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

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SC REVENUE RULING # 97-4

**SUBJECT:** Legal Residence (Property Tax)

**EFFECTIVE DATE:** Applies to all periods open under the statute.

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

**REFERENCES:** S. C. Code Ann. Section 12-43-220(c) (Supp. 1996)  
S. C. Code Ann. Section 12-37-251 (Supp. 1996)  
S. C. Code Ann. Section 12-37-610 (Supp. 1996)  
S. C. Code Ann. Section 12-49-10 (1976)  
S. C. Code Ann. Section 12-49-20 (1976)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. 1996)  
SC 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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

## **BACKGROUND.**

For residential real property in South Carolina, the owner, the value of the property, and the ratio of assessment to value for ad valorem property taxes are normally established on December 31st of the year preceding the tax year in question.

Section 12-43-220(c) previously modified this general rule in the case of a **legal residence** [owner-occupied domicile]. In 1996, the General Assembly amended Section 12-43-220(c) concerning eligibility requirements for the 4% assessment ratio for a legal residence. The new amendments to Section 12-43-220(c) are effective for tax years beginning after 1996 and apply to changes in ownership or classification occurring after 1996. Section 12-43-220(c), as amended, takes on added importance in light of the adoption and amendment of Section 12-37-251 which provides for a \$100,000.00 exemption from property taxes levied on a legal residence for school operations.

Questions which have arisen concerning the interpretation and implementation of Section 12-43-220(c), as amended, are discussed below.

## **STATUTES.**

### **Special Assessment Ratio of 4% for One Legal Residence.**

Section **12-43-220(c)** of the 1976 Code, as last amended by Section 24 of Act 431 of 1996, now reads as follows:

A(c)(1) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, is taxed on an assessment equal to four percent of the fair market value of the property. If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a residence by the income beneficiary of the trust. When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties. For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant. A taxpayer may receive the four percent assessment ratio on only one residence for a tax year.

(2)(i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year and remain in that status at the time of filing the application required by this item.

(ii) This item does not apply unless the owner of the property or the owner's agent applies for the four percent assessment ratio before the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. In the application the owner or his agent must certify to the following statement:

“Under penalty of perjury I certify that:

(A) the residence which is the subject of this application is my legal residence and where I am domiciled; and

(B) that neither I nor any other member of my household own any other residence in South Carolina which currently receives the owner-occupant four percent assessment ratio.’

(iii) For purposes of subitem (ii)(B) of this item, ‘a member of my household’ means:

(A) the owner-occupant’s spouse, except when that spouse is legally separated from the owner-occupant; and

(B) any child of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant’s federal income tax return.

(iv) In addition to the certification, the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires including, but not limited to:

(A) a copy of the owner-occupant’s most recently filed South Carolina individual income tax return;

(B) copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant.

(C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.

If the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title.

(v) A member of the armed forces of the United States on active duty who is a legal resident of and domiciled in another state is nevertheless deemed a legal resident and domiciled in this State for purposes of this item if the member’s permanent duty station is in this State. A copy of the member’s orders filed with the assessor is considered proof sufficient of the member’s permanent duty station.

(vi) No further applications are necessary from the current owner while the property for which the initial application was made continues to meet the eligibility requirements. If a

change in ownership occurs, another application is required. The owner shall notify the assessor of any change in classification within six months of the change.

(vii) If a person signs the certification, obtains the four percent assessment ratio, and is thereafter found not eligible, or thereafter loses eligibility and fails to notify the assessor within six months, a penalty is imposed equal to one hundred percent of the tax paid, plus interest on that amount at the rate of one-half of the one percent a month, but in no case less than thirty dollars nor more than the current year's taxes. This penalty and any interest are considered ad valorem taxes due on the property for purposes of collection and enforcement.

(viii) Failure to file within the prescribed time constitutes abandonment of the owner's right for this classification for the current tax year, but the local taxing authority may extend the time for filing upon a showing satisfactory to it that the person had reasonable cause for not filing before the first penalty date.

(3) Notwithstanding any other provision of law, a taxpayer may apply for a refund of property taxes overpaid because the property was eligible for the legal residence assessment ratio. The application must be made in accordance with Section 12-60-2560. The taxpayer must establish that the property in question was in fact his legal residence and where he was domiciled. A county council, by ordinance, may allow refunds for the county government portion of property taxes for such additional past years as it determines advisable.

(4) A legal residence qualifying for the four percent assessment ratio provided by this item must have an assessed value of not less than one hundred dollars."

B. Subsection A of this section is effective for tax years beginning after 1996 and applies for changes in ownership or classification occurring after 1996.

### **\$100,000 Exemption for School Operations.**

Subsection (A) of Section **12-37-251** of the 1976 Code, as amended by Section 1 of Act 401 of 1996, now reads as follows:

“(A) The State Property Tax Relief Fund shall be established at an amount equal to the revenue necessary to fund a property tax exemption of one hundred thousand dollars based on the fair market value of property classified pursuant to Section 12-43-220(c) calculated on the school operating millage imposed for tax year 1995, excluding taxes levied for bonded indebtedness and payments pursuant to lease purchase agreements for capital construction. . . .”

## **Personal Liability for Taxes and Tax Liens.**

'12-37-610. Persons liable for taxes and assessments on real estate.

“Every person is liable to pay taxes and assessments on the real estate which he owns or may have the care of as guardian, executor, trustee or committee.”

'12-49-10. Taxes, assessments and penalties constitute a debt due State and a first lien upon property; enforcement.

“All taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the State by the person against whom they shall be charged and such taxes, assessments and penalties shall be a first lien in all cases whatsoever upon the property taxed, the lien to attach at the beginning of the fiscal year during which the tax is levied. . . . The county treasurer may enforce such lien by execution against such property or, if it cannot be levied on, he may proceed by action at law against the person holding such property.”

'12-49-20. Time when lien attaches.

“As of December thirty-first a first lien shall attach to all real and personal property for taxes to be paid during the ensuing year . . . .”

## **GENERAL PRINCIPLES.**

### **Legal Residence - Definition.**

A property is a person's legal residence if the property is owned and occupied by that individual as the individual's domicile. “Domicile” has its usual meaning and is considered to be that residence where a person has a true, fixed and permanent home and principal establishment, and to which whenever the person is absent has the intention of returning. Black's Law Dictionary, fifth edition. Phillips v. South Carolina Tax Commission, 195 S.C. 472, 12 S.E.2d 13 (1940). An individual can have only one domicile at a time.

### **Application Process.**

A property does not qualify as a legal residence unless the owner-occupant applies to the county assessor and the county assessor determines the residence to be the domicile of the owner. A person and the members of his household may receive the 4% assessment ratio on only one residence for a tax year. Sec. 12-43-220(c)(1).

### **Application Procedure.**

To qualify for the 4% property tax assessment ratio, the owner-occupant must have actually owned and occupied the residence as a legal residence; have been domiciled at that address for some period during the applicable tax year; be an owner-occupant domiciliary at the time of application and at the end of the applicable tax year; and personally certify to the county assessor, under penalty of perjury, that:

(1) the property is the owner's legal residence and where the owner is domiciled; and

(2) neither the owner nor any member of the owner's household (spouse or child claimed or eligible to be claimed as a dependent on the owner-occupant's income tax return) owns any other residence in South Carolina which qualifies for the owner-occupied 4% assessment ratio.

Secs. 12-43-220(c)(2)(ii); (iii); (iv).

### **Spouse with Separate Residence.**

An owner-occupant may obtain the 4% assessment ratio even though the taxpayer's spouse claims the 4% assessment ratio for a different residence, only if the taxpayer and the spouse are "legally separated." Sec. 12-43-220(c)(2)(iii)(A).

"Legally Separated" for the purposes of '12-43-220(c) means the parties have obtained a court decree for separate support and maintenance and live separate and apart in different residences and no longer cohabit as husband and wife. Sec. 20-3-140.

### **Time for Making Application.**

Application for the 4% assessment ratio for a legal residence must be filed with the assessor before the sixteenth day of January or thirty days after the mailing of tax notices, whichever occurs later. Secs. 12-43-220(c)(2)(ii); 12-45-180.

### **Failure to Make Application.**

A failure to file within the prescribed time constitutes abandonment of the owner's right for the legal residence classification and the 4% assessment ratio for the current tax year. However, the local taxing authority may extend the time for filing upon a showing that the person had reasonable cause for not filing before the first penalty date. Sec. 12-43-220(c)(2)(viii).

### **Requirement for Additional Applications.**

No further application is required once the county assessor has determined the property is the owner-occupant's legal residence as long as the property remains that owner-occupant's domicile. Sec. 12-43-220(c)(2)(vi).

### **Proof of Legal Residence.**

The burden of proof is on the owner-occupant to establish that the property is a legal residence. Sec. 12-43-220(c)(2)(iv). In addition to the certification required in the application process, the applicant must provide proof the assessor requires and considers necessary, such as:

- (1) certification that neither the owner-occupant nor a member of his household has ever qualified for the 4% legal residence assessment ratio before or, if the applicant or a member of his household has previously qualified property for the 4% assessment ratio, the applicant or the member of his household, or both, have notified the county assessor where the old property lies, that the 4% assessment ratio no longer applies to the former domicile;
- (2) a copy of the owner-occupant's most recently filed S.C. individual income tax return;
- (3) copies of S.C. motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant;
- (4) other proof that the assessor may require to determine eligibility for the 4% assessment ratio.

Sec. 12-43-220(c)(2)(iv).

### **Types of Property That May Qualify for Legal Residence Status.**

#### **Residential Property Owned by Occupant.**

Real property owned totally (fee simple) or "in part in fee" or by life estate and occupied by the owner of the interest as a legal residence may qualify as a legal residence. Sec. 12-43-220(c)(1).

#### **Fee Simple Property.**

An owner-occupant of property in fee simple may qualify the owner-occupied residence and not more than five contiguous acres for legal

residence status. Sec. 12-43-220(c)(1). An estate in fee simple carries with it the largest possible aggregate of rights, privileges, powers and immunities with respect to the land in which it exists, and thus comprises full ownership of that land. Cunningham, Stoebuck, Whitman, The Law of Property, 2d. ed., *Present Estates*, '2.2, pg. 29.

### **Part in Fee.**

An owner-occupant of property owned “part in fee” may qualify the owner-occupant’s interest in the residence on the property and not more than five contiguous acres for legal residence status and a 4% assessment ratio. Sec. 12-43-220(c)(1).

“ Part in fee” exists when there are two or more owners of the fee simple property. Such estates exist whenever two or more persons have a concurrent right to the possession and use of the same parcel of fee simple property. Each person is said to own the property “part in fee,” the actual amount of ownership depending on each person’s individual interest. As a general rule, each may, without the consent of the other, transfer his or her interest by deed or by lease and may mortgage his or her interest. All of the owners need not have equal fractional interests. Cunningham, Stoebuck, Whitman, The Law of Property, 2d ed., ' 5.2, *Concurrent Ownership*, p. 188.

Section 12-43-220(c) does not indicate how the assessment is made when the legal residence property is owned “part in fee.” However, other closely related statutory provisions, when read in conjunction with 12-43-220(c)(1), provide the answer.

Under the rule of statutory construction, statutes in close relationship, or *pari materia*, are not to be considered as isolated fragments of law, but as a whole, or parts of a great, connected, homogeneous system. Such statutes are considered as if they constituted but one act, so that sections of one act may be considered as though they were parts of the other act, as far as that can be reasonably be done. Indeed, as a general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, unless a different purpose is shown plainly. 73 Am.Jur.2d *Statutes*, Section 188.

Property that qualifies for a homestead exemption is classified and taxed as residential on an assessment equal to 4% of the property’s fair

market value. Sec. 12-37-252(A). A person who is eligible for the 4% owner-occupied residential ratio also may be certified for a homestead tax exemption. Sec. 12-37-252(B). Thus these two statutes, '12-37-250 dealing with the homestead exemption, and '12-43-220(c) dealing with a legal residence, are closely related, stand in pari materia to each other, and should be read together.

Like the legal residence statute, the statute dealing with homesteads provides that a homestead tax exemption must be granted to those persons who own a legal residence “in part in fee.” Sec. 12-37-252. Section 12-37-252 then provides a means for calculating the exemption when the property is owned “part in fee.” “The amount of the [homestead] exemption must be determined by multiplying the percentage of the fee . . . owned by the person by the full exemption.” A percentage of ownership less than five percent is considered to be five percent. The exemption may not exceed the value of the interest owned by the person. Sec. 12-37-250.

Since the legal residence classification statute and the homestead exemption statute stand in pari materia to each other, they are read together. Thus, when one owns a legal residence “in part in fee,” the assessment is determined in two steps like the homestead provision, using the procedure provided in '12-37-250. First, the value of the legal residence and not more than five contiguous acres is multiplied by the 4% assessment ratio. The amount that results is then multiplied by the percentage of the fee, owned by the person occupying the legal residence as a domicile, to obtain the assessment. For purpose of the calculation, a percentage of ownership less than five percent is considered to be five percent. Sec. 12-37-250. If this property has located on it any rented home or residence which is rented or any business for profit, the four percent ratio does not apply to those businesses or any business for profit. Sec. 12-43-220(c).

### **Life Estate.**

An owner-occupant of a residence and not more than five acres contiguous thereto by life estate, may qualify the property as a legal residence and eligible for an assessment equal to 4% of the fair market value of the property.

A life estate is an estate in real property in which the tenant has a freehold interest for his or her life. A freehold interest means the person holding the life estate has exclusive possession of the property to the exclusion of all others, during the life of the tenant.

### **Residential Property Held in Trust for Income Beneficiary.**

Real property held in trust, if the income beneficiary of the trust occupies the property, may qualify as a legal residence. Sec. 12-43-220(c)(1). The trustee must apply to the assessor for the 4% assessment ratio and provide the necessary certification required in '12-43-220(c)(2)(i). If the trustee cannot provide the certification, the income beneficiary may be required to make the certification or other knowledgeable persons may be required to give affidavits.

### **Legal Residence on Leased Land.**

A residence, such as a mobile home, owned and occupied as the owner's legal residence, but located on leased or rented property, even though at the end of the lease period the lessor becomes the owner of the residence, may qualify as a legal residence. Sec. 12-43-220(c)(1). The county assessor may require written proof that the residence is owned by the applicant. Sec. 12-43-220(c)(2)(iv)(C). In the case of a mobile home, the license required under '31-17-320, evidencing proof of title, must be filed with the county assessor. Sec. 31-17-390.

### **Leased Property Where the Lessee is "Liable for the Taxes."**

Leased property upon which the lessee owns and occupies a residence, and the lessee is "liable for the taxes" on the leased property, may qualify as a legal residence. Sec. 12-43-220(c)(1). There are several instances in which the lessee is "liable for the taxes," including:

(1) All leasehold estates 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 are valued at the full value of the land and taxed to the lessee until the end of the term. The lease must be recorded with the clerk of court or register of mesne conveyances of the county where the property is located. Sec. 12-37-620.

(2) If the lease is in fact a financing arrangement and is treated as such for income tax purposes, the individual leasing the property is considered the owner of the leased property for tax purposes and is liable for the real property taxes on the property. SC Rev. Rul. 93-11. The lease must be recorded with the clerk of court or register of mesne conveyances of the county where the property is located. Sec. 12-37-620. One who buys land, pays a part of the purchase price, and takes possession under a contract for purchase, has sufficient ownership in equity to constitute the owner of the land and is taxed accordingly. Ridgeway v. Broadway et al., 91 S.C. 544, 75 S.E. 132 (1912); SC Rev. Rul. 93-11. See also "Contract for Sale" and "Leased Property" discussion, below.

## **Contract for Sale.**

Residential property that is sold to the purchaser and the purchaser occupies the residence as his domicile, even though the seller retains the recorded title to the property as security until some or all payments are made, may qualify as a legal residence. The purchaser is regarded as the equitable owner of the property, subject to liability for the unpaid price, and the seller as holding the legal title from the time a valid agreement for the purchase of the property is entered into. Southern Pole Bldgs., Inc. v. Williams, 347 S.E.2d 121, 122 (S.C. App. 1986). This purchaser's equitable title constitutes an ownership in the property sufficient to satisfy the requirements of '12-43-220(c) for a 4% tax assessment. Ops. Att'y Gen., No. 4261, p. 73, Feb. 12, 1976; Ops. Att'y Gen., No. 2849, p. 85. Mar. 5, 1970.

The "Contract for Sale" may be in the form of a lease. If the lease is, in fact, a financing arrangement for the purchase of the property and is treated as such for income tax purposes, the purchaser is considered the equitable owner of the property, and is treated as the owner for property tax purposes. 77 Am.Jur.2d, *Vendor and Purchaser*, Section 317; see also SC Rev. Rul. 93-11. As the purchaser is in possession of the property under an executory contract of sale, this purchaser has sufficient ownership to qualify the property for the 4% assessment ratio. Ops. Att'y Gen., No. 2849, p. 85. Mar. 5, 1970. Ops. Att'y Gen., No. 4261, p. 73, Feb. 12, 1976. See "Leased Property Where Lessee is 'Liable for Taxes'," above and "Leased Property," below.

To qualify for the 4% assessment ratio, the purchaser must apply to the county assessor, and file the contract for sale with the county assessor at the county courthouse.

Because a person may receive the 4% assessment ratio on only one residence for a tax year, ' 12-43-220(c)(1), which must be the person's legal residence, the seller, under a contract for sale, cannot obtain the 4% on the property being sold.

## **Types of Property That Will Not Qualify for Legal Residence Status.**

### **Leased Property.**

Residential property being leased from the owner of record and the lease agreement incorporates by reference the terms from Chapter 40 of Title 27 (S.C. Residential Landlord and Tenant Act) into the rental agreement, or the lease agreement, by its terms, indicates it is a true rental agreement and not a financing

arrangement (see “Contract for Sale”, above), will not qualify as a legal residence. An incorporation by reference to the terms in the S.C. Residential Landlord and Tenant Act indicates the occupant of the residence is renting the property and not purchasing it and thus has insufficient interest in the property to qualify it for the 4% assessment ratio.

Residential property that is rented or leased from another, with the rental or lease agreement containing an option to allow the lessee to purchase the rented property at some future time, will not qualify as a legal residence. Until the holder or owner of an option for the purchase of property exercises it, there is but a mere right to acquire an interest, and such person has neither the ownership of nor any interest in the property itself which would qualify the property for the 4% assessment ratio. 77 Am.Jur.2d, *Vendor and Purchaser*, Section 27. However, if the lease is really a financing arrangement for the purchase of the property and is treated as such for income tax purposes, the lessee is considered the owner for property tax purposes. Ops. Att’y Gen., No. 2849, p. 85, Mar. 5, 1970; Ridgeway v. Broadway et al., 91 S.C. 544, 75 S.E. 132 (1912); SC Rev. Rul. 93-11. See “Contract for Sale,” above.

### **Property Leased to Another.**

The portion of the legal residence property which has located on it any mobile home rented to another or other residence which is rented to another or any business for profit will not qualify as part of the legal residence. Sec. 12-43-220(c)(1).

### **Value of the Legal Residence.**

The value of the property is established on December 31st of the year preceding the tax year in question at its “true value in money which in all cases is the price which the property would bring following reasonable exposure to the market. . . .” Secs. 12-49-10; 12-37-900; 12-37-930.

### **Liability for the Property Taxes.**

#### **Personal Liability.**

An individual is personally liable for the taxes and assessment on the real property owned as of December 31st of the year preceding the tax year. Sec. 12-37-610; Vallentine v. Robinson, 188 S.C. 194, 198 S.E. 197 (1938); American Surety Co. v. Mills, 194 S.C. 221, 9 S.E.2d 433 (1940).

## **Liens.**

As of December 31st of the year preceding the tax year, a first lien attaches to real property for taxes, assessments, and penalties to be paid during the ensuing year. Sec. 12-49-20.

## **Enforcement of a Lien.**

The county treasurer may enforce such lien by:

- (1) execution against such property, or, if it cannot be levied on,
- (2) proceeding against the owner of record as of December 31st preceding the tax year.

Normally, the lien can be enforced against the property, even though it has been conveyed or sold by the owner to another. Ops. Att’y Gen., No. 3199, p. 177, Oct. 11, 1971. However, see Arrow Automotive Industries, Inc. v. Brady, 280 S.C. 79, 310 S.E.2d 661 (1983).

## **Refunds.**

Where the owner-occupant has filed for the 4% assessment ratio and the assessor determines the property qualifies as the owner-occupant’s legal residence, but taxes are paid on the property based on a higher assessment ratio, the taxpayer may seek the refund of the excess taxes paid by filing a claim for refund with the county assessor who made the property tax assessment for the property for which the tax refund is sought. The claim for refund must be filed within two years from the date of the over payment.

A county council, by ordinance, may allow refunds for the county government portion of property taxes for such additional past years as it determines advisable for property that constitutes an owner-occupant’s legal residence.

Application for a refund as a result of a change in the assessment ratio must be submitted by the property taxpayer who qualified the property as his or her legal residence for the tax year and any refund will be paid to that individual, regardless of whether someone, other than the owner-occupant qualifying the home as a legal residence, paid the taxes.

Secs. 12-43-220(c)(3); 12-60-430(22); 12-60-2560; 12-54-85(F).

### **Loss of Legal Residence Status.**

The property will lose its status as the current owner's legal residence if the property is sold or ceases to be the domicile of the owner-occupant. The 6% assessment ratio will then apply to the property for the entire tax year. Secs. 12-43-220(c)(2)(iv); (vi).

### **Penalties.**

If a person (1) signs the certification, obtains the 4% assessment ratio, and is thereafter found not eligible, or (2) loses eligibility and fails to notify the assessor within six months, then a penalty is imposed which is considered an ad valorem tax for purposes of collection. The penalty imposed is equal to one hundred percent of the tax paid, plus interest on that amount at the rate of one-half of one percent a month, but in no case less than thirty dollars nor more than the current year's taxes. Sec. 12-43-220(c)(2)(vii).

## **QUESTIONS.**

### **Sale and Purchase of a Legal Residence.**

1. Taxpayer A qualified his home in Columbia, S.C., as his legal residence on December 31, 1996. When he purchases a new home in Camden, S.C., in 1997, having sold the Columbia residence to Taxpayer B, does Taxpayer A get a choice of which residence gets the \$100,000 exemption from property taxes levied on a legal residence for school operations?

**Answer:** No, Taxpayer A does not get a choice. Once the Columbia property is sold it no longer qualifies for the 4% assessment ratio for the 1997 tax year for it is no longer Taxpayer A's legal residence. Secs. 12-43-220(c)(1); (c)(2)(vi); (c)(2)(vii). Having lost its eligibility for classification as a legal residence, the property is no longer eligible for the \$100,000.00 exemption for the tax year. Once the property loses its eligibility for the 4% assessment ratio, the property is subject to a 6% ratio for the entire tax year, unless Taxpayer B qualifies the Columbia property as his legal residence with the county assessor.

The intent of the legislature is to allow a 4% assessment ratio for the property that is owned and occupied as an individual's domicile during the tax year, even if such property is purchased after December 31st of the year preceding the tax year, provided the property remains the legal residence, once approved by the county assessor, for the remainder of the tax year.

Only Taxpayer A's Camden property is eligible for the 4% assessment ratio and the \$100,000.00 exemption if, upon application by Taxpayer A, the county assessor determines the Camden property is Taxpayer A's legal residence and the Camden property remains Taxpayer A's owner-occupied domicile for the remainder of the tax year. Sec. 12-43-220(c)(2)(vi).

### **Purchase of a Legal Residence Followed by Conversion to Rental Property.**

2. Taxpayer B purchases Taxpayer A's home in Columbia in June 1997 and rents it out. Can Taxpayer B get the 4% ratio since the property qualified as of December 31, 1996 for Taxpayer A? Can Taxpayer B be charged 6% for property that qualified for 4% on December 31, 1996?

**Answer:** The 4% assessment ratio is unique to Taxpayer "who owns and occupies the Columbia residence as Taxpayer A's domicile during the tax year and who has qualified the property as Taxpayer A's legal residence with the county assessor. Once the property is no longer owner-occupied as Taxpayer A's domicile, it loses its eligibility for the 4% assessment ratio for the tax year. Secs. 12-43-220(c)(2)(i); (2)(ii); (2)(vi); (2)(vii).

There is no statute in South Carolina apportioning the year. If the property loses its eligibility during the tax year for the 4% assessment ratio, it is taxed at 6% for the entire tax year. See Atkinson Dredging Company v. Thomas, 266 S.C. 361, 223 S.E.2d 592, 594 (1976); Ops. Att'y Gen., No. 2180, p. 313, Oct. 24, 1966; Ops. Att'y Gen., No. 2508, p. 193, Sept. 12, 1968.

Since the Columbia property is no longer Taxpayer A's legal residence and since it is being rented out by Taxpayer B, the 6% assessment ratio applies for the entire tax year to this property. Sec. 12-43-220(c)(2)(iv). If Taxpayer B occupies the Columbia property as his legal residence, instead of renting it out, and applies to the county assessor, the property may receive the 4% assessment ratio as B's legal residence for the tax year.

### **Contract for Sale.**

3. May a taxpayer who holds property under a contract for sale qualify the property as a legal residence?

**Answer.** Yes. If a person maintains a legal residence (owner-occupied domicile), as determined by the county assessor upon application, on property the person is purchasing under a contract for sale, even though the title of such property remains with the seller as security for future payments pending completion of the sale, the purchaser qualifies for

the 4% assessment ratio. Since the purchaser is in possession of the property under an executory contract of sale, the purchaser is considered the owner of an equitable interest in the property. Southern Pole Bldgs. , Inc. v. Williams, 347 S.E.2d 121, 122, (S.C. App. 1986). This purchaser's equitable title or interest constitutes an ownership in the property sufficient to satisfy the requirements of ' 12-43-220(c) for a 4% tax assessment ratio. Ops. Att'y Gen., No. 4261, page 73, February 12, 1976.

The contract for sale must be filed with the county assessor at the county courthouse in order for the property to be classified as a legal residence. Sec. 12-43-220(c)(2)(iv)(C).

Application for the 4% assessment ratio must be made by the purchaser, and the certification required under '12-43-220(c)(2)(ii) must be made personally by the purchaser.

The seller of the property under a contract for sale is not eligible for the 4% assessment ratio since the property will not constitute the seller's legal residence.

#### **Mobile Home Located on Rented Land.**

4. May a taxpayer who owns and occupies a mobile home which is located on leased property qualify the mobile home as a legal residence?

**Answer:** Yes. When a mobile home is located on leased or rented property, and the mobile home is owned and occupied by the owner as the owner's domicile, the owner may qualify the mobile home as a legal residence. If the assessor determines the mobile home is the legal residence of the owner-occupant, the mobile home qualifies for the 4% assessment ratio. The 4% ratio will apply even in the situation where, at the end of the lease period, the owner of the land being rented to the mobile home owner becomes the owner of the mobile home. Sec. 12-43-220(c)(1).

#### **Military Personnel.**

5. A military member is ordered to South Carolina for a three year tour of duty pursuant to written orders. The member is domiciled in Virginia but buys and occupies a home in S.C. in October of 1997 as the member's residence and lives in the residence for the remainder of the 1997 tax year. May the military member obtain a tax assessment ratio of 4% for the property for the tax year?

**Answer:** Yes. A member of the armed forces of the United States on active duty who is a legal resident of and domiciled in another state is nevertheless deemed a legal

resident and domiciled in South Carolina and eligible for the 4% assessment ratio for an owner-occupied residence, provided the member is in S.C. pursuant to permanent orders. A copy of the member's orders filed with the assessor is considered proof sufficient of the member's permanent duty station. Sec. 12-43-220(c)(2)(v). Only one residence may qualify for the 4% assessment ratio and that residence must be the military member's principal place of residence, not a temporary or vacation home.

If a member is sent to South Carolina under temporary duty orders for education or training or some other duty, commonly called TDY or TAD orders, and owns and occupies a residence, such residence will not qualify for the 4% assessment ratio since the member is not in South Carolina on permanent orders.

**Part in Fee.**

6. John and Mary together own 100 acres of undivided land, none of which is used for agricultural purposes. On the property is located a house that Mary occupies as her legal residence and domicile. John does not live on the 100 acres. Each acre of land is valued at \$1,000. The residence, which is the only building on the 100 acres, is valued at \$25,000. John has a 90% interest in the property; Mary a 10% interest. Mary seeks to have the property assessed as her legal residence using a 4% assessment ratio? May she do so?

**Answer.** Yes, but Mary may have only her interest in the property taxed at the 4% assessment ratio. The remainder will be taxed at the 6% assessment ratio or such other ratio for which the property may qualify. The assessment is computed as follows.

Value of the land (100 acres x \$1,000)	\$100,000
Value of the house	25,000
Total Value of the Property	\$125,000
Less 95 Acres (Only Residence. & 5 Contiguous Acres qualify for the 4% Ratio)	95,000
Mary & John's Interest in the House and 5 Acres	30,000
Mary's Interest in the House and 5 Acres (10%)	3,000
John's Interest in the House and 5 Acres (90%)	27,000

95 acres will be taxed at a 6% assessment ratio. ( $95,000 \times .06 = \$5700$ )  
 Mary's Interest in the residence & 5 Contiguous Acres will be taxed at the 4% Assessment Ratio. ( $3,000 \times .04 = \$120$ )  
 John's Interest in the residence & 5 Contiguous Acres will be taxed at the 6% assessment ratio. ( $27,000 \times .06 = \$1620$ )

7. While living in the residence on the 100 acre tract, Mary decides to rent out an apartment located in the basement to her friend, Alice. The apartment is valued at \$3,000

and is rented out at \$200 a month. May Mary still get a 4% assessment ratio on her interest in the property?

Answer: Yes, but the value of the apartment must be subtracted from the interest before the assessment ratio is used. Sec. 12-43-220(c)(1). The computation follows.

Mary and John's Interest in the House and 5 Acres	\$30,000
Less the value of the apartment	3,000
Total	27,000
Mary's Interest in the House & 5 Acres (10%)	2,700
John's Interest in the House & 5 Acres	24,300

Mary's Interest in the Legal Residence and 5 Contiguous Acres will be taxed at the 4% Assessment Ratio. ( $\$2,700 \times .04 = \$108$ )

John's Interest in the House & 5 Acres will be taxed at 6% ( $\$24,300 \times .06 = \$1,458$ )

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III, Director

Columbia, South Carolina

March 31, 1997