



HENRY McMASTER
ATTORNEY GENERAL

June 12, 2009

The Honorable R. Wayne Welch
Dorchester County Assessor
201 Johnston Street
St. George, South Carolina 29477

Dear Mr. Welch:

We understand that you desire advice from this Office concerning the legal residency of an individual owning property in Dorchester County for purposes of receiving the preferential four-percent assessment ratio and homestead exemption. You provide the following information:

The taxpayer has lived in Dorchester County for most of his life. He went to high school in St. George, S.C., and he still lives in his house in St. George. He is now over 65, and he was getting homestead. He has two vehicles registered in Dorchester County. He is registered to vote in Dorchester County. He, also, has a Winnebago and a car registered in Florida. Both stay in Florida, and are used on vacations.

Based on this information, you ask: "Is it legal for this person to get the 4% legal residence or homestead in this state when he has a motor home and a car registered in Florida?"

Law/Analysis

Section 12-43-220 of the South Carolina Code (Supp. 2008), requiring each classification of property be equal and uniform, contains a list of property classifications. Included in this list are legal residences, which the statute allows to be taxed at a special four-percent assessment ratio. S.C. Code Ann. § 12-43-220(c)(1).

The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property

Id. After describing various forms of property ownership in which such property may be held, the statute clarifies: “For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.” Id. Subsection (c)(2) of this provision, describing the specific qualifications to receive the special property tax assessment ratio, provides:

(2)(i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

Id. § 12-43-220(c)(2)(i) (emphasis added). Moreover, this provision requires the owner or the owner’s agent to apply for the special assessment ratio within a specified time. Id. § 12-43-220(c)(2)(ii). The statute sets forth a certification that the owner must make as part of application. Id. § 12-43-220(c)(2)(ii). As part of the certification, the owner must certify that

(A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that I do not claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and

(B) that neither I nor any other member of my household is residing in or occupying any other residence which I or any member of my immediate family has qualified for the special assessment ratio allowed by this section.

Id. Subsection (c)(2)(iv) states that in addition to the certification

the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires including, but not limited to:

(A) a copy of the owner-occupant’s most recently filed South Carolina individual income tax return;

(B) copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant;

(C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.

If the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title.

Id. § 12-43-220(c)((2)(iv). Accordingly, in order to receive the special assessment ratio, the property owner must use the property as his or her legal residence.

Section 12-37-220 of the South Carolina Code (2000 & Supp. 2008) list types of property exempt from property tax. Subsection (A)(9) of this provision allows for a homestead exemption “for persons sixty-five years of age and older, for persons permanently and totally disabled and for blind persons in an amount to be determined by the General Assembly of the fair market value of the homestead under conditions prescribed by the General Assembly by law.” S.C. Code Ann. § 12-37-220(A)(9)(2000). Section 12-37-250 of the South Carolina Code (Supp. 2008) specifies the requirements and amount of the homestead exemption. Subsection (A)(1) of this provision states:

(A)(1) The first fifty thousand dollars of the fair market value of the dwelling place of a person is exempt from county, municipal, school, and special assessment real estate property taxes when the person:

(i) has been a resident of this State for at least one year and has reached the age of sixty-five years on or before December thirty-first;

(ii) has been classified as totally and permanently disabled by a state or federal agency having the function of classifying persons; or

(iii) is legally blind as defined in Section 43-25-20, preceding the tax year in which the exemption is claimed and holds complete fee simple title or a life estate to the dwelling place. A person claiming to be totally and permanently disabled, but who has not been classified by one of the agencies, may apply to the state agency of Vocational Rehabilitation. The agency

shall make an evaluation of the person using its own standards.

Id. § 12-37-250(A)(1). Section 12-37-250(A) requires a person interested in receiving a homestead exemption to apply for the exemption by submitting an application to the county auditor and “the governing body of the municipality in which the dwelling place is located” Section 12-37-250(A)(5) defines the term “dwelling place” as “the permanent home and legal residence of the applicant.” Thus, like the special four-percent assessment ratio allowed pursuant to section 12-43-220, in order for an individual to qualify for the homestead exemption, he or she must use the property they are seeking the exemption for as their legal residence.

Section 12-43-220 specifies that a legal residence for purposes of the special assessment ratio is the equivalent to the applicant’s domicile. Section 12-37-250 does not specify that legal residence is the equivalent to domicile, but according to the South Carolina Supreme Court in Phillips v. South Carolina Tax Commission, 195 S.C. 472, 481, 12 S.E.2d 13, 19 (S.C. 1940) “legal residence . . . is equivalent to domicile.” We recognized this principle in several opinions of this Office concluding that legal residence for purposes of the homestead exemption is the equivalent to domicile. Ops. S.C. Atty. Gen., June 5, 1979; May 9, 1978; February 15, 1973 (all citing Phillips, 195 S.C. at 472, 12 S.E. 2d at 13). The Court in Phillips defined the term “domicile” as “the place where a 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.” Phillips, 195 S.C. at 477; 12 S.E.2d at 16.

In a previous opinion, this Office described domicile as follows:

A person may have but one domicile at any given time; and to change one’s domicile, “there must be an abandonment of, and an intent not to return to the former domicile.” 28 C.J.S., Domicile, § 13. There must also be the clear establishment of a new domicile. Gasque v. Gasque, 246 S.C. 423, 143 S.E.2d 811 (1965). The Supreme Court has emphasized that “[o]ne of the essential elements to constitute a particular place as one’s domicile . . . is an intention to remain permanently or for an indefinite time in such place.” Barfield v. Coker and Co., 73 S.C. 181, 53 S.E. 170, 171 (1906).

Op. S.C. Atty. Gen., June 11, 1993. Moreover, “just because an individual is absent from his or her home and temporarily resides in another location he or she does not automatically establish a new residence. To the contrary, an individual may be absent, but so long as that individual has the intent to return and to remain there permanently, he or she does not effectuate a change in residency.” Op. S.C. Atty. Gen., August 13, 2008.

Based on the authority cited above, whether or not the taxpayer to which you refer may receive either the special assessment ratio or the homestead exemption depends on whether the

taxpayer has the intent to treat the property as his legal residence or domicile. As we noted in a prior opinion, “[i]ntent is primarily a question of fact, determined on a case by case basis.” Op. S.C. Atty. Gen., March 31, 2008. See also, Phillips, 195 S.C. at 480, 12 S.E. 2d at 17 (recognizing that the determination of a person’s residence is a mixed question of law and fact). This Office, unlike a court, does not have the jurisdiction to investigate and determine factual issues. Op. S.C. Atty. Gen., July 17, 2007. Thus, we cannot determine with finality whether or not the taxpayer in question holds the requisite intent to establish his legal residence on the property.

You state in your letter that the taxpayer has a car and Winnebago registered in Florida. As cited above, section 12-43-220(c)(2)(iv) specifically requires a taxpayer seeking the four-percent special assessment ratio to provide the assessor with copies of South Carolina motor vehicle registrations as proof of eligibility for the four-percent special assessment ratio. While the provisions governing the homestead exemption do not specially require vehicle registrations as proof of legal residence, in a prior opinion of this Office, we deemed this to be a factor to consider when determining eligibility. Op. S.C. Atty. Gen., April 16, 1974. However, we do not believe the fact that a taxpayer has a car or other vehicle registered in another state to be conclusive evidence of his intent to establish his domicile in the other state for purposes of the four-percent assessment ratio or the homestead exemption. Rather, we believe all evidence of the taxpayer’s intent must be considered to determine whether the taxpayer intends to change his domicile.

You indicate that taxpayer at some point established his home in Dorchester County as his legal residence and that he “still lives in his house in St. George.” He has two vehicles registered in Dorchester County. Additionally, he is registered to vote in Dorchester County. See Phillips, 195 S.C. at 480 12 S.E. 2d at 17 (generally stating that residence for tax purposes is comparable to residence for voting purposes). These factors could lead a court to determine that the taxpayer intends to make this property his permanent home. The fact that the taxpayer has a car and Winnebago registered in Florida indicates he spends some time there. Thus, a court would have to also consider whether this factor along with other information as to his time spent in Florida to determine whether he intends to establish it as his new domicile. Regardless, these are issues which a court must determine.

Conclusion

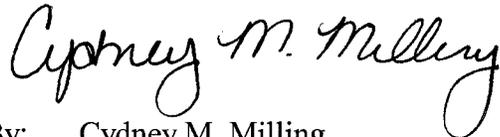
In order to receive either the four-percent special assessment ratio or a homestead exemption, the property in question must be the legal residence of the taxpayer. According to South Carolina law, a person’s legal residence is where they are domiciled. S.C. Code Ann. § 12-43-220(c)(1); Phillips, 195 S.C. at 472, 12 S.E. 2d at 13. Whether or not the taxpayer in question is domiciled at the property located in Dorchester County primarily depends on his intent to permanently remain for an indefinite period of time. Id. Section 12-43-220(c)(2)(iv) specifically contemplates the use of the taxpayer’s vehicle registrations as evidence domicile. In addition, we believe vehicle registrations can be a factor to consider in determining domicile for purposes of the homestead exemption. However, we do not believe this fact is conclusive. We are of the opinion that all factors

The Honorable R. Wayne Welch
Page 6
June 12, 2009

indicating the intent of the taxpayer must be considered in determining domicile. Your letter provides some indication of the taxpayer's intent to continue treating his home in Dorchester County as his domicile despite registering a car and a Winnegbago in Florida. However, because the determination of domicile is a factual issue, we cannot make a definitive determination as to whether this individual maintains his legal residence in Dorchester County. Such a determination must be made by a court.

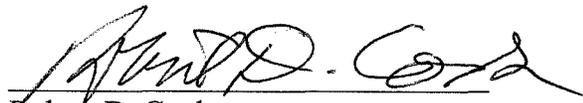
Very truly yours,

Henry McMaster
Attorney General



By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General