

1977 WL 37298 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 8, 1977

*1 Honorable C. D. Chamblee
Member
House of Representatives
Route 7
Box 23
Anderson, South Carolina 29621

Dear Representative Chamblee:

You have requested an opinion from this Office as to whether or not the provisions of Act No. 397 of 1965 [54 STAT. 718 (1965)] allow the Homeland Park Water District Commission (Commission) to rescind the 4 per cent (4%) interest on annual front foot assessments imposed therein. In my opinion, the Commission most probably can rescind the interest at its option as hereinbelow discussed.

The Homeland Park Water District was originally created in 1950 [46 STAT. 2768 (1950)] for the purpose, *inter alia*, of: . . . providing necessary and adequate sewerage lines, sewerage disposal plants, . . . 46 STAT. Act No. 1101, § 1 at 2769.

The provisions of Act No. 397 of 1965 were specifically made applicable to the Commission by Act No. 668 of 1971 [57 STAT. 1231 (1971)]. The constitutionality of the 1965 legislation was upheld by the South Carolina Supreme Court in 1966 in [Newton v. Hanlon](#), 149 S.E.2d 606 (1966); however, that decision did not discuss the question which you have raised.

The provisions of Act No. 397 of 1965 (subsequently codified in the South Carolina Code of Laws Cumulative Supplement as Sections 59-495 through 59-497) authorize the Commission to impose front foot assessments against property abutting on sewage collection laterals. Section 59-497(4)(i) provides in part as follows:

In the event the commission provides that such front-foot assessments may be paid in equal annual installments, then in that event the front-foot assessment shall be deemed to be due and payable in the equal annual installments prescribed by the commission and shall bear interest at the rate of four per cent per annum from the date of the confirmation of the assessment roll, payable with such annual installment. [Emphasis added.]

Thus, if the Commission wishes to impose the front foot assessment on an annual basis, it can do so for a period not exceeding ten years [*see*, § 59-495(4)] and such assessment must bear four per cent (4%) annual interest.

Nevertheless, Section 59-497(4)(h) provides in part as follows:

The commission may . . . remit, cancel or adjust the interest or penalties of any front-foot assessment . . . [Emphasis added.]

Whether or not the 'interest' specified in Section 59-497(4)(h) includes the four per cent annual interest required by Section 59-497(4)(i) to be placed upon annual front foot assessments is not altogether clear; note should be taken of the fact, however, that the four per cent interest imposed upon annual front foot assessments is the only interest expressly mentioned in the provisions of Sections 59-495 through 59-497. While it is arguable that the interest contemplated by Section 59-497(4)(h) may refer to any interest placed upon unpaid county taxes (since Section 59-497(4)(f) provides that past due front foot assessments

are to be collected in the same manner as unpaid county taxes), my opinion is that the Commission would be acting within its discretion if it were to 'remit, cancel or adjust' the four per cent interest to be imposed upon annual front foot assessments pursuant to Section 59-497(4)(h). It may be, however, that such remission, cancellation or adjustment should be done on an annual basis since Section 59-497(4)(h) speaks in terms of an individual assessment; that is, the Commission may need to impose the four per cent interest upon the annual installment and then cancel that interest each year.

*2 As a final suggestion, the Commission should seek a declaratory judgment pursuant to Sections 10-2001 *et seq.*, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, for a definitive resolution of the question which you have posed.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

ATTACHMENT

OPINION NO. 77-101

April 11, 1977

Director, Legislative Council

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 of the Act ratifying the same or of any effective date therein provided.

You have asked what effect, if any, does the 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?

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. 822.

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.

*3 "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.

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

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.
Deputy Attorney General

OPINION NO. 77-102

April 11, 1977
Director, Public Affairs

South Carolina Commission on Aging

Title to real property is held by liquidating trustees of a corporation when its charter is forfeited and such ownership does not meet the requirement of the exemption provided by Section 65-1522.1.

You have presented the following situation:

A corporation, the owner of a residence occupied by its shareholders, had its charter cancelled by forfeiture; title to the residence was conveyed to the shareholders February 17, 1977; the shareholder is disabled; does the property qualify for the homestead exemption for the 1977 tax year?

The office is advised that the corporate charter was cancelled on November 25, 1965 by forfeiture under Section 12-22.11 of the South Carolina Code of Laws.

Section 65-1522.1, the exemption statute, requires as a condition for the exemption that the property be owned in complete fee simple. The question therefore is whether the property is so owned. Section 12-22.22(b) provides in case of a corporate dissolution that:

‘After dissolution of a corporation, the directors as of the date of dissolution, or the survivors of such directors, shall be deemed liquidating trustees of the corporation with authority to take all action necessary or appropriate to dispose of any undistributed property of the corporation.’

Our Court has stated:

‘The true modern rule, arising out of the development in importance and variety of corporate organization and enterprise, and the principle which will be found running through nearly all modern judicial thought and expression, is that, on the dissolution of any corporation, the corporate assets, both real and personal, including debts due to the corporation, should be regarded as *belonging to a trust estate* in the hands of those who happen to have their custody, to be disposed of by the court of equity according to the equitable rights of interested parties. * * *.’ *McAlhany v. Murray*, 89 S. C. 440, 71 S. E. 1025. (Emphasis added)

*4 The statute and case law above quoted makes the ownership, at least until the deed is executed to the shareholders, something less than complete fee simple. Such being the case, the ownership conditions of the exemption statute are not satisfied.

Title to real property is held by liquidating trustees of corporation when its charter is forfeited and such ownership does not meet the requirement of the exemption provided by Section 65-1522.1.

Joe L. Allen, Jr.
Deputy Attorney General

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