

1982 S.C. Op. Atty. Gen. 62 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-61, 1982 WL 155030

Office of the Attorney General

State of South Carolina

Opinion No. 82-61

September 13, 1982

***1 SUBJECT: Taxation—Income—Gain from condemnation, relocation payments and period in which deficiency assessment may issue.**

1. The gain from the involuntary conversion of real property constitutes taxable income for South Carolina taxation. The gain may, however, be deferred when used within the time prescribed by § 12-7-980(2)(b) to replace the property converted by purchase of other property, similar or related in service or use.

2. Payments made by the United States Department of Interior under [42 U. S. C. 4602](#) for moving and relocation expenses constitute income to the recipient.

3. (a) A deficiency assessment may issue for the gain from property involuntarily converted within five years from the date notice is given to the Commission of (a) reinvestment in like or similar property; (b) election not to reinvest in such property.

(b) A deficiency assessment may issue for sums paid for moving and relocation expenses within three years from the date the same were required to be returned.

TO: South Carolina Tax Commission

QUESTIONS:

The United States Department of Interior acquired real property in Cherokee County for public purposes under threat of condemnation. The owners were compensated for the property so taken. Payments were additionally made under Public Law 91-646, [42 U.S.C.A. 4601](#), et seq. for relocation, moving et cetera expenses. The questions are:

1. Whether the gain from the taking of the property is income for South Carolina income tax purposes?
2. Whether the payments for relocation, moving, et cetera expenses are income for income tax purposes?
3. If the above constitutes income, when may a deficiency assessment be made?

APPLICABLE LAW:

[Sections 12-7-510, 12-7-760, 12-7-980 and 12-7-2220, Code of Laws of South Carolina](#), 1976, as amended.

DISCUSSION:

The definition of gross income is found in [§ 12-7-510 of our Code](#). Its language is broad in coverage and is intended to include income from any source. [Beard v. South Carolina Tax Commission](#), 230 S. C. 357, 95 S. E. 2d 628, [Roper v. South Carolina Tax Commission](#), 231 S. C. 587, 99 S. E. 2d 377 and [CIR v. Jacobson](#), 336 U. S. 28, 69 S. Ct. 358.

Question 1: The real property is here converted into money under condemnation or threat thereof. The gain from the conversion is taxable income, however, it may be deferred under [§ 12-7-980](#). The section provides that the gain is to be recognized as income unless:

‘2(a) * * * the taxpayer during the period specified in subitem (b) for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted * * *.’

Subitem (b) provides a two year period in which the taxpayer may purchase similar or related property. The two year period begins:

‘* * * with the date of the disposition of the converted property, or the earliest date of the threat or imminence or requisition or condemnation of the converted property, whichever is earlier, * * *.’

***2** The period ends with the close of:

‘* * * the first taxable year in which any part of the gain upon the conversion is realized.’

As evidenced by the above statutory provisions, the gain from the involuntary conversion of real property constitutes taxable income for South Carolina. The same may, however, be deferred when used within the time prescribed by [§ 12-7-980\(2\)\(b\)](#) to replace the property converted by purchase of property similar or related in service or use.

Question 2: Under the federal statute, the department is required to make payments to the persons displaced for moving and related expenses. [42 U.S.C.A. 4602](#), et seq. The moving expense cannot exceed \$300 and the relocation allowance is \$200. A person displaced from a business or farm may elect to receive, in lieu of the above, an allowance of not less than \$2,500 and no more than \$10,000. The payments are in addition to the compensation paid for the property taken. The same constitutes income to the recipient. In [Ritter v. United States](#), 393 F. 2d 823, payments made by an employer to an employee as reimbursement for the expenses of relocation were held to constitute income. Reimbursement for real estate appraisal fees, closing costs, upkeep of house pending sale and remaking of draperies was there held to be income. The Court further stated that the same were ‘personal living or family expenses that could not be deducted’. In [Ricketts v. United States](#), 405 F. 2d 1293, payments made to a service person to ‘aid him when he is involuntarily separated’ constituted income.

[Section 12-7-760](#) specifically provides that ‘personal living or family expenses’ are not deductible. The payments for moving and relocation fall within this category. The in lieu of payment for the loss of income from the taking of the farm or business is obviously business income. The amount of the payment is predicated upon ‘average annual net earnings of the business or farm operations’.

Payments made under [42 U.S.C.A. 4602](#) for moving and relocation expenses constitute income to the recipient.

The federal statute, [42 U.S.C.A. 4636](#), further provides that the payments are not income for purposes of federal income taxation. This is a specific exemption of the income from federal taxation. There is no comparable South Carolina statute and the federal statute is not controlling.

‘But the Act (federal) cannot and does not change the South Carolina Constitution and statutory law.’ [Creative Displays, Inc. v. South Carolina Highway Dept.](#), 272 S. C. 68, 248 S. E. 2d 916; [M. Lowenstein and Sons v. South Carolina Tax Commission](#), 277 S. C. 561, 290 S. E. 2d 812.

Question 3: [Section 12-7-980](#) provides the period in which a deficiency assessment is to be made regarding the gain from the involuntary conversion. The language is that:

‘(c) (i) The statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on such conversion is realized, attributable to such gain shall not expire prior to the expiration of five years from the date the Tax Commission is notified by the taxpayer of the replacement of the converted property or of an intention not to replace, * * *.’

*3 A deficiency assessment may, therefore, be issued within five years from the date the Tax Commission is notified by the taxpayer of the replacement of the converted property or of an intention not to replace the same.

The time period in which the deficiency assessment for the moving and relocation expenses may issue is more difficult. In [E. R. Hitchcock Co. v. United States](#), 514 F. 2d 484, payment of moving expenses of a business necessitated by involuntary conversion was held to be compensation for the conversion. The gain was thus deferrable under this theory. The Court held the law of Connecticut controlling as to whether the payment was compensation for the taking. If such is here applicable, the deficiency could be assessed within five years from the notice to the Tax Commission.

Under the law of this State, however, a business loss is not an independent element of damage when determining just compensation for the taking of property by eminent domain proceedings.

‘The lower court properly refused to allow loss of business as an independent element of damage in this case, and properly limited consideration by the jury of such testimony to its effect upon the market value of the property.’ [S. C. State Hwy. Dept. v. Bolt](#), 242 S. C. 411, 131 S. E. 2d 264. See also 27 Am. Jur. 2d, [Eminent Domain](#), Sec. 283.

Congress, by § 12 U.S.C.A. 4621, has expressed an intent that these payments be in addition to those for the involuntary conversion. The declared purpose is ‘the fair and equitable treatment of persons displaced’. It is not a measure of compensation for the conversion of the property of such persons. It compensates them for certain expenses incurred after the conversion.

In [Spackman v. Spackman](#), 3 Kan. App. 2d 400, 595 P. 2d 748, it was held that the:

‘Major purpose of this chapter is to assure that one who is displaced by a federally assisted program does not suffer a loss if that loss can be reasonably compensated by a money payment; not only is a displaced person guaranteed fair market value of his property, if taken, but he is assured of a payment in excess of that amount if that is necessary to acquire a comparable replacement dwelling.’

The payment is, therefore, ordinary income. The deficiency assessment may be issued under § 12-7-2220 within three years from the time the income was to be returned.

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