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THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. 87-103-277

December 29, 1987

SUBJECT: Taxation and Revenue - Notice Requirements On  
Change Of Ownership Of Agricultural Lands.

SYLLABI: 1. An application for lands to be taxed  
within the residential classification must be  
made by the current owner notwithstanding  
that the land was so classified and taxed to  
a previous owner.

2. There is no statutory requirement to mail  
an application for lands to be taxed within  
the agricultural classification.  
Nonetheless, the mailing of such an  
application is recommended as a public  
service particularly in light of the  
requirement to mail applications to owners of  
residential property.

TO: Honorable Ray Drayton  
Darlington County Assessor

FROM: Joe L. Allen, Jr. *JA*  
Chief Deputy Attorney General

QUESTIONS:

1. Is an application for land to be taxed within  
the agricultural classification required by an owner  
acquiring lands so classified?

2. Must the assessor mail applications to the  
owners of agricultural lands for purposes of classifying  
such lands for taxation within the agricultural  
classification?

APPLICABLE LAW: Section 12-43-220 of the South Carolina  
Code of Laws and Article X, Sections 1 and 2 (a) of the  
South Carolina Constitution.

DISCUSSION:

QUESTION 1:

Article X, Section 1(4) provides for the taxation of lands

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within the agricultural classification. It further states:

" . . . the General Assembly shall by general law provide for a penalty system on lands classified as agricultural lands to insure the proper utilization of this classification."

Article X, Section 2(a) provides in part that the General Assembly may:

" . . . establish administrative procedures for property owners to qualify for a particular classification."

The General Assembly pursuant to such provisions adopted Section 12-43-220 which sets forth the procedure for the classification and the penalty (roll back tax) when the use changes.

The section provides in part that:

"(3) Agricultural real property shall not come within the provisions of this section unless the owners of such real property or their agents make written application therefor on or before May first of the tax year in which the special assessment is claimed. . . . a failure to so apply shall constitute a waiver of the special assessment for that year . . . ."

The section further provides that a county governing body could modify the annual application requirement and mandate that the same be filed at intervals "of two years, three years, four years or five years so long as the use of the property concerned is not changed during such prescribed period." In this amending legislation it is again stated that the "property owner" is to file the application.

The application must therefore be made by the owner at the time the application is submitted. The life of the classification would be that as set forth by the county council and could be for as long as five years.

The first question is whether an application is required of

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a person who acquires the land from an owner who previously made application or does the classification continue to its expiration date under the former owner's application. In our view, a new application would be required. The word "owner" is here to be interpreted in the sense of the person liable for payment of the taxes. Section 12-37-610 provides that:

"Every person shall be liable to pay taxes and assessments on the real estate of which he may stand seized in fee or for life, in dower or as husband in right of his wife or may have the care of as guardian, executor, trustee or committee."

Whether the lands are to be taxed within the residential classification is the choice of the owner. If such is desired, then the application must be made, otherwise, the statute declares a waiver for that tax year. A former owner cannot waive a right that belongs to the current owner nor can he negate the right of choice that is given the current owner.

CONCLUSION:

An application for lands to be taxed within the residential classification must be made by the current owner notwithstanding that the land was so classified and taxed to a previous owner.

DISCUSSION:

QUESTION 2: We find no statutory requirement to mail applications to the owners of agricultural lands. Such a requirement does exist, however, for property to be taxed within the residential classification. (See Section 12-43-220(c)). We nonetheless recommend that such application be mailed as a service to the landowners within the county.

CONCLUSION:

There is no statutory requirement to mail an application for lands to be taxed within the agricultural classification. Nonetheless, the mailing of such applications is recommended as a public service particularly in light of the requirement to mail applications to owners of residential property.

JLAJR/jws