

1982 S.C. Op. Atty. Gen. 65 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-65, 1982 WL 155034

Office of the Attorney General

State of South Carolina

Opinion No. 82-65

October 25, 1982

***1 SUBJECT: Property Taxation—Residential and Agricultural Classifications of Real Property**

(1) A residence owned by a corporation and occupied by a shareholder cannot be classified for ad valorem taxation as residential property.

(2) A residence owned by a corporation and occupied by a shareholder cannot be classified for ad valorem taxation as agricultural real property.

TO: Honorable J. Leroy Marlow
Spartanburg County Assessor

QUESTION:

The stock of a corporation is equally owned by three persons. The three are a grandfather, his son and grandson. The corporation furnishes residential housing to the son and grandson. Can these residential homes be classified for purposes of taxation as either residential or agricultural property?

APPLICABLE LAW:

§§ 12-43-220(c) and 12-43-230, Code of Laws of South Carolina, 1976.

DISCUSSION:

The Residential Classification—Before the property can be classified as residential, it must be ‘owned totally or in part in fee or by life estate and occupied by the owner’. Here, the owner is the corporation.

‘When one purchases or acquires stock in a corporation, no matter what time, he acquires a fractional interest in the capital stock, assets, profits, and liabilities of a corporation. However, by the very nature of a corporation, the corporation property is vested in the corporation itself and not in the stockholders.’ 18 Am.Jur.2d. Corporations, § 486, p. 879.

The Agricultural Classification—Agricultural real property is defined by § 12-43-230. The section in part provides that: ‘The term ‘agricultural real property’ shall include real property used to provide free housing for farm laborers provides such housing is located on the tract of land that qualifies as agricultural real property.’

We are here concerned with that part of the provision that relates to ‘free housing for farm laborers’. Are the stockholders of the corporation furnished ‘free housing’ and are they ‘farm laborers’? It would be difficult to presume a circumstance where a shareholder of a corporation can be furnished the use of corporate property without compensation. It is assumed that the corporation is one for profit.

'A corporation for profit is primarily a business corporation, organized, with a view toward realizing gains to be distributed among its members. * * *.

* * *. 'Profit' does not necessarily mean a direct return by way of dividends, interest, capital account, or salaries. For example, profit may be dispensed to members of a corporation in the form of a saving of expense or the obtaining of a service at a lower price than that which would otherwise be paid for. * * *.' 18 Am.Jur.2d. Corporations, § 10, p. 556.

Here, the shareholders are furnished permanent housing. If a charge had been made by the corporation for the value thereof, the same would in part or in total be returned to the shareholders as dividends or by an increase in the value of their stock. Such housing is not therefore 'free' to the shareholders.

CONCLUSION:

*2 (1) A residence owned by a corporation and occupied by a shareholder cannot be classified for ad valorem taxation as residential property.

(2) A residence owned by a corporation and occupied by a shareholder cannot be classified for ad valorem taxation as agricultural real property.

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