
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #95-1 (TAX)

SUBJECT: Taxation of Personal Property Located in a Timeshare Unit or Other Vacation Home
(Property Tax)

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. §12-37-210 (Supp. 1993)
S.C. Code Ann. §12-37-220 (Supp. 1993)
S.C. Code Ann. §27-32-10, et. seq. (Rev. 1991)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1993)
S.C. Revenue Procedure #94-1

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

There are many questions concerning the taxation of the personal property located within vacation dwellings, including timeshare units. This document will address the forms of timeshare ownership, the taxation of personal property situated within such units, and the taxation of personal property located in other types of vacation homes.

STATUTORY PROVISIONS

S.C. Code §27-32-10 defines several terms related to timeshare units, including the two types of timeshare plans:

(8) "Vacation time sharing ownership plan" means any arrangement, plan or similar devise, whether by tenancy in common, sale, deed or by other means, which is subject to supplemental agreement or contract for use of the time share unit, whereby the purchaser receives an undivided ownership interest in and the right to use accommodations or facilities, or both, for a specific period of time during any given year, but not necessarily for consecutive years, which extends for a period of more than one year.

(9) "Vacation time sharing lease plan" means any arrangement, plan or similar devise, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, but does not receive an undivided fee simple interest in the property, for a specific period of time during any given year, but not necessarily for consecutive years, and which extends for a period of more than one year.

(10) "Vacation time sharing plan" means either a vacation time sharing ownership plan or a vacation time sharing lease plan as defined herein.

(11) "Time sharing unit" means the actual accommodations and related facilities which are the subject of the vacation time sharing ownership plan or lease plan.

Hence, a vacation time sharing plan may refer to a plan in which one holds an ownership interest in the unit or to a plan in which one holds a right to use such a unit.

S.C. Code of Laws §12-37-210 states that all real and personal property in this State is subject to taxation. Section 3 of Article X of the South Carolina Constitution provides for exemptions from ad valorem taxation, including the exemption codified in S.C. Code of Laws §12-37-220(A)(5) which provides an exemption from ad valorem taxation for

all household goods and furniture used in the home of the owner of such goods and furniture, such to include built-in equipment such as ranges, dishwashers and disposals, but this exemption shall not apply to household goods used in hotels, rooming houses, apartments or other places of business.

Thus, in order for household goods and furniture to be exempt, they must be used in the home of the owner of such goods. Hence, in order to determine if the personal property within a timeshare unit or other vacation home is subject to taxation, we must consider if such unit or house constitutes a home as required by Section 12-37-220(A)(5).

South Carolina property tax statutes do not define "home"; hence, we must look elsewhere to determine what constitutes a home for property tax purposes. Opinion of the Attorney General No. 249 (1982 Op Atty Gen No. 82-29, p. 33) held that the term "home" included second homes such as lake or beach houses or condominiums. The Opinion further held that household goods and furniture located in second homes are not subject to property tax. However, if the vacation home is rented or leased to third parties, the personal property located therein may be subject to tax depending upon whether such rental or leasing is considered a business. The Opinion held that the "operation of a business" or "doing business" denotes a continuing enterprise, and an occasional or incidental transaction would not come within the meaning of these phrases. Merely the sporadic or occasional renting of a vacation home will not subject the household goods and furniture to taxation. For example, if a vacation home is never rented during the taxable year, the personal property located therein would not be subject to property tax. This same result would occur if the home is rented only occasionally during the taxable year. In order for household goods and furniture to be taxable, the leasing of the home or unit must be a business.

Thus, the Constitution, statute, and Attorney General's Opinion indicate the proper inquiry is whether the goods are used in a home as opposed to a business; not whether they are used in the owner's legal residence as opposed to a temporary or part-time one.

It has been suggested that property cannot be a home if the owner cannot freely use it each and every day. However, this interpretation is not supported by the language of the Constitution or the statute. If the Legislature intended that property used for residential purposes and never rented out or otherwise used in a business, should be taxed at a 10.5% assessment ratio, it would have indicated this, rather than only stating it could not be used in a business. This suggested interpretation has also been refuted by:

- ◆ the Attorney General's ruling discussed above,
- ◆ longstanding administrative policy,
- ◆ the use of the term "home" for South Carolina income tax purposes and the use, in turn, of South Carolina income tax concepts to determine property taxes, and,
- ◆ our belief based upon viewing the property tax as a whole that the Legislature neither:
 - intended to tax a person who could only afford to own a portion of a vacation home more heavily than a person who can afford an entire vacation home, nor,
 - intended to tax a person who owned a share in a vacation home more heavily than a person in the business of renting.

Each of these reasons will be discussed in more detail below.

Attorney General's Opinion. The Attorney General's Opinion No. 249 implies that a dwelling can be considered a home even if the owner does not have unlimited access to the dwelling every day of the year or if he does not live at the dwelling for the entire year. If a vacation home is rented out occasionally during the year, the owner will not have unlimited access to the home during the time it is rented. However, the Attorney General's Opinion states that merely the occasional renting of a vacation home does not render it taxable for property tax purposes. Thus, unlimited access to a dwelling every day of the year is not a necessary condition for a vacation home to be considered a home for property tax purposes.

Administrative Policy. It has been longstanding administrative policy of the Department of Revenue to only tax the personal property of second homes if such homes are rented or otherwise used for business purposes. Also, until recently, to our knowledge no county taxing authority has disagreed with this position. Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. Marchant v. Hamilton, 279 S.C. 497, 309 S.E.2d 781 (1983). When the construction or

administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. Ryder Truck Lines, Inc. v. South Carolina Tax Commission, 248 S.C. 148, 149 S.E.2d 435; Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682.

Income Tax Statutes. To determine if a timeshare interest or vacation home is a "home" for property tax purposes, it is useful to look to South Carolina income tax statutes where this issue has been considered in detail. Because of the interrelationship of the property and income taxes, it has been an accepted practice of the Department to look to income tax statutes for definitions of words or phrases which are not defined in property tax statutes. This is especially appropriate in issues dealing with the taxation of tangible personal property because S.C. Reg. 117-110 defines the fair market value of merchants' furniture, fixtures and equipment for property tax purposes as the depreciated value as shown by the merchants for income tax purposes. Likewise, the value of manufacturers' machinery and equipment for property tax purposes is determined by the gross capitalized cost as shown on the taxpayer's income tax records (SC Code Section 12-37-930). The Department has also used income tax statutes to define what constitutes inventory for property tax purposes and to determine who is considered the owner of leased property for deciding who is liable for the property taxes thereon. (See SC Revenue Ruling 91-7 and SC Revenue Ruling 93-11).

Also, using income tax rules to determine if an activity constitutes a business for property tax purposes provides taxpayers with a uniform set of rules whereby the property will be treated in the same manner for both property and income tax purposes, i.e., as business or personal property, thus eliminating any confusion which may result from treating the same property differently for different taxes. The income tax rules are also familiar to many taxpayers and virtually all tax advisors and return preparers, and hence, are easy for them to apply. Since South Carolina conformed to the federal income tax law in 1985, we look to the Internal Revenue Code ("IRC") to determine if a vacation home or timeshare unit is a home or business.

The rules for determining whether an activity involving the use of a dwelling unit is a residence (home) are found in IRC Section 163¹. IRC Section 163(h)(3) allows a deduction for qualified residence interest which is defined as any interest paid or accrued on acquisition or home equity indebtedness with respect to any qualified residence of the taxpayer. A qualified residence means the principal residence of the taxpayer and one other residence of the taxpayer which is selected by the taxpayer for purposes of deducting the interest paid or accrued thereon and which is used by the taxpayer as a residence within the meaning of IRC Section 280A(d)(1). Therefore, if a dwelling is considered a residence within the meaning of Section 280A(d)(1) with modifications prescribed by Section 163(h), it will be a home for property tax purposes and its household goods and furniture will not be subject to property taxes.

¹IRC Section 163 is concerned with what is a residence and provides a tax benefit, i.e. an interest deduction, if a dwelling qualifies as a qualified residence, and thus, contains tighter standards than those set forth in sections which are concerned with what is a business and provide for a tax detriment, such as IRC Section 280A. Hence, our determination of whether a dwelling qualifies as a home, thus exempting the personal property therein from property taxation (a tax benefit), will rely on the standards set forth in IRC Section 163 with references to IRC Section 280A where IRC Section 163 adopts tests from IRC Section 280A.

IRC Section 280A generally disallows deductions with respect to the use of a dwelling unit which is used by an individual (including a partnership, trust, or estate) or S corporation during the taxable year as a residence. IRC Section 280A(d)(1) states that a taxpayer uses a dwelling unit during the taxable year as a residence if he uses such unit for personal purposes for a number of days which exceeds the greater of 14 days or 10 percent of the number of days during such year for which such unit is rented at a fair rental. Section 280A(g) provides that if a dwelling unit is used during the taxable year by the taxpayer as a residence, and such dwelling unit is actually rented for less than 15 days during the taxable year, then no deductions (which would otherwise be allowed because of the rental use of the dwelling unit) are allowed, and the income derived from such use is not included in the gross income of the taxpayer.

S.C. Code Section 27-32-240, which deals with the property taxation of timeshare units, provides that for property tax purposes, a unit must be valued as if it were owned by a single owner. Therefore, in determining personal and business use for the purpose of personal property taxation, we will consider the unit as a whole. This treatment is consistent with the rules found in IRC Section 280A. Prop. Reg. 1.280A-3(f) relates this rule to timesharing arrangements and applies it based on the number of days that the unit is actually rented during the entire taxable year. Hence, if a unit is rented for less than 15 days to persons other than those having an interest in the unit, no deductions are allowed because of the rental use and no amount is included in gross income from such use. If any person who has an interest in the timeshare unit uses the unit for personal purposes during the taxable year, any rental expenses incurred by anyone holding an interest in the unit must be allocated based on the number of days during the taxable year that the unit is rented at a fair rental and the number of days during the year that the unit is used for any purpose (Prop. Reg. §1.280A-3(f)(5)). Hence, the determination whether the timeshare unit is used as a residence is made at the unit level, i.e., considering the usage of all the persons having an interest in the unit.

Notwithstanding Section 280A(d)(1), if the taxpayer does not rent out a dwelling unit at any time during a taxable year, such unit is treated as a residence for such taxable year (IRC Section 163(h)(4)(A)(iii)). However, a residence is deemed to be rented during any period that the taxpayer holds the residence out for rental or resale, or repairs or renovates the residence with the intention of holding it out for rental or resale (Reg. 1.163-10T(p)(3)(iii)). Reg. §1.163-10T(p)(6) provides that property that is otherwise a qualified residence will not fail to qualify as such solely because the taxpayer's interest in or right to use the property is restricted by an arrangement whereby two or more persons with interests in the property agree to exercise control over the property for different periods during the taxable year (i.e., a timesharing arrangement).

Legislative Intent. We believe, based upon viewing the property tax as a whole, that the Legislature did not intend to place a heavier tax burden on those who must combine their funds with others in order to purchase a vacation home than on those who can buy an entire vacation home from personal resources. Hence, the type of ownership of the vacation home or timeshare unit is not controlling as to the taxation of the personal property therein but whether such dwelling is used for business or personal purposes.

If the income tax rules discussed above are not applied and personal property in a vacation home not used for business purposes is taxed, it would be taxed more heavily than personal property located

within a vacation home which is considered a business for income tax purposes. This result would place a heavier property tax burden on those who use their vacation home solely for personal use than on those who use it for business purposes. S.C. Reg. 117-110 states that:

The fair market value of merchants' furniture, fixtures and equipment shall be the depreciated value as shown by the merchants' records for income tax purposes . . .

If the vacation home is not a business for income tax purposes, the taxpayer is not allowed to depreciate the personal property. S.C. Code Section 12-37-930 states that all property shall be valued for taxation at the price which the property would bring given a willing buyer and willing seller, i.e., fair market value. Experience has shown that the fair market value of personal property is generally higher than the value that would be reported if the property was depreciated using income tax depreciation rules. Hence, the property would be valued at a higher amount on the taxpayer's personal property tax return than comparable property which is located within a vacation home which is considered a business. Section 1 of Article X of the South Carolina Constitution provides that assessment of all property must be equal and uniform. Personal property which is not allowed to be depreciated for income tax purposes is subjected to a higher property tax than personal property which is depreciated. This results in an assessment which appears to be unequal and not uniform and hence, unconstitutional. As between two possible interpretations of a statute, one which would render the statute unconstitutional and another which would not, the courts will favor the latter. Bradley v. Hullander, 277 S.C. 327, 287 S.E.2d 140 (1982).

Therefore, a timeshare unit is not a business, and its personal property will not be subject to tax if a taxpayer is allowed a deduction under IRC Section 163 for interest paid on the acquisition of a dwelling unit which qualifies as a residence, or would be allowed a deduction except for the fact that it is not mortgaged or it was not selected as the second home. The time limits on renting must be met for the unit itself, not based on the usage of each person having an interest in the unit.

QUESTIONS AND ANSWERS

The following questions and answers will address various types of timeshare and vacation home ownership and usage and the effects these will have on the taxability of the personal property located therein.

1. Q. Are household goods and furniture located in a vacation home or timesharing unit which is owned by an individual and is never rented to a third party or otherwise used for business purposes subject to taxation?

A. The personal property held in second homes, including timeshare units, which are never rented or otherwise used for business purposes is not subject to personal property tax.

However, personal property located in a timesharing unit which is leased under a vacation time sharing lease plan as defined in S.C. Code Section 27-32-10 is subject to ad valorem taxation.

2. Q. Are household goods and furniture located in a vacation home or timeshare unit which is owned by an individual and is rented occasionally to third parties subject to taxation?

A. The occasional renting of a vacation home or timeshare unit will not subject the personal property located therein to taxation (Opinion of the Attorney General No. 249). As discussed above, IRC 163(h)(3) allows a deduction for interest paid on the acquisition of a taxpayer's principal residence or one other residence selected by the taxpayer which meets the requirements of IRC 280A. IRC 280A provides that a dwelling unit qualifies as a residence if it is used for personal purposes for more than the greater of 14 days or 10% of the number of days the home is rented in a taxable year. Hence, if a vacation home or timeshare unit is used for personal use more than 14 days or 10% of the number of days the home is rented during a taxable year, the personal property located therein will not be subject to taxation.

However, if the vacation home or timeshare unit is used for business purposes (i.e., expenses related to the business use of a vacation home or timeshare unit are deductible even though expenses exceed the income from the unit), then the household goods and furniture within such home or unit are subject to tax. Whether deductions would be allowed to be deducted greater than income is determined by applying IRC Sections 280A. Hence, if for income tax purposes, a taxpayer deducts expenses related to the rental of a vacation home in excess of income generated therefrom, the vacation home does not meet the requirements of IRC Section 163, and the personal property located therein would be taxable.

3. Q. Smith & Jones is a law firm organized as a partnership which owns a vacation home at the beach that is used by the partnership to entertain clients and is also used by the partners for family vacations. Is the personal property located within the vacation home taxable?

A. S.C. Code Section 12-37-220A(5) states that household goods and furniture "used in hotels, rooming houses, apartments or **other places of business**" do not qualify for exemption from ad valorem taxation. (See Opinion of the Attorney General No. 249 discussed above.) Opinion of the Attorney General No. 4548 dated December 16, 1976 (pages 418-420, 1975-1976) held that a lodge and cottage owned by a manufacturing company and used for the entertaining of employees and customers, the holding of business meetings, etc. was used in the conduct of the business. Therefore, household goods and furniture located in the vacation home are subject to property taxation.

4. Q. Mr. Black and Mr. White are neighbors who form a partnership to purchase a cabin in the mountains for their families to use for vacationing. They have also considered leasing the cabin to other neighbors for a limited period of time. Are the household goods and furniture within the cabin taxable?

A. Partnerships are normally businesses, but in South Carolina the partnership form is also frequently used as a time and expense sharing arrangement for ownership of a vacation home by a group of individuals. The rules concerning the determination of whether a vacation home or timeshare unit qualifies as a residence apply to partnerships as well as to individuals. Therefore, if a vacation home is never leased to other persons or used in a business in some other manner, the household goods and furniture within such dwellings are not taxable. However, if the leasing, rental or other business use of the vacation home or timeshare unit is an activity entered into for profit such that it does not qualify as a "qualified residence" under Section 163, the household goods and furniture located within the vacation home are subject to tax.

5. Q. Two neighbors decide to form a partnership and purchase a timesharing unit. One neighbor uses the unit strictly for family vacations while the other routinely rents his usage to a third party. Is the personal property located in the unit taxable?

A. The determination of whether a timesharing unit is used for business or personal purposes is made at the unit, not the individual, level. Therefore, if the usage of the timeshare unit by all of the owners qualifies it as a business, the household goods and furniture located within the unit are subject to property taxation.

6. Q. Are household goods and furniture located in vacation homes or timeshare units which are held by a trust or an estate subject to property tax?

A. If a timeshare unit or vacation home owned by an estate or trust is being used as a time sharing arrangement among the beneficiaries, and it meets the requirements discussed above concerning the determination of whether a dwelling unit qualifies as a residence, the household goods and furniture located within the dwelling unit are not subject to property tax.

7. Q. Who must pay the property tax on household goods and furniture located in vacation homes or timeshare units?

A. S.C. Code Section 27-32-240 provides for the property taxation of time share units and states, in part:

(1) For purposes of property taxation, each time share unit, operating under a "vacation time sharing ownership plan" as defined in item (8) of §27-32-10, must be valued in the same manner as if the unit were owned by a single owner. The total cumulative purchase price paid by the time share owners for a unit may not be utilized by the tax assessor's office as a factor in determining the assessed value of the unit. A unit operating under a "vacation time sharing lease plan" as defined in item (9) of §27-32-10, may, however, be assessed the same as other income producing and investment property.

S.C. Code Section 27-32-95 provides, in part:

It shall be a violation of this chapter for a seller of vacation time sharing ownership plans to fail to:

(3) . . . deposit with an escrow agent, annually, sufficient funds for the payment of all taxes and assessments levied against the accommodations and facilities. In the alternative, provide for the assessment against the purchaser by an association or duly appointed agent for the owners of such escrow funds for all costs including taxes, assessments, maintenance, repairs and management fees.

Therefore, it is the responsibility of the seller or the association to collect and remit personal property taxes owed with respect to the household goods and furniture located in timeshare units.

For questions concerning the taxation of personal property located in a timeshare unit or other vacation home contact Kin Purvis of the Property Tax Division at (803) 737-4468 or Jean Croft at (803) 737-5007.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

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

Columbia, South Carolina
January 3, 1995