1977 S.C. Op. Atty. Gen. 9 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 77-1, 1977 WL 24344

Office of the Attorney General

State of South Carolina
Opinion No. 77-1
January 3, 1977

***1** A boat may be a 'legal residence' and taxable at the four (4%) per cent rate for such property.

TO: Mr. Robert S. Busk

QUESTION

Is a boat that is used by a person as a place of dwelling taxable at four (4%) per cent under Section 65–1605.1 of the 1962 Code of Laws, as amended?

STATUTE

Section 65–1605.1(c) of the South Carolina Code of Laws.

DISCUSSION

Section 65–1605.1(c) of the Code provides favorable tax treatment to a person's 'legal residence' in that such property is taxable at four (4%) per cent. Other property is taxable at higher percentages.

The question of a person's place of residence is largely one of intent to be determined under facts and circumstances of each case. Miller v. Miller, 248 S. C. 125, 149 S. E. 2d 336. It has been held that a person can have but one legal residence. Burr's Adm'r. v. Hatter, 240 Ky. 721, 43 S. W. 2d 26. 'Legal residence' may be different from 'actual residence'. Wilson v. Hoisington, 110 Mont. 20, 98 P2d 369. Actual residence at a place coupled with intent to remain at such place, constitutes 'legal residence'. Nunn v. Hamilton, 233 Ky. 663, 26 S. W. 2d 526. Stell v. Williams' Adm'r., 233 Ky. 441, 26 S. W. 8. See also Phillips v. South Carolina Tax Commission, 195 S. C. 492, 12 S. E. 2d 13. In the case of Ravenel v. Dekle, 265 S. C. 364, 218 S. E. 2d 521, evidence of dwelling places, voting record, income tax returns and club membership was considered in regard to citizenship and residence.

If a person permanently berths a boat in South Carolina so as to render it taxable in South Carolina, and such person lives upon the boat and has all intention and purpose of qualifying and being a resident of South Carolina, the boat may be his legal residence. We find no restriction in the statute precluding the taxation of the boat at four (4%) per cent. Language of the statute is to the effect that the boat is within the term 'legal residence'. The pertinent section states:
'* * * 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 shall be at the same ratio as provided herein. * * *.'

This indicates an intention that the four (4%) per cent rate shall apply to personal property if all other qualifications are met.

CONCLUSION

A boat may be a 'legal residence' and taxable at the four (4%) per cent rate for such property.

G. Lewis Argoe, Jr.
Assistant Attorney General

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