

1977 S.C. Op. Atty. Gen. 90 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-101, 1977 WL 24443

Office of the Attorney General

State of South Carolina

Opinion No. 77-101

April 11, 1977

*1 The provisions of Section 3 of Article 10, Act 750, Acts of 1976, are applicable to tax years that begin on or after March 1, 1978 regardless of the date the Act ratifying the same or of any effective date therein provided.

TO: Honorable Thomas S. Linton
Director
Legislative Council

QUESTION

What effect, if any, does that part of Section 3 of Article 10, as set forth in Act 750, Acts of 1976, have upon property tax exemptions that have accrued before March 1, 1978 when the amendment may be ratified before or after that date?

DISCUSSION

The Section provides:

‘All exemptions not specifically provided for or authorized in this article shall be repealed March 1, 1978.’

The fact that the act providing for the amendment may have an effective date after March 1, 1978 does not negate the repeal of the exemption as of March 1, 1978.

‘That a constitutional provision, originally or by amendment, may be given retroactive effect, when the intention to do so is manifest, provided it does not impair the obligations of contracts, divest vested rights, or is otherwise repugnant to the federal Constitution is thoroughly settled.’ Robinson v. Askew, 129 S. C. 188, 123 S. E. 622.

The provisions of the section would repeal the referred to exemptions as of March 1, 1978 regardless of the date of ratification or the effective date thereof.

The remaining question is the effect of the provisions upon existing exemptions for the 1977 and 1978 tax years. In this State property is returned and its tax status determined for tax purposes as of either December 31 preceding the tax year for some taxpayers, Section 65–1644, and for others as of the closing date of the income tax year that precedes the property tax year, Section 65–1647.1.

“* * *. Under our taxing system, there have always been inequalities and inequities resulting from the fact that the tax for an entire year is contingent under Section 65–1644 on possession or control on the 31st day of December next preceding the tax year in question.” Atkinson Dredging Co. v. Thomas, 223 S. E. 2d 596.

We find nothing in Article 10, as amended, that requires a departure from this accepted principle. The provisions of the Constitution are to be construed to reflect the peoples' intent.

'Fundamental principle in construction of Constitution is that intent of makers shall be ascertained and shall control.' [Ansel v. Means](#), 171 S. C. 432, 172 S. E. 434.

Had it been the intention to repeal the exemption for tax years that began before March 1, 1978, that date would not have been used. Conversely, by use of the date an intent is expressed that the provisions be prospectively applied to those years beginning on or after March 1, 1978, and such comports with the general rule.

"The rule favoring a prospective construction of statutes is applicable to statutes which repeal tax laws. Accordingly it is held that where such a statute is not made retroactive a tax assessed before the repeal is collectible afterwards; and where taxes are levied under a law which is repealed by a subsequent act, unless it appears clearly that the legislature intended the repeal to work retrospectively, it will be assumed that it intended the taxes to be collected according to the law in force when they were levied." [Cooley on Taxation](#), 4th Edition, Vol. 2, Sec. 538, [Unemployment Compensation Com'n v. L. Harvey & Son Co.](#), 227 N. C. 291, 42 S. E. 2d 86, 84 C.J.S., [Taxation](#), Sec. 58, p. 160.

*2 The exemptions for tax years that begin prior to March 1, 1978 are not repealed by the section.

CONCLUSION

The provisions of the Section are applicable to tax years that begin on or after March 1, 1978 regardless of the date of ratification or of any effective date therein provided.

It should be noted however that a ratification or effective date after March 1, 1978 brings into issue the questions of vested rights, refunds, abatements, etc., none of which are herein considered. If, as understood, the ratification and effective date would be sometime during 1977, then, in such an event, we would not anticipate any of these problems.

Joe L. Allen, Jr.
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