

1980 S.C. Op. Atty. Gen. 108 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-63, 1980 WL 81946

Office of the Attorney General

State of South Carolina

Opinion No. 80-63

June 4, 1980

**\*1 SUBJECT: Property Tax—Taxable Status of Tobacco Barns—Those Permanently Affixed and Bulk (Portable) Barns.**

1. Tobacco barns which are permanently affixed to the land are considered to be part of the real property and are subject to ad valorem taxation.
2. Bulk or portable barns are considered to be personal property and farm machinery and are therefore exempt from ad valorem taxation.

TO: Honorable Lester R. Waddell  
Florence County Auditor

QUESTION:

Are regular tobacco barns and bulk or portable tobacco barns subject to ad valorem taxation?

APPLICABLE LAW:

Sections 12–37–10(1), 12–37–210, 12–37–220, and 12–35–550(17).

DISCUSSION:

1. By regular tobacco barns we are considering those tobacco barns which are constructed on and are permanently affixed to the real property. This type of barn is considered to be a fixture or structure. Section 12–37–10(1) defines real property as: ‘\* \* \* not only land, city, town and village lots but also all structures and other things therein contained or annexed or attached thereto \* \* \*.’

Section 12–37–210 defines property subject to ad valorem taxation to be: ‘All real and personal property in this State \* \* \*.’

Thus, regular tobacco barns which are affixed to the land are subject to ad valorem taxation unless an exemption for such can be found. The general exemptions from ad valorem taxation are listed in § 12–37–220 and tobacco barns permanently affixed to land are not found to be exempt in that section or in any other section of Title 12, Taxation, South Carolina Code of Laws.

CONCLUSION:

Tobacco barns which are permanently affixed to the land are considered to be part of the real property and are subject to ad valorem taxation.

DISCUSSION:

2. Bulk or portable tobacco barns generally consist of a metal shell or other outside covering which contains within it a furnace with controls and metal racks. These barns are not permanently affixed to realty and can be moved from one location to another, usually on a trailer, and it is only necessary to make connections for energy sources of electricity and gas or oil. For these reasons, such barns are considered to be personalty.

Additionally, it must be considered as to whether bulk barns qualify as farm machinery under § 12-37-220(14) which exempts from ad valorem taxation:

‘All farm machinery and equipment \* \* \*.’

Machinery has been judicially defined to mean an:

‘Apparatus, though it does not apply force or involve the quality of motion, and though the major action therein is chemical, may constitute ‘machinery’ within statute exempting from real estate tax assessment machinery used in manufacturing. [Gulf Oil Corp. vs. City of Philadelphia](#), 53 A. 2d 250, 258, 357 Pa. 101, 172 A.L.R. 302.’ 26 Words and Phrases, Machinery.

Further, the question of whether portable tobacco barns are ‘machinery’ within the definition of that term as found in § 12-35-550(17) relating to sales and use taxes and the exemptions therefrom, was considered by the Circuit Court in Horry County in the case of Waccamaw Ford Tractor Company vs. South Carolina Tax Commission, 75-CP-40-1146 (1976). The Court in Waccamaw found portable tobacco barns to be machinery as that term is defined in § 12-35-550(17). The definition of ‘machinery used in the planting, cultivating or harvesting of farm crops \* \* \*’ in § 12-35-550(17) appears to be more specific and less broad than the term ‘\* \* \* farm machinery and equipment \* \* \*’ used in § 12-37-220(14). If portable tobacco barns can meet the definition of machinery used in § 12-35-550(17), then such barns can meet the definition of machinery used in § 12-37-220(14).

CONCLUSION:

**\*2** Bulk or portable barns are considered to be personal property and farm machinery and are therefore exempt from ad valorem taxation.

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