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States' Differential Tax Assessment of Agricultural Land Statutes

South Carolina



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

States' Differential Tax Assessment of Agricultural Land Statutes State of South Carolina

S.C. Code title 12, ch. 43, art. 3

S.C. Code § 12-43-220

S.C. Code § 12-43-222

S.C. Code § 12-43-230

S.C. Code § 12-43-232

S.C. Code § 12-43-233

S.C. Code § 12-43-340

Current through 2018 Act No. 292, subject to technical revisions by the Code Commissioner as authorized by law before official publication.

§ 12-43-220. Classifications shall be equal and uniform; particular classifications and assessment ratios; procedures for claiming certain classifications; roll-back taxes.

Except as otherwise provided, the ratio of assessment to value of property in each class shall be equal and uniform throughout the State. All property presently subject to ad valorem taxation shall be classified and assessed as follows:

- (a)
 - (1) All real and personal property owned by or leased to manufacturers and utilities and used by the manufacturer or utility in the conduct of the business must be taxed on an assessment equal to ten and one-half percent of the fair market value of the property.
 - (2) Real property owned by or leased to a manufacturer and used primarily for research and development is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property pursuant to this item (a). The term "research and development" means basic and applied research in the sciences and engineering and the design and development of prototypes and processes.
 - (3) Real property owned by or leased to a manufacturer and used primarily as an office building is not considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property pursuant to this item (a) if the office building is not located on the premises of or contiguous to the plant site of the manufacturer.
 - (4) Real property owned by or leased to a manufacturer and used primarily for warehousing and wholesale distribution is not



considered used by a manufacturer in the conduct of the business of the manufacturer for purposes of classification of property pursuant to subsection (a). For purposes of this item, the real property owned by or leased to a manufacturer and used primarily for warehousing and wholesale distribution must not be physically attached to the manufacturing plant unless the warehousing and wholesale distribution area is separated by a permanent wall.

- (b) All inventories of business establishments shall be taxed on an assessment equal to six percent of the fair market value of such property and all power driven farm machinery and equipment except motor vehicles registered with the Department of Motor Vehicles owned by farmers and used on agricultural lands as defined in this article shall be taxed on an assessment equal to five percent of the fair market value of such property; provided, that all other farm machinery and equipment and all livestock and poultry shall be exempt from ad valorem taxes.
- (c) (1) The legal residence and not more than five acres contiguous thereto, when owned totally or in part in fee or by life estate and occupied by the owner of the interest, and additional dwellings located on the same property and occupied by immediate family members of the owner of the interest, are taxed on an assessment equal to four percent of the fair market value of the property. If residential real property is held in trust and the income beneficiary of the trust occupies the property as a residence, then the assessment ratio allowed by this item applies if the trustee certifies to the assessor that the property is occupied as a residence by the income beneficiary of the trust. When the legal residence is located on leased or rented property and the residence is owned and occupied by the owner of a residence on leased property, even though at the end of the lease period the lessor becomes the owner of the residence, the assessment for the residence is at the same ratio as provided in this item. If the lessee of property upon which he has located his legal residence is liable for taxes on the leased property, then the property upon which he is liable for taxes, not to exceed five acres contiguous to his legal residence, must be assessed at the same ratio provided in this item. If this property has located on it any rented mobile homes or residences which are rented or any business for profit, this four percent value does not apply to those businesses or rental properties. However, if the person claiming the four percent assessment ratio resides in the mobile home or single-family residence and only rents a portion of the mobile home or single family residence to another individual as a residence, the foregoing provision does not apply and the four percent assessment ratio must be applied to the entire mobile home or single family residence. For purposes of the assessment ratio allowed pursuant to this item, a residence does not qualify as a legal residence unless the residence is determined to be the domicile of the owner-applicant.
- (2) (i) To qualify for the special property tax assessment ratio allowed by this item, the owner-occupant must have actually owned and occupied the residence as his legal residence and been domiciled at that address for some period during the applicable tax year. A residence which has been qualified as a legal residence for any part of the year is entitled to the four percent assessment ratio provided in this item for the entire year, for the exemption from property taxes levied for school operations pursuant to Section 12-37-



251 for the entire year, and for the homestead exemption under Section 12-37-250, if otherwise eligible, for the entire year.

- (ii) This item does not apply unless the owner of the property or the owner's agent applies for the four percent assessment ratio before the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. In the application the owner or his agent shall provide all information required in the application, and shall certify to the following statement:

“Under penalty of perjury I certify that:

- (A) the residence which is the subject of this application is my legal residence and where I am domiciled at the time of this application and that neither I, nor any member of my household, claim to be a legal resident of a jurisdiction other than South Carolina for any purpose; and
 - (B) that neither I, nor a member of my household, claim the special assessment ratio allowed by this section on another residence.”
- (iii) For purposes of subitem (ii)(B) of this item, “a member of my household” means:
 - (A) the owner-occupant's spouse, except when that spouse is legally separated from the owner-occupant; and
 - (B) any child under the age of eighteen years of the owner-occupant claimed or eligible to be claimed as a dependent on the owner-occupant's federal income tax return.
 - (iv) In addition to the certification, the burden of proof for eligibility for the four percent assessment ratio is on the owner-occupant and the applicant must provide proof the assessor requires including, but not limited to:
 - (A) a copy of the owner-occupant's most recently filed South Carolina individual income tax return;
 - (B) copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner-occupant and registered at the same address of the four percent domicile;
 - (C) other proof required by the assessor necessary to determine eligibility for the assessment ratio allowed by this item.

If the owner or the owner's agent has made a proper certificate as required pursuant to this subitem and the owner is otherwise eligible, the owner is deemed to have met the burden of proof and is allowed the four percent assessment ratio allowed by this item, if the residence that is the subject of the application is not rented for more than seventy-two days



in a calendar year. For purposes of determining eligibility, rental income, and residency, the assessor annually may require a copy of applicable portions of the owner's federal and state tax returns, as well as the Schedule E from the applicant's federal return for the applicable tax year.

If the assessor determines the owner-occupant ineligible, the six percent property tax assessment ratio applies and the owner-occupant may appeal the classification as provided in Chapter 60 of this title.

- (v) (A) A member of the armed forces of the United States on active duty who is a legal resident of and domiciled in another state is nevertheless deemed a legal resident and domiciled in this State for purposes of this item if the member's permanent duty station is in this State. A copy of the member's orders filed with the assessor is considered proof sufficient of the member's permanent duty station.
- (B) An active duty member of the Armed Forces of the United States eligible for and receiving the special assessment ratio for owner-occupied residential property allowed pursuant to this subsection (c), who receives orders for a permanent change of station or a temporary duty assignment for at least one year, retains that four percent assessment ratio and applicable exemptions for so long as the owner remains on active duty, regardless of the owner's subsequent relocation and regardless of any rental income attributable to the property. Subject to subsubitem (C), the provisions of this subsubitem (B) do not apply if the owner or a member of the owner's household, as defined in item (2)(iii) of this subsection (c), claims the special four percent assessment ratio allowed pursuant to this subsection for any other residential property located in this State.
- (C) (1) Notwithstanding any other provision of law, an active duty member of the Armed Forces of the United States meeting all the other requirements of this subsection who receives orders for a permanent change of station or a temporary duty assignment for at least one year, may claim the four percent assessment ratio and applicable exemptions for two residential properties located in the State so long as the owner attempts to sell the first acquired residence within thirty days of acquiring the second residence. The taxpayer must continue to attempt to sell the first acquired residence in any year in which the four percent assessment ratio is claimed.
 - (2) The four percent assessment ratio may not be claimed on both residences for more than two property tax years.
 - (3) This subsubitem does not apply unless the owner of the properties or the owner's agent applies for the four percent assessment ratio on both residences before



the first penalty date for the payment of taxes for the tax year for which the owner first claims eligibility for this assessment ratio. The burden of proof for eligibility for the four percent assessment ratio on both residences is on the taxpayer. The taxpayer must provide the proof the assessor requires, including, but not limited to, a copy of the owner's most recently filed South Carolina individual income tax return and copies of South Carolina motor vehicle registrations for all motor vehicles registered in the name of the owner. The taxpayer must apply to the county assessor by the first penalty date for the payment of taxes for the tax year in which the taxes are due to utilize the provisions of subsubitems (B) and (C). Along with the application, the applicant must submit a Leave and Earnings Statement (LES) from the current calendar year. Any information contained in the LES that is not related to the active duty status of the member may be redacted.

(D) For purposes of subsubitems (B) and (C), owner includes the spouse of the service member who jointly owns the qualifying property.

(E) The special four percent assessment ratio allowed by this subitem (v) must be construed as a property tax exemption for an amount of the fair market value of the residence sufficient to equal a four percent assessment ratio and other exemptions allowed applicable to property qualifying for the special assessment ratio.

(vi) No further applications are necessary from the current owner while the property for which the initial application was made continues to meet the eligibility requirements. If a change in ownership or use occurs, the owner who had qualified for the special assessment ratio allowed by this section shall notify the assessor of the change in classification within six months of the change. Another application is required by the new owner to qualify the residence for future years for the four percent assessment ratio allowed by this section.

(vii) (A) If a person signs the certification, obtains the four percent assessment ratio, and is thereafter found not eligible, or thereafter loses eligibility and fails to notify the assessor within six months, a penalty is imposed equal to one hundred percent of the tax paid, plus interest on that amount at the rate of one-half of one percent a month, but in no case less than thirty dollars nor more than the current year's taxes. This penalty and any interest are considered ad valorem taxes due on the property for purposes of collection and enforcement.

(B) If property has undergone an assessable transfer of interest as provided pursuant to Section 12-37-3150 and the transferee is a bona fide purchaser for value without notice, penalties assessed pursuant to subsubitem (vii)(A) and the additional



property taxes and late payment penalties are solely the personal liability of the transferor and do not constitute a lien on and are not enforceable against the property in the hands of the transferee. The provisions of this subsubitem (vii)(B) making the additional taxes and penalties assessed pursuant to subsubitem (vii)(A) the sole personal liability of the transferor also apply to transfers required as a result of a property settlement pursuant to a divorce or other disputed marital matters where required by written agreement of the parties or a court order unless the agreement or court order requires otherwise, and additionally apply to trust distributions unless the trust instrument requires otherwise.

- (viii) Failure to file within the prescribed time constitutes abandonment of the owner's right for this classification for the current tax year, but the local taxing authority may extend the time for filing upon a showing satisfactory to it that the person had reasonable cause for not filing before the first penalty date.
- (3) Notwithstanding any other provision of law, a taxpayer may apply for a refund of property taxes overpaid because the property was eligible for the legal residence assessment ratio. The application must be made in accordance with Section 12-60-2560. The taxpayer must establish that the property in question was in fact his legal residence and where he was domiciled. A county council, by ordinance, may allow refunds for the county government portion of property taxes for such additional past years as it determines advisable.
- (4) A legal residence qualifying for the four percent assessment ratio provided by this item must have an assessed value of not less than one hundred dollars.
- (5) To qualify for the four percent assessment ratio, the owner-occupant of a legal residence that is being purchased under a contract for sale or a bond for title must record the contract for sale or the bond for title in the office of the register of mesne conveyances or the clerk of court in those counties where the office of the register of mesne conveyances has been abolished.

For purposes of this subsection, a contract for sale or a bond for title is the sale of real property by a seller, who finances the sale and retains title to the property solely as security for the debt.

- (6) Notwithstanding any other provision of law, a purchaser who purchases a residential property intending that the property shall become the purchaser's primary residence, but subject to vacation rentals as provided for in Article 2, Chapter 50, Title 27 for no longer than ninety days, may apply for the four percent assessment ratio when the purchaser actually occupies the property. If the owner actually occupies the residence within ninety days of acquiring



ownership, the four percent assessment ratio, if the owner is otherwise qualified, applies retroactively to the date ownership was acquired.

(7) [deleted by 2014 Act No. 259, § 1.B.]

(8) (i) For ownership interests in residential property created by deed if the interest in the property has not already transferred by operation of law, when the individual claiming the special four percent assessment ratio allowed by this item has an ownership interest in the residence that is less than fifty percent ownership in fee simple, then the value of the residence allowed the special four percent assessment ratio is a percentage of that value equal to the individual's ownership interest in the residence, but not less than the amount provided pursuant to subitem (4) of this item. This subitem (8) does not apply in the case of a residence otherwise eligible for the special four percent assessment ratio when occupied jointly by a married couple or which remains occupied by a spouse legally separated from a spouse who has abandoned the residence. If the special four percent assessment ratio allowed by this item applies to only a fraction of the value of residence, then the exemption allowed pursuant to Section 12-37-220(B)(47) applies only to value attributable to the taxpayer's ownership interest.

(ii) Notwithstanding subsubitem (i), for ownership interests in residential property created by deed if the interest in the property has not already transferred by operation of law, an applicant may qualify for the four percent assessment ratio on the entire value of the property if the applicant:

(A) owns at least a twenty-five percent interest in the subject property with immediate family members;

(B) is not a member of a household currently receiving the four percent assessment ratio on another property; and

(C) otherwise qualifies for the four percent assessment ratio.

(iii) This subitem (8) does not apply to property held exclusively by:

(A) an applicant, or the applicant and the applicant's spouse;

(B) a trust if the person claiming the special four percent assessment ratio is the grantor or settlor of the trust, and the only beneficiaries of the trust are the grantor or settlor and any parent, spouse, child, grandchild, or sibling of the grantor or settlor;

(C) a family limited partnership if the person claiming the special four percent assessment ratio transferred the subject property to the partnership, and the only members of the partnership are the person and the person's parents, spouse, children, grandchildren, or siblings;



(D) a limited liability company if the person claiming the special four percent assessment ratio transferred the subject property to the limited liability company, and the only members of the limited liability company are the person and the person's parents, spouse, children, grandchildren, or siblings; or

(E) any combination thereof.

The exception contained in this subsubitem (iii) does not apply if the applicant does not otherwise qualify for the four percent assessment ratio, including the requirement that the applicant, nor any member of the applicant's household, claims the four percent assessment ratio on another residence.

For purposes of this subitem (8), "immediate family member" means a parent, child, or sibling.

(d) (1) Agricultural real property which is actually used for such agricultural purposes shall be taxed on an assessment equal to:

(A) Four percent of its fair market value for such agricultural purposes for owners or lessees who are individuals or partnerships and certain corporations which do not:

- (i) Have more than ten shareholders.
- (ii) Have as a shareholder a person (other than an estate) who is not an individual.
- (iii) Have a nonresident alien as a shareholder.
- (iv) Have more than one class of stock.

(B) Six percent of its fair market value for such agricultural purposes for owners or lessees who are corporations, except for certain corporations specified in (A) above.

(2) (A) "Fair market value for agricultural purposes", when applicable to land used for the growth of timber, is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents of the lands for timber growth or by capitalization of typical net income of similar soil in the region or a reasonable area of the region from the sale of timber, not including the timber growing thereon, and when applicable to land used for the growth of other agricultural products the term is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region or a reasonable area of the region, not including the agricultural products



thereon. Soil capability when applicable to lands used for the growth of timber products means the capability of the soil to produce such timber products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The term, when applicable to lands used for the growth of other agricultural products, means the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil as of the current assessment date. The term "region" means that geographical part of the State as determined by the department to be reasonably similar for the production of the agricultural products. After average net annual earnings have been established for agricultural lands, they must be capitalized to determine use-value of the property based on a capitalization rate which includes:

1. an interest component;
2. a local property tax differential component;
3. a risk component;
4. an illiquidity component.

Each of these components of the capitalization rate must be based on identifiable factors related to agricultural use of the property. The interest rate component is the average coupon (interest) rate applicable on all bonds which the Federal Land Bank of Columbia, which serves South Carolina farmers, has outstanding on July first of the crop-years being used to estimate net earnings and agricultural use-value. Implementation of the provisions contained in this section is the responsibility of the department.

- (B) (i) For tax year 1988 and subsequent tax years, fair market value for agricultural purposes must be determined by adjusting the applicable base year value by an amount equal to the product of multiplying the applicable base year value by a percentage factor obtained through the formula provided in this item. For tax year 1988, the applicable base year is 1981. The fair market value for agricultural purposes determined for the 1991 tax year is effective for all subsequent years.

- (ii) The percentage factor provided in this item is derived from the most recent edition of the United States Department of Agriculture publication "AGRICULTURAL LAND VALUES AND MARKETS", specifically, from "Table 1--Farm Real Estate Values: Indexes of the average value per acre of land and buildings . . ." as listed for this State. The formula to determine the applicable percentage factor is the index of the year of change less the index of the base year with the resulting amount being divided by the index of the



base year and rounded to the nearest whole number. For purposes of the formula, the base year is the last year in which values were adjusted under this item.

- (3) (A) Agricultural real property does not come within the provisions of this section unless the owners of the real property or their agents make a written application therefor on or before the first penalty date for taxes due for the first tax year in which the special assessment is claimed. The application for the special assessment must be made to the assessor of the county in which the agricultural real property is located, on forms provided by the county and approved by the department and a failure to apply constitutes a waiver of the special assessment for that year. The governing body may extend the time for filing upon a showing satisfactory to it that the person had reasonable cause for not filing on or before the first penalty date. No additional annual filing is required while the use of the property remains bona fide agricultural and the ownership remains the same. The owner shall notify the assessor within six months of a change in use. For failure to notify the assessor of a change in use, in addition to any other penalties provided by law, a penalty of ten percent and interest at the rate of one-half of one percent a month must be paid on the difference between the amount that was paid and the amount that should have been paid, but not less than thirty dollars nor more than the current year's taxes.

(B) Roll-back taxes authorized pursuant to item (d)(4) must not be applied solely because the owner of the property fails to make written application for an agricultural assessment so long as the actual use of the property remains agricultural. If the property assessment is changed from agricultural or the property is assessed roll-back taxes, the owner may appeal, and if an appeal is made, the property must continue to be assessed as agricultural and the roll-back taxes may not be applied until the final appeal date.

- (4) Except as provided pursuant to Section 12-43-222, when real property which is in agricultural use and is being valued, assessed, and taxed under the provisions of this article, is applied to a use other than agricultural, it is subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the real property been valued, assessed, and taxed as other real property in the taxing district, in the current tax year (the year of change in use) and each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed as herein provided. If in the tax year in which a change in use of the real property occurs the real property was not valued, assessed, and taxed under this article, then the real property is subject to roll-back taxes for each of the five tax years immediately preceding in which the real property was valued, assessed, and taxed hereunder. In determining the amounts of the roll-back taxes chargeable on real property which has undergone a change in



use, the assessor shall for each of the roll-back tax years involved ascertain:

- (A) the fair market value without consideration of the standing timber of such real property under the valuation standard applicable to other real property in the same classification;
 - (B) the amount of the real property assessment for the particular tax year by multiplying such fair market value by the appropriate assessment ratio provided in this article;
 - (C) the amount of the additional assessment on the real property for the particular tax year by deducting the amount of the actual assessment on the real property for that year from the amount of the real property assessment determined under (B) of this section;
 - (D) the amount of the roll-back for that tax year by multiplying the amount of the additional assessment determined under (C) of this section by the property tax rate of the taxing district applicable for that tax year.
- (5) Any other provision of law to the contrary notwithstanding, a dockside facility whose primary use is the landing and processing of seafood is considered agricultural real property.
 - (6) Any property which becomes exempt from property taxes under Section 12-37220(A)(1) or any economic development property which becomes exempt under Section 12-37-220(B) is not subject to rollback taxes.
- (e) All other real property not herein provided for shall be taxed on an assessment equal to six percent of the fair market value of such property.
 - (f) Except as specifically provided by law, all other personal property must be taxed on an assessment of ten and one-half percent of fair market value of the property, except that commercial fishing boats, and commercial tugboats and pilot boats must be taxed on an assessment of five percent of fair market value. As used in this item “commercial fishing boats” means boats used exclusively for commercial fishing, shrimping, or crabbing and (1) licensed by the Department of Natural Resources, or (2) on or from which is used commercial fishing equipment licensed by the Department of Natural Resources. As used in this item, “commercial tugboats” shall mean boats used exclusively for harbor and ocean towing, documented with the U.S. Coast Guard, constructed of steel, and being at least seventy-nine feet in length and having a gross tonnage of at least ninety-nine tons. As used in this item, “pilot boats” shall mean boats used exclusively for pilotage and operated exclusively by state pilots who are licensed by the Commissioners of Pilotage pursuant to Chapter 15, Title 54 and Chapter 136 of the regulations issued pursuant thereto.
 - (g) All real and personal property owned by or leased to companies primarily engaged in the transportation for hire of persons or property and used by such companies in the



conduct of such business and required by law to be assessed by the department shall be taxed on an assessment equal to nine and one-half percent of the fair market value of such property.

The department shall apply an equalization factor to real and personal property owned by or leased to transportation companies for hire as mandated by federal legislation.

Notwithstanding any other provision of this article, on June 3, 1975, if it is found that there is a variation between the ratios being used and those stated in this section, the county may provide for a gradual transition to the ratios as herein provided for over a period not to exceed seven years; provided, however, that all property within a particular classification shall be assessed at the same ratio, provided, further, however, that all property enumerated in subsection (a) shall be assessed at the ratio provided in such subsection and the property enumerated in subsections (b), (c), (d), (e), (f), and (g) shall be increased or decreased to the ratios set forth in this article by a change in the ratio of not less than one-half of one percent per year nor more than one percent per year. Provided, however, that notwithstanding the provisions of this section, a county may, at its discretion, immediately implement the assessment ratios contained in subsections (b), (c), (d), (e), and (f). Provided, however, that livestock shall not be subject to ad valorem taxation unless such livestock is physically located within the State for a period in excess of nine months. Provided, that this section shall not apply to farm animals and farm equipment in use on a farm in those counties which do not tax such property as of June 3, 1975.

Provided, however, all agricultural or forest land within easements granted to public bodies, agencies, railroads, or utilities for rights of way of thirty feet in width or greater shall be assessed at the same cropland value per acre as soil class 7 in schedule 1 of R 117-126 of the State Department of Revenue. In order to receive such assessment the landowner must apply to the tax assessor of the county where the easement is located, with documentation of the existence, location, and amount of acreage contained in the easement.

As used in this section, fair market value with reference to real property means fair market value determined in the manner provided pursuant to Article X of the Constitution of this State, Section 12-37-930 and Article 25, Chapter 37 of this title.

§ 12-43-222. Roll-back tax for open space.

(A) Notwithstanding the provisions of Section 12-43-220(d)(4), the property tax value, as defined in Section 12-37-3135, of that portion of a parcel of real property changed from agricultural use for purposes of residential or commercial development that is designated on the recorded development plat of the parcel as “green space for conservation” or “open space” if it equals ten percent or more of the area included within the outermost boundaries of the residential or commercial development must be valued according to its new “green space for conservation” or “open space” use for all purposes in calculating roll-back tax due on the parcel. As used in this section only, and without regard to any other definitions for those terms in state law or regulations, “green space for conservation” and “open space” have the meaning provided for those terms by the United States Environmental Protection Agency. The county assessor shall value the designated “green space for conservation” or “open space” in the manner that other property dedicated to that use is valued and that value must be used in the calculation of roll-back tax on the parcel pursuant to Section 12-43-220(d)(4). Appeals from the valuation of the “green space for conservation” or “open space” may be taken in the manner provided by law for appeals of value of real property appraised by county assessors.



(B) If the platted “green space for conservation” or “open space” is converted to another use in five property tax years or less since the provisions of this section were applied to the property, then the owner of property at the time of its conversion is liable for the roll-back taxes as if this section was not effective. For purposes of this subsection, if the transfer of property causes the change in use, then the transferor is deemed to be the owner of the property at the time of the conversion, and the taxes must be paid at the time of the closing.

(C) This section only applies when the local jurisdiction requires the designation of “green space for conservation” or “open space” as a condition to develop residential or commercial property.

§ 12-43-230. Treatment of agricultural real property, mobile home and lessee improvements to real property; department shall prescribe regulations; off-premises outdoor advertising signs.

- (a) For the purposes of this article, unless otherwise required by the context, the words “agricultural real property” shall mean any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture. In the event at least fifty percent of a real property tract shall qualify as “agricultural real property”, the entire tract shall be so classified, provided no other business for profit is being operated thereon. The term “agricultural real property” shall include real property used to provide free housing for farm laborers provided such housing is located on the tract of land that qualifies as agricultural real property.

The department shall provide by regulation for a more detailed definition of “agricultural real property” consistent with the general definition set forth in this section, to be used by county assessors in determining entitlement to special assessment under this article. Such regulations shall be designed to exclude from the special assessment that real property which is not bona fide agricultural real property for which the tax relief is intended.

- (b) For the purposes of this article all mobile homes in this State and all improvements to leased real property made by the lessee shall be considered real property and shall be classified and assessed for ad valorem taxation in accordance with the provisions of § 12-43-220. “Mobile homes” is defined as a portable unit designed and built to be towed on its own chassis, comprised of a frame and wheels, connected to utilities, and designed without a permanent foundation for year-round residential use. A mobile home may contain parts that may be folded or collapsed when being towed, and expanded on site to provide additional space. The term “mobile home” shall also include units in two or more separately towable components designed to be joined into one integral unit for use, and capable of being again separated into the components for repeated towing. It may also include two units which may be joined, on site, into a single residential unit.
- (c) The department may further provide by regulation for definitions not inconsistent with general law for real property and personal property in order that such property must be assessed uniformly throughout the State.



- (d) For purposes of this article, “homeowners' association property” means real and personal property owned by a homeowners' association if:
- (1) property owned by the homeowners' association is held for the use, benefit, and enjoyment of members of the homeowners' association;
 - (2) each member of the homeowners' association has an irrevocable right to use and enjoy on an equal basis, property owned by the homeowners' association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the homeowners' association; and
 - (3) each irrevocable right to use and enjoy property owned by the homeowners' association is appurtenant to taxable real property owned by a member of the homeowners' association.

Subject to making the appropriate application pursuant to this subsection, a homeowners' association may designate one or any number of its qualifying tracts or parcels as homeowners' association property for purposes of the special valuation contained in Section 12-43-227.

As used in this subsection, “homeowners' association” means an organization which is organized and operated to provide for the acquisition, construction, management, and maintenance of property.

Homeowners' association property does not come within the provisions of this subsection unless the owners of the real property or their agents make a written application for it on or before the first penalty date for taxes due for the first tax year in which the special valuation is claimed. The application may be with respect to one or any number of tracts or parcels owned by the homeowners' association. The application for the special valuation must be made to the assessor of the county in which the special valuation property is located, on forms provided by the county and approved by the department which includes the reporting of nonqualified gross receipts, and failure to apply constitutes a waiver of the special valuation for that year. No additional annual filing is required while the property remains homeowners' association property and the ownership remains the same, unless the nonqualified gross receipts within the meaning of Section 12-43-227 for the most recent completed tax year either (i) exceed the amount of nonqualified gross receipts with respect to the property reported on the most recently filed application by ten percent or more or (ii) are less than ninety percent of the amount of nonqualified gross receipts with respect to the property reported on the most recently filed application. In that case, the owners of the real property or their agents must make additional written application with respect to the property and report the change in nonqualified gross receipts.

- (e) (1) For ad valorem property tax purposes, an off-premises outdoor advertising sign must be classified as tangible personal property. The sign owner must file a business personal property tax return annually with the South Carolina Department of Revenue based upon the original cost of the sign structure less allowable depreciation. Any sign permit required by local, state, or federal law must be considered as intangible personal property for ad valorem property tax purposes.



- (2) (a) If an off-premises outdoor advertising sign site is one-quarter of an acre or less, or is otherwise limited to an area large enough only to accommodate the necessary building structure, foundation, and provide for service or maintenance, is leased from an unrelated third party, or the sign is owned by the owner of the site, and the sign owner has filed a business personal property tax return with the Department of Revenue, then the off-premises outdoor advertising sign site real property must be assessed to the site owner at its value before the lease or construction of the sign without regard to the structure, the lease, or lease income, and no separate assessment may be issued for the sign company's lease or ownership interest. The lease or construction of such property does not constitute an assessable transfer of interest pursuant to Article 25, Chapter 37, Title 12, and the real property constituting the sign site must maintain its same property tax classification as commercial, manufacturing, agricultural, or utility property as it had before the lease.
- (b) The provisions of this item do not apply to:
- (i) real property whose property tax classification is subject to change due to the addition of buildings, structures, or other improvements subsequent to the erection of the sign on the property; and
 - (ii) real property whose property tax classification was changed due to the erection of an on-premises outdoor advertising sign on existing buildings, structures, or other improvements unless the existing buildings, structures, or other improvements qualify within the same property tax classification pursuant to Chapter 43 of this title.
- (3) For purposes of this subsection:
- (a) "Intangible personal property" has the same meaning as contained in Section 3(j), Article X, of the Constitution of this State.
 - (b) "Off-premises outdoor advertising sign" means a lawfully erected, permanent sign which relates in its subject matter to products, accommodations, services, or activities sold or offered elsewhere other than upon the premises on which the sign is located.
 - (c) "Sign owner" means the owner of an off-premises outdoor advertising sign.

§ 12-43-232. Requirements for agricultural use.

In addition to all other requirements for real property to be classified as agricultural real property, the property must meet the following requirements:

- (1) (a) If the tract is used to grow timber, the tract must be five acres or more. Tracts of timberland of less than five acres which are contiguous to or are under the same management system as a tract of timberland which meets the minimum acreage requirement are treated as part of the qualifying tract. Tracts of



timberland of less than five acres are eligible to be agricultural real property when they are owned in combination with other tracts of nontimberland agricultural real property that qualify as agricultural real property. For the purposes of this item, tracts of timberland must be devoted actively to growing trees for commercial use.

(b) A tract which meets the acreage requirement of subitem (a) of this item devoted to growing Christmas trees is considered timberland. A Christmas tree tract not meeting the acreage requirement qualifies as agricultural property if the landowner reports gross income from Christmas trees that meets the income test provided in item (3) of this section, *mutatis mutandis*.

- (2) For tracts not used to grow timber as provided in item (1) of this section, the tract must be ten acres or more. Nontimberland tracts of less than ten acres which are contiguous to other such tracts which, when added together, meet the minimum acreage requirement, are treated as a qualifying tract. For purposes of this item (2) only, contiguous tracts include tracts with identical owners of record separated by a dedicated highway, street, or road or separated by any other public way.
- (3) (a) Nontimberland tracts not meeting the acreage requirement of item (2) qualify as agricultural real property if the person making the application required pursuant to Section 12-43-220(d)(3) earned at least one thousand dollars of gross farm income for at least three of the five taxable years preceding the year of the application. The assessor may require the applicant (i) to give written authorization consistent with privacy laws allowing the assessor to verify farm income from the Department of Revenue or the Internal Revenue Service and (ii) to provide the Agriculture Stabilization and Conservation Service (ASCS) farm identification number of the tract and allow verification with the ASCS office.
- (b) An owner making an initial application required pursuant to Section 12-43-220(d)(3) for a nontimberland tract of less than ten acres may claim the property as agricultural real property for each year for the first five years of operation if he earned at least one thousand dollars of gross farm income in at least three of the first five years. The assessor may require the new owner (i) to give written authorization consistent with privacy laws allowing the assessor to verify farm income from the Department of Revenue or the Internal Revenue Service and (ii) to provide the Agriculture Stabilization and Conservation Service (ASCS) farm identification number of the tract and allow verification with the ASCS office. If the new owner fails to meet the income requirements in the five-year period, the tract is not considered agricultural real property and is subject to the rollback tax.
- (c) Real property idle under a federal or state land retirement program or property idle pursuant to accepted agricultural practices is agricultural real property if the property otherwise would have qualified as agricultural real property subject to satisfactory proof to the assessor.
- (d) Unimproved real property subject to a perpetual conservation easement as provided in Chapter 8, Title 27 is agricultural real property if the property otherwise would have qualified as agricultural real property subject to satisfactory proof to the assessor.



(e) A nontimberland tract that does not meet the acreage or income requirements of this section to be classified as agricultural real property must nevertheless be classified as agricultural real property if the current owner or an immediate family member of the current owner has owned the property for at least the ten years ending January 1, 1994, and the property is classified as agricultural real property for property tax year 1994.

The property must continue to be classified as agricultural real property until the property is applied to some other use or until the property is transferred to other than an immediate family member, whichever occurs first. For purposes of this subitem, "immediate family" is a person related to the current owner within the third degree of consanguinity or affinity and a trust all of whose noncontingent beneficiaries are related to the grantor of the trust within the third degree of consanguinity or affinity.

- (4) In the case of rented or leased agricultural real property, either the lessor or the lessee shall meet the requirements of this section.
- (5) (a) On the application required pursuant to Section 12-43-220(d)(3), the owner or his agent shall certify substantially as follows: Subject to the penalty provided in Section 12-43-340, either:
- (i) "I certify that the property which is the subject of this application meets the requirements to qualify as agricultural real property as of January first of the current tax year"; or
 - (ii) "I certify that the property which is the subject of this application meets the requirements to qualify as agricultural real property and for the special assessment ratio for certain agricultural real property as of January first of the current tax year".
- (b) If it is determined that the property for which the certification was made did not meet the requirements to qualify for agricultural use classification at the time the certification was made, the property which is the subject of the certification is denied agricultural use value for the property tax year or years in question and in lieu of the rollback tax, the tax on the property for each tax year in question must be recalculated using fair market value, the appropriate assessment ratio, and the appropriate millage. There must be deducted from the recalculated tax liability any taxes paid for the year and the penalties provided pursuant to Section 12-45-180 must be added to the balance due. Interest at the rate of one percent a month must be added to the unpaid taxes calculated from the last penalty date. Additional property tax revenues derived from the operation of this section changing agricultural use property to some other use must be used only for the purpose of rolling back property tax millage.

§ 12-43-233. Agritourism uses.

(A) In addition to and incidental to the uses required for real property to be classified as agricultural real property pursuant to Sections 12-43-220(d), 12-43-230(a), and 12-43-232, and applicable regulations, uses of tracts of agricultural real property for "agritourism" purposes is deemed an agricultural use of the property to the extent agritourism is not the primary reason any tract is classified as agricultural real property but is supplemental and



incidental to the primary purposes of the tract's use for agriculture, grazing, horticulture, forestry, dairying, and mariculture. These supplemental and incidental agritourism uses are not an “other business for profit” for purposes of Section 12-43-230(a). For purposes of this section, agritourism uses include, but are not limited to: wineries, educational tours, education barns, on-farm historical reenactments, farm schools, farm stores, living history farms, on-farm heirloom plants and animals, roadside stands, agricultural processing demonstrations, on-farm collections of old farm machinery, agricultural festivals, on-farm theme playgrounds for children, on-farm fee fishing and hunting, pick your own, farm vacations, on-farm pumpkin patches, farm tours, horseback riding, horseback sporting events and training for horseback sporting events, cross-country trails, on-farm food sales, agricultural regional themes, hayrides, mazes, crop art, harvest theme productions, native ecology preservations, on-farm picnic grounds, dude ranches, trail rides, Indian mounds, earthworks art, farm animal exhibits, bird-watching, stargazing, nature-based attractions, and ecological-based attractions.

(B) The Department of Revenue by regulation may further define those uses qualifying as agritourism and appropriate definitions for “supplemental and incidental” as used in this section.

§ 12-43-340. Agricultural use application; false statement.

It is unlawful for a person knowingly and willfully to make a false statement on the application required pursuant to Section 12-43-220(d)(3) to a county assessor for the classification of property as agricultural real property or for the special assessment ratio for certain agricultural real property. A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars.

