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MEMORANDUM

TO: S.C. Association of Realtors
FROM: Jeffrey T. Allen
DATE: June 8, 2011
RE: H. 3718 – Point of Sale Exemption

On June 2, 2011, The South Carolina Senate and the House of Representatives passed important legislation which will limit or potentially eliminate property tax increases that can occur when certain property is transferred (“Legislation”).¹ It is anticipated that the legislation will be signed into law by Governor Nikki Haley in the coming days. The Legislation would reduce the fair market value of certain transferred property by a maximum of 25% for property tax purposes.

25% Exemption

Under present law all real property is required to be revalued by counties every five years through reassessment programs.² The value of real property generally may not be increased by more than 15% every five years, unless an assessable transfer of interest (“ATI”) occurs.³ Generally, any transfer of real property to a third party constitutes an ATI.⁴ When an ATI transfer occurs, the value of the property for ad valorem property tax can be increased to its true fair market value, without regard to the 15% cap. Any increase in value above 15% during a five year period is not relevant to determining ad valorem property tax liability absent an ATI.

The ATI rules have been viewed by many as hindering the sale of real property as the ad valorem property tax imposed on property can increase dramatically if the fair market value of property has increased more than 15% in a five year period. The Legislation is designed to reduce the increased tax

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¹ H. 3713

² S.C. Code § 12-43-217.

³ S.C. Code § 12-37-3140.

⁴ S.C. Code § 12-37-3150.

burden that can result when certain ATI transfers occur by reducing the value of property for property tax purposes when a transfer occurs (“Exemption”).

Under proposed S.C. Code § 12-37-3135, all property which is subject to a six percent assessment ratio and subject to property tax prior to a transfer will be eligible for the Exemption for transfers occurring after the 2010 tax year.⁵ Most real property is subject to a six percent assessment ratio. Agricultural property, manufacturer and utility property, and owner-occupied residences are not subject to a six percent assessment ratio.⁶ In order to claim the Exemption, the owner must notify the county assessor that the property will be subject to the six percent assessment ratio before January 31st for the tax year for which the owner first claims the Exemption.⁷ The Exemption does not apply to increases in value attributable to additions or improvements not previously subject to tax.⁸

The Exemption would reduce the fair market value of qualifying real property (as of the date of transfer) for property taxes by a maximum of 25%.⁹ If the 25% reduction in fair market value would result in a lower value than the value of the property for property taxes immediately before the ATI transfer, then the property would continue to have the same value for property taxes as it did prior to the ATI transfer.¹⁰ If the fair market value of property at the time of transfer is less than the value of the property for property tax purposes, then the lower fair market value becomes the value for property tax purposes.¹¹

The Exemption value of property would be used for property tax purposes as long as the property continues to be subject to a six percent assessment ratio or until an ATI transfer.¹²

Exemption Example: Jane owns whiteacre. In year 1, whiteacre has a value of \$100 for ad valorem property tax purposes, but its fair market value is \$200. County implements a reassessment program in year 2 assigning a value of \$115 to whiteacre (maximum value with 15% cap).

If John purchases whiteacre from Jane in year 3, the purchase results in an ATI and the value of whiteacre for ad valorem property tax purposes will now be \$200. Pursuant to the Exemption, however, only \$150 of the value of whiteacre will be subject to ad valorem property tax until the next county reassessment program is implemented. When the next county reassessment program is implemented, the 15% limit on the increase in value will apply to the Exemption value of the property (\$150). If the fair market value

⁵ Prop. S.C. Code § 12-37-3135(B)(1), (C).

⁶ S.C. Code § 12-43-220.

⁷ Prop. S.C. Code § 12-37-3135(C).

⁸ Prop. S.C. Code § 12-37-3135(B)(1).

⁹ Prop. S.C. Code § 12-37-3135(B)(2)(a).

¹⁰ Prop. S.C. Code § 12-37-3135(B)(2)(a).

¹¹ Prop. S.C. Code § 12-37-3135(B)(2)(b).

¹² Prop. S.C. Code § 12-37-3135(B)(1).

of whiteacre increased to \$250, the value for ad valorem property tax purposes would be limited to \$172.50.

Observations

The Exemption would reduce the increased property tax burden that would otherwise result when qualifying real property (i.e. property subject to a six percent assessment ratio) whose fair market value is significantly above its property tax value undergoes an ATI transfer. The benefit of the Exemption could be claimed indefinitely, as long as the property remains subject to a six percent assessment ratio and does not undergo an ATI transfer. Owner-occupied residential real property will not benefit from the Exemption. The Exemption does not apply to increases in value attributable to improvements and additions.