

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. 87-47 pg 126

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SUBJECT: Taxation and Revenue - Taxability of property when less than perpetual easement donated under South Carolina Scenic Rivers Act.

SYLLABUS: Land on which a less than perpetual easement is donated under the Scenic Rivers Act is not exempt from property taxation.

TO: Buford S. Mabry, Jr., Esq.  
Chief Counsel  
S.C. Wildlife & Marine Resources Department

FROM: Joe L. Allen, Jr. *JLA*  
Chief Deputy Attorney General

QUESTION: Is real property subject to taxation when less than a perpetual easement is donated to the State under the South Carolina Scenic Rivers Act?

APPLICABLE LAW: Section 51-5-70, South Carolina Code of Laws, 1976.

DISCUSSION:

Section 51-5-70 provides in part that lands on which a perpetual easement is donated to the State under the Scenic Rivers Act are exempt from property taxation. The pertinent language is that:

"\* \* \*. Land subject to a perpetual easement shall be exempt from all property taxes which would otherwise be assessed after the easement is granted.  
\* \* \*." Section 51-5-70, South Carolina Code of Laws, 1976.

Under the facts here considered, the grant is not a perpetual easement. It is one that is terminable upon the happening of an event or circumstance. It is an easement subject to a condition subsequent. 25 Am.Jur.2d, Easements and Licenses, § 99, p. 504. The specific condition is set forth in § VI of the Scenic Easement as follows:

"B. Right of Termination: In the event that, as a direct or indirect

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result of State Scenic River status, a minimum release requirement is imposed on the Saluda Hydroelectric Project (FERC Project 516) located at the Lake Murray (Saluda) Dam, the Grantor may, at its option, terminate this Easement and, upon such termination, all restrictions and limitations placed upon the Grantor's use of the Restricted Property by this Easement or by the inclusion of the Saluda River in the Scenic Rivers System shall be void. \* \* \*."

The easement is thus less than perpetual. Perpetual is defined in Webster's New Collegiate Dictionary to mean:

"Continuing forever, everlasting, also continuous or indefinitely long-continued in use, service, action, etc, permanent."

The General Assembly, however, has limited the exemption to lands on which a perpetual easement is donated. This language cannot be extended to include grants of less than perpetual duration.

"Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of taxpayer claiming exemption, but he must clearly bring himself within constitutional or statutory language upon which he relies." York County Fair Association v. South Carolina Tax Commission, 249 S.C. 337, 154 S.E.2d 361. (For other cases see 17A South Carolina Digest, Taxation, Key 204.

#### CONCLUSION:

Land on which a less than perpetual easement is donated under the Scenic Rivers Act is not exempt from property taxation.

JLAJr:wcg