

1973 S.C. Op. Atty. Gen. 153 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3530, 1973 WL 20990

Office of the Attorney General

State of South Carolina

Opinion No. 3530

May 24, 1973

***1 When pursuant to an Order of Court timber is cut and sold and all proceeds are placed in trust for contingent remaindermen, the income from the sale is taxed to the trust at the time of the sale.**

Chairman

South Carolina Tax Commission

This is in reply to your request for an opinion of this office on the tax consequences of the sale of timber under the following circumstances:

In 1944 the property on which the timber is located was deeded by the fee holder to his brother for life remainder to his brother's issue; but if his brother died without issue, then a life estate to his sister in one-half the property with remainder to her issue and the other one-half to the grantor's issue. The grantor reserved a life estate. All parties are still living. The grantor is age 73, his brother and sister who have never married are ages 69 and 68 respectively. The grantor has two living children. An action has been commenced petitioning the court to authorize the sale of the timber and the placement of the proceeds in trust for the contingent remaindermen who will, in all probability, be the children of the grantor.

Under South Carolina law, the relationship of a life tenant to a remainderman is a fiduciary one, and the relationship has frequently been termed an implied or quasi trusteeship. See 51 Am. Jur. 2d, *Life Tenants and Remaindermen*, Section 28, citing [Green v. Green](#), 50 S. C. 514, 27 S. E. 952 (1897). Generally, a life tenant has no right to the use of timber except for reasonable estovers such as fuel and fences. See *Smith v. Poyas*, 2 Desaus. Eq. 65, 20 S. C. Rep. 26 (1805). It has been held that where timber is cut by court order, the proceeds thereof belong to the remainderman and the life tenant is entitled to the income generated by the principal. 51 Am. Jur. 2d, *Life Tenants and Remaindermen*, Section 144.

The question of the proper tax treatment of the sale of timber with the proceeds to be held in trust for contingent remaindermen appears to be a novel one in South Carolina. There is, however, a line of Federal cases which have held that the income from a sale of realty by a life tenant is taxable to him as a trustee for the remainderman rather than to the tenant individually. See [United States v. De Bonchamps](#), 278 F. 2d 127 (9th Cir. 1960); [Robinson v. United States](#), 192 F. Supp. 253 (1961); [Weil v. United States](#), 180 F. Supp. 407 (1960). The Internal Revenue Service has taken the position that a court-appointed trustee who receives the proceeds of a sale of real estate which the court permitted the life tenant to sell, must report the gain on a fiduciary return for the year of sale. Revenue Ruling 59-99, 1959-1 C. B. 158.

In the *De Bonchamps* case, the Ninth Circuit distinguished a situation in which vested remaindermen had present rights to the gain in question and thus were to be regarded as present owners and individually taxable as such. In the case at hand, the interests of the remaindermen are also contingent.

*2 Section 65-223 of the South Carolina Income Tax Act imposes the tax on fiduciaries. The section states: 'The tax imposed by this chapter shall be imposed upon resident fiduciaries * * * having in charge funds or property for the benefit of a resident of this State.'

It is the opinion of this office that the gain from the sale of the timber in question, the proceeds of which will be placed in trust for the contingent remaindermen, is taxable to the trust to be paid by the court-appointed trustee at the time that the timber is sold.

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