

1977 WL 37029 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 17, 1977

*1 Property is not exempt from advalorem taxation by Section 65–1585 962 Code of Laws when title is held by the Veterans Administration.

Honorable Gerald W. Burnett
Deputy Comptroller General

QUESTION

Is the residence of a disabled veteran that is situate in Marlboro County exempt by reason of Section 65–1585 of the 1962 Code of Laws (Local Law in the 1976 Code) when the title thereto in held by the Veterans Administration?

APPLICABLE LAWS

Section 65–1585 of the 1962 Code of Laws, Section 12–37–610 and 12–37–220(11) of the 1976 Code of Laws.

DISCUSSION

The exemption provision is that:

‘All totally disabled war veterans residing in Marlboro County are hereby exempt from the payment of * * * real estate taxes on their homes and five acres of land levied by Marlboro County and any of its political subdivisions.’

The property involved is the residence of such a person, however, legal title thereto is held by the Veterans Administration. There is an agreement between the veteran and the Administration that the property will be deeded to the veteran upon his compliance with the terms of the sale; namely, satisfaction of the payment requirements.

Under South Carolina law the veteran is not liable for any taxes. Section 12–37–610 of the 1976 Code provides:

‘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, in dower or as husband in right of his wife, or may have the care of as guardian, executor, trustee or committee.’

The person owning the legal title is liable for the taxes.

‘Under South Carolina statute, the obligation to pay taxes on land rests upon the holder of legal title rather than on whoever may be in possession.’ [South Carolina Public Service Authority v. 11,754.8 Acres of Land](#), 123 F. 2d 738.

Additionally, the contract to sell or the bond for title in an incomplete sale.

‘It has been soundly held that a bond for title is but an agreement to make title in the future upon performance of certain conditions, such being an executory or incomplete sale.’ [Wahl v. Hatto](#), 155 S. E. 2d 1.

Finally, the accepted and settled rule of construction must here prevail.

‘Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of taxpayer claiming an exemption, and he must clearly bring himself within the language on which he relies.’ [Textile Hall Corp. v. Hill](#), 215 S. C. 262, 54 S. E. 2d 809.

Under the facts as stated there is no tax levied upon the veteran, therefore, there is no tax on which the exemption can apply.

The veteran has covenanted with the Administrator to pay the taxes, however, much does not shift the legal liability for the tax to the veteran.

‘In the absence of a statute providing otherwise, contracts between private persons with respect to taxes may be binding as between them and given effect according to their terms, but such contracts do not affect the right of the state unless it is in privity thereto.’ 84 C.J.S., [Taxation](#), Section 61(h), page 163.

*2 Section [38 U.S.C.A. 1820](#) provides in part that:

*** the Administrator may ***

(5) *** take title to property, real, personal or mixed; and similarly sell, at public or private sale, exchange, assign, convey or otherwise dispose of any such property; and

(6) *** the acquisition of any such property shall not deprive any state or political subdivision thereof of its civil or criminal jurisdiction of, on, or over such property (including power to tax) or impair rights under state or local law of any persons on such property.’ (Emphasis added)

Such constitutes a waiver of any tax immunity possessed by the United States and agencies thereof. Section 12–37–220(11) of the 1976 Code exempts from taxation:

‘All property owned exclusively by the United States or this State.’

The ownership of the legal title would not, in our opinion, constitute such exclusive ownership.

Attention is also called to the provisions of Article 10, Section 3 of the Constitution, as amended, that repeal the above-referred to exemption March 1, 1978.

CONCLUSION

It is the opinion of this office that property is not exempt from ad valorem taxation by Section 65–1585 of the 1962 Code of Laws when title is held by the Veterans Administration.

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