

1977 WL 37009 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 6, 1977

*1 1. Property cannot be sold for nonpayment of taxes incurred during the estate of the life tenant after the same is ended and title has vested in the remainderman.

2. Only real property 'actually occupied' by a church is exempt from taxation.

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QUESTIONS

1. Can the property passing to a church as remainderman under a will be sold for the taxes that accumulated during the estate of the life tenant?

2. Will the church be liable for taxes that accumulated during the life of the life tenant and/or after the death of the life tenant in view of the fact that the property of churches is usually non-taxable? The property is not actually used by the church for church purposes, but is being rented pursuant to the terms of the will.

APPLICABLE LAW

Section 65–1611 and Article 10, Section 4 of the Constitution.

DISCUSSION

Section 65–1611 provides that:

'Every person shall be liable to pay taxes and assessments on the real estate of which he may stand seized in fee or for life, * * *.'

It is settled law that only the interest of the life tenant may be levied upon and sold upon default of the life tenant to pay the taxes. 'A life tenant is required to assess the land in his possession as such and upon his default in paying taxes only his interest in the land can be sold under execution against him.' [Taylor v. Strauss](#), 95 S. C. 295, 78 S. E. 2d 883; [Bolt v. Sullivan](#), 173 S. C. 24, 174 S. E. 491, [Stamper v. Avant](#), 233 S. C. 359, 104 S. E. 2d 565.

The interest of the remainderman is not affected by the failure of the life tenant to pay the taxes and hence there is no liability on the part of the remainderman to pay the taxes accruing during the estate of the life tenant. The taxes due by the life tenant are a debt and are payable from the assets of the deceased life tenant.

With reference to the second question, Article 10, Section 4 of the Constitution provides in part that:

'There shall be exempted from taxation * * * churches * * *; provided that as to real estate this exemption shall not extend beyond the buildings and premises actually occupied by such * * * churches, although connected with charitable objects.'

The above provision as the same relates to colleges and orphanages has been construed. [Wofford College Trustees v. Spartanburg](#), 201 S. C. 315, 23 S. E. 2d 9; [Strange v. Sumter](#), 185 S. C. 203, 193 S. E. 649. The property has to be occupied.

Here you advise that the property is not occupied by the church, therefore the above constitutional provision precludes exemption.

CONCLUSION

Question 1. The property cannot be sold for nonpayment of taxes incurred during the estate of the life tenant as the same is now ended and title has vested in the remainderman.

Question 2. Only real property 'actually occupied' by a church is exempt. Because the property is not exempt it is therefore taxable. Additionally, there is no liability of the church to pay taxes that accrued to the estate of the life tenant.

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