

# 17

## Local Taxes and Tax Collection

---

In 1998, the General Assembly made major changes in the taxation of undeveloped land when it is annexed by a municipality and attempted to restore the property tax exemption for certain retirement homes. Perhaps the biggest news, however, was the failure of a furious last-minute attempt to increase the property tax exclusion for low-income elderly or disabled homeowners.

### **Property Tax Assessment**

#### **Use Value**

**Loss of Qualification for Use Value.** S.L. 1998-98 (S 1226) makes several changes in the use-value statutes. Under existing G.S. 105-277.3(b), land that is qualified for use value loses its qualification if it is transferred to a person who is not a relative of the owner. Qualified land does not lose its eligibility for classification, however, if it is transferred to a new owner who, at the time of transfer, owned other land that was assessed under the use-value program. S.L. 1998-98 amends G.S. 105-277.3(b2) to make it clear that even though the land continues to qualify for use-value assessment, the deferred taxes are due under G.S. 105-277.4(c) at the time of the transfer. The act also amends the definition of “business entity” in G.S. 105-277.2(4)b to include as a member of the entity a person who “is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity.”

S.L. 1998-98 makes two other changes in G.S. 105-277.3 that may lead to some confusion. First, it recodifies the first paragraph following G.S. 105-277.3(b) as new subsection (b1), and it deletes from that paragraph the language providing that land qualified for use value and owned by a business entity does not lose that qualification because of the death of one of the entity’s members if the decedent’s ownership passes to a relative of the decedent. Second, it recodifies the second paragraph following G.S. 105-277.3(b) as new Subsection (b2), and it deletes from that paragraph the language providing that land qualified for use value does not lose its qualification if it is transferred to a relative of the owner. Appearances to the contrary, these deletions do not cause a loss of qualification when qualified land is transferred to a relative of the owner. This is

so because G.S. 105-277.3(b)(2) provides that the natural person ownership requirements are met if the land has been owned by the current owner or a relative for four years. Thus the ownership requirements are still met when there is a transfer to a relative. New subsection (b2) provides that a loss of qualification occurs and deferred taxes come due "if the land fails to meet an ownership requirement due to a change in ownership." But because of G.S. 105-277.3(b)(2), transfer to a relative does not cause the land to fail to meet an ownership qualification.

**Effective Date of Annexation for Use-Value Property.** S.L. 1998-150 (H 1361) makes a number of changes in the municipal annexation laws. Most of them are discussed in Chapter 16 (Local Government and Finance). One of the objectives of S.L. 1998-150 is to protect from the burden of municipal taxes qualified agricultural, horticultural, and forestland that is annexed to a municipality without the owner's consent pursuant to the general municipal annexation statutes.

There are three ways that a city can expand its corporate limits to include new territory: (1) by special act of the General Assembly, (2) upon petition of all property owners in the area to be annexed, and (3) by an ordinance of the municipal governing board adopted after notice and hearing. Under the third method, the area to be annexed must meet specified statutory criteria, but the consent of property owners in the annexed area is not required. This method, often termed "involuntary annexation," begins when a city council adopts a resolution of intent to annex a described area. S.L. 1998-150 applies to any land that is included in the area described in a resolution of intent to annex adopted on or after November 1, 1998, under the "involuntary" annexation statutes. It does not affect land annexed by petition or land annexed by special legislative act.

As amended by S.L. 1998-150, the municipal annexation statutes provide that agricultural, horticultural, or forestland that is annexed to a city will not be subject to municipal taxes and will not be entitled to municipal services as long the land meets one of two tests: (1) it is being taxed at present-use value as of the date of the adoption of the resolution of intent to annex or (2) as of the date of adoption of the resolution it "has not been in use for actual production for the required time under G.S. 105-277.3" but meets all the other criteria for use-value taxation, and the county assessor certifies that fact to the municipality. The meaning of the quoted phrase is not entirely clear, but it seems most likely that the legislative intent is to include agricultural and horticultural land that meets all of the statutory criteria for use-value eligibility except the requirement that the land must have produced an average gross income over the preceding three calendar years of at least \$1,000 from the sale of agricultural or horticultural products produced thereon.

S.L. 1998-150 leaves several important administrative issues ambiguous or unresolved. The most troublesome for county assessors is likely to be the inclusion of property that might become eligible for use-value taxation in some future tax year but does not qualify for the current tax year because the income requirement has not been satisfied. G.S. 105-277.4(b), as amended by S.L. 1998-150, provides that "upon a request for a certification pursuant to G.S. 160A-37(f1) or G.S. 160A-49(f1), or any change in the certification, the assessor for the county where the land subject to the annexation is located shall, within thirty days, determine if the land meets the requirements of G.S. 160A-37(f1)(2) or G.S. 160A-49(f1)(2) and report the results of its [*sic*] findings to the city." This clause is ambiguous as to who will request certification. If the request will be made by the property owner, administration should be relatively simple. The property owner could be required to supply all of the information normally required in an application for use-value status. Certification of that parcel would follow if all eligibility criteria except the average income requirement are present. On the other hand, if the assessor is required to respond to a certification request from the city, it is not apparent how he or she would obtain the necessary information without inviting all of the owners of undeveloped property in the annexed area to apply for use-value appraisal.

The second major problem with S.L. 1998-150's property tax provisions is that they fail to address the question of the status of property that was certified as not subject to municipal taxation as of the annexation date but did not at that time actually qualify or has subsequently ceased to qualify. The use-value statutes contain considerable detail regarding the maintenance of

records of deferred taxes, the rollback of tax liability upon loss of qualification, the duty of the property owner to report loss of eligibility, and the consequences of the owner's failure to report loss of eligibility. None of these issues is addressed by S.L. 1998-150. It seems clear that there will be no rollback of municipal taxes to prior tax years when annexed use-value land loses eligibility, but the status of municipal taxes in subsequent years is not at all clear when the property owner fails to report loss of eligibility and that fact is not uncovered by tax officials until later. Nothing in S.L. 1998-150 gives any hint as to the legislative intent on this issue.

Having established the public policy that land eligible for use-value taxation should not be subject to municipal taxation and is not entitled to municipal services, the next session of the General Assembly should address the implications of that policy for property tax administration.

## Exemptions and Exclusions

**Flight Equipment of Air Couriers.** Section 10 of S.L. 1998-55 (S 1569) amends G.S. 105-275 to classify and exclude from taxation aircraft that are (1) owned or leased by an interstate air courier, (2) apportioned to the courier's hub in North Carolina, and (3) used in the courier's operations in North Carolina. This new classification is apparently intended to benefit Federal Express, which recently announced plans to locate hub operations at the Piedmont Triad Airport near Greensboro. The new classification is effective for tax years beginning on or after July 1, 2001.

**Major Recycling Facilities.** Section 18 of S.L. 1998-55 amends G.S. 105-278(8) to expand the exclusion for recycling facilities. This section has classified and excluded from the tax base real or personal property "used *exclusively* for recycling or resource recovering of or from solid waste" (emphasis supplied) under specified conditions. The 1998 amendment adds a new subparagraph that covers any real or personal property "used by a major recycling facility as defined in G.S. 105-129.25 *predominately* for recycling or resource recovering of or from solid waste" (emphasis supplied), if the Department of Environment and Natural Resources certifies to the county assessor that the property "has, or will have as a purpose recycling or resource recovering of or from solid waste." The reference to G.S. 105-129.25 has the effect of adding the following qualifications: (1) the facility must be located in an area that, at the time construction began, was an enterprise Tier One area as defined in G.S. 105-129.3; (2) the Secretary of Commerce has certified that, by the end of the fourth year after construction begins, the owner will have invested at least \$300 million in the facility and will have created 250 new, full-time jobs; and (3) the jobs at the facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date construction begins. This new classification is effective for tax years beginning on or after July 1, 1999. It appears to be carefully drafted to apply only to a proposed steel plant to be built in Hertford County by Nucor Corporation.

**Continuing Care Retirement Homes.** Section 29A.18 of S.L. 1998-212 (S 1366) is an attempt to resolve, on a temporary basis, the property tax status of continuing care retirement homes. But, unfortunately for those who worked for its passage, the revised law clearly violates accepted constitutional standards for classified legislation. The 1998 legislation attempts to revise G.S. 105-275(32) to cover retirement facilities that meet five specified criteria, one of which is that the charter or bylaws of the facility "as they existed on August 15, 1998," provide that it is governed by a board of directors a majority of whom are selected in specified ways. The quoted phrase makes this a class based on existing circumstances only. It is well established that classified legislation that limits members of the class to those meeting specific criteria as of a specific date is a denial of equal protection of the laws and therefore void under the Fourteenth Amendment to the United States Constitution. *State v. Glidden Co.*, 228 N.C. 664, 46 S.E.2d 860 (1948); 16B Am. Jur. 2d *Constitutional Law* § 823 (1998).

The debate over the property tax status of continuing care retirement facilities began with a ruling by the North Carolina Court of Appeals in a case involving a facility in Chapel Hill known as Carol Woods. *In re Chapel Hill Residential Retirement Center, Inc.*, 60 N.C. App. 294, 299 S.E.2d 782, *cert. denied*, 308 N.C. 386, 302 S.E.2d 249 (1983). In that case, the court of appeals

held that Carol Woods did not qualify for exemption under G.S. 105-278.6 as a charitable home for the aged or infirm because there was no evidence that any resident of the facility was unable to pay the entrance fee or the monthly fees charged for service after admission to the facility, or that any resident was being subsidized by charitable contributions. This ruling placed in jeopardy the tax status of a number of retirement facilities that had originally been established by religious organizations and the Masonic Order with the charitable intent of providing retirement homes for the aged or infirm, at least some of whom were unable to pay the full cost of their care.

In 1987 the General Assembly attempted to ensure that retirement homes with ties to religious organizations or the Masonic Order would not lose the exempt status that they had traditionally enjoyed. From the outset, the Institute of Government held the opinion that explicitly crafting a property tax classification that distinguishes between identical activities solely on the basis of their ties to a religious organization violates the Establishment Clause of the First Amendment to the U.S. Constitution. [Campbell, William A. and Joseph S. Ferrell, "Local Taxes and Tax Collection," in Joseph S. Ferrell, ed., *North Carolina Legislation 1987* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1987), p. 111.] This point of view was eventually adopted by the N.C. Court of Appeals in a case involving the Springmoor Retirement Center in Wake County, a facility that meets all of the criteria for exclusion except those requiring affiliation with a religious or Masonic organization. *In re Springmoor, Inc.*, 125 N.C. App. 184, 479 S.E.2d 795 (1997). Rather than declare the entire exclusion unconstitutional, the court of appeals held that the specific portion of G.S. 105-275(32) that conditions eligibility on ties to a religious or Masonic organization was unconstitutional and could be struck down without impairing the remainder of the statute. The result of the court's decision would have been that virtually all nonprofit residential retirement communities would have qualified for exclusion if they had an active fund-raising program to assist residents who might become unable to continue to reside in the facility without financial assistance.

The N.C. Supreme Court wrote the next chapter in the debate by ruling that the court of appeals had erred in its decision. *In re Appeal of Springmoor, Inc.*, 348 N.C. 1, 498 S.E.2d 177 (1998). The supreme court agreed that the clause requiring ties to a religious organization or a Masonic organization was unconstitutional, but it found that this clause was so integral to the overall legislative plan that it could not be severed. Therefore, the court ruled that G.S. 105-275(32) was unconstitutional in its entirety. The result of this decision is that some retirement communities with religious ties could be at risk of losing exempt status if they are unable to demonstrate that at least some of their residents are being subsidized by charitable contributions.

The 1998 amendment to G.S. 105-275(32) attempts to restore temporarily (for 1998 and 1999 taxes only) the tax status of residential retirement communities to the situation that existed before the *Springmoor* litigation. Meanwhile, the Legislative Research Commission is directed to conduct a comprehensive study of property tax exemptions for nonprofit institutions. The commission may make an interim report to the 1999 session of the General Assembly and a final report to the 2000 session. Without doubt, the tax status of residential retirement communities will be the first matter that this study addresses, and it would not be surprising if the 1999 General Assembly acts quickly to remedy the defect in the 1998 special provision. For that reason, county assessors should move cautiously in attempting to revoke the exempt status of facilities that appear to be covered by the 1998 amendment to G.S. 105-275(32) until the intentions of the 1999 General Assembly in this matter become clear.

One consequence of the supreme court's ruling in *Springmoor* is that the state of the law returned to what it was before enactment of G.S. 105-275(32) in 1987. Section 29A.18 does not address the tax status of property excluded under G.S. 105-275(32) for the tax years 1987 through 1997. It attempts to provide for exclusion for 1998 and 1999 but makes no provision for prior years. A strict reading of the law in this situation leads to the conclusion that any action adding property to the exempt roster in 1987 or any subsequent tax year through 1997 solely on the basis of qualifying under G.S. 105-275(32) should be rescinded. This could well mean that some facilities could now find themselves liable for accrued taxes plus interest from 1989 through the current year (the ten-year statute of limitations having already run on 1987 and 1988

taxes). As in the case of revoking existing exemptions for 1998, the most prudent course of action for tax collectors would seem to be to await action of the 1999 General Assembly on this issue.

### **Maps**

S.L. 1998-228 (S 1552) amends G.S. 47-30(m) to require that maps attached to deeds or other instruments must be no larger than 8 1/2 by 14 inches and amends G.S. 47-30(n) to provide that a map attached to a deed or other instrument that does not meet the requirements of G.S. 47-30(m) (that is, a map that does not contain the original signature and seal of a registered land surveyor or is not a certified copy of such a map) may be accepted for recording only if it contains the following label: "THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS." Such maps must also be no larger than 8 1/2 by 14 inches.

S.L. 1998-228 also amends G.S. 47-30.2(c) to add two new categories of maps that are exempt from certification by a review officer and may be recorded by the register of deeds without a review officer's certification. The first category of exempt maps is maps that are exempt from G.S. 47-30 by virtue of G.S. 47-30(j) or (l). These are maps of boundaries of municipalities, annexation maps, highway right-of-way maps, and transportation corridor maps. The second category of exempt maps is maps attached to deeds and recorded pursuant to G.S. 47-30(n). It is important to note that not all maps attached to deeds are exempt from a review officer's certification. Only those that are recorded pursuant to G.S. 47-30(n), discussed above, are exempt; attached maps recorded pursuant to G.S. 47-30(m) must still be certified by a review officer.

The amendments to G.S. 47-30(m) and (n) became effective December 1, 1998. The amendments to G.S. 47-30.2, creating the new exemptions, became effective November 6, 1998.

### **Exchange of Information**

S.L. 1998-139 (H 1489) adds two new provisions to G.S. 105-148.1(a) that allow county tax officials to exchange tax information that is otherwise confidential. New subsection (4) allows the exchange of information with a regional public transportation authority or a regional transportation authority. New subsection (5) allows the exchange of information with the state Department of Revenue "when the information is needed to fulfill a duty imposed on the Department or on the county."

## **Local Tax Collection**

### **Motor Vehicle Taxes**

S.L. 1998-139 (H 1489) amends G.S. 105-330.6(c) to provide for the prorated release or refund of taxes on registered motor vehicles if the owner moves out of state and registers the vehicle in that jurisdiction. The owner must surrender the North Carolina plates to the Division of Motor Vehicles and present evidence of the surrender to the county tax collector within 120 days.

### **Taxes Paid Before Deed Recorded**

S.L. 1998-73 (H 1307) adds Banner Elk to the list of cities and counties in which a deed may not be recorded by the register of deeds unless it is accompanied by a certificate from the tax collector that all delinquent taxes on the property described in the deed have been paid.

## Other Local Taxes

### Privilege License Taxes

**License Year.** S.L. 1998-95 (S 1252) amends G.S. 105-33 to delete the provision that allowed the license tax year for taxes levied under Schedule B to run from either July 1 to June 30 or June 1 to May 30. This is in the nature of a cleanup amendment because virtually no city and county privilege license taxes are levied under authority of Schedule B anymore; since 1996 virtually all local privilege license taxes have been levied under the authority of G.S. 153A-152 and G.S. 160A-211. All cities and counties, by now, should be on a July 1 to June 30 license year.

**G.S. 105-37.1 Amusements Not Otherwise Taxed, G.S. 105-38 Circuses.** S.L. 1998-95 deletes all of the exemptions from G.S. 105-37.1 (except those for school dances and athletic events) and all of the exemptions from G.S. 105-38 and amends G.S. 105-40 to exempt the N.C. Symphony, agricultural fairs, outdoor dramas, school athletic contests and dances, teen centers, centers for performing arts, and entertainments on the Cherokee reservation from both G.S. 105-37.1 and 105-38. It also sets the maximum city tax under G.S. 105-37.1 at \$25, which does not change existing law, and the maximum city and county tax under G.S. 105-38 at \$25, which is a change from the existing law. S.L. 1998-96 (S 1001) further amends G.S. 105-49 to exempt certain arts and community festivals. To qualify for the exemption, a festival must be sponsored by an organization that is exempt from the state income tax, the organization may sponsor no more than two arts festivals or one community festival per year, and the festival must last no longer than seven days. In addition, in the case of an arts festival, the festival must be held outdoors on public property, and, in the case of a community festival, the majority of the events must be outdoors and the events must be open to the public. All of these changes are effective July 1, 1999.

**Wholesale Malt Beverage and Wine License.** S.L. 1998-95 amends G.S. 105-113.79, effective May 1, 1999, to change the annual city license tax on wholesale malt beverage and wine businesses from 25 percent of the state tax to \$37.50. This makes no substantive change in the amount of the tax.

### Prepared Food and Beverage Taxes

S.L. 1998-139 (H 1489) amends G.S. 105-259(b) to allow the Department of Revenue to provide the following information to cities and counties: (1) the name, address, and identification number of retailers who collect the sales tax and may be selling prepared food and beverages; and (2) the name, address, and identification number of retailers audited when the audit results may be of interest to cities and counties in the administration of the prepared food and beverage tax.

### Bills That Failed to Pass

The 1997-98 General Assembly considered, but failed to enact, a number of legislative proposals (Senate Bill 421, House Bill 37, House Bill 1268, Senate Bill 1169, House committee substitute for Senate Bill 1092, and House committee substitute for Senate Bill 1241) to expand homestead property tax relief for low-income, elderly, or disabled homeowners. These bills are discussed in more detail in Chapter 22 (Senior Citizens).

The General Assembly also failed to enact legislation (House committee substitute for Senate Bill 421) that proposed a constitutional amendment to freeze real property values at their levels in the year 2000.

*William A. Campbell*

*Joseph S. Ferrell*