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## Local Taxes and Tax Collection

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The 2002 Session of the General Assembly made numerous changes to the property tax laws. The changes in the laws governing use-value assessment were especially extensive.

### Assessment

#### Use-Value Assessment

S.L. 2002-184 (S 1161) makes broad and significant changes in the laws governing appraisal and assessment of agricultural, horticultural, and forest land at present-use value. All of these changes are effective for the 2003 tax year.

The valuation standard prescribed by the Machinery Act for appraisal and assessment of property in general is fair market value—that is, the price the property would bring in an arms-length sale between a willing buyer and a willing seller, each having equal knowledge of the highest and best use of the property. Agricultural, horticultural, and forest land may be eligible for taxation under a different valuation standard known as present-use value. Under this standard the current use of the property for agricultural, horticultural, or forest purposes is assumed to be the highest and best use. Appraisal values, standards, and rules must be based not on actual sales of comparable land but on the value imputed by capitalizing the land's capacity to generate income in its present use. Furthermore, the capitalization rate is fixed by law, not derived from the market. To be eligible for present-use valuation, both the land and its owner must meet complex eligibility requirements designed to aim program benefits toward individuals owning tracts of land large enough to be actively involved in commercial production of agricultural, horticultural, or forest products.

**Use-Value Advisory Board.** The heart of the use-value program is a set of standards and rules used by county assessors to appraise eligible property at present-use value. These standards and rules are known collectively as the use-value manual. Each county is free to develop its own

use-value manual, following the directives set out in the Machinery Act. In practice, however, most counties use a use-value manual recommended by the North Carolina Department of Revenue. The department's manual is in turn based on recommendations submitted by the Use-Value Advisory Board. This board has, in the past, been composed of four members: the director of the Agricultural Extension Service of North Carolina State University serves as chair and the remaining three members have been designated by the Department of Agriculture and Consumer Services, the Forest Resources Division of the Department of Environment and Natural Resources, and the Agricultural Extension Service at North Carolina Agricultural and Technical State University. S.L. 2002-184 adds five new board members to be appointed by the chief officers of the North Carolina Farm Bureau, the North Carolina Association of Assessing Officers, the Property Tax Division of the Department of Revenue, the North Carolina Association of County Commissioners, and the North Carolina Forestry Association.

**Use-value manual.** Previously the Machinery Act has required that the use-value manual establish ranges of expected net income per acre based on soil productivity and has prescribed a 9 percent capitalization rate. For agricultural land the income estimates have been based solely on corn and soybean production. S.L. 2002-184 makes major changes in this system. Instead of expected net income to the land, G.S. 105-277.7(c) now looks to estimated cash rental rates to the owner. These rental rates will be based on geographic area or soil class and will be derived from individual county studies or from contracted studies conducted by federal or state agencies. Income ranges for forestland will be based on up to six classes of land within each Major Land Resource Area designated by the United States Soil Conservation Service and will be developed by the Forestry Section of the Agricultural Extension Service. The capitalization rate for forestland remains 9 percent. The rate for agricultural and horticultural land may range between 6 and 7 percent, and the maximum value per acre for the best agricultural land may not exceed \$1,200. Each year the Use Value Advisory Board must report to the Revenue Laws Study Committee and the legislative leadership its recommendations for adjustments to the capitalization rates or the maximum per-acre value for agricultural land.

**Sound management.** The Machinery Act has required that land must be under a *sound management program* in order to qualify for use-value assessment. According to G.S. 105-277.2(6), this program of production is "designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement." As defined the program has been difficult to administer because few assessors have the time or resources to gather and analyze the information necessary to determine the sound management practices appropriate for hundreds or thousands of individual tracts. S.L. 2002-184 adds new subsection (f) to G.S. 105-277.3, which will make this task much more manageable. Under this new provision, a property owner may demonstrate that agricultural or horticultural land is part of a sound management program by providing evidence of any one of the following:

1. The land is enrolled in and complies with an agency-administered and approved farm management plan.
2. The land complies with a set of best management practices.
3. The land complies with a minimum gross income per acre.
4. The land yields net income from farm operations.
5. Farming is the farm operator's principal source of income.
6. A recognized agricultural or horticultural agency certifies that the land is operated according to a sound management program.
7. Other similar factors exist to support the conclusion that the land is operated according to a sound management program.

The new subsection provides that as long as the farm operator meets the sound management requirements, it is irrelevant whether the property owner received rent or income from the operator. This provision apparently pertains to the fourth and fifth means for demonstrating sound management listed above. The new subsection explicitly provides that forestland be subject to the current administrative practice of requiring the landowner to obtain and implement a written sound management plan.

S.L. 2002-184 also addresses problems that have arisen in applying the sound management requirement to woodland included within a farm or horticultural unit. Although the Machinery Act has allowed forestland that is part of a qualifying agricultural or horticultural tract to be included within the farm unit, such land must be appraised as woodland or wasteland under the use-value schedules. This stipulation has created difficulties in situations where the wooded portion of an agricultural tract is less than twenty acres—the minimum size required for classification as a forest tract—since sound management of forest tracts normally includes activities such as thinning and regular harvesting that would not be economically feasible on small isolated stands. S.L. 2002-184 provides that if an agricultural or horticultural tract includes less than twenty acres of woodland, the wooded portion is not required to be subject to a sound management program. Furthermore, a wooded portion of greater than twenty acres need not be subject to a sound management program if the highest and best use of the portion is (1) to reduce wind erosion on or protect the water quality of adjacent agricultural or horticultural land or (2) to serve as a buffer for livestock or poultry operations on adjacent agricultural land.

**Eligible owners.** The Machinery Act has been vague as to whether land can qualify for use-value assessment when it is owned by tenants in common who are not related within the degrees of kinship prescribed by G.S. 105-277.2(5a). S.L. 2002-184 clarifies this ambiguity by adding new G.S. 105-227.2(4)e to provide that tenants in common are qualified owners if each is either a natural person or a business entity as described in G.S. 105-277.2(4)b (generally, a family partnership or trust). Furthermore, each tenant in common may elect to treat his or her undivided interest as individually owned. Unfortunately the act does not make it clear whether such an election would have all of the effects of a partition of the land among co-owners, but it seems unlikely that this was the legislative intent. Take, for example, a nineteen-acre farm inherited in equal shares by two related individuals as tenants in common. Assuming that the tract is under a sound management program, it qualifies for use-value assessment as agricultural land. If it were to be partitioned between the two owners, each would presumably receive tracts of approximately nine and one-half acres in size, neither of which would meet the minimum ten-acre size requirement for use-value assessment. What would be the effect if one co-owner elected to treat his or her share as individually owned? In the example, if each undivided share were subjected to all of the eligibility requirements independently of the remainder of the tract, both co-owners' shares would no longer qualify, even if the other co-owner wished to remain in the program.

**Farm unit.** The Machinery Act has permitted an eligible owner who owns at least one agricultural, horticultural, or forest tract that meets the minimum size requirements for use-value assessment to “tack on” smaller tracts if all of the tracts are collectively operated as a single production unit. It has not been clear whether small tracts located in other counties could be so added to a unit. S.L. 2002-184 clarifies this issue by creating G.S. 105-277.2(7). The new definition of *unit* provided therein stipulates that multiple tracts contained within a farm, horticultural, or forest unit must be owned by the same entity and, if in different counties, be located within fifty miles of one another and share either the same type of classification or the same equipment or labor force.

**Application.** As with most other kinds of property classified for preferential treatment, an owner of property eligible for use-value assessment must apply for that benefit. G.S. 105-277.4 has provided that a new application is required when title to eligible land is transferred to another entity. S.L. 2002-184 amends G.S. 105-277.4(a) to provide that the new application “may be submitted at any time during the calendar year but must be submitted within sixty days of the date of the property’s transfer.” If interpreted literally, there are two situations in which this new provision will have potentially unforeseen consequences: (1) when property is transferred within the last sixty days of the calendar year and (2) when title to property is transferred by will, intestate succession, or operation of law. If property were to be transferred on December 29, for example, it seems unlikely that the General Assembly intended to require a new use-value application to be filed on or before December 31. More likely the intent would be to allow a full sixty days for submitting a new application even though the last day of that period may not be within the same calendar year as the transfer. It also appears the General Assembly intended the provision to apply to transfers of land by deed, not by other means such as by will or intestate

succession. The administrative practice in most counties is to list property of a deceased person in the name of the estate until the executor or the new owners have given the assessor notice of the division of the property among the heirs. It is not clear whether the sixty-day period for filing a new use-value application begins on the date of death, upon the filing of the executor's or administrator's final account, or upon notice to the assessor of the division of the estate.

**Audit of use-value tracts.** The Machinery Act requires the county assessor to review annually at least one-eighth of the parcels in the county that are in the use-value program. S.L. 2002-184 amends G.S. 105-296(j) to provide that the eligibility review must be based on the average of the preceding three years' data. In determining whether the property continues to be under a sound management program, the assessor must take into account weather conditions or other acts of nature that interfered with normal agricultural or horticultural operations. Before making this determination, the assessor must also allow the property owner to submit "additional information." The act also amends G.S. 105-299 to permit a county to assign to county agencies, or contract with state or federal agencies for performance of, any tasks involved with the approval or auditing of use-value accounts.

**Deferred taxes.** The Machinery Act provides that property in the use-value program is appraised at both its fair market value and its use value. The difference in taxes that would be due under market value assessment is carried forward in the taxing unit's records as deferred taxes, but those deferred taxes do not become due unless the property ceases to qualify for use-value assessment. When disqualification occurs, taxes for the current tax year are recomputed on the basis of fair market value and the deferred taxes for the previous three tax years immediately become due. The most common cause of disqualification is transfer of title to a new owner who does not meet the statute's complex ownership requirements.

G.S. 105-277.3 makes several exceptions to these general rules. G.S. 105-277.3(b2) permits a transferee who acquires land already in the use-value program to qualify immediately for use-value assessment, even though the transferee does not meet the natural person or entity ownership requirements imposed by G.S. 105-277.3(b) and (b1), if the transferee intends to continue using the land for the same purposes as did the previous owner. In such a case, deferred taxes will become due but they will be the responsibility of the new owner. S.L. 2002-184 makes it clear that the new owner must file a timely application and adds a requirement that the new owner certify that he or she (1) accepts liability for the deferred taxes and (2) intends to continue the present use of the land.

The act also adds new subsection (d1) to G.S. 105-277.3 concerning conservation easements. The new subsection provides that property in the use-value program continues to qualify as long as it is subject to an enforceable conservation easement that qualifies for the conservation tax credit available under the North Carolina income tax statutes even though the property no longer meets the use-value production or income requirements. Subsequent transfer of the property does not extinguish use-value eligibility of such property as long as the conservation easement is in effect.

### **Animal Waste Management Systems**

G.S. 105-275(8)a classifies and excludes from taxation real and personal property used for pollution abatement or waste disposal purposes that complies with the requirements of the Environmental Management Commission (EMC) or a local air pollution control program, as evidenced by certification issued by the appropriate regulatory agency. S.L. 2002-104 (S 1253) adds a new subdivision to the statute that will have the effect of limiting the availability of this exclusion to animal waste management systems, such as waste lagoons, commonly operated in conjunction with large-scale commercial production of hogs and poultry. Effective for the 2002 tax year, real and personal property constituting an animal waste management system will qualify for exclusion only if the EMC determines that the facility will

- eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff;

- substantially eliminate atmospheric emissions of ammonia;
- substantially eliminate odor detectable beyond the boundaries of the parcel or tract of land on which the farm is located;
- substantially eliminate release of disease-transmitting vectors and airborne pathogens; and
- substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

S.L. 2002-104 also directs the Revenue Laws Study Committee to consider whether the exclusion afforded by G.S. 105-275(8) should be limited to property subject to an individual EMC permit and whether this exclusion should be phased out altogether. The committee is to report its recommendations to the 2003 session of the General Assembly.

## **Manufactured Housing**

G.S. 105-273(13) was amended in 2001 to provide that a manufactured home that does not have the moving hitch, wheels, and axles removed and is not placed on a permanent foundation on land owned by the owner of the manufactured home is by definition to be considered tangible personal property. This amendment, enacted by S.L. 2001-406, was effective for the 2002 tax year and required some counties to reclassify a number of manufactured homes from real property to personal property. The 2001 act did not become law until December 19, 2001, less than two weeks before the beginning of the 2002 listing period. Section 4 of S.L. 2002-156 (H 1523) changes the effective date of the 2001 amendment so that the amendment will first apply to 2003 taxes. Thus counties that were unable to complete reclassification of manufactured housing for purposes of 2002 taxes have additional time to comply.

## **Listing and Valuation Appeals**

S.L. 2002-156 corrects a long-standing flaw in the Machinery Act by establishing a procedure for the appeal of personal property valuations, effective for 2003 taxes.

When the Machinery Act was last revised in 1971, most counties were still using the township list taker system for obtaining lists of taxable property, especially taxable personal property. Under that traditional system, the taxpayers appeared in person before township list takers and “gave in their lists”—that is, taxpayers disclosed to the list taker any items of taxable personal property they owned and that had a tax situs in that township. The list taker might then ask questions designed to jog the taxpayer’s memory regarding items that might have been overlooked and to obtain information useful in estimating each item’s value. At the conclusion of the interview, the list taker assigned a tax value to each listed item and entered the value on a listing called an abstract. The taxpayer then signed the abstract. Under this system the taxpayer had actual notice of the tax value assigned to each listed item because the listing and appraisal were done in his or her presence. All tax listing occurred during the regular January listing period.

The statutory process for appeals of all listing and valuation decisions allows the taxpayer to appeal to the board of equalization and review. This board normally meets each year for four weeks beginning in April or May. After the board adjourns, which always occurs before the current year’s taxes are levied and billed, the taxpayer no longer has a right to appeal for the current year.

Modern procedures for listing and appraising taxable personal property bear little resemblance to the traditional list taker system. Some counties provide valuation notices for personal property, but many do not. In counties that do provide valuation notices, mailing of the notices does not necessarily correspond with the scheduled meetings of the board of equalization and review. In counties that do not provide separate valuation notices, taxpayers have no actual notice of the tax value assigned to taxable personal property for the current year until taxes are billed. When the notice is finally received, the time for appeal of the listing, valuation, situs, or taxability of the property has long since passed.

S.L. 2002-156 redresses this anomalous situation by adding new subsection (c) to G.S. 105-317.1. The new provision states that the taxpayer is to be given thirty days from the date of the initial notice of value to initiate an appeal. If the assessor gives separate written notice of value before the taxes are billed, the thirty-day period is measured from the date of that notice (presumably, from the date the notice was mailed). If the assessor does not give separate notice, the tax bill serves as the notice of value, and the thirty-day period is measured from the billing date (again, presumably from the mailing date). In either event the notice must state that the taxpayer may appeal the property's assessed value, situs, or taxability within thirty days after the date of the notice. Counties that do not provide separate valuation notices for personal property will have to redesign the billing notice. From this point forward, the appeal process parallels the procedure for appealing a discovery. Upon receiving a timely appeal, the assessor must arrange a conference with the taxpayer. If the parties do not reach an agreement at the conference, the assessor must make a final decision and notify the taxpayer in writing within thirty days of the conference. The taxpayer then has thirty days to appeal the assessor's decision to the board of equalization and review or, if that board is not in session, to the board of county commissioners.

## **Collection**

### **Bad Check Penalties**

The current minimum penalty set by G.S. 105-357(b) when a check is submitted for payment of taxes and is returned by the bank either because of insufficient funds or nonexistence of an account is \$1 or 10 percent of the amount of the check, whichever is greater. S.L. 2002-156 increases this minimum penalty to \$25 or 10 percent of the amount of the check, whichever is greater. S.L. 2002-156 also enacts new G.S. 105-358(a) authorizing the tax collector to reduce or waive this penalty. However, the statute gives no guidance to collectors about what situations are appropriate for such a reduction or waiver. In the event a collector does reduce or waive the penalty, he or she must record the reasons for that action. These changes became effective October 9, 2002.

### **Setoff Debt Collection**

Chapter 105A of the General Statutes establishes a procedure by which state agencies and local governments may request the Department of Revenue to collect, or set off, from a state tax refund amounts owed the agency or local government by the individual entitled to the refund. Tax collectors have used this procedure to collect delinquent property taxes. Collectors have found, however, that the law does not authorize them to charge the taxpayer the expenses incurred in using the procedure. S.L. 2002-156 remedies this problem by amending various sections of Chapter 105A to direct the Department of Revenue to add a local collection assistance fee of \$15 to each local government debt collected and to remit this fee to the clearinghouse that submitted the debt. The collection assistance fee does not apply to child support debts. If only part of a debt can be collected through the setoff procedure, the state collection assistance fee has first priority, then the local collection assistance fee, and then the debt itself. [G.S. 105A-13(d)] The amendments to Chapter 105A are effective January 1, 2003.

### **Address Confidentiality Program**

Effective January 1, 2003, S.L. 2002-171 (H 1402) enacts new G.S. Chapter 15C to establish a program to keep the addresses and telephone numbers of certain persons confidential. In summary, a victim of domestic violence, a sexual offense, or stalking who has relocated may apply to the Attorney General for acceptance in the Address Confidentiality Program. The statute defines two important concepts: (1) an *actual address* is a "residential, work, or school street address as specified on the individual's application to be a program participant under this Chapter"

[G.S. 15C-2(1)]; and (2) a *substitute address* is “an address designated by the Attorney General under the Address Confidentiality Program” [G.S. 15C-2(9)]. When a person is accepted into the program, the Attorney General’s office issues that person an authorization card and establishes a substitute address where the person’s mail is to be delivered. The person’s actual address, even though it may appear on public records, is no longer to be treated as a public record under G.S. Chapter 132 and its use by public officials is subject to numerous restrictions. Applicants accepted into the program are certified for four years and may renew their certifications after that time.

Two of the new statute’s provisions deal specifically with property tax records. G.S. 15C-8(f) provides that for purposes of assessing and collecting motor vehicle taxes, the Attorney General shall issue to assessors and collectors a list of the names and actual addresses of program participants residing in their counties. The statute further provides that this information is to be used only for assessing and collecting property taxes on motor vehicles and is not to be disclosed to any person other than tax office employees. G.S. 15C-8(g) provides that a substitute address is not to be used “for purposes of listing, appraising, or assessing taxes on property and collecting taxes on property under the provisions of Subchapter II of Chapter 105 of the General Statutes.” The intent of this provision is that actual addresses will be used for property tax purposes. Although the statute is not entirely clear on this point, apparently these records, with the actual addresses, remain public records. This conclusion is based on the observation that five subsections of G.S. 15C-8 deal with actual addresses of persons in the program: subsection (e) pertains to board of elections records; subsection (f), to motor vehicle tax records; subsection (g), to non-motor vehicle tax records; subsection (h), to nonmarriage records and indexes in the office of the register of deeds; and subsection (i), to certain school records. In three of these subsections—those dealing with elections records, motor vehicle tax records, and school records—the statute expressly provides that the actual addresses shown in the records shall be kept confidential. The subsections dealing with nonmarriage records in the register of deeds’ office and tax records other than those related to motor vehicles contain no such confidentiality requirement. Apparently the General Assembly intended to require that some records showing actual addresses be kept confidential but others are to remain public record.

Anyone who knowingly and intentionally discloses information in violation of Chapter 15C is guilty of a Class 1 misdemeanor and may be assessed a fine not to exceed \$2,500 [G.S. 15C-9(f)].

### **Fees for In Rem Foreclosures**

Effective October 1, 2002, S.L. 2002-126 (S 1115) increases two of the fees that taxing units filing in rem foreclosures pursuant to G.S. 105-375 must pay. The act amends G.S. 7A-308(a)(11) to increase the fee for recording and indexing the first page of any document from \$4 to \$6, and it amends G.S. 7A-308(a)(5) to increase the fee for issuance of an execution from \$15 to \$22.50.

### **Payment of Taxes before Recording Deeds**

G.S. 161-31, which is applicable in only thirty-five counties, authorizes boards of county commissioners to adopt resolutions requiring tax collectors to certify that no delinquent property taxes are liens on a parcel of property before the register of deeds is allowed to record a deed conveying an interest in that property. S.L. 2002-51 (H 1533) adds the following counties to this statute: Bertie, Clay, Durham, Henderson, Hertford, Macon, Northampton, Polk, Rutherford, and Transylvania.

### **Studies**

After a lapse of many years, the General Assembly has again created a permanent body charged with ongoing study of the property tax. S.L. 2002-184 adds new G.S. 120-70.108 to direct the Revenue Laws Study Committee to establish a permanent Property Tax Study Subcommittee

consisting of six members. The Senate and House co-chairs of the Revenue Laws Study Committee will each appoint three members from their respective chambers to serve on the subcommittee and will designate one of those members as co-chair. The subcommittee is specifically directed to study all classes of exempt and excluded property as well as the use-value system.

S.L. 2002-180 (S 98) authorizes the Revenue Laws Study Committee to study issues related to the collection of property taxes on mobile homes and to report its findings and recommendations to the 2003 General Assembly.

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