

1976 WL 30635 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 2, 1976

*1 (1) The application for the agricultural classification of property pursuant to the provisions of Act 208, Acts of 1975, should be received by the tax assessor and the property classified and taxed as provided for in the Act.

(2) The homestead exemption as provided for in Section 65-1522.1 and the classification of property for residential purposes as provided for by Act 208, Acts of 1975, are independent of the other, however, that property which constitutes the homestead for the exemption must be classified as residential under the provisions of Act 208.

(3) The County Assessor of Marlboro County is without authority to extend an exemption of farm machinery from ad valorem taxation.

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You request the opinion of this office for three questions concerning the requirement of Act 208, Acts of 1975. For convenience, the questions and opinions will be separately treated.

QUESTION 1.

Marlboro probably will assess agriculture property at 6% for 1976. All of the other real property in the County (except possibly residential and industrial real property) will also be assessed at 6%. Is it necessary for the Tax Assessor to comply with the provisions of 281 (Act 208, Acts of 1975) concerning receiving application for property used for agriculture purposes since the 6% assessment ratio for agriculture property will not give agriculture property an advantage?

STATUTES INVOLVED

Act 208, Acts of 1975.

DISCUSSION

The Act provides two standards of value for real property in your County. Agricultural lands are taxed according to 'its fair market value for such purposes' while other real property is taxed upon 'fair market value'. The two values are not the same; the first generally being referred to as 'use' value, that is, the value of the property for agricultural purposes only, while the latter is the actual fair market value of the property.

CONCLUSION

For a compliance with the Act, the application for the 'agricultural classification' should be received by the Tax Assessor and the property taxed as provided for in the Act.

QUESTION 2.

The Homestead Act provides that property with a residence will not be taxed if its total value is under \$10,000.00. The value of the property which will exceed \$10,000.00 will be taxed. The \$10,000.00 exemption is applicable regardless of the number of acres involved. The special ratio for residences of 4%, however, is applicable only to not more than five acres. (a) Does the 281 (Act 208, Acts of 1975) affect the acreage than can be included in the Homestead Exemption? (b) If the homestead property exceeds \$10,000.00 and the acreage exceeds five acres, what is the assessment ratio applicable to the property and in what proportion?

STATUTES INVOLVED

Act 208, Acts of 1975.

DISCUSSION

The Homestead Exemption and the residential classification stand independent of the other. The residential classification is limited to five acres and its value must be ascertained in order that the amount of tax reimbursement by the State can be determined. When the value of the property within the residential classification is valued at \$10,000.00 or more, no problem exists, however, when that value is less than \$10,000.00 and there is additional acreage within the homestead, then the additional acreage must be valued for the Homestead Exemption. The State would, under such circumstances, make reimbursement of the tax that is based upon the use of the two different ratios, four percent of the value of the five acres or less and six percent of the difference in the value of the five acres and the \$10,000.00 value limitation.

CONCLUSION

*2 Act 208, Acts of 1975, affects the Homestead Exemption as the same provides for the amount of taxes upon the homestead and the amount of reimbursement by the State. A four percent ratio should be used upon the value of the first five acres and a six percent ratio should be used on the remaining acreage that is in fact a part of the homestead.

QUESTION 3.

Farm machinery will be taxed on a ratio of 5% and is to be based on a value book provided by the South Carolina Tax Commission. The book fully depreciates the property in nine years. May the governing body of the County exclude farm equipment that is more than nine years old?

STATUTES INVOLVED

Act 208, Acts of 1975.

DISCUSSION

It is understood that the Tax Commission's publication does not go beyond nine years and that the publication is not to be interpreted as a declaration that machinery over nine years of age is without a fair market value. If the assumption is made that the machinery has a fair market value, then, in such an event, it is to be taxed as the council is without authority to exempt the property from taxation. The Home Rule Act, S. 18, provides authority to the council as 'granted by the Constitution and subject to the general laws of this State' and the right to exempt property is specifically reserved to the General Assembly and then only for certain enumerated purposes. Art. 10, Section 1, Constitution of South Carolina.

CONCLUSION

The council is without authority to exempt property from ad valorem taxation.

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