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THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

May 4, 1993

SUBJECT: Taxation and Revenue - Homestead Exemption and Life Estate.

SYLLABI: 1. The fact that a will creates in the surviving spouse a life estate that will terminate upon the remarriage of the surviving spouse does not prevent that spouse from qualifying for the homestead exemption so long as the other requirements of the exemption are satisfied.

2. The creation by deed of a joint life estate in the grantor and his wife with rights of survivorship does not allow the surviving wife to qualify for the homestead exemption under the surviving spouse provisions of S.C. Code Ann. Section 12-37-250 (Supp. 1992) since the wife's life estate is not acquired by the death of the husband. The creation by deed of a joint life estate in the grantor and his wife with rights of survivorship, however, will satisfy "the ownership requirements for the exemption" where the creation of the life estate complies with the requirements of S.C. Code Ann. Section 12-37-265 (Supp. 1992). The surviving spouse must still satisfy the other requirements of the exemption for age, disability or blindness, and residency.

TO: Honorable Cheryl H. Morgan
Auditor, Lancaster County

FROM: Ray N. Stevens *RNS*
Chief Deputy Attorney General

QUESTIONS:

1. Does the fact that a will creates in the surviving spouse a life estate that will terminate upon the remarriage of the spouse prevent the surviving spouse from qualifying for the

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homestead exemption so long as the other requirements of the exemption are satisfied?

2. Does the creation by deed of a joint life estate in the grantor and his wife with rights of survivorship allow the wife as the survivor to qualify for the homestead exemption as either a surviving spouse or a life estate under the provisions of Section 12-37-265?

APPLICABLE LAW: S.C. Code Ann. Sections 12-37-250 and 12-37-265 (Supp. 1992).

DISCUSSION 1:

You have inquired about a life estate in a surviving spouse where such life estate was created by a will, but where the life estate will terminate upon the remarriage of the surviving spouse. You ask if the limitation in the will of "until she remarries" prohibits the surviving spouse from receiving the homestead exemption.

Section 12-37-250 is available for life estates created by will and specifically addresses life estates for a surviving spouse. The applicable portion of Section 12-37-250 states the following:

When any person who was entitled to a homestead tax exemption under this section dies . . . and the surviving spouse is at least fifty years of age and acquires complete fee simple title or a life estate to the dwelling place, . . . 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. . . .

This provision grants the exemption to the surviving spouse of a party entitled to the homestead where the surviving spouse is at least fifty years of age, receives a life estate, remains unmarried, and utilizes the dwelling place as the legal residence.

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In your request, you state that a husband, who was properly qualified for the homestead exemption and who had been receiving the exemption, died and provided his wife an interest in a residence and other property "for and during her natural life or until she remarries, whichever occurs first". We also understand, the surviving spouse is at least fifty years of age and lives in the residence.

Section 12-37-250 requires that the surviving spouse hold a fee simple estate or a life estate in order to claim the exemption. Since the surviving spouse does not have a fee simple estate, there must be a showing of a life estate to claim the homestead exemption. Here, the will grants an interest to the spouse "for and during her natural life or until she remarries, whichever occurs first". A limitation of "for, during and so long as she shall live or remain a widow . . . and upon her death or intermarriage, whichever event shall first occur" then to the remaindermen, has been held to create a life estate.

. . . "If an estate be given to a woman dum sola [while single] or durante viduitate [during widowhood] . . . the grantee takes an estate for life, but one that is determinable upon the happening of the event on which the contingency depended." . . .

Snelling v. Lamar, 32 S.C. 72, 10 S.E. 825 (1890). The fact that the interest is determinable (i.e. liable to come to an end upon some event, e.g. remarriage) does not prevent the interest in the property from being a life estate since the devise of a property for life to terminate upon the devisee's remarriage constitutes "a devise of a life estate". Lydick v. Tate, 44 N.E.2d 583, 589 (1942).

Further, in determining the meaning of words used in a statute, the statute must be interpreted as a whole and considered in light of the purpose of the law. City of Columbia v. Niagara Fire Ins. Co., 249 S.C. 388, 154 S.E.2d 674 (1967). Here, the statute itself states that the life estate in a surviving spouse is a sufficient interest "so long as the spouse remains unmarried".

The statute contemplates that a life estate is sufficient until the remarriage occurs. Under the will, the life estate would terminate upon the remarriage, and thus the interest required for the homestead would no longer exist.

Correspondingly, under the statute, upon remarriage, the homestead is no longer available. It would be inconsistent with the intent of the General Assembly to deny the exemption to a life estate solely on the basis that the life estate carried the same limitation which the statute imposes.

CONCLUSION 1:

The fact that a will creates a life estate in a surviving spouse which will terminate upon the remarriage of the surviving spouse does not prevent the surviving spouse from qualifying for the homestead exemption so long as the other requirements of the exemption are satisfied.

DISCUSSION 2:

Under an additional set of facts, as we understand them, a husband was age 65 and owned a fee simple interest in a residence. He executed a deed in which he created a joint life estate in himself and his wife for the survivor of the two, and upon the death of the survivor, the remainder interest is to pass to a third party. We understand the deed was executed after December 31, 1979. The husband has now died, and the wife seeks to continue the homestead exemption. We are not told the age of the surviving wife.

The life estate interest of the husband was sufficient for the homestead exemption. The husband, who was otherwise qualified for the homestead, owned a fee simple interest, and created a life estate in himself and his wife for the survivor of the two. Such facts allowed the exemption under Section 12-37-265 while the husband was alive.

The issue now concerns the ability of the surviving spouse to receive the homestead exemption. Here, the life estate in the wife is created by deed. Under Section 12-37-250, a life estate is not eligible for the homestead unless it is created by will or if "otherwise created [must have been] in effect on or before December 31, 1979". Clearly, the life estate was not created by will and was not otherwise created before December 31, 1979. Thus, in the absence of an exception, the homestead is not available to the surviving spouse.

The surviving spouse provisions of Section 12-37-250 are not applicable as an exception since those provisions require the surviving spouse to acquire the life estate as a result

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of the death of the spouse. See OAG 77-179 dated June 7, 1977 to York County Auditor from Joe L. Allen, Jr. Here, the life estate was created by deed prior to the husband's death.

Section 12-37-265 does, however, provide a basis for a limited exception for the surviving spouse. Section 12-37-265 states the following:

Notwithstanding any other provision of law, when a person is entitled to the homestead tax exemption provided by Section 12-37-250 of the 1976 Code and owns fee simple title to the homestead, and who thereafter creates a life estate for such person by conveyance of the remainder, the life estate so created shall satisfy the ownership requirements for the exemption. The term "person" shall include husband and wife when the homestead is jointly owned and either is entitled to the exemption.

This section applies "[n]otwithstanding any other provision of law". A person who meets the requirements of the section is able to create a qualifying life estate, even if the life estate is created by deed after December 31, 1979.

To create the necessary life estate, a fee owner may by deed reserve to himself a life estate upon conveying the remainder to another. 23 Am.Jur.2d, Deeds, Section 74. In South Carolina, a husband is able to create a life estate in his wife and reserve a life estate in himself. Glasgow v. Glasgow, 221 S.C. 322, 70 S.E.2d 432 (1952). In fact, a will can create in a husband and wife a joint life estate with rights of survivorship, which joint life estate satisfies the ownership requirements for the survivor who seeks the homestead exemption. See OAG 82-49 dated July 9, 1982 to the Honorable Earle E. Morris, Jr., from Joe L. Allen, Jr. Further, the creation by deed of a joint life estate in a husband and wife with the right of survivorship establishes a qualifying interest for the homestead exemption so long as the joint life estate was created prior to the restrictive date for life estates as set by statute. See OAG 3950 dated January 28, 1975 to the Horry County Auditor from Joe L. Allen, Jr.

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Here, the facts present a deed that creates a joint life estate with survivorship rights in a husband and wife. Since it was created within the requirements of Section 12-37-265, the joint life estate is proper, notwithstanding the fact that such was created after December 31, 1979. Upon the death of the husband, the wife does not acquire any new interest in the property. Rather, the wife merely continues to own the same interest, i.e. a life estate, created by the original deed. Accordingly, a joint life estate with survivorship rights in the husband and wife which is created by deed and which complies with the requirements of Section 12-37-265, satisfies "the ownership requirements for the exemption". The spouse must still satisfy the other requirements of the exemption for age, disability or blindness, and residency.

CONCLUSION 2:

The creation by deed of a joint life estate in the grantor and his wife with rights of survivorship does not allow the surviving wife to qualify for the homestead exemption under the surviving spouse provisions of Section 12-37-250 since the wife's life estate is not acquired by the death of the husband. However, the creation by deed of a joint life estate in the grantor and his wife with rights of survivorship will satisfy "the ownership requirements for the exemption" where the creation of the life estate complies with the requirements of Section 12-37-265. The surviving spouse must still satisfy the other requirements of the exemption for age, disability or blindness, and residency.

RNS:wcg