

THE CURIOUS CASE OF THE DISAPPEARING TAX BASE How DOR's ACTIONS AFFECT LOCAL TAXING ENTITIES

2018 AMENDMENTS TO THE SOUTH CAROLINA REVENUE PROCEDURES ACT

“Department Determination” means the final determination within the department from which a taxpayer **or a local governing body**, as applicable, may request a contested case hearing before the Administrative Law Court.

ADDED DEFINITIONS:

- “**Local governing body**” means, for property tax purposes, the governing body of a county, municipality, or other political subdivision that is entitled to receive any portion of the tax revenue generated from a property tax assessment.
- “**Affected county**” means, for property tax purposes, a county that administers property tax collections for its own jurisdiction or for another local governing body and is in a property tax dispute with a taxpayer.
- “**Chief executive officer**” means, for property tax purposes, the official identified in Section 8-13-1110(B)(5).
 - *The county manager, county administrator, county supervisor, or chief county administrative official or employee, by whatever title*
- “**Chief administrative official**” means, for property tax purposes, the official identified in Section 8-13-1110(B)(6).
 - *The chief administrative official or employee of each political subdivision including, but not limited to, school districts, libraries, regional planning councils, airport commissions, hospitals, community action agencies, water and sewer districts, and development commissions*

AMENDED NOTIFICATION REQUIREMENTS:

- All determinations (not just those adverse to the taxpayer) must be in writing.
- Determinations must be delivered to the taxpayer **and any affected county**.
- Determinations must inform the taxpayer **and any affected county** of the right to request a contested case hearing.
- If a Determination is protested, the Department shall explain that taxes will be assessed and payment demanded unless the taxpayer **or any local governing body** requests contested case hearing.
- The department shall notify **any affected county** of a written protest filed by a taxpayer.
- If a written protest is filed by a taxpayer, other than an individual, then the department must notify **any affected county** of the written protest.

AMENDED TIMING REQUIREMENTS:

Before the 2018 Amendments	Currently
Dept. had 9 months to act on a protest	Dept. has 1 year, <i>with option of seeking a 6-month extension from the Administrative Law Court</i>
The Dept. was required to give notice to a taxpayer of its Department Determination	The Dept. is required to give notice to a taxpayer or an affected County of its Department Determination
The Dept. could argue that it had power to grant a refund of property taxes for an unlimited number of back years, provided those back years were timely protested by the taxpayer on the front end	The Dept. can only grant a refund of property taxes for up to three back years, <i>unless the Dept. seeks the approval of the Administrative Law Court for a refund that extends further back</i>

HOW DO THE AMENDMENTS BENEFIT AFFECTED COUNTIES?

Examples:

BEFORE THE 2018 AMENDMENTS – FTC:

Background: Farmers Telephone Cooperative, Inc., FTC Communications, LLC, and FTC Diversified Services, LLC (collectively, “Taxpayers”) own property in multiple South Carolina counties that is subject to taxation in those counties. The Department granted Taxpayers the Rural Telephone Service Exemption for tax years 2010-2015 and memorialized that decision in a Settlement Agreement dated January 8, 2017. These exemptions would both reduce future tax revenue to be received by the affected counties and would retroactively create refund liability owed by the counties to the Taxpayers. On July 10, 2017, Clarendon County requested a contested case hearing with the Administrative Law Court to appeal the Department’s assertion that the property owned by the Taxpayers is exempt from property taxation for years 2010-2015. To protect their revenue interests, other affected counties, school districts, and hospital districts (together with Clarendon County, the “Taxing Entities”) intervened in the dispute to request a contested case hearing before the Administrative Law Court. As the case moved forward, the Taxing Entities appealed the Department’s grant of the Rural Telephone Service Exemption for tax years 2016, 2017, and 2018.

Takeaways:

- Before 2018, the Act did not require the Department to notify affected counties of a grant of an exemption, so the Settlement Agreement was entered into between the Department and the Taxpayers without any input from the Taxing Entities.
- Before 2018, the Department argued that it could issue a Determination that had the effect of granting a refund on property taxes for an unlimited number of back years, provided those back years were timely appealed by the Taxpayer in the first place. Thus, the Department’s grant of an exemption in 2017 for tax years 2010-2015 was granted by the Department in the FTC case, whereas it could not be granted today.

AFTER THE 2018 AMENDMENTS – COLONIAL PIPELINE:

Background: Colonial Pipeline Company (“Taxpayer”) is a pipeline company that transports refined petroleum. Taxpayer owns property that is at least partially located within the jurisdictional boundaries of multiple South Carolina counties. On April 19, 2017, the Taxpayer sent an application to the Department to report a “pollution control equipment” exemption. The Department denied the exemption, the Taxpayer promptly protested, and the Department then forwarded the exemption application information to DHEC, which responded that it lacks the authority to permit, inspect, or enforce pipeline operations and refused to determine whether Taxpayer’s property qualified for the exemption. On April 23, 2018, the Taxpayer sent a second application to the Department to request the same exemption, resulting in another denial by the Department. Taxpayer ultimately requested a contested case hearing before the Administrative Law Court to dispute the Department’s Determination that concluded the Taxpayer is not entitled to the “Pollution control equipment” exemption. Pursuant to the Revenue Procedures Act, as amended, affected South Carolina counties were notified and some have chosen to intervene to uphold the Department Determination.

Takeaway:

- Because the Act now requires that all affected counties are notified, each affected county had the opportunity to intervene after the Taxpayer requested a contested case hearing.