1976 WL 30934 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 14, 1976

***1** (1) Senate Bill S-592 would tax a legal residence when occupied by the owner upon an assessment equal to not less than two and one-half percent or more than four percent or four years beginning with the 1976 tax year and thereafter at four percent notwithstanding the fact that it may be located upon rented and leased lands. The Bill is silent as to whether such residences are real or personal property.

(2) Structure or improvements to realty that are made by the lessee would under the Bill be taxed upon an assessment equal to six percent of fair market value. This class of property is considered to be real for tax purposes.

The Honorable Allen R. Carter
Senator District No. 16

QUESTION

Under Senate Bill S-592, what is the ratio to be applied to the fair market value of the following property to ascertain the tax value of the same and additionally is such property taxed as realty or personalty? (a) A legal residence owned separately from the land on which it is situated when occupied by the owner of such residence, and (b) a structure or improvement to realty made by a lessee.

STATUTES INVOLVED

Act 208, Acts of 1975 and Senate Bill S-592.

DISCUSSION

Under present provisions such residence and the improvements, if owned separately from the land, are taxed as personal property upon an assessment equal to 10.5 percent of fair market value. (Section 65-1613 and Act 208, Acts of 1975.) The exception is for the residence or improvement that is a mobile home which is taxed as real property and upon an assessment equal to six percent of fair market value. (Section 65-1605.2.)

The Senate Bill S-592 would provide for the taxation of a legal residence when owned separately from the land and occupied by the owner of the residence upon an assessment equal to not less than two and one-half percent or not more than four percent of fair market value for four years and thereafter at four percent.

This is applicable notwithstanding the fact that the residence will become the property of the lessor at the end of the lease. The pertinent language applicable to the residence is found in Section 4 of the Bill and provides:
'The legal residence * * * shall be taxed on an assessment equal to not less than two and one-half percent or not more than four percent of the fair market value * * * for a period of four years * * *; provided, that at the completion of the four-year period the property (residence) shall be taxed on an assessment of four percent of the fair market value; * * *; provided, further, that 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 of the residence shall be at the same ratio as provided herein. * * *.' (Emphasis added)

The effect of the amendment is therefore to tax a legal residence at the prescribed ratios when occupied by the owner of the residence notwithstanding the fact that it may be located upon land rented or leased. Please note that a relation of landlord and tenant may exist as to the land but not as to the residence. If the residence is owned by the landlord, this section is not applicable.

***2** Section 6 of the Bill provides in part that:
'For the purposes of this act all mobile homes in this State and <u>all improvements to leased real property made by the lessee shall be considered real property</u> and shall be classified and assessed for ad valorem taxation in accordance with the provisions of Section 2 of this act. * * *.' (Emphasis added)

The purpose of this section is to tax mobile homes when not the legal residence of the owner and improvements to realty made by a lessee upon an assessment equal to six percent of fair market value.

CONCLUSION

Senate Bill S-592 would tax a legal residence when occupied by the owner upon an assessment equal to not less than two and one-half percent or more than four percent for four years beginning with the 1976 tax year and thereafter at four percent notwithstanding the fact that it may be located upon rented and leased lands. The Bill is silent as to whether such residences are real or personal property.

Structures or improvements to realty that are made by the lessee would under the Bill be taxed upon an assessment equal to six percent of fair market value. This class of property is considered to be real for tax purposes.

COMMENT

Please note that mobile homes or improvements to realty may, however, be subject to a different and specific classification such as those owned or leased by manufacturers or transportation companies.

Joe L. Allen, Jr.
Deputy Attorney General

1976 WL 30934 (S.C.A.G.)

End of Document

