

1976 WL 30925 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 10, 1976

*1 (1) There is no statutory authority to change the name of the owner of property during a Tax year from the name of the owner on December 31 preceding the tax year.

(2) A person purchasing a legal residence under contract for sale has sufficient ?? to satisfy the requirements of Act 208, Acts of 1975, for a residential classification.

(3) Property purchased after January 1 of a current tax year could not be classified as residential under Act 208 upon application by the purchaser.

(4) The taxable status of property owned by the U. S. Government on December 31 preceeding the tax year and sold sometimes thereafter is determined by the December 31

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QUESTIONS

You advise that several questions have arisen between the local Auditor and local Tax Assessor concerning the interpretation of certain provisions of Act No. 208 of the 1975 General Assembly and request the opinion of this office concerning the following questions:

'1. What is the proper cut-off date to cease transferring real property on the tax books? (Prior to this act, transfers of real property were made up to and including August 15 of each year with the tax notices going to the transferee as of that date. After August 15, the tax notices would be sent to the owner of record as of August 15. Would we still use the August 15th cut-off date or would it be January 1?)

2. Can a home-owner qualify as owning a legal residence when he is buying the property under a sales contract where the property is still listed in the seller's name on the tax records?

3. Can a home-owner who purchases a home after December 31 of the preceding year qualify for the lower assessment rate on this property? In other words, assume that the property was purchased on January 10. He would not have owned it on January 1 according to the Act.

4. How do we treat a piece of property that is listed on January 1 which is in the name of H. U. D. or Farmers Home Administration which, in effect, is non-taxable property as long as it remains in their names as of the first of the year. After the first of the year, someone purchases the property from H. U. D. or Farmers Home Administration, can they then qualify for the lower assessment rate on this property?"

DISCUSSION

QUESTION 1. We know of no statute providing for the change in the name of the owner of real property when the real property is transferred after December 31 preceding the tax year. Sections 65-2004 and 65-2005 provide for apportionment in limited circumstances, however, Section 65-1644 requires the listing of property owned on December 31 preceding the tax year and the list is required by Section 65-1758 of such owners and property. The statutes further recognize that the property may be sold for nonpayment of taxes in the name of the owner on December 31, Section 65-2769, and additionally, the notice of the taxes is provided by Section 65-1970 and requires in part that:

*2 'In mailing such notices to the taxpayers the treasurer shall use the addresses of the taxpayers as furnished by the Auditor on the returns of such taxpayers.'

Section 65-1779 relates to the county duplicate and provides authority to the Auditor to '* * * correct any errors he may discover in the name of the owner * * *', however, this has been construed to mean the next annual county duplicate.

[Osborne v. Vallentine](#), 196 S. C. 90, 12 S. E. 2d 856.

CONCLUSION

There is no statutory authority to change the name of the owner of property during a tax year from the name of the owner on December 31 preceding the tax year.

QUESTION 2. We attach a copy of an opinion of this office of February 12, 1976, wherein it is stated that such ownership would qualify for the needed estate for the residential classification.

QUESTION 3. Section 2(c) of Act 208 provides for the residential classification and requires in part that the owner certify as follows:

'Under the penalty of perjury I certify that I meet the qualifications for the special assessment ratio for a legal residence as of January first of the current tax year.'

The section further requires that the property be owned in part in fee or for life and because the property in the question presented was not purchased until January 10, the ownership by the purchaser would not meet the requirement of the statute. Attention should however be given to the seller and if the conditions of the statute are satisfied by the seller, he should make the application for the classification and the classification so made would carry forward for the whole tax year.

CONCLUSION

Property purchased after January 1 of a current tax year could not be classified as residential under Act 208 upon application by the purchaser.

QUESTION 4. We attach copies of opinions of this office to the effect that the property is not subject to taxation for the whole tax year. The date of December 31 preceding the tax year being the date on which the taxable status of the property is fixed. Opinions of January 7, 1976 and October 30, 1973. See also Opinion No. 20182 of the South Carolina Supreme Court issued March 9, 1976, [Atkinson Dredging Co. v. Thomas](#).

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