



ALAN WILSON
ATTORNEY GENERAL

December 21, 2020

Stanley A. Foreman
Director of Division of Administrative Services
South Carolina Department of Veteran's Affairs
1205 Pendleton Street
Suite 369
Columbia, South Carolina 29201

Dear Mr. Foreman:

We received your letter addressed to Attorney General Alan Wilson requesting an opinion of this Office regarding the "application of S.C. Code Ann. Section 12-37-220 to property tax exemption for qualified surviving spouses of Veterans who had been rated permanently and totally disabled as a result of a service-connected disability."

Law/Analysis

According to section 12-37-210 of the South Carolina Code (2014) "[a]ll real and personal property in this State . . . shall be subject to taxation" unless expressly exempted by the legislature. By way of section 12-37-220 of the South Carolina Code (2014 & Supp. 2019), the legislature exempted certain property from taxation including "the house owned by an eligible owner in fee or jointly with a spouse . . ." and "the house owned by a qualified surviving spouse acquired from the deceased spouse and a house subsequently acquired by an eligible surviving spouse." S.C. Code Ann. §§ 12-37-220(B)(1)(a) & (b) (2014). Section 12-37-220 continues on to define "eligible owner" as including "a veteran of the armed forces of the United States who is permanently and totally disabled as a result of a service-connected disability and who files with the Department of Revenue a certificate signed by the county service officer certifying this disability" and "qualified surviving spouse" as "the surviving spouse of an individual described in subsubitem (i) while remaining unmarried, who resides in the house, and who owns the house in fee or for life." S.C. Code Ann. § 12-37-220(B)(1)(e).

In your letter, you informed us that "the South Carolina Department of Revenue has interpreted the statute to require that the house be owned or co-owned by the Veteran prior to death for this benefit to transfer on the surviving spouse." Initially, we note, this Office generally "defers the interpretation of administrative questions to administrative agencies within their jurisdiction." Op. Att'y Gen., 2018 WL 1160093 (S.C.A.G. Jan. 9, 2018). By section 12-4-710 of the South Carolina Code (2014), the legislature provides "[e]xcept for the exemption provided by Section 12-37-220(A)(9), the department shall determine if any property qualifies for exemption from local

property taxes under Section 12-37-220 in accordance with the Constitution and general laws of this State.” Accordingly, we recognize the legislature’s express desire that the Department of Revenue (the “Department”) determine whether an exemption applies. Thus, we will defer to such authority unless it is contrary to the plain language in the statute.

With this deference in mind, we follow the two-step process of interpreting statutes administered by an agency as expressed by our Supreme Court. “First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation.” Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Env’tl. Control, 411 S.C. 16, 32, 766 S.E.2d 707, 717 (2014). We believe that section 12-37-220(B) does speak to the ability of a surviving spouse of a disabled veteran to receive a property tax exemption on his or her house.

Section 12-37-220(B)(1)(b) specifically states “the house owned by a qualified surviving spouse acquired from the deceased spouse and a house subsequently acquired by an eligible surviving spouse” is eligible for a property tax exemption. From the plain language of this statute, we believe “acquired from” indicates the house was owned by the disabled veteran prior to his or her death as the surviving spouse could not acquire from the disabled veteran a house he or she did not own. Moreover, recent Administrative Law Court (“ALC”) cases indicate in order for a house “subsequently acquired by an eligible surviving spouse” to qualify for the exemption, the surviving spouse must first acquire a house from the disabled veteran who was not only eligible for the exemption, but also applied for and received the exemption for the house.

In 2000, the ALC considered whether a surviving spouse was entitled to an exemption for a house that was never owned by her husband, a disabled veteran. Watson v. S.C. Dep’t of Rev., 2000 WL 147506 (S.C. Admin. Law Judge Div. 2000). The wife and her brother originally owned the house, although her husband lived in it. Id. Hurricane Hugo destroyed the house, but the husband and wife continued to live in a trailer on the property while the house was rebuilt. Id. The new house was not completed until after the husband died. Id. The ALC considered the requirements under section 12-37-220(B)(1) in determining the wife was not entitled to an exemption. First, the ALC found that because the husband was never named on the deed, she “did not establish that her husband owned the Property ‘in fee or for life, or jointly with [his] spouse’” as required under section 12-37-220(B)(1)(a). Id. (quoting S.C. Code Ann. § 12-37-220(B)(1)(a)). In addition, the ALC determined because the husband never owned the property, his wife “could not have ‘obtain[ed] by devise’ any land or dwelling at the Property from her husband.” Id. (quoting S.C. Code Ann. § 12-37-220(B)(1)). Lastly, the ALC concluded “Taxpayer did not identify a ‘dwelling’ at the Property that would qualify for the property tax exemption under § 12-37-220(B)(1).” Id. (quoting S.C. Code Ann. § 12-37-220(B)(1)). The ALC also noted because the husband never owned the property and did not pay property tax on it, he would not have been entitled to an exemption. Id. The ALC reasoned “[s]ince Taxpayer’s husband was not entitled to a property tax exemption under § 12-37-220(B)(1), Taxpayer is not entitled to that property tax exemption.” Id. Accordingly, the ALC held

[u]nquestionably, Taxpayer's husband did not own the property "in fee or for life, or jointly with [his] spouse." Also, Taxpayer could not have "obtain[ed] by devise" any interest in the Property from her husband. Although unfortunate, the language of the statute cannot be strained or liberally construed in favor of Taxpayer. Consequently, I find that Taxpayer is not entitled to the claimed exemption under § 12-37-220(B)(1).

Id.

In a subsequent decision, the ALC further concluded a surviving spouse was not entitled to an exemption when her husband never applied for or received a disabled veteran property tax exemption. Cromey v. S.C. Dep't of Rev., 2018 WL 4208256 (S.C. Admin. Law Judge Div. 2018). The Department took the position that because the husband never filed the certificate certifying his disability with the Department, he was not an eligible owner. Id. Therefore, the wife could not be a qualified surviving spouse because "she was not the spouse of an 'eligible owner.'" Id. The ALC agreed with the Department, citing to the portion of the definition of "eligible owner" stating he or she is one "who files with the Department of Revenue a certificate signed by the county service officer certifying this disability." Id. (quoting S.C. Code Ann. § 12-37-220(B)(1)(e)(i)). Because the "qualified surviving spouse" must be the spouse of an eligible owner, if the husband is not an eligible owner, wife cannot be a "qualified surviving spouse." Id. Moreover, the ALC determined "for the exemption to be claimed on a subsequent house, the surviving spouse had to first acquire an exempt house from the deceased veteran spouse." Id.

Conclusion

We agree with the Department's interpretation that in order for a surviving spouse to claim an exemption under section 12-37-220, he or she must acquire the house from a disabled veteran who qualifies as an eligible owner. We also agree with the ALC's analysis and believe the disabled veteran must not only have owned or partly owned the house prior to his or her death, he or she must applied for and received an exemption for the house. Moreover, for any house subsequently acquired by a surviving spouse to be eligible, the surviving spouse must first acquire an exempt house from the deceased veteran spouse.

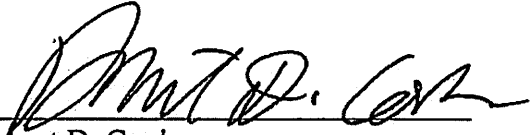
Sincerely,



Cydney Milling
Assistant Attorney General

Stanley A. Foreman
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REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "R. D. Cook", written over a horizontal line.

Robert D. Cook
Solicitor General