

1976 WL 30807 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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\*1 An enclosure used to cure tobacco is a fixture if the surrounding facts and circumstances indicate an intention on the part of the owner to make it a permanent part of realty.

Mr. William B. Huggins  
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#### QUESTION

Is the following described enclosure which is used to cure tobacco real or personal property and what assessment ratio is to be applied to it for ad valorem property tax purposes?

#### STATUTES

Section 65-1605.1(b) of the Code, enacted as Subpart (d), Section 2, Act No. 208, 1975 Acts and Joint Resolutions.

#### DISCUSSION

The subject of taxation is an enclosure used to cure tobacco. It is placed on a concrete slab, the slab being used as a floor. Burners are attached to the enclosure. Racks or baskets are not attached and can be removed from the enclosure.

The question of whether or not the enclosure is a fixture and therefore taxed as real property is a factual one. This office has issued numerous opinions in the past which reiterate the rule that personalty becomes realty when a consideration of all surrounding facts and circumstances indicates an intention on the part of the owner to make the personalty a permanent part of realty. See 1964-1966 OAG, page 264 and opinions dated January 11, 1972; January 17, 1972; September 26, 1973 and November 15, 1973. The South Carolina cases on the subject are collected in [AT&T v. Muller](#), 299 F. Supp. 157 (South Carolina Federal District Court, 1968). See also [Merchants & Mechanics Federal Savings & Loan v. Herald](#), 120 Ohio App. 115, 201 N. E. 2d 237; [Appliance Buyers Credit Corp. v. Crivello](#), 43 Wis. 2d 241, 168 N. W. 2d 892; [Wilmington Suburban Water Corp. v. Board of Assessment](#), 291 A. 2d 293 (Delaware Superior Court); [Sulphur Springs Valley Electric Co-op v. City of Tombstone](#), 1 Ariz. App. 268, 401 P. 2d 753. Numerous other cases so holding are collected at 17 Words and Phrases, [Fixture](#), pages 23 through 25.

Because the question of whether the enclosure you describe is realty or personalty is necessarily subjective, each case must be analyzed from a factual standpoint. However, as a matter of guidance, the fact that a concrete foundation has been prepared to support the enclosure and acts as its floor is, in our judgment, one indication of permanent commitment. In [George v. Commercial Credit](#), 440 F. 2d 551, a mobile home was determined to be realty. A fact indicating permanency to the court was that 'a concrete slab as a permanent foundation' was laid. On the other hand, pumping equipment standing on wooden blocks was held not to be a fixture in [Banks v. Clintworth](#), 20 Cal. Rptr. 431, 201 C.A. 2d 509.

Should a complete review of the facts indicate a lack of intention on the part of the owner to permanently accede the enclosure to the realty, you have asked what ratio would be applied to the enclosure if classed as personalty. In this

regard the South Carolina Tax Commission has issued a Rule defining 'power driven' farm machinery. That definition is sufficiently broad to cover the enclosure in question. See Property Tax Rule 21 (copy enclosed).

CONCLUSION

\*2 The question of whether an enclosure for curing tobacco is realty or personalty is a subjective one to be determined from all surrounding facts and circumstances. A concrete foundation is an indication of permanent commitment. The definition of power driven equipment given in Property Tax Rule 21 is sufficiently broad to encompass the enclosure should it not be classed as real estate.

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