

1975 S.C. Op. Atty. Gen. 257 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4215, 1975 WL 22512

Office of the Attorney General

State of South Carolina

Opinion No. 4215

December 12, 1975

***1 Where a person appears at the county auditor's office for the purpose of making written application for the homestead exemption and is prevented from doing so by the office, such person does not forfeit or waiver the exemption and the same should be granted.**

Deputy Comptroller General

Section 65–1522.1 grants an exemption from property taxation (homestead exemption), however, conditions the same upon ‘written application.’ Some persons entitled to the exemption did not make the ‘written application’ because of erroneous statements or instructions by the county auditors' office and you request the opinion of this office of whether the exemption can be granted and, if so, whether reimbursement can be made to the county for the amount of taxes involved in the exemption.

We are advised that the property owner (disabled) appeared in person at the auditor's office and requested a form upon which to make application for the exemption. The person was advised that the form would be mailed and that he should complete that form and return it for the exemption. The application form for the person (disabled) was not mailed and any (disabled) person seeking the exemption was required to complete the form at the auditor's office.

We have not found any case in point on this question and are fully cognizant of the settled rule that exemption statutes are to be strictly construed and that any person claiming thereunder must place himself squarely within the exemption requirements. We, however, view this matter in the light of the taxpayer seeking to comply and being incorrectly advised as to the procedure.

Section 65–1522.1 provides in part as follows:

‘The exemption shall not, however, be granted unless such persons or their agents make written application therefor on or before May first of the tax year in which the exemption is claimed * * *. The *application* for the exemption *shall be made to the auditor of the county* in which the dwelling place is located *upon forms, provided by the county* and approved by the Comptroller General, and a failure to so apply shall constitute a waiver of the exemption for that year.’ (Emphasis added)

The taxpayer in this case made every effort to make the application and was prevented from doing so by mistake of the county. The circumstance is analogous to a person attempting to pay a tax and being prevented from doing so by the county. Under such circumstances, the taxpayer cannot be penalized.

* * * the rule supported by the weight of authority is that an attempt to pay taxes, made in good faith by the person interested or by someone on his behalf, and frustrated by the mistake, negligence, fraud or other fault on the part of the person authorized by law to receive the taxes, prevents the taxpayer from becoming a delinquent, and thus prevents interest or penalties from thereafter accruing on the amount tendered * * *.’ 51 Am. Jur., *Taxation*, Section 954.

***2** Our Court, in the case of *Colonial Life and Accident Ins. Co. v. South Carolina Tax Commission*, 248 S. C. 334, 149 S. E. 2d 777, recognized this rule. The taxpayer there was given no opportunity to timely pay the tax because of advices of the South Carolina Tax Commission and the Court held that interest could not be assessed because of the

'late' payment. In the instant matter the property owner failed to make the application because of incorrect instructions from the auditor's office. Under the above analogy he should not be penalized for the failure to make the application.

It is therefore the opinion of this office that where a person appears at the auditor's office to make application for the homestead exemption and is prevented from doing so, such person does not forfeit or waive the exemption and it should be granted. This opinion does not conflict with Section 65-1522.2 and your office is authorized to rebate the amount of taxes that are not collected because of the exemption.

This opinion is not to be interpreted as authorizing the exemption because a form was not mailed or when no effort was made by the owner to obtain the form. Evidence should be submitted that the failure to apply was the direct result of the erroneous statement or information of the auditor's office before your office can make reimbursement for the taxes.

Joe L. Allen, Jr.
Deputy Attorney General

1975 S.C. Op. Atty. Gen. 257 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4215, 1975 WL 22512

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.