



ALAN WILSON
ATTORNEY GENERAL

March 12, 2013

The Honorable Thomas D. Corbin
Senator, District No. 5
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Corbin:

Attorney General Alan Wilson has referred your letter of January 24, 2013 to the Opinions section for a response. The following is our understanding of your question presented and the opinion of this Office concerning the issue based on that understanding.

Issue: May a constituent receive the homestead exemption for his real property taxes pursuant to S.C. Code §12-37-250 for the tax year 2012 if he moved to the property in May of 2011 and if he was already 65 years old when he moved?

Short Answer: Based on general principles of how this Office believes a court would interpret the law, it is not likely a court would find your constituent to be eligible for the homestead exemption for the tax year of 2012.

Law/Analysis:

S.C. Code §12-37-250 provides that:

(A) (1) The first fifty thousand dollars of the fair market value of the dwelling place of a person is exempt from county, municipal, school, and special assessment real estate property taxes when the person:

(i) **has been a resident of this State for at least one year and has reached the age of sixty-five years on or before December thirty-first;**

(ii) has been classified as totally and permanently disabled by a state or federal agency having the function of classifying persons; or

(iii) is legally blind as defined in Section 43-25-20, preceding the tax year in which the exemption is claimed and holds complete fee simple title or a life estate to the dwelling place. A person claiming to be totally and permanently disabled, but who has not been classified by one of the agencies, may apply to the state agency of Vocational Rehabilitation. The agency shall make an evaluation of the person using its own standards.

(2) The exemption includes the dwelling place when jointly owned in complete fee simple or life estate by husband and wife, and either has reached sixty-five years of age, or is totally and permanently disabled, or legally blind pursuant to this section,

before January first of the tax year in which the exemption is claimed, and either has been a resident of the State for one year.

(3) The exemption must not be granted for the tax year in which it is claimed unless the person or his agent makes written application for the exemption before July sixteenth of that tax year. If the person or his agent makes written application for the exemption after July fifteenth, the exemption must not be granted except for the succeeding tax year for a person qualifying pursuant to this section when the application is made. However, if application is made after July fifteenth of that tax year but before the first penalty date on property taxes for that tax year by a person qualifying pursuant to this section when the application is made, the taxes due for that tax year must be reduced to reflect the exemption provided in this section.

(4)(a) The application for the exemption must be made to the auditor of the county and to the governing body of the municipality in which the dwelling place is located upon forms provided by the county and municipality and approved by the department. A failure to apply constitutes a waiver of the exemption for that year. The auditor, as directed by the department, shall notify the municipality of all applications for a homestead exemption within the municipality and the information necessary to calculate the amount of the exemption.

(b) The application required may be:

- (i) made in person at the auditor's office;
- (ii) by mail, when accompanied by a copy of documentation of age, or disability, or legal blindness; or
- (iii) by internet in those instances where the auditor has access to official records documenting the appropriate eligibility standard.

The department shall assist auditors with compliance with the provisions of this subitem and by means of the approval required pursuant to subitem (a) of this item ensure uniform application procedures.

(5) "Dwelling place" means the permanent home and legal residence of the applicant.

...

(D) When a person who was entitled to a homestead tax exemption pursuant to this section dies or any person who was not sixty-five years of age or older, blind, or disabled on or before December thirty-first preceding the application period, but was at least sixty-five years of age, blind, or disabled at the time of his death and was otherwise entitled dies and the surviving spouse acquires complete fee simple title or a life estate to the dwelling place within nine months after the death of the spouse, the dwelling place is exempt from real property taxes to the same extent and obtained in accordance with the same procedures as are provided for in this section for an exemption from real property taxes, so long as the spouse remains unmarried and the dwelling place is utilized as the permanent home and legal residence of the spouse. A surviving spouse who disposes of the dwelling place and acquires another residence in this State for use as a dwelling place may apply for and receive the exemption on the newly acquired dwelling place. The spouse shall inform the county auditor of the change in address of the dwelling place.

...

(G) The department shall develop advisory opinions as may be necessary to carry out the provisions of this section.

...

(emphasis added).

Before we examine this particular statute, a background in tax interpretations would be helpful. Usually when one thinks of tax interpretation, he usually thinks of the long-recognized rule of statutory interpretation that any ambiguity in the imposition of a tax must be interpreted in favor of the taxpayer. Op. S.C. Atty. Gen., 1967 WL 12119 (April 28, 1967). However, there is another principle in tax interpretation applicable here. It says that any ambiguity regarding a tax exemption should be strictly scrutinized and that any such ambiguity should be resolved against the exemption and in favor of the tax. Op. S.C. Atty. Gen., 1979 WL 42729 (January 2, 1979) (citing Chronicle Publishers, Inc. v. South Carolina Tax Commission, 244 S. C. 192, 136 S.E.2d 261(1964)).

As a background on statutory interpretation, the cardinal rule in statutory interpretation is to ascertain the intent of the Legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). This Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)).

Since your constituent was already sixty-five years old before he moved to the property, then he would clearly meet the requirement to be sixty-five by December 31 as listed in the statute. S.C. Code §12-37-250(A)(1)(i) (1976 Code, as amended). The issue revolves around whether the statute's requirement to be a "resident of this State for at least one year" requires a full tax year before the person can apply for a homestead exemption or if the full year can be the year in which the person is claiming the homestead exemption. Id. In examining this statute in a clear reading, it would seem to say one must be a resident for one year before he can claim the homestead exemption for the following year. S.C. Code §12-37-250(A)(1)(i),(2) (1976 Code, as amended). Additionally, this Office previously answered this question in an Opinion, clarifying any such ambiguity by finding "[a] person must have been a resident of this State for at least one year on or before December 31 preceding the year for which the homestead exemption is claimed in order to qualify for the same." Op. S.C. Atty. Gen., 1979 WL 29078 (June 5, 1979). This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL

289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Furthermore, “[t]he absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views suppressed therein were consistent with the legislative intent.” Op. S.C. Atty. Gen., 2005 WL 2250210 (September 8, 2005) (citing Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977)). Based on the facts given, your constituent moved from another state to South Carolina in May of 2011 and therefore would not have been a resident to receive the homestead exemption for the year 2012.

Additionally supporting that interpretation is this Office’s understanding that the Department of Revenue also reads the statute with the same interpretation. Historically this Office, along with the courts, usually gives deference to interpretations of applicable statutes or regulations by an administrative agency. Op. S.C. Atty. Gen., 2007 WL 1031453 (March 20, 2007) (citing Brown v. Bi-Lo., Inc., 354 S.C. 436, 581 S.E.2d 836 (2003)). Only when the plain language is so contrary to the agency’s interpretation of its own regulation will a court reject an agency’s interpretation of that regulation. Op. S.C. Atty. Gen., 2007 WL 1031453 (March 20, 2007) (citing Brown v. SC Dept. Health & Envir. Control, 348 S.C. 507, 560 S.E.2d 410 (2002)). “Where the administrative interpretation has been formally promulgated as an interpretative regulation or has been consistently followed, this required deference is highlighted and the administrative interpretation is entitled to great weight.” Op. S.C. Atty. Gen., 1990 WL 482427 (May 1, 1990) (citing Marchant v. Hamilton, 279 S.C. 497, 309 S.E.2d 781 (1983)). Even though this question deals with a statute and not a regulation promulgated by the Department of Revenue, its interpretation appears to be consistent with a plain reading of the statute. Accordingly, this Office finds no compelling reason to veer from this interpretation, nor should it veer absent compelling reason. Emerson Elec. Co. v. Wasson, 287 S.C. 294, 339 S.E.2d 118 (1986).

Also, previously in South Carolina real property tax appeals were handled through the county assessor’s office and then went to the Comptroller General per S.C. Code of Laws § 65-2653 and § 65-2654 (1962 Code). Op. S.C. Atty. Gen., 1973 WL 20941 (February 23, 1973). However, those statutes, which later became S. C. Code § 12-47-30 and §12-47-40 (1976 Code), were repealed in 1995. Currently, real property tax appeals (other than exemptions) in South Carolina begin with the assessor and then are handled through the local county board of assessment appeals. S.C. Code § 12-60-2510, -2520, -2530 (1976 Code, as amended). The board of assessment appeals is authorized to hear any relevant claims to a property tax assessment other than claims concerning property tax exemptions. S.C. Code § 12-60-2530 (1976 Code, as amended). Appeals from the county board of assessment appeals go to the Administrative Law Judge Division, per S.C. Code § 12-60-2530(J)(3)(c) and § 12-60-2540 (1976 Code, as amended). Appeals from the Administrative Law Judge Division are then heard by the South Carolina Court of Appeals. S.C. Code § 12-60-3380 (1976 Code, as amended). As long as the taxpayer pays or posts bond for the outstanding taxes, he may appeal the Administrative Law Judge Division’s decision. S.C. Code § 12-60-3370 (1976 Code, as amended). Homestead exemptions and personal property tax appeals are handled through the county auditor’s office pursuant to S.C. Code § 12-60-2910 (1976 Code, as amended). Regardless of the course of action taken, your constituent would need pay his property taxes (or at least pay the property taxes under appeal) and file the necessary appeal papers in order to prevent a tax lien on his property. S.C. Code § 12-60-2550 (1976 Code, as amended).

Conclusion: Based on the conclusion that one year residency requirement applies to the application for a homestead exemption on real property taxes, it appears your constituent would need to wait until the following tax year to receive a homestead exemption. However, this office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is

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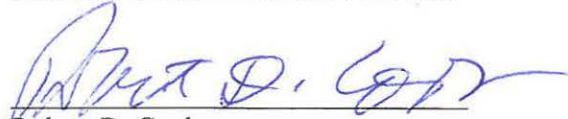
only an opinion on how this Office believes a court would interpret the law in the matter. If it is later determined otherwise or if you have any additional questions or issues, please let me know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General