

7101 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 26, 2001

The Honorable William L. Otis, Jr.
Mayor, Town of Pawleys Island
P.O. Box 1818
Pawleys Island, South Carolina 29585

RE: Informal Opinion

Dear Mayor Otis:

By your letter of February 13, 2001, you have requested an opinion of this Office asking for "the legal steps necessary to declare residency on Pawley's Island for purposes of obtaining a 4% rate." You state:

Recognizing that a husband and wife can only declare one residence, there still seems to be some confusion at the County level as to exactly what can be legally required, and when a filing must be made.

Fortunately, the Code of Laws provides the general guidelines for determining primary legal residency. Reproduced below are the provisions applicable to the most common circumstances surrounding the application for residency. Although, as you can see, the entire subsection is rich with detail, I will emphasize a few particular points that appear to be relevant to your inquiry.

South Carolina Code of Laws Section 12-43-220(c) sets forth the requirements necessary to establish legal residency for real property in South Carolina. Section 12-43-220(c) reads, in part:

(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. ... When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same ratio as provided in this item. If the

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lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties. 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.

(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.

(ii) This item does not apply unless the owner of the property or the owner's agent applies for the four percent assessment ratio before the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. In the application the owner or his agent must certify to the following statement:

"Under penalty of perjury I certify that:

(A) the residence which is the subject of this application is my legal residence and where I am domiciled; and

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

(iii) For purposes of subitem (ii)(B) of this item, "a member of my household" means:

(A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and

(B) any child of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.

(iv) 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.

...

(vi) 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.

(vii) If a person signs the certification, obtains the four percent assessment ratio, and is thereafter found not eligible, or thereafter loses eligibility and fails to notify the assessor within six months, a penalty is imposed equal to one hundred percent of the tax paid, plus interest on that amount at the rate of one-half of one percent a month, but in no case less than thirty dollars nor more than the current year's taxes. This penalty and any interest are considered ad valorem taxes due on the property for purposes of collection and enforcement.

(viii) Failure to file within the prescribed time constitutes abandonment of the owner's right for this classification for the current tax year, but the local taxing authority may extend the time for filing upon a showing satisfactory to it that the person had reasonable cause for not filing before the first penalty date.

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(5) To qualify for the four percent assessment ratio, the owner-occupant of a legal residence that is being purchased under a contract for sale or a bond for title must record the contract for sale or the bond for title in the office of the register of mesne conveyances or the clerk of court in those counties where the office of the register of mesne conveyances has been abolished.

For purposes of this subsection, a contract for sale or a bond for title is the sale of real property by a seller, who finances the sale and retains title to the property solely as security for the debt.

Realizing that the length of Section 12-43-220(c) may obscure some of the more relevant points, I will highlight the provisions of the Section that may provide clarification to the county. In short, the resident must have been domiciled at the residence for at least some part of the year for which he wishes to qualify. See §12-43-220(c)(1). So long as the resident qualifies for some part of the year for which he is domiciled, the entire year is subject to the 4% tax ratio. See §12-43-220(c)(2)(i). To qualify, the resident must apply for the 4% ratio by providing a sworn statement that neither the resident nor a member of his household holds any other property as a primary residency. See §12-43-220(c)(2)(ii). The application must be made before the first penalty date for payment for the tax year for which the resident wishes to qualify. See §12-43-220(c)(2)(ii). Finally, in proving the domiciliary of the resident, the tax assessor may require documentation such as the resident's income tax returns or motor vehicle registrations. See §12-43-220(c)(2)(iv).

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Again, I have only addressed the basics set forth in the statute. Our Office has issued prior opinions dealing with individual aspects of Section 12-43-220 as questions have arisen. Should the county and the Town of Pawleys Island require further clarification on a specific question or dispute we will be happy to provide further assistance.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General