

1978 S.C. Op. Atty. Gen. 119 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-94, 1978 WL 22573

Office of the Attorney General

State of South Carolina

Opinion No. 78-94

May 15, 1978

**\*1 SUBJECT: Exemptions of Retirees From Income Taxes**

(1) An individual is entitled to more than one twelve hundred dollar exemption if the person has more than one qualifying source of retirement income. 1973-74 OAG No. 3872, page 296 is withdrawn and superseded.

(2) A civil service annuitant or a military retiree is not entitled to an additional twelve hundred dollar exemption against his civil service or military retirement income simply by reason of attaining sixty-five years of age.

(3) An individual who retires from the military with less than twenty years of active duty but who receives military retirement because of service in the national guard or the military reserve qualifies for a twelve hundred dollar exemption when he reaches sixty-five years of age.

(4) Persons receiving survivor annuities based on the service of another are not entitled to a twelve hundred dollar exemption because they are not retired persons as required by the exemption statute.

TO: Mr. C. H. Brooks  
Director  
Income Tax Division

**QUESTIONS:**

(1) Is an individual entitled to more than one twelve hundred dollar exemption if the person has more than one qualifying source of retirement income?

(2) Would a civil service annuitant or military retiree be entitled to an additional twelve hundred dollar exemption simply by reason of attaining age sixty-five?

(3) Would an individual who retires from the military with less than twenty years of active duty but who receives military retirement because of reserve or national guard duty qualify for a twelve hundred dollar exemption when he has attained age sixty-five?

(4) Is the survivor of a pensioner or annuitant entitled to a twelve hundred dollar exemption?

**STATUTES:**

Section 12-7-310, specifically Subsections (9), (10) and (11) of the 1976 South Carolina Code of Laws.

In response to question (1).

**DISCUSSION:**

The statutory language in question is as follows:

'(9) Any retired person who receives a Federal civil service retirement annuity shall be allowed an exemption of twelve hundred dollars on such annuity each taxable year, exclusive of any other exemption. The provisions of this item shall not apply to retired persons who are now exempt from payment of taxes on Federal civil service retirement annuities.

(10) Any person retired from the uniformed services of the United States with twenty or more years active duty service shall be allowed an exemption of one thousand two hundred dollars on his uniformed services retirement pay.

(11) Any retired person who attains the age of sixty-five before the close of the taxable year and who receives income under an established pension program shall be allowed an exemption of twelve hundred dollars of such pension income annually in each taxable year.'

These above-quoted sections provide twelve hundred dollar exemptions from state income taxes for recipients of certain retirement plans. Subsection (9) provides for an exemption for federal civil service retirees of 'twelve hundred dollars on such annuity'. Subsection (10) provides for an exemption for a military retiree of twelve hundred dollars 'on his uniformed services retirement pay'. Finally, Subsection (11) provides for an exemption for any sixty-five year old retired person receiving income under an established pension program of twelve hundred dollars 'of such pension income'.

\*2 Each retirement pay exemption makes a particular reference to the source of the income exempted. In this regard, the three retirement pay exemptions differ from all other exemptions covered by § 12-7-310 which exempts income regardless of source. The exemptions in question, because they delineate the source of the income offset, are more in the nature of exclusions than exemptions. It is our belief that the exemptions in question are exempting the first twelve hundred dollars of income from a particular source.

We are not unmindful of the fact that exemptions are to be strictly construed. [Southern Soya Corp. v. Wasson, 252 S. C. 484, 167 S. E. 2d 311](#). However, if a particular taxpayer brings himself within the literal wording of two or more of the exclusions by reason of having two or more sources of income to which the exclusions apply, the burden has been met. Furthermore, Subsection (9), the civil service exclusion, specifically states that the benefits of that subsection are 'exclusive of any other exemption'. The words 'exclusive of' are defined in [Webster's New Collegiate Dictionary](#) (1973) as 'not taking into account'. See also 15A Words and Phrases, '[Exclusive Of](#)', Supp. at 44.

You have asked for an example of circumstances under which more than one exclusion would be allowable. An example would be an individual who retires from the military after twenty years and goes to work for the Veterans' Administration (federal civil service). Before retiring from the VA, he is clearly entitled to a twelve hundred dollar exclusion from his military retirement. Upon retirement from the VA, he will also be entitled to a twelve hundred dollar exclusion against his federal civil service retirement annuity. If instead of having gone to work with the VA, the individual had been employed by a private employer with an established pension program, upon his retirement and attaining age sixty-five, he would be entitled to exclude twelve hundred dollars per year of the income from the established pension program. The fact that the individual is allowed an exclusion from his military retirement does not prevent him from claiming an exclusion against his private pension.

On October 18, 1974, this office issued an opinion which reached the opposite conclusion to that just expressed. See 1973-74 OAG No. 3872, page 296. The 1974 opinion, although published in the Attorney General's Reports, was not annotated in the published Rules and Regulations of the Tax Commission as is customarily done and, therefore, the Tax Commission has not followed the earlier opinion in administering the exemption sections in question. Because it is our belief that the conclusion reached in the earlier opinion is in error, that opinion is withdrawn and superseded.

CONCLUSION:

An individual is entitled to more than one twelve hundred dollar exemption if the person has more than one qualifying source of retirement income.

In response to question (2).

DISCUSSION:

\*3 As stated above, the exemptions in question are actually exclusions of income by source. An individual entitled to exclude twelve hundred dollars under Subsection (9), civil service, or Subsection (10), military, does not become eligible to exclude twenty-four hundred dollars from that single source because the individual attains the age of sixty-five and therefore meets the literal wording of Subsection (11).

CONCLUSION:

A civil service annuitant or a military retiree is not entitled to an additional twelve hundred dollar exemption against his civil service or military retirement income simply by reason of attaining sixty-five years of age.

In response to question (3).

DISCUSSION:

In order to qualify for an exemption under Subsection (10), an individual must have retired from the military with 'twenty or more years active duty'. A military retiree with less than twenty years active duty is, therefore, clearly not entitled to an exclusion under Subsection (10). When the individual reaches age sixty-five and is a 'retired person', he comes within the exclusion provided by Subsection (11), provided the military retirement plan can be considered an 'established pension program'. The words of a statute must be given their ordinary meaning. See [Gulf Oil v. South Carolina Tax Commission](#), 248 S. C. 267, 149 S. E. 2d 642, [Field v. Gregory](#), 230 S. C. 39, 94 S. E. 2d 15 and other cases collected at 17 West's South Carolina Digest, [Statutes](#), § 188. Certainly the United States Military Retirement Program is an established pension program. Although not qualified under Subsection (10), when the military retiree reaches sixty-five and is retired, he may exclude twelve hundred dollars annually from his military retirement.

CONCLUSION:

An individual who retires from the military with less than twenty years of active duty but who receives military retirement because of service in the national guard or the military reserve qualifies for a twelve hundred dollar exemption when he reaches sixty-five years of age.

In response to question (4).

DISCUSSION:

Under a number of circumstances, various pension or annuity plans provide for payments of the benefits to the survivor (spouse or children) of the retiree. You have asked whether a survivor of a civil service annuitant or a military pensioner would be entitled to an exemption under Subsection (9) or (10). Also, if not entitled under Subsection (9) or (10), you have asked whether or not a survivor would be entitled under Subsection (11) upon reaching sixty-five years of age. First, with regard to a survivor under the age of sixty-five, there is no statutory authority for such an exemption. Both Subsection (9) and Subsection (10) specifically grant the exemption to 'any retired person who receives a federal civil

service retirement annuity 'and' any person retired from the uniformed services'. No exemption is granted to the survivor of the pensioner or annuitant. The exemption language is specific in its application only to the 'retired person'.

\*4 A portion of Income Tax Regulation 117-87.66 states with regard to a civil service annuity:  
'If these benefits are paid to the surviving spouse of a retired civil service employee, the spouse would be allowed the twelve hundred dollar exclusion each taxable year.'

If this part of the regulation is contrary to law, which in our opinion it is, you have asked what steps should be taken to culminate that portion of the regulation.

Pursuant to [§ 1-23-70 of the Code](#), we advise that the proper procedure for repeal of that part of the regulation stating that the survivor is entitled to the exemption is the same procedure followed in promulgating regulations. Section 1-23-10 of the Code provides that the term regulation 'includes the amendment or repeal of a prior regulation'.

Turning to the second part of your question, you have asked whether a survivor receiving benefits under an annuity would be entitled to an exemption under Subsection (11) when the survivor reaches age sixty-five. You have expressed this part of your question in terms of the following example:

'Military retirees are permitted to establish a survivor's annuity by investing a certain amount of retirement pay into a plan established for providing monthly benefits to the survivor of a deceased retired military person. Would the recipient qualify for the twelve hundred dollar exemption after reaching age sixty-five as provided under § 12-7-310(11)?'

Military retirement is, in our judgment, income under an 'established pension plan'. The surviving spouse of the retiree, when she reaches sixty-five is not however, in our opinion, a 'retired person' as that term is used in Subsection (11). By using the term 'any retired person' instead of 'any person', the Legislature has expressed an intention to limit the exclusion contained in Subsection (11) to the retiree. All language of a statute must be considered and read together. See [Savannah Bank & Trust Co. v. Shurman](#), 250 S. C. 344, 157 S. E. 2d 864, and other cases cited at 17 West's South Carolina Digest, [Statutes](#), § 206. It is not sufficient that the recipient be sixty-five and receiving income from an established plan. The recipient must be the 'retired person' which, in our judgment, means the retiree. The surviving spouse is, therefore, not entitled to the exclusion under Subsection (11).

#### CONCLUSION:

Persons receiving survivor annuities are not entitled to a twelve hundred dollar exemption because they are not retired persons as required by the exemption statute.

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