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LEGAL RESIDENCE STATUTES

SECTION 12-43-220. Classifications shall be equal and uniform; particular classifications and assessment ratios; procedures for claiming certain classifications; roll-back taxes.

Except as otherwise provided, the ratio of assessment to value of property in each class shall be equal and uniform throughout the State. All property presently subject to ad valorem taxation shall be classified and assessed as follows:

(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, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are 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.

(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. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

(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 at the time of this application and that I do not claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and

(B) that neither I nor any other member of my household is residing in or occupying any other residence which I or any member of my immediate family has qualified for the special assessment ratio allowed by this section."

(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 under the age of eighteen years 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 or use occurs, the owner who had qualified for the special assessment ratio allowed by this section shall notify the assessor of the change in classification within six months of the change. Another application is required by the new owner to qualify the residence for future years for the four percent assessment ratio allowed by this section.

(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 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.

(5) To qualify for the four percent assessment ratio, the owner-occupant of a legal residence that is being purchased under a contract for sale or a bond for title must record the contract for sale or the bond for title in the office of the register of mesne conveyances or the clerk of court in those counties where the office of the register of mesne conveyances has been abolished.

For purposes of this subsection, a contract for sale or a bond for title is the sale of real property by a seller, who finances the sale and retains title to the property solely as security for the debt.

(6) Notwithstanding any other provision of law, a purchaser who purchases a residential property intending that the property shall become the purchaser's primary residence, but subject to vacation rentals as provided for in Title 27, Chapter 50, Article 2 for no longer than ninety days, may apply for the four percent assessment ratio when the purchaser actually occupies the property. If the owner actually occupies the residence within ninety days of acquiring ownership, the four percent assessment ratio, if the owner is otherwise qualified, applies retroactively to the date ownership was acquired.

(7) Notwithstanding any other provision of law, the owner-occupant of a legal residence is not disqualified from receiving the four percent assessment ratio allowed by this item if the taxpayer's residence meets the requirements of Internal Revenue Code Section 280A(g) as defined in Section 12-6-40(A) and the taxpayer otherwise is eligible to receive the four percent assessment ratio.

LEGAL RESIDENCE REGULATIONS (DOR REGULATIONS)

117-640.2. Legal Residence When Military Personnel is Domiciled in a Foreign Country.

The Soldiers' and Sailors' Civil Relief Act protects the rights of U.S. Armed Forces personnel, restricting the servicemember's liability for state income tax to his or her state of domicile. Domicile is defined legally as **"that place where a man has his true, fixed, and permanent home and principal establishment and to which, whenever he is absent therefrom, he has the intention of returning"**. A residence, on the other hand, generally is defined as a "factual place of abode" at a particular time.

A member of the armed forces who entered military service while domiciled in this state will be presumed to be a resident of South Carolina, for tax purposes, unless the service member submits evidence that he or she has established legal residence in another state and abandoned domicile in this state.

117-1760.2. Multi-Use Property.

Code Sections 12-43-210 to 12-43-310 of the South Carolina Code of Laws provides classifications of property for property tax purposes at different ratios of assessment.

If a particular piece of property is used for more than one purpose, **then the value of the total piece of property must be allocated on some equitable basis.** Then separate ratios could be applied to arrive at the assessed value of each part. For example a duplex in which the owner resides in one part and rents the other part the value of the duplex must be allocated on an equitable basis, such as square footage.

HOMESTEAD EXEMPTION

SECTION 12-37-250. Homestead exemption for taxpayers sixty-five and over or those totally and permanently disabled or legally blind.

(J) The homestead tax exemption must be granted in the amount in this paragraph to a person who owns a dwelling in part in fee or in part for life when the person satisfies the other conditions of the exemption. **The amount of the exemption must be determined by multiplying the percentage of the fee or life estate owned by the person by the full exemption.** For purposes of the calculation required by this paragraph, 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.

SAMPLE 1

Mr. John Smith and & Mrs. Jane Smith – beach house and house out of state

The Smiths purchased their property in 2003 and built a house which was C/O'd in November of 2009. Legal residence was applied for in October 2009. Jane Smiths SCDL was issued in Sept 2009, John lives and works in Connecticut. Jane says she does not work. A vehicle was registered in November 2009 to John or Jane Smith. According to Jane Smith, she her and her husband live separately since they do not get along. No legal divorce or separation agreement has been filed. Connecticut does not have a real property tax exemption for residency, so her husband does not claim any property exemption in Connecticut.

SAMPLE 2

Mr. Frank Jones and Mrs. Frances Jones – beach house and house out of state

The Jones own a beach house in South Carolina and a house in Kentucky. They have owned the South Carolina house for a long time, but never claimed 4%. They placed the house in a Trust with the wife as the beneficiary. She applied, did not inform us she was married, had SCDL, a car and voter registration in South Carolina. She changed the mailing address (for bills, etc) to Kentucky. A search of that Kentucky address allowed us to find out she was married. She indicated she lives here, he lives there, and she has no income – so she does not file SC taxes. We requested her tax returns from Kentucky and Federal Tax returns. She files jointly with her husband, they both claim resident income tax deductions in Kentucky. In addition, her federal return shows the beach property as rental property that they live in less than 15 days a year.

SAMPLE 3

Elizabeth Doe and James Deer – two houses in one county

Own two properties in South Carolina, each in their own name. Each has 4%, one has a Homestead exemption. The Assessor's office became aware of the marriage and of both exemptions from a neighbor who also indicates that one of the properties is rented out. The names of the owners are different, and neither indicated when they filed that they were married. A copy of a federal tax return was provided in 2008 which has Elizabeth Doe as single. No SC tax return was provided.

SAMPLE 4

Pebbles Rubble and Bam Bam Rubble – two houses in one county

Pebbles Flintstone owned a house before she married, she applied for 4% and qualified. Bam-Bam Rubble owned a condo before he married, he applied for 4% and qualified. When Pebbles and Bam-Bam married, Bam-Bam moved out of the condo, began renting it and did not inform the Assessor. Ultimately Pebbles sold her house, she and Bam-Bam jointly purchased a new one and applied jointly – giving the Assessor both social security numbers. A computer search turned up Bam-Bam's 4% condo. Research into marriage records revealed the dual residency had gone on for 4 years.

SAMPLE 5

Barney Rubble and Wilma Rubble – two houses in one county

Barney's 4% started in 2004, 100% Homestead started in 2005
Wilma's 4% started in 2007

These two are married per an anonymous phone call stating that they have been bragging about getting 4% on two properties they own. Since the properties are deeded in each of their names and at the time of application marriage was not mentioned they were approved 4%. They each have SCDL, Voter Regis, etc at the respective properties. A search of the cross reference directory for the county shows that an apparently unrelated party did live at one of the houses recently.

SAMPLE 6

Sara Separated and Sam Separated – two houses

Sam and Sara have jointly owned two houses for several years, one at the beach, one elsewhere. Sara and Sam have an attorney draw up a separate support agreement and file it with the courts in each of the two counties. Sam files for legal residence at the beach providing his social security number, and SCDL, Voter Registration and a car registration. Sara reapplies at the existing home with similar documentation. They never divorce, they file income taxes separately.

SAMPLE 7

The family Von Trapp

The Von Trapp's own a house in the upstate, a lake house in the midlands, a beach house and a condos at Clemson. They have been qualified for 4% for a number of years on their upstate home. They deed 1% of the lake house to a disabled son, who has no income and files no taxes. He has no car, does have a state ID at the lake address, and is registered to vote in the county where the lake is located. They deed 1% of the beach house to a daughter who is a student at the College of Charleston. She is over 18, is claimed on their income taxes as a dependent. Her documents check out at the Beach house. They deed 1% of the condo at Clemson to another son, also over 18, also claimed on their income taxes. All his documents check out in Clemson.

COMMITTEE AMENDMENT ADOPTED

March 25, 2010

S. 876

Introduced by Senator Alexander

S. Printed 3/25/10--S.

Read the first time May 21, 2009.

A BILL

SECTION 9. Section 12-43-220(c)(2) of the 1976 Code is amended to read:

"(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. Additionally, the taxpayer must provide his social security number and the social security number of all members of his household. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

(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 at the time of this application and that neither I do not nor my spouse claim to be a legal resident of a jurisdiction other than South Carolina for any purpose, unless my spouse and I are separated; and

(B) that neither I nor any other member of my household is residing in or occupying any other residence which I or any member of my immediate family has qualified for the special assessment ratio allowed by this section.'

(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 under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return."

SECTION 10. Chapter 43, Title 12 of the 1976 Code is amended by adding:

"Section 12-43-226. Notwithstanding any other provision of law, the county assessor may require a taxpayer to re-qualify for the special four percent assessment ratio set forth in Section 12-43-220(c) for all or a portion of the parcels of real estate then receiving the special four percent assessment ratio