



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 29, 2000

The Honorable John M. Knotts, Jr.
Member, House of Representatives
500 West Dunbar Road
West Columbia, South Carolina 29169

RE: Informal Opinion

Dear Representative Knotts:

You have requested an opinion of this Office concerning the taxation of fifth wheel camper trailers. Specifically, you note that motor homes and cabin cruiser boats may qualify as primary or secondary residences and benefit from the four percent and six percent tax ratio, respectively. You ask if a fifth wheel camper trailer can also be classified as a second home and benefit from the six percent tax ratio, instead of the ten and one-half percent ratio usually applied to personal property.

Presently, the classification of property for taxation is governed by the general law and the South Carolina Constitution. In accordance with S.C. Const. Art. X, § 1, S. C. Code Ann § 12-43-220 sets particular classifications and assessment ratios for a legal residence at four percent, all other real property at six percent, and personal property at ten and one-half percent. The requirements for primary legal residency are delineated in the statute: the taxpayer must apply for the four percent assessment ratio, certifying that the taxpayer is domiciled at the property and resides in no other residence qualifying for the primary residence assessment ratio. See S.C. CODE ANN. § 12-43-220(c). This section has been interpreted to allow property otherwise classified as personal to be deemed a residence upon proper application. See, e.g., OPS. ATTY. GEN. 80-97 and 77-1 (concerning boats classified as legal residences).

Notwithstanding the general classification scheme, S. C. Code Ann. § 12-37-224 states:

A motor home on which the interest portion of indebtedness is deductible pursuant to the Internal Revenue Code as an interest expense on a qualified primary or secondary residence is also a primary or secondary residence for purpose of ad valorem property taxation in this State and is considered real property rather than personal property for property tax purposes.

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This statute provides an exception to the rule that personal property is taxed at ten and one-half percent by allowing motor homes to qualify as primary and secondary residences and benefit from the four and six percent tax assessment ratios. There appears to be no other statute that similarly exempts other kinds of personal property from the ten and one-half percent ratio by qualifying them as primary or secondary residences. Thus, if a fifth wheel camper trailer can be classified as a second home, it must be authorized under the ambit of S.C. Code Ann. § 12-37-224. It is the opinion of this Office that the statute does not encompass these trailers.

In determining the applicability of § 12-37-224 to fifth wheel camper trailers, a number of rules of statutory construction are relevant. The cardinal rule of statutory interpretation is to ascertain and give effect to the legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Most often, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). Moreover, exceptions contained in a statute give rise to a strong inference that no other exceptions were intended. Pa. Natl. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (S.C. App. 1984).

Under a plain reading of the statute, only *motor* homes may be classified as a primary or secondary residence. In other words, despite the fact that the fifth wheel campers have sleeping and eating facilities, because the camper trailers do not have their own internal motor they are not encompassed by the statute. No other exceptions are allowed by the statute. This interpretation depends upon the literal meaning of the terms "motor home," as required by the tenants of statutory construction, and it also comports with the legislative intent of the provision. An indication of the legislative intent can be found in the versions of § 12-37-224 that never passed. For example, 1997-98 Bill 141 attempted to allow a "recreational vehicle or boat" to be classified as a primary or secondary residence. 2000 Senate Bill 1153 allowed a "motor home or a recreational trailer ... and the truck designed and used for the purpose of towing such a trailer" to qualify for residency. Finally, 2000 Senate Bill 1068 would have added a second part to § 12-37-224, stating:

(B) A travel trailer, as defined in Section 31-17-10, that has sleeping, cooking, and bathroom facilities is also the primary or second residence for purposes of ad valorem property taxation in this State and is considered real property rather than personal property for property tax purposes.

Certainly a "recreational trailer" or a "travel trailer" would have included within its meaning a fifth wheel camper trailer, but none of this legislation was actually passed by the General Assembly. The fact that such legislation has been attempted, but has not yet succeeded, seems to indicate that the General Assembly prefers the more narrow reading of "motor home" in § 12-37-224, which would not include a fifth wheel camper trailer by its plain meaning.

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In short, it is the opinion of this Office that a fifth wheel camper trailer may not be classified as a secondary residence under the provisions of §12-37-224. Interestingly, the law may allow for a fifth wheel camper trailer to qualify as a primary residence, if the taxpayer, in fact, lives in the trailer and has made proper application for primary residence. See S.C. Code Ann. § 12-43-220(c). It is our opinion that the General Assembly has not, however, extended the exception for secondary residences to fifth wheel camper trailers.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

A handwritten signature in cursive script, reading "Susannah R. Cole".

Susannah Cole
Assistant Attorney General