



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

NOV 25 2015
OPINION 15-0128

90-A-1 PUBLIC FUNDS & CONTRACTS
La. Const. art. VII, § 18
La. Const. art. VII, § 21

Honorable Geneva F. Odom
Assessor, East Carroll Parish
400 First Street, Room 10
Lake Providence, LA 71254

Dear Assessor Odom,

In order for a particular property to be eligible for a use value assessment pursuant to La. Const. art. VII, § 18, the property must meet all of the requirements contained in La. R.S. 47:2302 and La. R.S. 47:2303. Further, for any building on the property to qualify for an exemption from ad valorem taxation pursuant to La. Const. art. VII, § 21, the building must constitute a "farm structure," as set forth in La. R.S. 47:1707, which includes any building, house, barn, fence, and any other construction located on land devoted to agricultural and cultivation purposes.

Your request for an Attorney General's Opinion has been assigned to me for research and reply. You have asked our opinion concerning whether three separate properties with similar characteristics in East Carroll Parish may qualify for a "use value" assessment. You have additionally asked whether any building on the properties may qualify for exemption from ad valorem taxes as farm structures.

Each of the properties described in your request were formerly owned and operated as cotton gins. However, all of the cotton gin equipment has now been sold and the properties are now used to store farm equipment. You have additionally provided the following information regarding each individual property:

Property 1: The lands upon which these buildings are situated are not in cultivation, nor are they devoted to the raising of animals. The taxpayer does not own any of the land surrounding the tracts in question.

Property 2: Approximately four (4) acres of land formerly used as the gin yard is now in cultivation, and as such has been granted a use value classification. The remainder of the lands upon which the former gin buildings are situated is not in cultivation nor are they devoted to the raising of animals.

Property 3: The lands upon which these buildings are situated are not in cultivation nor are they devoted to the raising of animals. The taxpayer does own property near the subject land, separated only by a small parish

road. This additional tract of land is in cultivation and has received a use value assessment.

At the outset, we note that this office is not a finder-of fact; therefore, we cannot opine as to whether a certain tract of land actually qualifies for use valuation or exemption from ad valorem taxation. The authority to make such a determination is exclusively reserved by the Louisiana Constitution and statutory law to the assessor, the Louisiana Tax Commission, and ultimately, the courts. See, e.g., La. Atty. Gen. Op. Nos. 76-0114, 89-0500, 92-0660, 93-0392, 94-0602, 94-0603, 96-0438, 00-0054, 01-0144, 05-0017, 13-0211. Nevertheless, we can provide the constitutional and statutory authority to guide you in making that determination.

Article VII, § 18(C) of the Louisiana Constitution allows for “[b]ona fide agricultural, horticultural, marsh, and timber lands, as defined by general law, [to] be assessed for tax purposes at ten percent of use value rather than fair market value.” Pursuant to statute, use value of bona fide agricultural, horticultural and timber lands means the highest value of such land when used by a prudent agricultural, horticultural or timber operator for the sole purpose of continuing the operation, as a commercial agricultural, horticultural or timber enterprise, of an existing bona fide agricultural, horticultural or timber use.¹

La. R.S. 47:2302 defines the following types of land as eligible to qualify for such a special assessment:

A. Bona fide agricultural land is land devoted to the production for sale, in reasonable commercial quantities, of plants and animals, or their products, useful to man, and agricultural land under a contract with a state or federal agency restricting its use for agricultural production.

B. Bona fide horticultural land is land devoted to the production for sale, in reasonable commercial quantities, of fruits, vegetables, flowers or ornamental plants, and horticultural land under a contract with a state or federal agency restricting its use for horticultural production.

C. Bona fide marsh land is wetland other than bona fide agricultural, horticultural or timber land.

D. Bona fide timberland is land stocked by forest trees of any size and specie, or formerly having such tree cover within the last three years and not currently developed or being used for nonforest purposes, and devoted to the production, in reasonable commercial quantities, of timber

¹ La. R.S. 47:2301.

and timber products, and timberland under a contract with a state or federal agency restricting its use for timber production.

In addition, La. R.S. 47:2303 provides the following:

In order to be classified as bona fide agricultural, horticultural, marsh or timber land and assessed at its use value under the provisions of Article VII, Section 18(C) of the Louisiana Constitution of 1974, it must meet the definition of bona fide agricultural, horticultural, marsh or timber land as described in R.S. 47:2302 and, in the case of bona fide agricultural, horticultural, or timber land:

A. Be at least three acres in size, or have produced an average gross annual income of at least two thousand dollars in one or more of the designated classifications for the four preceding years, and

B. The landowner has signed an agreement that the land will be devoted to one or more of the designated uses as defined in R.S. 47:2302.

Our office has previously concluded that, in order for a particular property to be eligible for a use value assessment, it must meet the requirements contained in La. R.S. 47:2302 and La. R.S. 47:2303. La. Atty. Gen. Op. No. 13-0211. Accordingly, should you determine that any of the properties described above do not meet the definition of bona fide agricultural, horticultural, marsh, or timber lands as defined in La. R.S. 47:2302 and further fails to meet the eligibility criteria described in La. R.S. 47:2303, then that particular property would not be eligible for use value assessment.

La. R.S. 47:2306 prescribes penalties for false certification on an application for a use value assessment and, additionally, for failure to timely notify the assessor of loss of eligibility for such assessment. This places the burden of proving that a particular property qualifies for a use value assessment on the land owner, rather than the assessor.

Turning our attention to a possible exemption from ad valorem taxation, we note that the jurisprudence of this state has consistently held that constitutional and statutory grants of exemptions from taxation must be strictly construed in favor of the taxing body and against the taxpayer desiring exemption. Any possible doubt is fatal. *Zapata Haynie Corp. v. Carpenter*, 583 So.2d 867, 871 (La. Ct. App.1st Cir.) *writ denied*, 589 So.2d 1071 (La. 1991). Thus, an exemption, being an exceptional privilege, must be clearly, unequivocally and affirmatively established. See also La. Atty. Gen. Op. Nos. 01-0144 and 05-0017.

With that in mind, La. Const. art. VII, § 21(C)(11) provides for the following exemption from ad valorem taxation:

§ 21. In addition to the homestead exemption provided for in Section 20 of this Article, the following property and no other shall be exempt from ad valorem taxation:

* * *

(C)(11) agricultural products while owned by the producer, agricultural machinery and other implements used exclusively for agricultural purposes, animals on the farm, and property belonging to an agricultural fair association;

La. R.S 47:1707 clarifies the meaning of the phrase "agricultural machinery and other implements used exclusively for agricultural purposes" contained in La. Const. art. VII, § 21(C)(11) as:

the term "agricultural machinery and other implements used exclusively for agricultural purposes" shall mean agricultural and horticultural implements *immediately and directly employed in cultivation, production, and harvest of crops or in the raising and management of livestock in use upon agricultural lands.* (emphasis added).

It further provides that "farm structures" are included within the meaning of the phrase "agricultural machinery and other implements used exclusively for agricultural purposes." The statute expressly states that a building used for a principal residence is not considered a farm structure, but does not otherwise define the term "farm structure."

This office has previously defined a farm structure as "any building, house, barn, fence and any other construction located on land devoted to agricultural and cultivation purposes." La. Atty. Gen. Op. No. 81-0179. We have also concluded that buildings on lands that are not being used for agricultural purposes (i.e. the cultivation of the land or production of crops and animals) do not constitute farm structures for tax-exempt purposes. La. Atty. Gen. Op. Nos. 01-0144 and 05-0017.

Therefore, in order for any building on the property to qualify for an exemption from ad valorem taxation, the building in question must constitute a farm structure as defined above. Any doubt as to whether a particular building meets this definition must be resolved in favor of the taxing body and against the taxpayer desiring the exemption.

Applying these principals to the properties described in your request, it appears that the buildings located on Property 1 do not qualify for exemption from ad valorem taxes as farm structures. As noted in your request, the land upon which the buildings are situated is not in cultivation nor is it devoted to the raising of animals. Pursuant to La. Const. art. VII, § 21(C)(11) and La. R.S. 47:1707, in order to qualify as a farm structure, the building must be located on land which is "immediately and directly employed in

cultivation, production, and harvest of crops or in the raising and management of livestock in use upon agricultural lands." Property 1, as described, does not meet this definition.

Following this line of reasoning, it appears that the buildings located on Property 2 do meet the criteria to be defined as farm structures. You have described these buildings as situated on land that is currently in cultivation. Therefore, the buildings on this property likely will qualify for exemption from ad valorem taxation.

With regard to Property 3, as described in your request, it does not appear that the buildings located thereon will qualify for exemption from ad valorem taxation. You have described the land upon which the buildings are located as not in cultivation nor devoted to the raising of animals. While you do advise that an additional tract of nearby land which is owned by the same taxpayer is currently in cultivation, the information provided in your request requires us to assume that this is a different tract of land than that which the buildings in question are located. Due to the fact that any possible tax exemption must be strictly construed against the taxpayer seeking exemption, we cannot conclude that the buildings located on Property 3, as described in your request, meet the criteria to be considered farm structures.

To summarize, while the final authority to determine whether a certain tract of land actually qualifies for use valuation or exemption from ad valorem taxation belongs to the assessor, the Louisiana Tax Commission, and ultimately, the courts, it is the opinion of this office that in order for a particular property to be eligible for a use value assessment, it must meet the requirements contained in La. R.S. 47:2302 and La. R.S. 47:2303. It is our further opinion that in order for any building on the property to qualify for exemption from ad valorem taxation, it must qualify as a "farm structure" as set forth in La. R.S. 47:1707. This definition includes any building, house, barn, fence, and any other construction located on land devoted to agricultural and cultivation purposes.

We hope this sufficiently answers your inquiry; however, if we may be of further assistance, please do not hesitate to contact our office.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By: 
Andrea Barient
Assistant Attorney General