



SC REVENUE RULING #93-11

SUBJECT: Leased Property
(Property Tax)

TAX ANALYST: Jean P. Croft

EFFECTIVE DATE: Applies to all periods open under statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. Section 12-37-710 (1976)
S.C. Code Ann. Section 12-37-610 (1976)
S.C. Code Ann. Section 12-4-540 (Supp. 1992)
S.C. Code Ann. Section 12-43-220 (Supp. 1992)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1992)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Department's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

Is the lessee or lessor liable for property taxes on leased property?

Discussion:

In recent years, the leasing of property, both personal and real property, has become increasingly prevalent. With this increase has come some confusion as to how this property should be reported for South Carolina property tax purposes. This document will address these issues by first stating the general property tax rules relating to leased property and then discussing exceptions to these rules.

PERSONAL PROPERTY

Code Section 12-37-710 provides, in part:

Every person of full age and of sound mind shall annually list for taxation the following personal property, to wit:

- (1) All the tangible personal property in the State owned or controlled by him;
- (2) All the tangible property owned by him or by any other resident of this State and under his control which may be temporarily out of the State but is intended to be brought into the State;
- (3) All tangible personal property owned or controlled by him which may have been sent out of the State for sale and not yet sold . . .

Hence, the owner, or lessor, is generally liable for the property taxes due.

Although the lessor is usually the owner for personal property tax purposes, the above statute states that property "owned or controlled" by a person is required to be reported by him for property tax purposes. Thus, the statute states that if personal property is owned by one person and yet controlled by another, the one who controls the property may also be liable for any taxes due.

In Investors Premium Corporation v. South Carolina Tax Commission, 193 SE2d 642 (1973), the South Carolina Supreme Court considered the interpretation of a documentary stamp tax statute which imposed the tax on "any person who makes, signs, issues, sells, . . . or ships them **or for whose benefit or use** they are made, signed, . . .". The Court stated that the word "or" in the statute "does not set up an alternative of choice available to the Tax Commission [Department of Revenue] but allows an alternative of necessity. We find that the legislature meant `or' as introducing a substitute taxpayer in the event holding the primary taxpayer liable is impracticable". Hence, the Department should first look to the primary taxpayer for payment and then to the secondary taxpayer. The Court cited an earlier case, Brewer v. Brewer, 129 SE2d 736 (1963), in which the Supreme Court had previously said that "the word `or' used in a statute marks an alternative, and ordinarily means one or the other of two, but not both".

Therefore, for property tax purposes other than the exceptions listed below, the tax collector must first look to the lessor for taxes due on personal property. If it is impractical for the tax to be collected from the lessor, the tax collector may look to the lessee for payment.

Another situation in which the lessee is liable for personal property taxes occurs when the lease is in fact a financing arrangement. South Carolina property tax laws do not define "financing lease". However, there are several situations in which the income tax treatment of an item is dispositive of the property tax treatment. For example, the fair market value of merchants' furniture, fixtures and equipment is the depreciated value as shown by the merchants for income tax purposes (SCTC Regulation 117-110). Likewise, the value of manufacturers' machinery and equipment is determined by the gross capitalized cost as shown on the taxpayer's income tax records (SC Code Ann. Section 12-37-930). Therefore, it makes sense to use well defined income tax concepts to determine the property tax consequences. So if the lessee is treated as the owner for income tax purposes because the lease is a financing arrangement, the lessee will also be treated as the owner for property tax purposes. As owner, the lessee is liable for any personal property taxes.

REAL PROPERTY

Section 12-37-610 provides:

Every person shall be liable to pay taxes and assessments on the real estate of which he may stand seized in fee or for life, in dower or as husband in right of his wife or may have the care of as guardian, executor, trustee or committee.

Although "seized in fee" has traditionally been understood to refer to the holder of title which, in an ordinary lease, would be the lessor, a lessee may be liable for taxes owed on real property when the lease is in fact a financing arrangement. The Attorney General's Office has held that one who purchases property under an installment sale agreement in which the purchaser takes immediate possession of the property is seized in fee or the owner of the property, even though the seller may hold title to the property until full payment is made (1969-70 Ops. Att'y Gen., No. 2849, p. 85). Therefore, seized in fee or ownership does not depend on holding actual title to the property. "Land may be assessed and taxed to a person who is in possession thereof under an executory contract of sale". (84 C.J.S. 2d, Taxation, Section 98, p. 213.) In the previously cited opinion, the Attorney General's Office quoted from Ridgeway v. Broadway et al., 91 S.C. 544, 75 S.E. 132 (1912), in which the South Carolina Supreme Court defined the purchaser as the owner of real property purchased on the installment basis. The court stated:

The law is well settled that one who buys land, pays a part of the purchase price, and takes possession under his contract of purchase, is the owner of the land in equity. He may mortgage it, convey it to another, or devise it, and, if he dies intestate, it descends to his heirs. The vendor holds the legal title as trustee for the vendee, his heirs and assigns, and is bound to convey it upon performance or tender of performance of the contract of sale.

Therefore, as discussed above in relation to personal property, if the lease is in fact a financing arrangement and is treated as such for income tax purposes, the lessee is considered the owner for property tax purposes and is liable for real property taxes on the property.

Section 12-37-610 also states that a person is liable for taxes on property of which he stands seized "in dower or as husband in right of his wife". South Carolina no longer has dower rights or "husband in right of his wife" provisions. Therefore, these provisions are of no effect.

EXCEPTIONS

Unit Valuation Method

Section 12-4-540(A) gives the Department the responsibility for the "appraisal, assessment, and equalization of the taxable values" of various entities. Some of these entities are valued using the unit valuation method. Section 12-4-540(E) provides that

When the commission uses the unit valuation concept, property taxes on all leased and used real and personal property must be paid by the lessee. Whether or not the unit valuation concept is used, an airline or private carlines shall pay property taxes on all leased real and personal property in its control.

Therefore, whenever the Department uses the unit valuation method for valuing an entity, the real and personal property taxes due on leased property must be paid by the lessee. Airlines and private carlines, whether or not valued by the unit valuation method, are required to pay the property taxes due on all leased property under their control.

Certain Long-Term Leasehold Estates

Although the lessor is generally liable for real property taxes, there are some situations in which the lessee may be held liable. Section 12-37-620 states:

All leasehold estates hereafter established and held on a term of ninety-nine years or more or for a term certain renewable at the option of the lessee for an additional term of ninety-nine years or more shall be valued at the full value of the land and taxed to the lessee until the end of the term. Provided, however, that the lease or contract must be recorded with the clerk of court or register of mesne conveyance of the county where the property is located. The lease must contain the name and resident address of the lessee, the length of the lease and the real consideration therefor, and the derivation of title to the lessor and his resident address. Provided further, if such property should be sold for taxes, only the leasehold interest can be sold and not the fee.

Hence, if a leasehold estate is held for ninety-nine years or more or for a term renewable for ninety-nine years or more, and if such lease is properly recorded in the county where the property is located, it will be valued at its full value and taxed to the lessee.

Charitable Hospitals

Section 12-37-222 contains a special provision for certain property leased to hospitals and states:

Equipment leased by and used in connection with the operation of charitable, not for profit, or governmental hospitals shall, for the purpose of ad valorem taxation, be deemed to be owned by the hospital.

Section 12-37-220A(2) grants an exemption for "all property of . . . all charitable institutions in the nature of hospitals. . .". Hence, equipment leased by a charitable, not for profit, or governmental hospital is exempt from personal property taxes.

FEE IN LIEU PAYMENTS

As discussed above, property subject to a financing lease is generally taxed to the lessee who is deemed to be the owner of the property. Section 4-29-67 provides an exception to this rule when property qualifies for a fee in lieu of taxes. It provides that in a financing lease that qualifies for a fee in lieu of taxes, the owner of the property for property tax purposes is the county. (See Quirk v Campbell, 302 SC 148, 394 SE2d 320 (1990)). Hence, the property is deemed to be owned by the county for property tax purposes, but the lessee is responsible for the fee in lieu payments.

Conclusions:

PERSONAL PROPERTY:

The liability for property taxes imposed upon leased personal property falls upon the lessor as owner of the property. However, the liability for the property taxes imposed upon leased personal property will fall upon the lessee if:

1. it is impractical for the tax collector to enforce collection against the lessor;
2. the lease is a financing arrangement for income tax purposes whereby the lessee is treated as the owner of the property; or,
3. the Department values the property of the lessee using the unit valuation method (Section 12-4-540(E)).

Equipment leased to charitable, not for profit hospitals or governmental hospitals are not subject to property taxes (Sections 12-37-222 and 12-37-220A(2)).

REAL PROPERTY:

The liability for property taxes imposed upon leased real property falls upon the lessor as owner of the property. However, the liability for property taxes imposed upon leased real property will fall upon the lessee if:

1. the lease is a financing arrangement for income tax purposes whereby the lessee is treated as the owner of the property;
2. the Department values the property using the unit valuation method (Section 12-4-540(E)); or,
3. the lease is for ninety-nine years or more and otherwise meets the requirements of Section 12-37-620.

FEE IN LIEU PAYMENTS

With respect to real or personal property subject to fee in lieu payments, the property is considered to be owned by the county for property tax purposes and therefore not subject to taxation. However, the manufacturer is responsible for the fee in lieu payments.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/A. Crawford Clarkson, Jr.
A. Crawford Clarkson, Jr., Chairman

s/T. R. McConnell
T. R. McConnell, Commissioner

s/James M. Waddell, Jr.
James M. Waddell, Jr., Commissioner

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