

1976 S.C. Op. Atty. Gen. 320 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4461, 1976 WL 23078

Office of the Attorney General

State of South Carolina

Opinion No. 4461

September 22, 1976

***1 (1) Unless a contract between a seller and a buyer under a title retention contract is terminated, the purchaser is precluded from claiming a loss deduction for payments on the contract for South Carolina income taxes.**

(2) A gain or loss from the sale or exchange of real property is taxable or deductible in the state where the property is located.

Director

Income Tax Division

South Carolina Tax Commission

1. Is an individual who is a resident of this state allowed a deduction upon his individual income tax return in the amount of the total payments made pursuant to a contract to purchase real property located within the state for use not connected with a trade or business of the individual when such individual is notified by the seller that a good and clear title to the real property cannot be conveyed to the purchaser nor can a refund be made of the purchase price because of the seller's insolvency?

2. If the real property is located outside the state under the same facts, is the deduction allowed for individuals?

The purchaser of real estate under a title retention contract is, under the doctrine of equitable conversion, regarded as the owner of the property. This principle is explained by the following:

'A contract for the sale of land operates as an equitable conversion; the vendee's interest under the contract becomes realty and the vendor's interest under the contract constitutes personalty. In equity the purchaser is regarded as the owner subject to liability for the unpaid price and the vendor as holding the legal title in trust for him from the time a valid agreement for the purchase of land is entered into. This view of the estate of the purchaser is based on the maxim that 'equity regards and treats as done what, in good conscience, ought to be done.' Accordingly, in equity a contract for the sale of land is treated, for most purposes, precisely as if it had been specifically performed. Thus, as a vendee makes payments on a land contract the vendor becomes trustee for him of the legal estate, and he becomes in equity the owner of the land to the extent of payments made. A contract for the sale of land, part of the purchase price being paid and possession taken, vests in the vendee and equitable title in fee. The vendor is a trustee of the legal title for the vendee to the extent of his payment.' 77 Am. Jur. 2d, *Vendor and Purchaser*, Section 317, page 478. See also 27 Am. Jur. 2d, *Equitable Conversion*, Section 11, page 494.

Thus, in regard to the question above, it must be concluded that the purchaser has acquired an interest in the property. This interest under the contract continues until voluntarily terminated by agreement of the parties or until terminated through a legal proceeding. The facts given indicate no termination.

It is clearly understood that deductions from income taxes are allowed as a matter of legislative grace and that a deduction must fall squarely within the statute authorizing the deduction. *Chronicle Publishers, Inc. v. South Carolina Tax Commission*, 244 S. C. 192, 135 S. E. 2d 261; *Arkwright Mills v. Murph*, 219 S. C. 438, 65 S. E. 2d 665. If the contract is terminated, a deduction may be allowed under Section 65-258(6) of the Code of Laws of South Carolina if such is

tantamount to a 'sale or exchange of a capital asset.' In the case of *C. L. Gransden & Co. vs. Commissioner of Internal Revenue*, 117 F. 2d 80, it was held that termination of such a contract through an agreement between the parties to the contract was tantamount to a sale or exchange.

*2 In regard to the question as to whether or not a loss would be permitted if the real estate is located outside the state rather than inside the state, we refer your attention to Section 65-259.1(5), which provides that gains and losses from the sale of real property located in this state are allocable to this state and that gains and losses from the sale of real property located outside this state shall be allocated to the state where the property is located. This section is believed to be applicable and would preclude a deduction by an individual of a loss from real estate located outside this state.

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