

1978 WL 34614 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 28, 1978

***1 RE: Special Tax Assessment Ratios for Owner-occupied Residential Property, [Section 12-43-220\(c\), 1976 Code](#)**

Hon. Joe L. Allen, Jr.
Deputy Attorney General
P. O. Box 125
Columbia, SC 29214

Dear Joe:

[Section 12-43-220\(c\)](#), in providing for a special tax assessment ratio for owner-occupied residential property, provides that 'the legal residence and not more than 5 acres contiguous thereto when owned totally or in part in fee, or by life estate and occupied by the owner of such interest shall be taxed . . .' at the lower rate. The question on which I am requesting your opinion is as follows: Does the provision for the special tax ratio for owner-occupied residential property apply to a beneficial life estate when the residence is occupied by the owner of that interest (the beneficiary)?

An example of such a situation is one in which, under a trust, a home is left for the use of the beneficiary, for that beneficiary's life, and the beneficiary actually occupies the home. It is my opinion that such a life beneficiary who is actually occupying the residence would be eligible for the special ratio as the owner, totally or in part by life estate.

I base this opinion on the general principle that the fact that the interest involved is a beneficial interest under a trust, rather than a legal estate, does not affect the rights of the life tenant. 'The rights and liabilities of the life tenant and remaindermen are substantially the same, whether the interests are equitable or legal, consequently the incidents and characteristics of life estates are basically alike, whether legal or equitable. Generally speaking, present enjoyment is the very essence of a life estate.' 28 Am Jur 2d, Estates Section 57. (See also Section 62).

This principle is supported by Section 21-27-70 (1976 Code) which provides that the beneficiary of a trust who has the use of lands for a term of life 'shall be deemed and adjudged in lawful seizing, estate and possession of and in such land . . . to all intents, constructions and purposes in law of and in such like estates as they shall have in use . . .' I interpret that section, as applied to [Section 12-43-220\(c\)](#), as meaning that the life beneficiary who actually occupies the residence should be deemed as the owner-occupant by life estate of that residence.

Such an interpretation is supported by 51 Am Jur 2d Life Tenants Section 247, which treats the obligation to pay taxes as the same, whether the life tenant has a legal or beneficial interest.

However, a difficulty arises with two sections: Section 12-37-610 and Section 12-37-740. Section 12-37-610 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 . . . or may have the care of as trustee . . .' Under Section 21-27-70, the beneficiary would be deemed as 'seized for life,' and, therefore, liable to pay all taxes and assessments. This would be in line with the general law cited in the preceding paragraph. However, Section 12-37-610 could also support the view that the trustee, and not the beneficiary, would be liable for the taxes. The same problem is presented by Section 12-37-740, with subsection 1 pointing to the beneficiary (being in possession and deemed in lawful estate under Section 21-27-70 as the party in whose name the property should be listed, and subsection 3 pointing to the trustee.

*2 Since the beneficiary would be deemed as seized for life, I would take the position that such seizer should take precedence over any possibly conflicting provisions as to liability for taxes and names in which the property is to be listed. As a result, I would take the position that such a beneficiary of a life interest who is actually occupying the residence in which his life interest lies would be eligible for the special ratio for owner-occupied residential property. I would also take the position that the proper means by which to apply for the special assessment ratio for owner-occupied residence under [Section 12-43-220\(c\)](#) would be for the trustee to apply as the agent of the beneficiary/owner.

Your kindness in reviewing this situation is very much appreciated.

Sincerely,

George R. Hundley
Assistant County Attorney

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