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THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_ June 7, 1985

SUBJECT: Taxation and Revenue - Application for agricultural classification by substitute or successor trustee.

SYLLABUS: A new application for agricultural lands to be taxed within the agricultural classification is not required of a substitute trustee provided the time period for the classification granted by reason of the application of the original trustee has not expired.

TO: Honorable Walter G. Gutman  
Sumter County Assessor

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

QUESTION: Must a new application for agricultural land classification be filed by a substitute trustee as a condition for the classification; the original trustee having so applied?

APPLICABLE LAW: §§ 12-43-220(d) and 21-29-30, Code of Laws of South Carolina, 1976.

DISCUSSION:

Certain agricultural lands were deeded in trust to three trustees. The trustees timely applied for the lands to be taxed within the agricultural land classification. The land was so taxed, however, before the expiration of the years the lands could be so classified under the application, there was a substitute of one of the three trustees. The inquiry is whether the substitution of one of the trustees necessitates the reapplication before the lands can be taxed within the agricultural classification.

We were not furnished a copy of the trust and do not therefore know whether the substitution was made under the terms of the trust or pursuant to § 21-29-30. It is assumed, however, that the substitution was pursuant to the terms of the trust as there is no deed from the original three

Honorable Walter G. Gutman  
Page Two

June 7, 1985

trustees to the present three trustees, one of whom is a substitute trustee.

The general rule applicable to such is found in 76 Am.Jur.2d, Trusts, § 100, p. 346. It is there stated:

"The view has been expressed that, apart from the terms of the trust, the appointment of a new trustee does not confer legal title to the trust res upon him without a conveyance from the old trustee; but if the substitution of a new trustee is provided for by the author of the trust, either by naming the person to be substituted or by giving the power of appointment to another, and the provision for succession is duly followed, the substituted trustee takes under the trust instrument and derives his legal title therefrom. \* \* \*."

The legal title presently held by the trustees is apparently derived from the trust instrument. The present trustees merely take the place of the original trustees.

"A substitute or successor trustee when appointed steps into the place of the old trustee, charged with the trust, and with all the powers and duties of the old trustee. He assumes the trust estate subject to all imperfections and cum onere, that is, subject to all liabilities binding the trust estate in the hands of his predecessor. \* \* \*."  
76 Am.Jur.2d, Trusts, § 132, p. 374.

Under such circumstances, there would not be a transfer of ownership of the lands so as to require a new application. The property is in a trust, legal title to which is held in the trustees. There is but one trustee (here three co-trustees) whether the trustee be the original or a substitute therefor.

#### CONCLUSION:

A new application for agricultural lands to be taxed within the agricultural classification is not required of a

Honorable Walter G. Gutman  
Page Three

June 7, 1985

substitute trustee provided the time period for the classification granted by reason of the application of the original trustee has not expired.

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