

1978 S.C. Op. Atty. Gen. 243 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-212, 1978 WL 22680

Office of the Attorney General

State of South Carolina

Opinion No. 78-212

December 29, 1978

***1 SUBJECT: Property Tax—Taxation of Mobile Homes of Non-Resident Military Personnel**

Although state law defines and taxes a mobile home as real property such does not negate the provision of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C.A. 574, that precludes the taxation of such property by states when the same is in fact personal property.

TO: Honorable Pauline S. Koger
Charleston County Auditor

QUESTION:

Are mobile homes of non-resident military personnel that are not annexed to the realty subject to taxation by Charleston County?

APPLICABLE LAW:

50 U.S.C.A. 574 and [Section 12-43-230 of the 1976 South Carolina Code](#) of Laws.

DISCUSSION:

The South Carolina statute provides in part that:

'For the purposes of this article (taxation) all mobile homes in this State shall be considered real property * * *.'

The Soldiers' and Sailors' Relief Act precludes the taxation of certain personal property of non-resident military personnel who are stationed in this State. The language is that:

'For the purposes of taxation in respect of the personal property, * * * by any State, Territory, possession, or political subdivision of any of the foregoing, * * *, of which such person is not a resident or in which he is not domiciled, * * * personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district.'

The application of this provision is not governed by actions of the State:

'The determination of the scope of a federal statute necessarily raises a federal question which does not depend on the divers interpretations by the several states of what is personal or real property.' [United States v. Chester Co. Bd. of Assess. & Rev. of Taxes](#), 281 F. Supp. 1001.

The Court in that case was concerned with a Pennsylvania statute that subjected to taxation:

‘All real estate, to wit: Houses, house trailers and mobilehomes permanently attached to land or connected with water, gas, electric or sewage facilities, * * *.’ (Emphasis added.)

That definition did not affect the Federal statute and the Court held mobile homes so connected to be personal property and excluded from taxation by the State. That holding controls the disposition of the question here presented. It should be noted that if the mobile home is personal property it is not under the statute located within this State so as to be subject to the State's definition for tax purposes.

CONCLUSION:

Mobile homes of non-resident military personnel are not subject to taxation by Charleston County unless the same have been annexed to the realty so as to lose their identity as personal property.

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