

1974 WL 28037 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 31, 1974

*1 A person may qualify for the homestead exemption when meeting the concerns of the statute although he is not a citizen of the United States.

A temporary absence from the homestead would not forfeit the exemption.

Mr. Courtenay Carson
Director
Division of Public Affairs
South Carolina Commission on Aging
915 Main Street
Columbia, South Carolina 29201

Dear Courtney:

Reference is made to your letter of December 31, 1974, wherein a request is made for the opinion of this office concerning the homestead exemption. You enclose a copy of a letter from Bernard Radley of Aiken to furnish the factual basis for the opinion. Mr. Radley advises that he is seventy years of age, that he is not a United States citizen and that he resides in Aiken from November to May. You request the opinion of citizenship requirements and a residence for a portion of the year as the same relate to the exemption.

The homestead exemption (Section 65-1522.1) exempts from county, school and special assessment real estate property taxes the first ten thousand dollars of the fair market value of the 'dwelling place' of certain persons. The statute defines the 'dwelling place' to mean 'the permanent home and legal residence of the applicant' and the statute also requires such person to have been a resident of this State for at least one year.

The terms 'legal residence' and 'domicile' were held to be synonymous for income tax purposes. [Phillips v. South Carolina Tax Commission](#), 195 S. C. 472, 12 S. E. 2d 13, and the Court there stated:

'The term 'domicile' means the place where the person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent an intention of returning. The true basis and foundation of domicile is the intention, the quo animo, of residence. * * *.'

'* * *. The question of a person's place of residence is to be determined by his intention, accompanied by his voluntary act.'

'* * *. One of the essential elements to constitute a particular place as one's domicile or principal place of residence is an intention to remain permanently or for an indefinite time, in such place.' See also [25 Am. Jur. 2d Domicil](#), Section 6.

Mr. Radley will have to submit additional facts to establish that his legal residence and his permanent home is in Aiken before the exemption can be extended. While not intended to be inclusive he may show to what state income taxes are paid as a resident; documents of all kinds to establish the fact that persons with whom he did business were informed that Aiken was the place of legal residence, and any other evidence related to the place of legal residence.

The fact that Mr. Radley is not a citizen of the United States would not preclude the exemption. A legal residence and citizenship are not the same.

‘The provisions relate only to residence, and not to citizenship, which are entirely different things.’ [Cummings v. Wingo](#), 31 S. C. 427, 10 S. E. 107. (See also [25 Am. Jur. 2d Domicil](#), Sec. 9, p. 10.

*2 Likewise a temporary absence would not constitute a change or abandonment of domicile.

‘A domicil, once established, is not lost by an absence from it for months or even years, * * * if during such absence there exists an intent to be absent merely temporarily and an intent to resume residence in the place of domicil following the completion of the purpose of the absence.’ [25 Am. Jur. 2d, Domicil](#), Sec. 31, p. 24.

Courtney, the exemption is predicated on the applicant a being a legal resident of the State for one year prior to the year in which the exemption is claimed and that the exemption be for the permanent home of the applicant.

We hope the above will be helpful and with best wishes, I am

Yours very truly,

Joe L. Allen, Jr.
Assistant Attorney General

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