

As of end of 2016 Legislative Session

SECTION 12-43-220 (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. However, if the person claiming the four percent assessment ratio resides in the mobile home or single family residence and only rents a portion of the mobile home or single family residence to another individual as a residence, the foregoing provision does not apply and the four percent assessment ratio must be applied to the entire mobile home or single family residence.

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 shall provide all information required in the application, and shall 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, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and
- (B) that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence."

- (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 and registered at the same address of the four percent domicile;
- (C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.

If the owner or the owner's agent has made a proper certificate as required pursuant to this subitem and the owner is otherwise eligible, the owner is deemed to have met the burden of proof and is allowed the four percent assessment ratio allowed by this item, if the residence that is the subject of the application is not rented for more than seventy-two days in a calendar year. For purposes of determining eligibility, rental income, and residency, the assessor annually may require a copy of applicable portions of the owner's federal and state tax returns, as well as the Schedule E from the applicant's federal return for the applicable tax year.

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) 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.
- (B) An active duty member of the Armed Forces of the United States eligible for and receiving the special assessment ratio for owner-occupied residential property allowed pursuant to this subsection (c), who receives orders for a permanent change of station or a temporary duty assignment for at least one year, retains that four percent assessment ratio and applicable exemptions for so long as the owner remains on active duty, regardless of the owner's subsequent relocation and regardless of any rental income attributable to the property. Subject to subsubitem (C), the provisions of this subsubitem (B) do not apply if the owner or a member of the owner's household, as defined in item (2)(iii) of this subsection (c), claims the special four percent assessment ratio allowed pursuant to this subsection for any other residential property located in this State.
- (C) (1) Notwithstanding any other provision of law, an active duty member of the Armed Forces of the United States meeting all the other requirements of this subsection who receives orders for a permanent change of station or a temporary duty assignment for at least one year, may claim the four percent assessment ratio and applicable exemptions for two residential properties located in the State so long as the owner attempts to sell the first acquired residence within thirty days of acquiring the second residence. The taxpayer must continue to attempt to sell the first acquired residence in any year in which the four percent assessment ratio is claimed.
- (2) The four percent assessment ratio may not be claimed on both residences for more than two property tax years.
- (3) This subsubitem does not apply unless the owner of the properties or the owner's agent applies for the four percent assessment ratio on both residences 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. The burden of proof for eligibility for the four percent assessment ratio on both residences is on the taxpayer. The taxpayer must provide the proof the assessor requires, including, but not limited to, a copy of the owner's most recently filed South Carolina individual income tax return and copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner. The taxpayer must apply to the county assessor by the first penalty date for the payment of taxes for the tax year in which the taxes are due to utilize the provisions of subsubitems (B) and (C). Along with the application, the applicant must submit a Leave and Earnings Statement (LES) from the current calendar year. Any information contained in the LES that is not related to the active duty status of the member may be redacted."

Notwithstanding any other provision of law, if a taxpayer qualified for the special assessment ratio for tax year 2014 or 2015 pursuant to Section 12-43-220(c)(2)(v)(B) or (C), except that the taxpayer applied after the May fifteenth deadline, then the taxpayer must be refunded the appropriate amount so long as the taxpayer makes application for either or both years by January 15, 2017.

- (D) For purposes of subsubitems (B) and (C), owner includes the spouse of the service member who jointly owns the qualifying property.
  - (E) The special four percent assessment ratio allowed by this subitem (v) must be construed as a property tax exemption for an amount of the fair market value of the residence sufficient to equal a four percent assessment ratio and other exemptions allowed applicable to property qualifying for the special assessment ratio."
- (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) (A) 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.  
  
(B) If property has undergone an assessable transfer of interest as provided pursuant to Section 12-37-3150 and the transferee is a bona fide purchaser for value without notice, penalties assessed pursuant to subsubitem (A) and the additional property taxes and late payment penalties are solely the personal liability of the transferor and do not constitute a lien on and are not enforceable against the property in the hands of the transferee. The provisions of this subitem making the additional taxes and penalties assessed pursuant to subitem (A) the sole personal liability of the transferor also apply to transfers required as a result of a property settlement pursuant to a divorce or other disputed marital matters where required by written agreement of the parties or a court order unless the agreement or court order requires otherwise, and additionally apply to trust distributions unless the trust instrument requires otherwise.
  - (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 Article 2, Chapter 50, Title 27 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) [DELETED]
- (8) (i) For ownership interests in residential property created by deed if the interest in the property has not already transferred by operation of law, when the individual claiming the special four percent assessment ratio allowed by this item has an ownership interest in the residence that is less than fifty percent ownership in fee simple, then the value of the residence allowed the special four percent assessment ratio is a percentage of that value equal to the individual's ownership interest in the residence, but not less than the amount provided pursuant to subitem (4) of this item. This subitem (8) does not apply in the case of a residence otherwise eligible for the special four percent assessment ratio when occupied jointly by a married couple or which remains occupied by a spouse legally separated from a spouse who has abandoned the residence. If the special four percent assessment ratio allowed by this item applies to only a fraction of the value of residence, then the exemption allowed pursuant to Section 12-37-220(B)(47) applies only to value attributable to the taxpayer's ownership interest.
  - (ii) Notwithstanding sub-subitem (i), for ownership interests in residential property created by deed if the interest in the property has not already transferred by operation of law, an applicant may qualify for the four percent assessment ratio on the entire value of the property if the applicant:
    - (A) owns at least a twenty-five percent interest in the subject property with immediate family members;
    - (B) is not a member of a household currently receiving the four percent assessment ratio on another property; and
    - (C) otherwise qualifies for the four percent assessment ratio.
  - (iii) This subitem (8) does not apply to property held exclusively by:
    - (A) an applicant, or the applicant and the applicant's spouse;
    - (B) a trust if the person claiming the special four percent assessment ratio is the grantor or settlor of the trust, and the only beneficiaries of the trust are the grantor or settlor and any parent, spouse, child, grandchild, or sibling of the grantor or settlor;
    - (C) a family limited partnership if the person claiming the special four percent assessment ratio transferred the subject property to the partnership, and the only members of the partnership are the person and the person's parents, spouse, children, grandchildren, or siblings;
    - (D) a limited liability company if the person claiming the special four percent assessment ratio transferred the subject property to the limited liability company, and the only members of the limited liability company are the person and the person's parents, spouse, children, grandchildren, or siblings; or
    - (E) any combination thereof.

For purposes of this subitem, "immediate family member" means a parent, child, or sibling.