
State of South Carolina
Department of Revenue
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SC REVENUE RULING # 98-12

SUBJECT: Ad Valorem Taxation of Boats
(Property Taxes)

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 12-37-710 (1976)
S.C. Code Ann. Section 12-37-890 (1976)
S.C. Code Ann. Section 12-37-900 (1976)
S.C. Code Ann. Section 12-37-905 (Supp. 1997)
S.C. Code Ann. Section 12-37-930 (Supp. 1997)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
SC Revenue Procedure #97-8

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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Questions have arisen on how ad valorem property taxes are levied on boats [watercraft] located in South Carolina. The fact that a boat is titled or registered in another state does not preclude its ad valorem taxation in South Carolina. Nor does the fact that the boat is titled or registered in South Carolina mean the boat will always be taxed in South Carolina. The following summarizes how the taxation of boats is determined in South Carolina.

BOATS USED FOR PLEASURE

Boat of a S. C. resident¹ or entity² (domiciliary) used primarily for pleasure.

The following rules apply to boats of S.C. residents used primarily for pleasure and only insignificantly, if at all, for any business or commercial purpose:

- 1) A boat owned by a S.C. resident and located in S.C. on December 31 of the year prior to the tax year, is subject to ad valorem property taxes in S.C. for the following year. S.C. Code Ann. Sections 12-37-210 (1976); 12-37-710 (1976); 12-37-900 (1976); 12-37-905 (Supp. 1997). Such is true even if the boat may have a taxable situs³ and is taxed in another state.
- 2) A boat owned by a S.C. resident on December 31 of the year prior to the tax year but **not** located in S.C. on December 31 of the year prior to the tax year, but which is **temporarily** out of S.C., is subject to ad valorem property taxes in S.C. for the following year. S.C. Code Ann. Sections 12-37-210 (1976); 12-37-710 (1976); 12-37-900 (1976); 12-37-905 (Supp. 1997). See also, Op. Atty. Gen., No. 79-25, February 9, 1979.
- 3) A boat owned by a S.C. resident but not located in S.C. on December 31 of the year prior to the tax year and located more or less “permanently” outside of S.C. is not subject to ad valorem property taxes in S.C. S.C. Code Ann. Sections 12-37-210 (1976); 12-37-710 (1976).

¹A “domicile” is that place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent he has the intention of returning. Black’s Law Dictionary, Fifth Ed. (1979). It is his legal residence, as distinguished from his temporary place of abode; or his home, as distinguished from a place to which business or pleasure may temporarily call him. Id.

²A corporation’s “domicile” is the state of its incorporation, Com. v. Mundy Corporation, 30 A.2d 878, 880, 346 Pa. 482 (1943), or where it maintains its principal office or its principal place of business. Merchants Fast Motor Lines v. Levens, Tex. Civ. App., 161 S.W.2d 853, 854 (1942). A “domicile” is where a person has his true, fixed and permanent home and principal establishment to which he intends to return whenever he is absent therefrom. Black’s Law Dictionary, Fifth Ed. (1979).

³Situs of property, for tax purposes, is determined by whether the taxing state has sufficient contact with the personal property sought to be taxed to justify in fairness the particular tax. Town of Cady v. Alexander Const. Co., 12 Wisc.2d 236, 107 N.W.2d 267, 270 (1961).

Boat of a nonresident located in South Carolina used primarily for pleasure.

S.C. Code Ann. Section 12-37-890 (1976) provides that personal property shall be returned for taxation: “. . . at the place where the owner thereof shall reside⁴ at the time of listing the same, if the owner reside in this State; if not, at the residence of the person having it in charge.” Therefore, the taxation of personal property is not dependent upon the owner being a legal resident; i.e., a domiciliary of South Carolina. Section 12-37-210 requires the return of tangible personal property located “in the State” and the issue becomes whether the property is “in the State.”

The general rule is that “[t]angible personal property [to include boats] of a nonresident is not subject to tax in a taxing jurisdiction unless it has acquired a taxable situs in the jurisdiction” 84 C.J.S. “Taxation,” ' 115, p. 224; see also ' 321. “The courts are all agreed that before tangible personal property [used primarily for pleasure] may be taxed in a state other than its owner’s domicile, it must acquire there a location more or less permanent.” Op. Atty. Gen., No. 2805, December 2, 1969. Tangible personal property, to include boats, [used primarily for pleasure] will be held to have a taxable situs in a jurisdiction other than that of the owner’s domicile only if the owner habitually uses and employs the property there. Marye v. Baltimore & O.R. Co., 127 U.S. 117, 8 S.Ct. 1037, 32 L.Ed 94 (1888). Thus, for property of a nonresident which is not used in a business to be considered “in the State” it must be used or employed in South Carolina on a more or less permanent basis.

Additionally, the boats of nonresidents, not used in a business, are not subject to ad valorem taxes if such are outside the State of South Carolina on December 31 of the year prior to the tax year. See S.C. Code Ann. Section 12-37-710(2)(1976) and Atkinson Dredging Company v. Thomas 266 S.C. 361, 223 S.E.2d 592 (1976). A boat of a nonresident that is not located in South Carolina on December 31 of the year prior to the tax year will nevertheless be subject to ad valorem property taxes in South Carolina if the boat was located primarily in South Carolina and is removed from the State on December 31 of the year prior to the tax year simply to avoid South Carolina property taxes for the coming year. In such a case, the boat will be taxable. See Op. Atty. Gen. March 30, 1962, 1962 WL 12782.

⁴ The South Carolina Supreme Court in the case of Phillips v. SC Tax Commission, 195 S.C. 472, 12 S.E.2d 13 (1940), quoted 61 C.J.S. 511-512 as an accurate statement of the law relating to the meaning of the term residence in a taxing statute. “. . . it is usually recognized that the terms ‘residence,’ ‘resident,’ ‘reside’ and the like, ‘inhabitaney,’ or ‘inhabitant’ and ‘actual place of abode’ are equivalent in substance to the terms ‘domicile,’ ‘having a domicile,’ or ‘one domiciled’ and the like.”

The following rule results:

For the boat of a nonresident used primarily for pleasure to be subject to ad valorem property taxes in South Carolina⁵, the boat:

(1) must be located in South Carolina on December 31 of the year prior to the tax year and not removed from the State simply to avoid South Carolina property taxes;

and

(2) must be located in South Carolina on a more or less permanent basis⁶.

NOTE: BOATS NOT USED IN A BUSINESS IN A SHIPYARD UNDERGOING REPAIRS.

The boat of a nonresident which is not used in a business may be located in South Carolina for several weeks or even months undergoing repairs in a shipyard. Even if the boat is located in South Carolina on December 31 of the year prior to the tax year, it does not obtain taxable situs in South Carolina merely by being in the shipyard for repairs⁷.

⁵ The due process requirement of a relationship between the situs of tangible personal property and the protection and other benefits conferred by the taxing jurisdiction on the property is evident in the general rules applicable to a determination of the situs of personalty, which have been applied specifically in cases involving the taxation of aircraft, rolling stock, and vessels. The most basic rule applied in such cases is that tangible personal property will be held to have a tax situs in the tax district in which the property is more or less permanently located, regardless of where the property owner is domiciled.

The corollary rule is that property which has a more or less permanent location elsewhere will not be held to have a situs in the tax district in which the property is only temporarily or transiently present.

Property Taxation - Situs, 3 ALR 4th 837, p. 844.

⁶ The fact that the boat of a nonresident is titled and registered in South Carolina is **NOT** conclusive of an intent to keep such boat in South Carolina more or less permanently. Although S.C. Code Ann. Section 50-23-60 (Supp. 1997) provides that “[e]very owner of a watercraft . . . principally used in this State shall make application to the department for a certificate of title for the watercraft . . .”, “it does not preclude the registration of a boat not kept in S.C. on a more or less permanent basis. The fact that a boat is registered or titled in a state other than S.C. is not conclusive of an intent to keep such boat more or less permanently out of S.C.

⁷Vessels which are only temporarily within a taxing jurisdiction which are not doing business within that jurisdiction do not have a situs in that jurisdiction for purposes of personal property taxation. Hays v. Pacific Mail S.S. Co, 58 U.S. 596, 15 L.Ed. 254 (1855); St. Louis v. Ferry Co., 78 U.S. 423, 20 L.Ed. 192 (1871).

If the boat of a nonresident is in the shipyard strictly for repairs and is not ordinarily in South Carolina on a “more or less permanent basis” it does not obtain taxable situs in South Carolina even if present in the State on December 31 of the year prior to the tax year. Op. Atty. Gen. No. 2805, December 2, 1969. See also, SC Revenue Ruling #98-3. Presence within the taxing State must be more or less permanent, as opposed to temporary or transient within the taxing jurisdiction in order for the property to obtain tax situs. Mikos v. Ringling-Bros.-Barnum & Bailey Combined Shows, Inc., 368 So.2d 884 (Fla. App. 1979), cert. denied 378 So.2d 348, appeal dismissed 445 U.S. 939 (1989), rehearing denied 446 U.S. 947 (1980).

BOATS USED FOR BUSINESS OR COMMERCIAL PURPOSES

Boat Located in South Carolina used for Business or Commercial Purposes Only in South Carolina (Intrastate Only⁸)

A boat owned by a nonresident, or a resident of South Carolina, which is located in South Carolina and used in commerce solely in South Carolina (intrastate commerce) has taxable situs in South Carolina⁹. Such boats have obtained a tax situs in South Carolina by reason of doing business in South Carolina. Op. Atty. Gen., No. 2805, December 2, 1969.

Thus the following rules arise:

(1) If a boat is engaged solely in commerce in South Carolina and is located in South Carolina on December 31 of the year prior to the tax year, it is subject to ad valorem property taxes for the following year irrespective of whether it is owned by a resident or a nonresident. S.C. Code Ann. Sections 12-37-210 (1976); 12-37-710 (1976); 12-37-900 (1976); and 12-37-905 (Supp. 1997).

(2) If a boat is engaged solely in intrastate commerce in South Carolina, and is owned by a South Carolina resident, and is temporarily out of the state on December 31 of the year prior to the tax year, it is, nevertheless, subject to South Carolina ad valorem property taxes for the following tax year. S.C. Code Ann. Sections 12-37-900; 12-37-710 (1976).

(3) A boat of a nonresident, engaged only in intrastate commerce in South Carolina, that is not located in South Carolina on December 31 of the year prior to the tax year, is

⁸Intrastate commerce involves commerce occurring solely within the State of South Carolina, and not affecting other states.

⁹Vessels which were employed in commerce wholly within the limits of the state of Virginia were held in Old Dominion S.S. Co. v. Virginia, 198 U.S. 299, 49 L.Ed. 1059, 25 S.Ct. 686 (1905), to have their tax situs in Virginia and to be subject to Virginia personal property taxation, despite the fact that the vessels were registered outside the State of Virginia and were owned by a New York corporation.

ordinarily not subject to ad valorem property taxes in South Carolina. S.C. Code Ann. Section 12-37-710(2); Commission Decision 94-8 of January 12, 1994 (1994 WL 289349). Such a boat, however, may nevertheless be subject to ad valorem property taxes in South Carolina if the boat is removed from the State prior to December 31 of the year prior to the tax year simply to avoid South Carolina property taxes for the coming year. In such a case, the boat will be taxable. See Op. Atty. Gen. March 30, 1962, 1962 WL 12782.

(4) A boat of a nonresident that is engaged in intrastate commerce in a state other than South Carolina, and the boat is located in a shipyard in South Carolina for several weeks or even months undergoing repairs, is not taxable in South Carolina even if located in South Carolina on December 31 of the year prior to the tax year. Presence within the taxing State must be more or less permanent, as opposed to temporary or transient within the taxing jurisdiction, in order for the property to obtain tax situs. See “Note” on Boats in Shipyards, page 5, above.

Boat Located in South Carolina and used in Commerce both in South Carolina and in Other States (Interstate Commerce¹⁰)

Property operating in interstate commerce such as trains, airlines, and boats operating on inland waters may be taxed by both the domiciliary¹¹ state and the non-domiciliary state provided the property is taxed on an apportioned basis by the two and provided the carrier has tax situs through regular physical presence with the domiciliary and non-domiciliary states. Japan Line Ltd. v. Los Angeles County, 441 U.S. 434, 99 S.Ct. 1813, 60 L.Ed.2d 336 (1979)¹². Standard Oil Co. v. Peck, 342 US. 382, 72 S.Ct. 309, 96 L.Ed. 427 (1952)¹³.

¹⁰The term “interstate commerce” involves commerce which concerns more than one state.

¹¹See Footnotes 1 and 2 above for a discussion of domicile.

¹² A domiciliary state is allowed to tax the entire value of the property even though part of the property is absent from the state during part of the tax year provided the property has not obtained a tax situs in another state. Central R. Co. of Pennsylvania v. Com. of Pennsylvania, 370 U.S. 607, 82 S.Ct. 1297, 8 L.Ed.2d 720 (1962), rehearing denied 371 U.S. 856 (1962). The taxpayer has the burden of establishing that property has obtained tax situs in a non-domiciliary state such that multiple jurisdictions have the ability to tax the property. *Id.* Whether property has acquired tax situs and, thus, nexus in a state other than the domiciliary state is a question of fact.

¹³Boats and barges owned by an Ohio corporation and traversing the Ohio River but only occasionally stopping in Ohio for fuel or repairs were held in Standard Oil Co. v. Peck, 342 US. 382, 96 L.Ed. 427, 72 S.Ct. 309 (1952), not to be taxable by Ohio on their entire value. Stating that most, if not all, of the barges and boats which Ohio had taxed were almost continuously outside Ohio during the tax year, and that while no one vessel may have been continuously in another state during the tax year, most, if not all, of them were operating in other waters and therefore could be taxed by the several states on an apportionment basis precluded taxation of all of the property by the state of domicile since otherwise there would be multiple taxation of

If a boat used in interstate commerce has established tax situs in more than one state through regular physical presence in each of the states, the taxes for that boat must be apportioned. There is no statute in South Carolina apportioning the tax year for these property taxes. See Atkinson Dredging Company v. Thomas, 266 S.C. 361, 223 S.E.2d 592, 594 (1976); Atty. Gen. Op. No. 2180, p. 313, October 24, 1966; Atty. Gen. Op. No. 2508, p. 193, September 12, 1968. Since South Carolina's statute does not allow for the apportionment of property taxes, property taxes may not be imposed on a boat used in interstate commerce which has a tax situs in a state other than South Carolina.

The following rules result:

(1) A boat used in interstate commerce which is owned by a South Carolina resident which does not have a tax situs in another state, because it does not have regular physical presence with that other state, will be subject to ad valorem property taxes in South Carolina provided the boat was located in South Carolina on December 31 of the year prior to the tax year, or is temporarily out of the state on that date.

(2) A boat used in interstate commerce owned by a nonresident will be subject to ad valorem property taxes in South Carolina if the boat has tax situs through a regular physical presence in South Carolina, it is physically located in South Carolina on December 31 of the year prior to the tax year (or is removed from S.C. prior to that date for the purpose of defeating property taxation), and it does not have tax situs by regular physical presence in any other jurisdiction.

A boat involved in interstate commerce which is owned by a nonresident and which is located in South Carolina on December 31 of the year prior to the tax year and which has obtained a tax situs in South Carolina¹⁴ and in at least one other state by regular physical presence, will not be subject to South Carolina ad valorem property taxes since South Carolina does not apportion property taxes¹⁵.

interstate operations and the tax would have no relation to the opportunities, benefits, or protection which the taxing state gives those operations.

¹⁴ See Footnote 7, *supra*.

¹⁵ See Orestes G. Christophides and Brush Island Corporation vs. Peggy Moseley, Charleston County Auditor, 95-ALJ-17-0223-CC, September 18, 1995: "The ARGUS [boat] is not exempt from personal property taxation The evidence establishes a "tax situs in South Carolina for part of 1993, while engaged in interstate commerce, establishing a continuous presence in this State. . . . But because the tax can not be fairly apportioned pursuant to South Carolina law, it does not comply with the requirements of the Commerce Clause of the United States Constitution."

(3) A boat involved in interstate commerce which is owned by a South Carolina resident and which has obtained a tax situs in South Carolina and in at least one other state by regular physical presence in both states, will not be subject to South Carolina ad valorem property taxes in South Carolina, even if located in the state on December 31 of the year prior to the tax year, since South Carolina does not apportion property taxes.

(4) A boat which is owned by either a resident or a nonresident, which is engaged in interstate commerce, which has a tax situs in another State because of regular physical presence in that state, regardless of whether it has a taxable situs in South Carolina, which is undergoing repairs in a South Carolina shipyard, even if the repairs take weeks and even months, is not subject to property taxes in South Carolina, even if located in South Carolina on December 31 of the year prior to the tax year. See, "Note" on "Boats in Shipyards," page 5, above, for a complete discussion of this issue.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank, III, Director

Columbia, South Carolina
May 26, _____, 1998