



ALAN WILSON
ATTORNEY GENERAL

July 30, 2013

Marvin C. Jones, Esquire
Jasper County Attorney
Post Office Box 420
Ridgeland, South Carolina 29936

Dear Mr. Jones:

Attorney General Alan Wilson has referred your letter of April 22, 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 taxpayer receive the legal residence (4% assessment) rate pursuant to S.C. Code § 12-43-220 when the taxpayer is living on the property as his legal residence and owns the property with a vested remainder interest subject only to a life estate which was given to two people whose legal residence is elsewhere?

Short Answer: While this Office does not answer factual questions, nor does it know the background information in this situation, we think it is likely a court will uphold treating the taxpayer with the remainder interest subject to the life estates as qualified to receive the legal residence discounted rate as long as he occupies the property.

Law/Analysis:

As you reference in your letter, South Carolina law Section 12-43-220(c) states:

(1) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, **are taxed on an assessment equal to four percent of the fair market value of the property.** If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a residence by the income beneficiary of the trust. **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 for the residence is at the same ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be**

assessed at the same ratio provided in this item. If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties. For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.

(2)(i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

(ii) This item does not apply unless the owner of the property or the owner's agent applies for the four percent assessment ratio before the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. In the application the owner or his agent shall provide all information required in the application, and shall certify to the following statement:

“Under penalty of perjury I certify that:

- (A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and
- (B) that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence.”

(iii) For purposes of subitem (ii)(B) of this item, “a member of my household” means:

- (A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and
- (B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.

(iv) In addition to the certification, the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires including, but not limited to:

- (A) a copy of the owner-occupant's most recently filed South Carolina individual income tax return;
- (B) copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant;

(C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.

If the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title.

...

(8)(i) For ownership interests in residential property created by deed if the interest in the property has not already transferred by operation of law, **when the individual claiming the special four percent assessment ratio allowed by this item has an ownership interest in the residence that is less than fifty percent ownership in fee simple, then the value of the residence allowed the special four percent assessment ratio is a percentage of that value equal to the individual's ownership interest in the residence**, but not less than the amount provided pursuant to subitem (4) of this item. This subitem (8) does not apply in the case of a residence otherwise eligible for the special four percent assessment ratio when occupied jointly by a married couple or which remains occupied by a spouse legally separated from a spouse who has abandoned the residence. If the special four percent assessment ratio allowed by this item applies to only a fraction of the value of residence, then the exemption allowed pursuant to Section 12-37-220(B)(47) applies only to value attributable to the taxpayer's ownership interest.

(ii) Notwithstanding subitem (i), for ownership interests in residential property created by deed if the interest in the property has not already transferred by operation of law, an applicant may qualify for the four percent assessment ratio on the entire value of the property if the applicant:

(A) owns at least a twenty-five percent interest in the subject property with immediate family members;

(B) is not a member of a household currently receiving the four percent assessment ratio on another property; and

(C) otherwise qualifies for the four percent assessment ratio.

For purposes of this subitem, "immediate family member" means a parent, child, or sibling.

S.C. Code 12-43-220(c) (1976 Code, as amended) (emphasis added).

This Office understands your question is may a taxpayer receive the legal residence (4% assessment) rate pursuant to S.C. Code § 12-43-220 when the taxpayer is living on the property as his legal residence and owns the property with a vested remainder interest subject only to a life estate which was given to two people whose legal residence is elsewhere. Based on your letter, this Office knows that the life estates "have relinquished possession to [the taxpayer with the remainder interest], but possession is revocable [by the life tenants]." Since the facts given were limited, this Office does not know if there was a formal agreement (oral or written) between the parties. South Carolina law allows a tenancy for one year or less

to be created orally. S.C. Code § 27-35-10. Additionally, South Carolina case law is clear, as stated in one case:

Even if no formal agreement was reached between the parties, the Durneys would still be tenants at will. South Carolina Code Ann. § 27-33-10 (3) (1976 [Code]) explicates: “(3) Tenant at will.-Every person other than the owner of real estate, ..., using or occupying real estate without an agreement, either oral or in writing, shall be deemed a ‘tenant at will.’” In *Carson v. Living Word Outreach Ministries, Inc.*, 315 S.C. 64, 431 S.E.2d 615 (Ct.App. 1993), this Court enounced: ‘An express agreement is not necessary to create the relation of landlord and tenant, but such relation may arise from the implied agreement of the parties, and may be established by proof of circumstances authorizing the inference that the parties intended to assume such relation toward each other.’ 51C C.J.S. *Landlord and Tenant* § 9 at 42 (1968). A tenant is one who occupies the premises of another in subordination to that other’s title and with his assent, express or implied. *Columbia Ry., Gas & Electric Co. v. Jones*, 119 S.C. 480, 112 S.E. 267 (1922). After termination of a lease, one continuing to occupy the premises, absent a new agreement, express or implied, comes squarely within the definition of a tenant at will. *Townsend v. Singleton*, 257 S.C. 1, 183 S.E.2d 893 (1971). Thus, even if there was no written or oral agreement between the parties, the Church was, at the very least, a tenant at will.” *Carson*, 315 S.C. at 69, 431 S.E.2d at 618. Even if this Court held there was no agreement, the relationship between the Durneys and Motsinger would still be that of a landlord and a tenant at will.

Bruce v. Durney, 341 S.C. 563, 534 S.E.2d 720 (Ct.App. 2000). Thus, even without a written or oral agreement between the parties, it is likely a court would find the taxpayer is a tenant at will as long as the owners of the life estates are alive because, as you state in your letter, the two people may revoke the taxpayer’s right to use the property at any time. However, then the question then becomes does a tenancy at will equate treatment as a lease under S.C. Code § 12-43-220. South Carolina Jurisprudence states:

The two main characteristics of a tenancy at will are the uncertainty of the length of the term and the fact that either party can terminate the lease at any time with proper notice.[7] Where the tenancy is at will, the existence of any contract is immaterial. *Carson v. Living Word Outreach Ministries*, 315 S.C. 64, 431 S.E.2d 615 (Ct.App. 1993).

14 S.C. Jur. *Landlord and Tenant* § 14 (2013) (citing *Monarch Mills, Lockhart Plant v. Godshall*, 173 S.C. 286, 175 S. E. 552 (1934); *Nimmer v. Chewning*, 155 S.C. 528, 152 S.E. 702 (1930)). Therefore, since South Carolina Jurisprudence equates the tenancy at will to a lease, this Office will follow suit. Thus, if the taxpayer is considered to be a tenant at will, the taxpayer could be considered to be a lessee. The next issue is may the taxpayer, as the tenant, claim the property as his primary legal residence. Since the taxpayer is considered a lessee, we will direct you to follow the statute accordingly allowing a lessee (even as a tenant at will) to apply for legal residence. Based on the facts as given, this Office believes the taxpayer as lessee would qualify for the legal residence discounted rate pursuant to S.C. Code § 12-43-220(c).

However, using an alternate analysis, you may reach the same conclusion. Simply by holding the remainder interest and the fee interest, the taxpayer may qualify for the legal residence rate as long as he

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resides on the property with permission by the holders of the life estate. Under such analysis, South Carolina Code Section 12-43-220(c)(1) may be read at face value when it says “[t]he legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, ..., are taxed on an assessment equal to four percent of the fair market value of the property.” The taxpayer would likely qualify for the legal residence discounted rate pursuant to S.C. Code § 12-43-220(c) because he both “owns” and “occupies” the property.

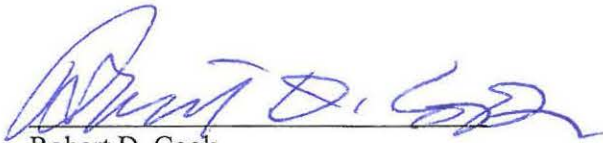
Conclusion: Based on either analysis, this Office believes a court will likely uphold treating the taxpayer with the remainder interest subject to the life estates as qualified to receive the legal residence discounted rate as long as he occupies the property. However, this Office is only issuing a legal opinion. Until a court or the legislature specifically addresses the issues presented in your letter, this is 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 us know.

Sincerely,



Anita Smith Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General