

1977 S.C. Op. Atty. Gen. 188 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-256, 1977 WL 24597

Office of the Attorney General

State of South Carolina

Opinion No. 77-256

August 12, 1977

\*1 Agricultural lands that are actually used for such purposes, title to held by a trustee, are to be taxed on an assessment ratio that is to be ?? the character of the trustee, if a natural person or persons, at four percent ?? and if a corporation, at the ratio applicable to the class of corporation. ??

TO: Alvin L. McElveen, Jr., Esq.  
Attorney for Berkeley County

#### QUESTION

Under the provisions of Act 208, Acts of 1975, as amended by Act 618, Acts of 1976, and under the provisions of Article 10, Section 1 of the South Carolina Constitution, as amended and effective November 30, 1977, how are agricultural lands, title and possession of which are held by a trustee, to be taxed?

#### APPLICABLE LAW

Act 208, Acts of 1975, as amended by Act 618, Acts of 1976 and Article 10, Section 1 of the South Carolina Constitution, as amended and effective November 30, 1977.

#### DISCUSSION

The applicable language of both the statutory and constitutional provisions are substantially identical and the constitutional language is that:

‘Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to:

(A) four percent of its value for such purposes when owned or leased to individuals or partnerships and certain corporations \* \* \*.

(B) six percent of its value for such purposes when owned or leased to corporations, except for certain corporations specifies in (A) above, \* \* \*.’

‘All other real property not herein provided for shall be taxed on an assessment equal to six percent of the fair market value of such property.’

The above provisions, as the same relate to the question presented, are subject to several different interpretations or constructions. The language needs clarification to remove existing doubt of whether the trustee is to be considered as owning or leasing the property in either an individual or corporate capacity.

There is authority that the word ‘individual’ means natural persons and that a trustee does not hold property as such a person. [Lake Shore ‘Auto Parts v. Korzen](#), 54 Ill. 2d 237, 296 N. E. 2d 342, cert. denied 94 S. Ct. 539, 414 U. S. 1039, 38 L. Ed. 2d 329.

That conclusion is also supported by the rule of construction that the inclusion of individuals, partnerships and corporations excluded all others. [Jones v. H. D. & J. K. Crowell](#), 60 F. 2d 827.

Argument may also be made that classification is to be determined by the character of the beneficiary or by the character of both the trustee and beneficiary. Such, however, is not compatible with the other taxing statutes that impose the tax upon the trustee. (Section 12-37-610, 1976 Code of Laws). That section clearly recognizes that the trustee may be an individual or a corporation and should therefore be considered when reviewing the provisions here involved that determine the amount of the trustee's tax liability. (See cases collected 17 S.C.D., [Statutes](#), Key 223.2, et seq.). Another settled rule of construction is that: \*2 'It should not be presumed that Congress intended to enact an unfair and discriminatory statute unless the statute clearly requires such a construction.' [Adams v. Pitts](#), 140 F. Supp. 618.

We find no settled authority proscribing that the character of the trustee, whether natural or corporate, cannot control the classification of the agricultural lands held by such a trustee. The provision reveals that ownership is not controlling; it is the use and character of the user that determines the ratio. A corporation may own and lease to an individual or conversely the individual may own and lease to the corporation. In either event it is the owner that is liable for the tax with the ratio determined by the character of the user.

We therefore are of opinion that the more reasonable construction of the provision is that the character of the trustee, whether a person or a corporation, determines the ratio to be applied to the agricultural lands. As stated above, the language needs clarification or perhaps a judicial construction to conclusively resolve the doubt.

#### CONCLUSION

It is the opinion of this office that agricultural lands that are actually used for such purposes, title to which is held by a trustee, are to be taxed on an assessment ratio that is to be determined by the character of the trustee, if a natural person or persons, at four percent of use value, and if a corporation, at the ratio applicable to the class of corporation.

Joe L. Allen, Jr.  
Deputy Attorney General

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