

*Summary*

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. 85-67 ~~192~~ July 24, 1985

SUBJECT: Taxation & Revenue - Rollback tax when agricultural lands acquired by exempt entity.

SYLLABUS: Agricultural lands acquired by a church and used as a cemetery are not subject to the additional (rollback) taxes.

TO: Mr. Walter G. Gutman  
Assessor, Sumter County

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

QUESTION: Land within the agricultural classification is acquired by a church. The use of the lands will be changed from an agricultural use to that of a church cemetery. Is a rollback tax due and payable?

APPLICABLE LAW: Article X, Section 3(c) of the South Carolina Constitution; Section 12-43-220d(4) and § 12-37-220(3) South Carolina Code of Laws, 1976.

DISCUSSION:

Section 12-43-220d(4) provides in part that:

"When real property which is in agricultural use and being valued, assessed and taxed under the provisions of this article, is applied to a use other than agricultural, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and assessment authorized hereunder and the taxes that would have been paid or payable had the real property been valued, assessed and taxed as other real property in the taxing district, in the current tax year (the year of change in use) and each of the five tax years immediately preceding

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in which the real property was valued,  
assessed and taxed as herein provided..."

The property is thus subject to additional taxes in an amount equal to the difference between the taxes paid on the agricultural use valuation and that which would have been due on a valuation as other real property for the current and the preceding five years. We have previously concluded that the tax is the liability of the person and entity that owns the property on December 31 of the year of use change. (OAG - 4/16/76, 1/18/79) This is the date upon which the tax status of property is ascertained for the next ensuing tax year. Section 12-37-900.

For purposes of this opinion, it is assumed that the property herein will be owned by the church and used as a cemetery on that date. Under such circumstances there would be no tax. Article X, Section 3(c) of the South Carolina Constitution and § 12-37-220(3) exempts from property taxation:

..."all property of all public  
libraries, churches, parsonages and  
burying grounds; ..."

As stated it is presumed that the "occupancy" requirements of the Constitution and statutes are satisfied.

CONCLUSION:

Agricultural lands acquired by a church and used as a cemetery are not subject to the additional (rollback) taxes.

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<sup>1</sup>The only case law found on this subject is from the state of New Jersey. Property acquired by the state was there held subject to the rollback tax. Our state, however, applies a liberal construction to the exemption of public property. Further, the South Carolina tax is an additional tax measured by the value of the property and is thus a property tax.

JLAJr/jws