

1976 S.C. Op. Atty. Gen. 76 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4263, 1976 WL 22883

Office of the Attorney General

State of South Carolina

Opinion No. 4263

February 17, 1976

***1 Eligibility for the homestead exemption must be met by December 31 next preceding the tax year.**

McCormick County Auditor

You state in your letter that you are concerned with property acquired after December 31 preceding the tax year. This office has issued numerous opinions in the past which hold that the owner of property on December 31 next preceding the tax year is liable for the ad valorem property tax on the property for the entire year even though the property is sold during the year. (Enclosed is the most recent opinion on this point dated November 20, 1975.) Conversely, if a person does not own the property on December 31 of the preceding year but purchases the property some time during the tax year, he is not liable for any tax on the property. These opinions are primarily based on Section 65-1644 which provides for the return of property possessed as of December 31 next preceding the tax year. It therefore follows, and this office has held, that the homestead exemption provided in Section 65-1522.1 applies to the 'dwelling place' of the qualified taxpayer owned on December 31 next preceding the tax year. See 1971-72 OAG No. 3382, page 238, and an opinion of this office dated March 22, 1974 (copy attached). For example, if an otherwise qualified taxpayer sold his old dwelling place and purchased a new dwelling place after December 31, 1975 (February of the 1976 tax year), he would not be liable for property tax on the new dwelling place and would, of course, not be entitled to a homestead exemption. He would, however, be liable for tax and be able to claim a homestead exemption on his old dwelling place for the 1976 tax year.

Another situation with which you express concern is that of an otherwise qualified taxpayer who purchases a house before December 31 next preceding the tax year (in November of 1975), but who does not attempt to move into the new house until after December 31, 1975 (February of 1976). One of the qualifications for the homestead exemption is that it applies only to the 'dwelling place' of the taxpayer. That term is defined as the permanent home and legal residence of the applicant. In using the term 'legal residence', the General Assembly has provided a definition which must be handled on a case by case basis. Without all the facts before us, we will not attempt to determine a taxpayer's legal residence.

We suggest instead that you refer a particular case to your county attorney, however, the following general rules may serve as guidelines.

The statute does not expressly say that the property must be the dwelling place on December 31 next preceding the tax year; however, all other qualifications, the residency requirement, the age requirement and the disability requirement, are expressly tied to that date. The statute is one of exemption and must therefore be strictly construed. See *Textile Hall Corp. v. Hill*, 215 S. C. 262, 54 S. E. 2d 809, *York County Fair Association v. South Carolina Tax Commission*, 249 S. C. 337, 154 S. E. 2d 361, and other cases collected at 17 South Carolina Digest, *Taxation*, Section 204(2). It is our opinion that generally all requirements must be met on December 31 next preceding the tax year and mere ownership of property on or before that date does not meet the requirements of the Act. Therefore, in the example given the taxpayer would not meet the requirements of the homestead exemption for 1976 on a house he purchased in November 1975, but did not until February of the 1976 tax year use the house as his dwelling place.

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