

1972 S.C. Op. Atty. Gen. 13 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3234, 1972 WL 20382

Office of the Attorney General

State of South Carolina

Opinion No. 3234

January 1, 1972

***1 Where real property is partly exempt from taxation and partly subject to taxation and the exempt portion can be separated from the nonexempt portion, then for purposes of the homestead exemption the exempt portion should be identified and the exemption granted.**

Auditor

Bamberg County

Reference is made to your request of November 22, 1971, for the opinion of this office concerning the application of the homestead exemption under the following facts: Two separate residences are located on the same lot, one building is the former residence of the owner and is rented to a member of the family, the other building is a garage apartment and the upstairs portion is rented and the downstairs portion is the legal residence of the owner. The owner otherwise qualifies for the homestead exemption and the inquiry is whether the exemption is to be granted or denied under such circumstances.

The question presents a complex issue that necessitates the further question of whether the valuation of the downstairs part of the garage apartment can be separated from the other property.

The general rule is stated as follows:

‘* * * a tax levied upon partly exempt real property as a whole is not valid as to the nonexempt part, if the assessment is inseparable, but is wholly void.’ 118 A. L. R. 861; 51 Am. Jur., *Taxation*, Sec. 498, page 504; 84 C. J. S., *Taxation*, Sec. 232, page 450.

The cited authorities state however that where possible the portion that is taxable and the portion that is exempt should be identified and taxed accordingly.

‘* * * where real property is partly exempt from taxation, the taxing authorities generally should and can separate the exempt and none-exempt parts thereof * * * the fact that a certain portion of a building of a charitable organization which is not exempt from taxation cannot be separated from the exempt portion by definite lines is no obstacle to the valuation and assessment for taxation of such non-exempt portion.’ 118 A. L. R. 862; citing *Y. M. C. A. v. Lancaster County*, 106 Neb. 105, 182 N. W. 593, 34 A. L. R. 1060; *Cleveland Library Assoc. v. Pelton*, 36 Ohio St. 253.

Under the provisions of the homestead exemption it is the first five thousand dollars of the fair market value of the owner's residence that is exempt. It is thus the opinion of this office that unless the value of that part of the garage apartment that constitutes the owner's residence, along with that portion of the lot that is customarily used therewith can be determined and the exemption applied to the value thereof, then the exemption is to be applied to the value of the whole lot and the buildings located thereon.

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