

1976 WL 30935 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 16, 1976

\*1 Act 208, Acts of 1975, requires that the application for agricultural classification be made; that a change in use bring about an additional tax which is levied in the tax year that the property is first taxable upon the different use and the Act further creates a lien for such additional tax on December 31 preceding such year.

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### QUESTION

You refer to Act 208, Acts of 1975 and advise:

Several questions arise concerning this. One is that if the landowner does not ask that his property be assessed at 4% of its fair market value for agricultural purposes, is the property assessed at fair market value for agricultural purposes, but subject to a 6% assessment of same? Another question that I have in mind is where the use of agricultural property has been changed by the owners, does the roll-back provisions as to taxes constitute a lien on subject property? What happens when a landowner who has used the property for agricultural purposes sells the same to another person who changes the use of same? Would the provisions concerning roll-back taxes constitute a lien on the property such as to become the obligation of the purchaser if the original owner did not pay same?

### STATUTE INVOLVED

Act 208, Acts of 1975.

### DISCUSSION

The pertinent language of the Act is found in Section 2(d) which provides:

‘Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to four percent of its fair market value for such purposes, \* \* \*. Provided, that agricultural real property shall not come within the provisions of this subsection unless the owners \* \* \* make written application \* \* \*. Provided, further, when real property \* \* \* being valued, assessed and taxed under \* \* \* this act, is applied to a use other than agricultural, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, \* \* \*.’

It is thus necessary that the application for agricultural classification be made and, in the absence of the same, the property is taxed at six percent of fair market value unless otherwise classified. The tax brought about by the change in use is an ‘additional tax’ that is levied in the first taxable year that the property is subject to taxation upon the basis of the different use. The additional tax would also be a lien under the provisions of Section 65-2701, et seq.

The year that the additional tax is levied is determined by reference to other statutes relating to property taxation. (See cases collected in 17 S. C. D., Statutes, Key 223). Section 65-1644 provides that the property be returned as of December

31 preceding the tax year and it is settled law that this is the date that the tax status of the property is determined. Atkinson Dredging Co. v. Thomas, Opinion 20182, March 8, 1976, South Carolina Supreme Court. It is the owner of the property on December 31 preceding the tax year in which the 'additional taxes' are levied who is liable therefor and it is also that date upon which the lien attaches.

#### CONCLUSION

\*2 Act 208, Acts of 1975 requires that the application for agricultural classification be made; that a change in use brings about an additional tax which is levied in the tax year that the property is first taxable upon the different use and the Act further creates a lien for such additional tax on December 31 preceding such year.

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