



ALAN WILSON
ATTORNEY GENERAL

July 18, 2016

The Honorable Brian Shult, Georgetown County Auditor
Post Office Box 421270
Georgetown, SC 29442

Dear Auditor Shult:

Attorney General Alan Wilson has referred your letter dated August 24, 2015 to the Opinions section for a response. The following is this Office's understanding of your questions and our opinion based on that understanding.

Questions (as quoted from your letter):

- 1) *Can airplanes that are represented solely as being used for crop dusting services be considered farm machinery under § 12-37-220(B)(14) thereby exempting the plane from ad valorem taxation?*
- 2) *Can an airplane that is designed and used solely as a crop duster by a company upon the payment or agreement for the payment of a fee by a farmer be considered farm machinery under § 12-37-220(B)(14)?*

Law/Analysis:

Before we examine this particular statute, a background in tax interpretation would be helpful. Usually when one thinks of tax interpretation, he usually thinks of the long-recognized rule of statutory interpretation that any ambiguity in the imposition of a tax must be interpreted in favor of the taxpayer. See Op. S.C. Atty. Gen., 1967 WL 12119 (April 28, 1967). However, there is another principle in tax interpretation applicable here. It states that any ambiguity regarding a tax exemption should be strictly scrutinized and that any such ambiguity should be resolved against the exemption and in favor of the tax. Op. S.C. Atty. Gen., 1979 WL 42729 (January 2, 1979) (citing Chronicle Publishers, Inc. v. South Carolina Tax Commission, 244 S. C. 192, 136 S.E.2d 261(1964)).

By way of background, the statute you reference in your question states:

(B) In addition to the exemptions provided in subsection (A), the following classes of property are exempt from ad valorem taxation subject to the provisions of Section 12-4-720:

...

(14) all farm machinery and equipment including self-propelled farm machinery and equipment except for motor vehicles licensed for use on the highways. For the purpose of this section "self-propelled farm machinery and equipment" means farm machinery or equipment which contains within itself the means for its own locomotion. For purposes of this item, farm equipment includes greenhouses;

S.C. Code § 12-37-220(B)(14) (1976 Code, as amended). Let us also examine some of the exemptions in Section B of South Carolina Code § 12-37-220 starting with Section 13, which exempts:

- (13) all agricultural products owned by the producer in this State;
- (14) all farm machinery and equipment including self-propelled farm machinery and equipment except for motor vehicles licensed for use on the highways. For the purpose of this section "self-propelled farm machinery and equipment" means farm machinery or equipment which contains within itself the means for its own locomotion. For purposes of this item, farm equipment includes greenhouses;
- (15) all livestock and live poultry;

S.C. Code § 12-37-220(B)(13)-(15) (1976 Code, as amended) (emphasis added). Subsections thirteen through fifteen all seem to be within the same category of agricultural exemptions. Subsection thirteen addresses "agricultural products" while subsection fifteen appears to address farm animals. Subsection fourteen covers equipment. It is also clear from reading S.C. Code § 12-37-220(B)(13) that the General Assembly intended the exemption to be for the producer of the agricultural product who is also the owner. While (B)(14) and (B)(15) do not specifically state a requirement for ownership by the producer, the implication could be that the owner of livestock is a producer and that the owner of such farm equipment is a producer. Stated otherwise, it appears that the exemption looked to a producer who is also an owner, but the statute is not clear on that point. Therefore, we question whether it is reasonable for one to infer an implication in (B)(14) of ownership by the producer in light of strict scrutiny regarding a tax exemption.

While we attempted to review agricultural exemptions as far back as the 1868 Constitution, based on the legislative history (and lack thereof) for the 1978 Act (Act No. 621 of 1978, Section 2), we were not able to determine the extent of the intent of the exemptions and the full legislative background thereof.¹ Examining the legislative background regarding agricultural exemptions, the South Carolina Constitution of 1895 includes a homestead exemption in Article III § 28. S.C. Const. Art. III (1895). The homestead exemption includes up to one thousand dollars in lands and up to five hundred dollars in personal property. However, the 1895 Constitution did not specifically include agricultural products or livestock in its homestead exemption as the 1868 Constitution did. Neither the 1868 nor the 1895 Constitution exempted agricultural products or equipment specifically within the list of ad valorem tax exemptions. Moreover, the current version of the 1895 Constitution lists ad valorem tax exemptions in Article X, Section 3, but the list does not include agricultural equipment or machinery. Fast-forwarding to the 1965 Code of Laws, Section 65-1643 required that all personal property including that on farms and farm animals be returned to where it is situated to be taxed annually. Moreover, the list of general exemptions from taxation is found in § 65-1522 and does not include a primary residence, farm equipment or machinery, or farm animals. S.C. Code § 65-1522 (1965 Code). Moving to 1978, the language in the Title of Act No. 621 of 1978 states as its purpose "And To Amend Section 12-37-220, Relating To General Exemptions From Property Taxes, So As To Delete The Exemptions Repealed Pursuant To Article X Of The Constitution Of South Carolina, 1895, Enumerate The Property Exempted By Such Article X And Provide For Additional Exemptions." Act No. 621 of 1978, Section 2 provided that

¹ While we reviewed as far back as the 1868 South Carolina Constitution, our review was a general overview. We included some of the information we gathered in our search. Nevertheless, we are not discounting that the answers to your questions could be in the negative but instead are merely acknowledging we did not find sufficient information in legislative history to support such a conclusion.

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pursuant to Article X, Section 3 of the South Carolina Constitution the following were exempted from ad valorem taxation:

(13) All agricultural products owned by the producer in this State.

(14) All farm machinery and equipment except self-propelled farm machinery and equipment and motor vehicles licensed for use on the highways. All self-propelled farm machinery and equipment, excluding motor vehicles licensed for use on the highways, eligible for taxation shall be taxed on its fair market value; provided that the fair market value shall be determined by reducing the original cost by an annual depreciation allowance of twenty percent. The full year depreciation shall be allowed in the year of acquisition. For the purpose of this section the term 'self-propelled farm machinery and equipment' shall mean farm machinery and/or equipment which contains within itself the means for its own locomotion.

(15) All livestock and live poultry.

Those are the same exemptions you reference in your questions. Moreover, "motor vehicles licensed for use on the highways" are not within the purview of subsection fourteen. S.C. Code § 12-37-220(B)(14). "Motor vehicles" have their own division in Title 56 of the South Carolina Code of Laws. It is our understanding that there is a special classification for a farm truck license pursuant to the South Carolina Department of Transportation Form 4042 (Rev. 9/14). A "farm truck" is defined in the South Carolina Code of Laws as "a truck used exclusively by the owner for agricultural, horticultural, dairying, livestock, and poultry operations and includes transporting farm processed horticultural products, including soil amendments and mulches owned by the truck's owner or another person, including first market." S.C. Code § 56-5-225 (1976 Code, as amended). However, our code of laws has no such title specific to airplanes. Contrastingly, there are other sections in the Code where "vehicle" includes airplanes. See, e.g., S.C. Code § 12-28-110(25). Please also note in a different section of the code our State imposes a tax on the sale of motor vehicles, motorcycles, boats, motors and airplanes. See S.C. Code 12-36-1710. The tax amount is five percent of the fair market value. Id. Thus, Act No. 621 of 1978's history is not clear from the legislative background.

Nonetheless, this Office issued an opinion in 1990 on a similar question regarding airplanes and crop dusting. See Op. S.C. Att'y Gen., 1990 WL 482411 (February 26, 1990). In the 1990 opinion we stated:

The third question asks whether an airplane used solely by a farmer to spray his own crops and crops of others for a fee is exempted under Section 12-37-220 B (14). The answer turns on whether the exemption is based strictly on use or whether it is also related to ownership. In other words, must the agricultural purpose served be that of the airplane's owner?

The general rule on this point is found at 84 C.J.S., Taxation, Section 232, pages 450-451. There it is stated:

"Under constitutional and statutory provisions for exemption from taxation of property used for stated purposes, ordinarily it is the use and not the ownership which determines the right to the exemption. It has been held that, where the property is so used as to exempt it from taxation, the ownership of the property is immaterial except as it may be of evidentiary significance in determining whether or not the use of the property is within the exemption; ... "

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The exemption in Section 12-37-220 B (14) appears to be based on use rather than ownership. Nowhere in the statute is it indicated that machinery and equipment used for agricultural purposes must also be owned by a particular party as a prerequisite to being exempted. Accordingly, the airplane here in question should be exempted since it is being used for the required purpose.

CONCLUSION:

An airplane used by a farmer solely to spray his crops and other farmers' crops for a fee comes within Section 12-37-220 B (14)'s property tax exemption for farm machinery.

Op. S.C. Att'y Gen., 1990 WL 482411 (February 26, 1990) (emphasis added). The opinion went on to answer the question of whether the owner of farm machinery may claim the exemption pursuant to Section 12-37-220(B)(14) when he leases it to a farmer. The opinion concluded the owner who leased it to a farmer could receive the exemption. Such a conclusion would lead us to presume the 1990 opinion based its interpretation of the exemption on use of the machinery, not on the ownership. However, in the 1990 opinion the question was asked regarding a singular farmer using a crop-dusting airplane for agricultural purposes, not an independent contractor that is a commercial entity and which may have other commercial purposes for the airplane.²

It is this Office's understanding that aircraft in your county is taxed at the four (4%) ratio of its fair market value pursuant to S.C. Code § 12-43-360 and Georgetown County Ordinance #2006-75, Section 2, approved October 10, 2006. S.C. Code § 12-43-360 states:

The governing body of a county by ordinance may reduce the assessment ratio otherwise applicable in determining the assessed value of general aviation aircraft subject to property tax in the county to a ratio not less than four percent of the fair market value of the general aviation aircraft. The ordinance must apply uniformly to all general aviation aircraft subject to property tax in the county.

Moreover, we presume you ask two questions distinguishing between company-owned airplanes and other airplanes due to the Code of Federal Regulation's certification requirements. It is our understanding, though we are not opining on federal law in this opinion, all airplanes must be registered with the Federal Aviation Administration and that the certification for agricultural aircraft operations is through the Federal Aviation Administration pursuant to 14 C.F.R. 1(G)1137. A private agricultural aircraft operator may not "conduct an agricultural aircraft operation... (a) [f]or compensation or hire; (b) [o]ver a congested area; or (c) [o]ver any property unless he is the owner or lessee of the property, or has ownership or other property interest in the crop located on that property." 14 C.F.R. 137.35. It is also our understanding there is also an accepted certification for a private or commercial agricultural aircraft operating certificate pursuant to the U.S. Department of Transportation Federal Aviation Administration's Advisory Circular No. 137-1A dated October 10, 2007.³ (December 2015, https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/74322). It is also our understanding for purposes of this opinion that the South Carolina Department

² However, it is this Office's understanding that non-agricultural use of the airplane, e.g. non-agricultural spraying, would not qualify an airplane for the exemption pursuant to S.C. Code § 12-37-220(B)(14).

³ Please note the circular states it is not mandatory, is not a regulation but is an acceptable but not the exclusive means to apply for an agricultural aircraft operating certificate.

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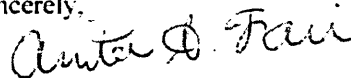
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of Revenue notifies each county Auditor of the list of registered planes within their respective counties as documented by the Federal Aviation Administration.

Conclusion:

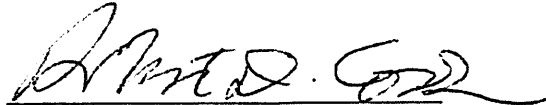
Your questions ask whether an airplane used solely⁴ for crop-dusting "can" be considered "self-propelled farm equipment" exempted in S.C. Code § 12-37-220(B)(14), and we believe, as we concluded in our February 26, 1990 opinion, a court will determine it can be in regards to both of your questions. However, this Office is only issuing a legal opinion based on the current law at this time. Until the South Carolina General Assembly, the Department of Revenue or a court otherwise interprets the exemption, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law may interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

⁴ We emphasize "used solely for crop-dusting" and again restate footnote #2 here that it is this Office's understanding that non-agricultural use of the airplane, e.g. non-agricultural spraying, would not qualify an airplane for the exemption pursuant to S.C. Code § 12-37-220(B)(14).