



HENRY McMASTER  
ATTORNEY GENERAL

August 27, 2009

The Honorable Dennis Carroll Moss  
Member, House of Representatives  
306 Silver Circle  
Gaffney, South Carolina 29340

Dear Representative Moss:

We understand from your letter that you desire an opinion of this Office concerning vehicle registration and legal residence tax status. In this regard, you ask the following two questions:

First, may the owner of real property be denied the special legal residence assessment ratio solely on the basis that the property owner is co-owner of a vehicle in which the taxes are paid in another county? If yes, under what authority? In this example, the owner of the property co-owns one vehicle with a parent, and the parent is listed first on the title. Taxes are paid on the vehicle in the county in which the parent resides, and this is a different county from where the real property is located. In this example, the owner of the real property has voter registration and a driver's license both reflecting the real property address. The property owner's spouse has two vehicles solely in the spouse's name, and taxes are paid on those two vehicles in the same county in which the real property is located.

Second, may a county assessor remove someone's legal residence tax status if the person has registered his vehicles in another state after the application process has been complete? In other words, may a county use the removal of the legal residence status on a citizen's home as leverage to ensure that all vehicles are taxed and registered in the county? If yes, under what authority?

### Law/Analysis

Section 12-43-220 of the South Carolina Code (Supp. 2008), requiring each classification of property to be equal and uniform, contains a list of property classifications. Included in this list are legal residences, which the statute allows to be taxed at a special four-percent assessment ratio. S.C. Code Ann. § 12-43-220(c)(1).

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property . . . .

Id. After describing various forms of property ownership in which such property may be held, the statute clarifies: “For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.” Id. Subsection (c)(2) of this provision, describing the specific qualifications to receive the special property tax assessment ratio, provides:

(2)(i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

Id. § 12-43-220(c)(2)(i) (emphasis added). Moreover, this provision requires the owner or the owner’s agent to apply for the special assessment ratio within a specified time. Id. § 12-43-220(c)(2)(ii). The statute sets forth a certification that the owner must make as part of application. Id. § 12-43-220(c)(2)(ii). As part of the certification, the owner must certify that

(A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that I do not claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and

(B) that neither I nor any other member of my household is residing in or occupying any other residence which I or any member of my immediate family has qualified for the special assessment ratio allowed by this section.

Id. Subsection (c)(2)(iv) states that in addition to the certification

the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires including, but not limited to:

(A) a copy of the owner-occupant's most recently filed South Carolina individual income tax return;

(B) copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant;

(C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.

If the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title.

Id. § 12-43-220(c)((2)(iv). Accordingly, in order to receive the special assessment ratio, the property owner must use the property as his or her legal residence.

Section 12-43-220 specifies that a legal residence for purposes of the special assessment ratio is the equivalent to the applicant's domicile. In a previous opinion, this Office described domicile as follows:

A person may have but one domicile at any given time; and to change one's domicile, "there must be an abandonment of, and an intent not to return to the former domicile." 28 C.J.S., Domicile, § 13. There must also be the clear establishment of a new domicile. Gasque v. Gasque, 246 S.C. 423, 143 S.E.2d 811 (1965). The Supreme Court has emphasized that "[o]ne of the essential elements to constitute a particular place as one's domicile . . . is an intention to remain permanently or for an indefinite time in such place." Barfield v. Coker and Co., 73 S.C. 181, 53 S.E. 170, 171 (1906).

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Op. S.C. Atty. Gen., June 11, 1993. Moreover, “just because an individual is absent from his or her home and temporarily resides in another location he or she does not automatically establish a new residence. To the contrary, an individual may be absent, but so long as that individual has the intent to return and to remain there permanently, he or she does not effectuate a change in residency.” Op. S.C. Atty. Gen., August 13, 2008.

Based on the authority cited above, whether or not the taxpayer to which you refer may receive the special assessment ratio depends on whether the taxpayer has the intent to treat the property as his legal residence or domicile. As we noted in a prior opinion, “[i]ntent is primarily a question of fact, determined on a case by case basis.” Op. S.C. Atty. Gen., March 31, 2008. See also, Phillips, 195 S.C. at 480, 12 S.E. 2d at 17 (recognizing that the determination of a person’s residence is a mixed question of law and fact). This Office, unlike a court, does not have the jurisdiction to investigate and determine factual issues. Op. S.C. Atty. Gen., July 17, 2007. Thus, we cannot determine with finality whether or not the taxpayer in question holds the requisite intent to establish his legal residence on the property.

In your letter, you explained that the taxpayer co-owns a vehicle with a parent and the parent, who is listed first on the title of the vehicle, pays taxes on it in the county in which they reside. As cited above, section 12-43-220(c)(2)(iv) specifically requires a taxpayer seeking the four-percent special assessment ratio to provide proof of his or her residency to the assessor including copies of South Carolina motor vehicle registrations.

In a recent opinion, we examined this requirement in considering whether a taxpayer by having vehicles registered in another state, could continue to qualify for the special four-percent assessment ratio. Op. S.C. Atty. Gen., June 12, 2009. In that opinion, we concluded

we do not believe the fact that a taxpayer has a car or other vehicle registered in another state to be conclusive evidence of his intent to establish his domicile in the other state for purposes of the four-percent assessment ratio or the homestead exemption. Rather, we believe all evidence of the taxpayer’s intent must be considered to determine whether the taxpayer intend to change his domicile.

Id. Likewise, we do not believe the fact that the taxpayer has a vehicle registered in another county, as presented in your letter, would be conclusive evidence of his or her intent to establish domicile in the other county. Thus, we are of the opinion that all evidence indicative of the taxpayer’s intent must be considered. Nonetheless, the burden is on the taxpayer to prove eligibility.

You also inquired as to whether the county assessor can remove someone’s legal residence tax status if the taxpayer registered his or her vehicles in another state after the application process has been completed. As indicated in our June 12, 2009 opinion, we believe registering a vehicle or

vehicles in another state is not conclusive as to the determination of their domicile or residence. Op. S.C. Atty. Gen., June 12, 2009. Nonetheless, we will consider what would happen if a taxpayer initially qualifies for the special assessment ratio, but then makes a change in his or her domicile after the legal residency status has been granted.

Section 12-43-220(c)(2)(i) states in pertinent part: “A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year . . . .” Accordingly, this provision indicates that once the taxpayer qualifies for the special assessment ratio, they may receive it for the entire tax year. Section 12-43-220(c)(2)(vi) states:

No further applications are necessary from the current owner while the property for which the initial application was made continues to meet the eligibility requirements. If a change in ownership or use occurs, the owner who had qualified for the special assessment ratio allowed by this section shall notify the assessor of the change in classification within six months of the change. Another application is required by the new owner to qualify the residence for future years for the four percent assessment ratio allowed by this section.

Pursuant to this provision, taxpayers are not required to reapply for the special assessment ratio every year, but they are charged with the responsibility of notifying the assessor of any change in classification. In addition, section 12-43-220(c)(2)(vii) states if a taxpayer is found to be ineligible after the submission of a certification or loses their eligibility and does not notify the assessor within six months a penalty may be imposed.

Although these provisions do not specifically state that the county assessor can remove legal residency status from property he or she previously concluded to be an eligible legal residence, we believe that such is implied from these provisions. Clearly, the assessor is charged with determining whether property is eligible for the special assessment ratio under section 12-43-220(c)(2)(iv). Moreover, section 12-43-220(c)(2)(vii) indicates that the assessor could later find that a property is in fact ineligible or can lose its eligibility. However, again the evidence must show that the taxpayer is no longer domiciled at the property in question. Therefore, we believe under certain circumstances that county assessors can remove a property from being eligible to receive the special four-percent assessment ratio.

### **Conclusion**

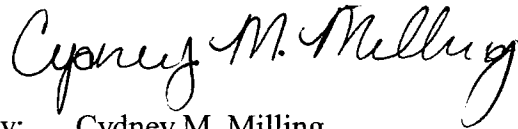
Based on our reading of section 12-43-220(c) and a recent opinion of this Office, we do not believe that a taxpayer can be denied the special assessment ratio for a legal residence based solely on the fact that the taxpayer is a co-owner of a vehicle on which the taxes are paid in another county due to the co-ownership. Moreover, we do not believe that a county assessor can remove legal

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residency status from a property based solely on where the property owner's vehicle is registered. However, we acknowledge that vehicle registration is a factor that should be considered by the county assessor in determining legal residency status and the burden of proof is on the taxpayer seeking the special assessment ratio. Therefore, if the taxpayer's vehicle or vehicles are registered outside the county where the property is located and other factors indicate that the taxpayer is not in fact domiciled on the property, a county assessor could properly find that the taxpayer is not entitled to legal residency status.

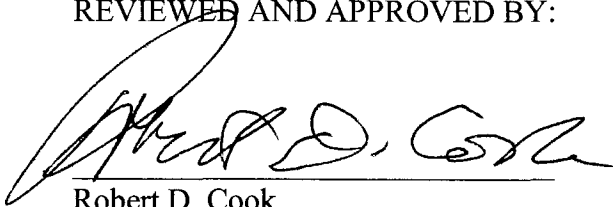
Very truly yours,

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