of value
- Focus on providing sufficient evidence supporting valuation
  - Appraisal for taxpayer
  - Actual NOI
  - Support for cap rate
- Appeal can trigger higher valuation from assessor (computer v. human appraisal)

Appeals

Payments pending appeal

- Taxpayer can request 80% payment pending appeal
- Must be done with time for auditor to issue 80% bill prior to 12/31

Appeals

Refunds 12-60-2560

- Taxpayer can request refund for overpayments

- Often used in conjunction with appeals

Appeals

Refunds 12-60-2560

- Treasurer, Auditor and Assessor decide whether to refund
- If refund denied, TP has 30 days to appeal to BAA
- Same procedure from there forward as normal appeal

QUESTIONS?

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