

1983 S.C. Op. Atty. Gen. 120 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-75, 1983 WL 142744

Office of the Attorney General

State of South Carolina

Opinion No. 83-75

September 26, 1983

***1 SUBJECT: Taxation and Revenue—Property—Qualifying Ownership for Residential Classification**

The legal residence of a minor qualifies for the residential property tax classification when the other conditions for the classification are satisfied; in example, occupancy and ownership.

TO: Ms. Vera R. Benton
Orangeburg County Tax Assessor

QUESTION:

When a residence passes to heirs by will or the Statute of Descent and Distribution, is the residential classification to be given when the residence is then owned in fee or in part in fee or for life by a child or grandchild of the decedent?

APPLICABLE LAW:

[§ 12-43-220\(c\), Code of Laws of South Carolina, 1976.](#)

DISCUSSION:

The section provides in part that the residence must be occupied by the owner and that the same must be the legal residence of the owner. The ownership requirements are that the property be:

‘* * * owned totally or in part in fee or by life estate and occupied by the owner * * *.’

It is assumed for purposes of the opinion that the ownership and occupancy requirements are satisfied. In the absence of the owner being a minor, the residential classification should be given. Here, the more narrow question is whether this is the legal residence of the minor. Additional facts are needed before that determination can be made.

Some general rules for guidance are that the child's legal residence is that of his father. If there is a separation of parents, the child's legal residence may be with the father or mother, dependent upon custody orders. If the parents are deceased then the child's legal residence is controlled by the guardian. See 25 Am.Jur.2d, Domicile, § 63, et seq.

The legal residence of a child is the legal residence of the father or parent with custody or a guardian when applicable. When the same is owned by the child, then under such circumstances, the residence should be classified as residential.

CONCLUSION:

The legal residence of a minor qualifies for the residential property tax classification when the other conditions for the classification are satisfied; in example, occupancy and ownership.

Joe L. Allen, Jr.
Chief Deputy Attorney General

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