

# Setting Debt and Operations Millage: Role of County Auditors



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The story you are about to see is true. The names have been changed to protect the innocent.

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The following story is fictional and does not depict any actual person or event.

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# COUNTY AUDITORS

# Functions

- The Auditor's Office is responsible for listing and assessing personal property for ad valorem taxation.
- Assembles information on real and personal property ownership for the purpose of establishing a fair market value, computing the assessed value, and applying the applicable millage rate to produce revenue to be collected by the County Treasurer.

# Responsibilities

- Authorizes all additions, omissions, and abatements to the tax roll.
- Determines the assessed value of all personal property using manuals furnished by the South Carolina Department of Revenue
- Applies penalties to unpaid tax records
- Determines eligibility for Homestead Exemption
- Prepares and lists all taxable property in the County on the tax roll.

# What County Auditors Do Not Do

- Place values on real property
- Collect any money
- Give information on paid taxes
- Issue business or federal ID numbers

# History – In the 1800's

- County auditors and treasurers were appointed by the Governor with the advice of the State Senate.
- Historically, auditors functioned in a very similar role to their current role.
  - › For example, in the Code of Laws of South Carolina of 1881, “the county auditors of each county are **required for the purpose of assessing taxes, to attend at a convenient point in each township or tax district** as many days as may be necessary; and for the balance of the time allowed by law there shall be in and remain at the respective county seats.”

# In the Present Day

- › In comparison, Section 12-39-60 of the Code of Laws of South Carolina 1976, as amended, provides “he shall, **for the purpose of assessing taxes, attend at a convenient point in each township or tax district** as many days as may be necessary and for the remainder of the time allowed by law he must be and receive returns at the county seat.”

# History – In the 1800's

- › Another example would be in the Code of Laws of South Carolina of 1881, “each county auditor shall make out, in a book to be prepared for that purpose, in such manner as the Comptroller General shall prescribe, **a complete list or schedule of all taxable property in his county; and the value thereof, as equalized**, so arranged as that **each separate parcel of real property in each district, other than city, village, and town property, shall be contained in a line or lines** opposite the names of the owners, arranged in numerical or alphabetical order, and **so that each lot or parcel of real property in cities, villages, and towns shall be contained in a line or lines** opposite the names of the owners thereof, respectively, arranged in alphabetical order.”

# In the Present Day

- › In comparison, Section 12-39-150 of the Code of Laws of South Carolina 1976, as amended, provides “The auditor shall enter into a book prepared for that purpose, in a manner as the department prescribes, **a complete list or schedule of all taxable property in his county and the value of it as equalized.** The list or schedule must be arranged so that **each separate parcel of real property in each district, other than city, village, and town property, is contained in a line or lines opposite the names of the owners,** arranged in numerical or alphabetical order, **and so that each lot or parcel of real property in cities, villages, and towns is contained in a line or lines opposite the name of the owner of it,** respectively, arranged in alphabetical order.”

# History

- Examples of duties county auditors had in 1881 that they no longer have.
  - › If the county auditor shall suspect or be informed that any person or persons, corporation or company, has evaded making a return, or made a false return of his, **her**, or their personal property for taxation, or have or has not made a full return, or that the valuation returned is less than it should have been, it shall be his duty, at any time before settlement with the treasurer for the year, **to notify such party to appear before him at his office**, at a time fixed in said notice, together with such other person or persons as said auditor may desire to examine, and the party, together with the witnesses called, **shall be examined by the auditor under oath**

# History

- › (which oath said auditor is authorized to administer), touching the personal property, and the value thereof, of such party, and everything which may tend to evince the true amount such party should have returned for taxation.

# History

- › The county auditors are required to **appoint** in and for each township of their respective counties **three intelligent and discreet freeholders**, resident in the township for which they are appointed, **upon taking the oath prescribed for officers in the Constitution, and the oath with respect to dueling**, shall meet at some convenient place in their respective townships, and elect a chairman, and when so organized, shall form a Board of Assessors for the purpose of assessing the value of real and personal estate in their township for the purposes of taxation.

# History

- › The county auditors are required to **appoint** in and for each township of their respective counties **three intelligent and discreet freeholders**, resident in the township for which they are appointed, **upon taking the oath prescribed for officers in the Constitution, and the oath with respect to dueling**, shall meet at some convenient place in their respective townships, and elect a chairman, and when so organized, shall form a Board of Assessors for the purpose of assessing the value of real and personal estate in their township for the purposes of taxation.

# History

- › In 1880 the General Assembly equated dueling with murder and required an oath of those holding public office that they would neither send nor receive challenges while in the service of the public.



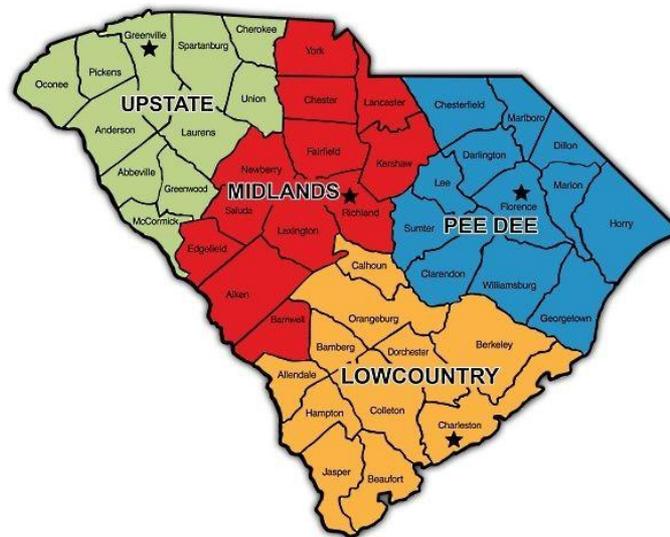
# History

- › “I do solemnly swear (or affirm, as the case may be,) that I have not, since the first day of January, A.D. 1881, engaged in a duel within or without the State, either as principal or second, or been present threat as a party thereto in behalf of either of the principals in such duel, and that I will not during the term of office to which I have been elected (or appointed, as the case may be,) engage in a duel as principal, or aid and abet in such duel as second or as a party thereto, in behalf of either principal or otherwise.”



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# SOUTH CAROLINA COUNTY GOVERNMENTS



# Forms

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- Council - Abbeville, Allendale, Barnwell, Calhoun, Laurens and Saluda.
- Council-supervisor - Berkeley, Chester, Union and Williamsburg
- Council-manager - Greenwood and York.
- Council-administrator – All remaining counties

## Selection of County Auditors

- For Council, Council-supervisor and Council administrator forms of government, the county auditor is elected.
- For Council-manager, the County auditor can be elected or appointed by County Council. The current Auditors were appointed.

# Comparison of Selection

- The duties, obligations and responsibilities are the same whether a county auditor is appointed or elected. See Chapter 39 of Title 12 of the Code of Laws of South Carolina 1976, as amended.

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# SETTING OPERATIONS MILLAGE

# Tax Calculations

- Tax calculations are composed of 3 elements:
  - › Valuation/Fair Market Value
  - › Assessment Ratio
  - › Millage Rate

$$\begin{array}{r} \text{Fair Market Value} \\ \times \text{Assessment Ratio} \\ \hline \text{Assessed Value} \end{array}$$

$$\begin{array}{r} \text{Assessed Value} \\ \times \text{Millage Rate} \\ \hline \text{Tax Levy} \end{array}$$

# Valuation

- Real property appraised to determine fair market value
- Real property reappraised every 5 years
  - › Usually subject to reassessment in the next year
- Increase is capped at 15%
- Cap in effect until an “assessable transfer of interest”
- Rollback millage
  - › Used when a reassessment is implemented
  - › Usually less than the previous year’s rate to prevent a windfall due to a higher value of the property

# Assessment Ratio by Classification

- Manufacturing Property – 10.5%
- Utility Property – 10.5%
  - › Water companies
  - › Power companies
  - › Electric cooperatives
  - › Telephone companies
  - › Sewer companies
  - › Cable companies
- Commercial Personal Property – 10.5%

# Assessment Ratio by Classification

- Real Property
  - › Manufacturing – 10.5%
  - › Primary Residence – 4.0%
  - › Other Real Property – 6.0%
  
- Certain manufacturing real property is assessed at 6%
  - › Research and development
  - › Office building
  - › Warehousing attached to a manufacturing plant

# Assessment Ratio by Classification

- Agricultural Real Property
  - › Owned by individuals and corporation with 10 or fewer shareholders – 4.0%
  - › Owned by corporation with more than 10 shareholders – 6%
- Personal Motor Vehicles – 6.0%
- Most other Personal Property – 10.5%

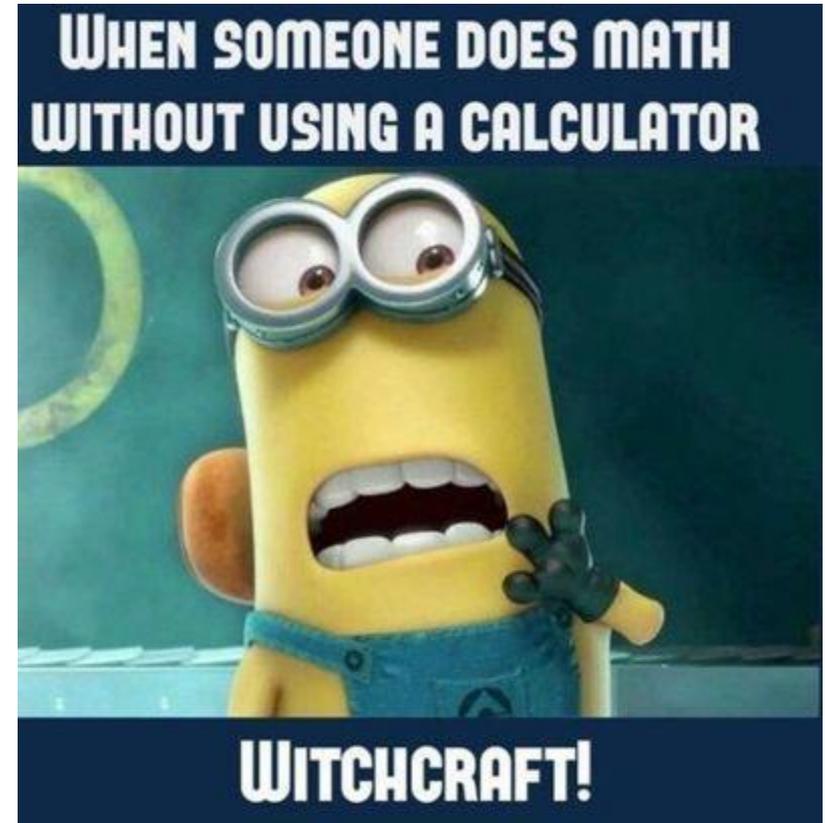
# Assessment Ratio by Classification

- Fee in Lieu of Taxes (FILOT)
  - › Fee is paid instead of property taxes
  - › 10.5% assessment ratio can be adjusted to 6% (4% for very large investments)
  - › County can freeze the millage rate for a period of time
  - › FILOT dictated by the county instead of the school district



# Calculating Millage

- Millage determined annually
- Calculated by dividing the cost of the taxing jurisdiction's annual budget (operations and/or debt service) by the total assessed value within the taxing jurisdiction



# Example of Full Fiscal Autonomy

- A school district which adopts its own operations budget with no further approvals.
- Before September 2 of each year, the Board shall notify the county auditor and treasurer in writing of ***the millage required*** for the operation of the schools in the district for the ensuing school year. The notice by the Board constitutes that authority for the levy and collection of the millage.

# Example of Limited Fiscal Autonomy

- A school district sets the levy to be applied uniformly on all property in the county, which in its opinion will guarantee an adequate program of public school education to all the children in the county.
- The board shall not increase ***ad valorem taxes*** for the operation of the school system without the approval of a majority of the county council.

# Example of No Fiscal Autonomy

- A school district which adopts its own operating budget and then has to have further approval by another governing body such as county council.



# Limitation on Millage Increases

- Annual millage for operations may increase only at a rate equal to the sum of:
  - › The increase in the consumer price index, plus
  - › The rate of population growth in the taxing jurisdiction
- Limitation does NOT apply to debt service millage

# Limitation on Millage Increases

- Limitation may be overridden by 2/3 of the governing body for the following purposes:
  - › Deficiency in the preceding year
  - › Catastrophic event
  - › Taxpayer closure decreasing revenue by 10%
  - › Purchase of undeveloped real property near an operating United States Military base
  - › Purchase capital equipment in a county having a population less than 100,000 and having 40,000 acres of state or national forest land

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# SETTING DEBT SERVICE MILLAGE

# School Bond Act

**SECTION 59-71-150.** Credit pledged for payment; tax.

- For the payment of the principal and interest on such bonds as they respectively mature and **for the creation of such sinking fund as may be necessary therefor** the full faith, credit and resources of the operating school unit are irrevocably pledged and **there shall be levied annually by the auditor of each county wherein such operating school unit is located**, and collected by the treasurer of such county in the same manner as county taxes are levied and collected, a tax, without limit, on all taxable property in such operating school unit sufficient to pay the principal and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

# County Bond Act

**SECTION 4-15-150.** Pledge of credit for payment; levy and collection of tax.

- For the payment of the principal and interest on such bonds as they respectively mature **and for the creation of such sinking fund as may be necessary therefor**, the full faith, credit and taxing power of the county are irrevocably pledged and **there shall be levied annually by the county auditor** and collected by the county treasurer in the same manner as other county taxes are levied and collected, a tax, without limit, on all taxable property in the county sufficient to pay the principal and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

# Certification of Millage

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- The governing body of a political subdivision on whose behalf a property tax is billed by the county auditor shall certify in writing to the county auditor that the millage rate levied is in compliance with laws limiting the millage rate imposed by that political subdivision.

# Excess Millage

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- If a millage rate is in excess of that authorized by law, the county treasurer shall either issue refunds or transfer the total amount in excess of that authorized by law, upon collection, to a separate, segregated fund, which must be credited to taxpayers in the following year as instructed by the governing body of the political subdivision on whose behalf the millage was levied. An entity submitting a millage rate in excess of that authorized by law shall pay the costs of implementing this subsection or a pro rata share of the costs if more than one entity submits an excessive millage rate.

# Beaufort County vs. Beaufort County Auditor

- An action for a temporary injunction and writ of mandamus to require the Beaufort County Auditor (the “County Auditor”) to set/levy the appropriate millage for debt service as identified by Beaufort County Council (“County Council”).
  - › *Temporary injunction* – a legal and equitable remedy in the form of a special court order that compels a party to do or refrain from specific acts.
  - › *Writ of mandamus* – coercive writ that orders a public official to perform a ministerial duty.

# Beaufort County vs. Beaufort County Auditor

- *Note:* This action also involved claims by and among the Town of Hilton Head Island (the “Town”), Beaufort County (the “County”) and the County Auditor relating to placing a County-authorized law enforcement service charge (LESC) on tax bills for residents of the Town. During the litigation, the County Auditor represented to the Court that he would fulfill his ministerial duties by placing the LESG on appropriate tax bills. As a result, the Court did not believe that granting relief on that issue was necessary.

# Beaufort County vs. Beaufort County Auditor

- Facts

- › In Ordinance #2020/22 (the “Budget Ordinance”), Beaufort County Council set 4.8 mills for debt service for Rural and Critical Lands debt.
- › 4.8 mills is expected to generate \$10.2 million.
- › Fiscal year 2020-2021 debt service for Rural and Critical Lands debt is \$10.8 million.
- › County Council determined that the shortfall of approximately \$600,000 would be paid from reserves in the sinking fund which currently has a balance of \$2.6 million.

# Beaufort County vs. Beaufort County Auditor

- Facts
  - › The County Auditor intended to levy 5.8 mills for debt service which is estimated to produce approximately \$12.3 million with the excess to be deposited in the sinking fund reserve.
  - › In an effort to obtain a court order requiring the County Auditor to levy 4.8 mills for Rural and Critical Lands debt, the County filed an action against the County Auditor.

# Beaufort County vs. Beaufort County Auditor

- County's Argument
  - › One of the County Auditor's ministerial duties is to levy tax millage sufficient for the payment of principal and/or interest on general obligation debt and for the creation of a sinking fund to service the debt.
  - › The County Auditor's duty to do so is purely ministerial.
  - › The County Auditor is not permitted to exercise discretion determining the amount to levy for debt service.

# Beaufort County vs. Beaufort County Auditor

- County Auditor's Argument
  - › While the requirement to levy a sufficient and proper millage rate as to debt service is ministerial, the calculation of sufficiency and propriety of any certain rate is a discretionary function of the County Auditor.

# Beaufort County vs. Beaufort County Auditor

- Arguments Presented to the Court
  - › The plain statutory language in the County Bond Act makes it clear that the County Auditor has a very limited, non-discretionary role when levying taxes for debt service.
  - › The statute does not authorize the County Auditor to levy an excessive tax or use his judgment to speculate about what the effect of COVID-19 will be on collections.

# Beaufort County vs. Beaufort County Auditor

- Arguments Presented to the Court
  - › The calculation of the tax “sufficient” to service the Rural and Critical Lands debt is not open to discretion; it is a simple mathematical analysis.
  - › It is a function of the amount required to service the debt in the coming year, the value of a mill, and the total assessed property in the County.
  - › The County Auditor cannot dispute that the 4.8 mill levy provided in the Budget Ordinance would be “sufficient” to pay debt service.

# Beaufort County vs. Beaufort County Auditor

- Arguments Presented to the Court
  - › The County Auditor might contend that he had discretion in levying the tax, based on his desires concerning the balance of the sinking fund.
  - › The statute only allows for the County Auditor to “create” a sinking fund; it does not authorize him to maintain the sinking fund.
  - › It does not authorize him to make policy judgments about how the sinking fund should be used and how much should be retained in reserve.

# Beaufort County vs. Beaufort County Auditor

- Arguments Presented to the Court
  - › It does not allow the County Auditor to exercise discretion to determine what proportion the sinking fund should bear in comparison to the debt service obligation.
  - › The County Auditor's only authority is to levy an amount sufficient to pay debt service for the coming year and to "create" the sinking fund in the first instance.
  - › The levy of 5.8 mills is not necessary for the creation of a sinking fund because a sinking fund already exists.

# Beaufort County vs. Beaufort County Auditor

- Arguments Presented to the Court
  - › The sinking fund for Rural and Critical Lands debt service has a balance of over \$2.6 million.
  - › County Council elected in its Budget Ordinance to set 4.8 mills and to pay a small portion of the total debt service with a small percentage of the sinking fund.
  - › After the payment of the Rural and Critical Lands debt service for fiscal year 2020-2021, there will be a balance of over \$2 million in the sinking fund account.

# Beaufort County vs. Beaufort County Auditor

- Arguments Presented to the Court
  - › Consistent with the plain language of the statutes, the South Carolina Supreme Court has determined that – when levying taxes for debt service – the County Auditor acts in a ministerial capacity.
  - › In the case *Stackhouse v. Floyd*, 248 S.C. 183, 198, 149 S.E.2d 437, 445-446, The Supreme Court said:
    - Plaintiffs also contend that the Act is unconstitutional in that it delegates to the Auditor the authority to tax and the discretion to fix the amount of the tax to be levied to provide debt service on the bonds.

# Beaufort County vs. Beaufort County Auditor

- Arguments Presented to the Court
  - The Act, however, gives no such discretionary power to the Auditor but rather compels him to levy annually ‘a tax sufficient to pay the principal and interest of the bonds as they respectfully mature and to create such sinking fund as may be necessary therefor’.
  - ***The amount of the levy, therefore, is established by the maturity schedule of the bonds and the interest rate. The Auditor acts in a ministerial fashion as the agent of the General Assembly in this matter.*** Emphasis Added.

# Beaufort County vs. Beaufort County Auditor

- Court Order in favor of the County
  - › The Court approached this case as one involving an interpretation of the County Bond Act, Section 4-15-150.
  - › The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.
  - › The plain statutory language in the County Bond Act makes it clear that the County Auditor has a very limited, non-discretionary role when levying taxes for debt service.
  - › The County Auditor did not provide any authority (statutory or case law) that would allow him to substitute his own judgment for County Council's on this subject.

# Beaufort County vs. Beaufort County Auditor

- Court Order ordered the County Auditor to:
  - › fulfill his ministerial duty and levy taxes on properties at 4.8 mills for rural & critical (Purchase of Real Property Program) debt service for the 2020-2021 tax year, as set forth in the Budget Ordinance;
  - › prepare an amended tax roll duplicate reflecting the same; and
  - › deliver the amended tax roll duplicate to the County Treasurer.

# Beaufort County vs. Beaufort County Auditor

- Court Order also enjoined the County Auditor from:
  - › levying taxes on properties at 5.8 mills, or any number of mills other than 4.8 mills for Rural & Critical debt service (Purchase of Real Property Program) for the 2020-2021 tax year.

# Beaufort County vs. Beaufort County Auditor

- A Notice of Appeal has been filed by the County Auditor

# Beaufort County vs. Beaufort County Auditor

- What does this case mean for the future?

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Thanks for your attention.

If you would like a copy of this presentation, please e-mail [lfoster@burr.com](mailto:lfoster@burr.com).

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