

PROPERTY TAX

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APPLICATIONS FOR EXEMPTIONS AND EXCLUSIONS

■ William A. Campbell

This bulletin reviews the procedures for applying for exemptions and exclusions from local ad valorem property taxes, appeals of denials of applications, and discovery of property that does not qualify for an exemption or exclusion. It is the first in a planned series of bulletins on exemptions and exclusions. Each bulletin will discuss the relevant Machinery Act provisions, Property Tax Commission decisions, and court cases.

Application procedures and requirements

To obtain an exemption or exclusion of property from local ad valorem taxes, most property owners must file an application with the county assessor.¹ The application should be on a form approved by the Department of Revenue, and the owner must provide "a complete and accurate statement of the facts that entitle the property to the exemption or exclusion,"² but the owner does not have to cite or refer to the particular statute pursuant to which the exemption or exclusion is claimed.³ Moreover, the application does not even have to be on a department-approved form so long as the owner furnishes the assessor with all of the

¹ N.C. Gen. Stat. § 105-282.1(a). If the property is appraised by the Department of Revenue, the application must be filed with the department. This requirement applies only to public service company property, *see* G.S. 105-333 through G.S. 105-346.

² N.C. Gen. Stat. § 105-282.1(a).

³ *In re R.J. Reynolds Tobacco Co.*, 74 N.C. App. 140, 327 S.E.2d 607, cert. denied, 314 N.C. 116, 332 S.E.2d 483 (1985).



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information necessary for the assessor to determine whether to grant the exemption or exclusion.⁴

Owners of the following types of property are not required to file applications:

1. Property owned by the federal, state, or local governments;⁵
2. Motor vehicles given to veterans by the United States on account of disabilities;⁶
3. Standing timber;⁷
4. Nonbusiness personal property;⁸
5. Property manufactured for nonresidents;⁹
6. Intangible personal property;¹⁰
7. Inventories of manufacturers, contractors, and wholesale and retail merchants;¹¹
8. Computer software;¹²
9. Burial property.¹³

Owners of other types of property must file an application for exemption or exclusion, and although the general rule is that an application must be filed annually, there are so many exceptions to the annual application requirement that they have swallowed the general rule. Once an application has been approved, owners of the following types of property are not required to file an application in subsequent years unless additional property is acquired or improvements are made that necessitate a change in the valuation of the prop-

⁴ In re Valley Proteins, Inc., 128 N.C. App. 151, 494 S.E.2d 111 (1997). The taxpayer included a statement with its 1994 listing that it was applying for an exclusion for recycling and resource recovery property and that it had submitted an application for certification to DEHNR. The taxpayer did not apply on form AV-10, approved by the Department of Revenue. On Dec. 12, 1994, DEHNR sent the county assessor the certification of the property for 1994. In February, 1995, the assessor informed the taxpayer that its application for 1994 was denied because it had not applied on form AV-10. The taxpayer appealed to the Property Tax Commission, and the commission ordered that the application be granted because the taxpayer met the requirements of the statute and had provided the assessor with all of the information necessary to make a decision. The court of appeals affirmed, holding that G.S. 104-282.1(a) does not require as a condition for exemption or exclusion that the application be on a department-approved form.

⁵ N.C. Gen. Stat. § 105-282.1(a)(1).

⁶ *Id.* § 105-282.1(a)(2).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

erty, or the use of the property is changed so that a review of the exemption or exclusion must be made:¹⁴

1. Property used for religious purposes [G.S. 105-278.3];
2. Property used for educational purposes [G.S. 105-278.4];
3. Property of religious educational assemblies [G.S. 105-278.5];
4. Property used for charitable purposes [G.S. 105-278.6];
5. Property used for educational, scientific, literary, or charitable purposes [G.S. 105-278.7];
6. Property used for charitable hospital purposes [G.S. 105-278.8];
7. Property owned by nonprofit water or sewer associations or corporations [G.S. 105-275(3)];
8. Property owned by a nonprofit corporation or charitable organization appropriated exclusively for public parks and drives [G.S. 105-275(7)];
9. Property used for pollution control and recycling [G.S. 105-275(8)];
10. Real property used for educational and scientific purposes as a protected natural area [G.S. 105-275(12)];
11. Property owned by veterans' organizations [G.S. 105-275(17)];
12. Property owned by lodge organizations [G.S. 105-275(18)];
13. Property owned by civic clubs [G.S. 105-275(19)];
14. Residence owned by a disabled veteran receiving certain federal benefits, up to a maximum of \$38,000 in value [G.S. 105-275(21)];
15. Certain property owned by a nonprofit corporation and leased to a local government [G.S. 105-275(39)];
16. Agricultural, horticultural, and forest land qualified for assessment at use value [G.S. 105-277.1];
17. Historic properties [G.S. 105-278].

Also, once the special assessment rules are applied to precious metals used in a manufacturing process [G.S. 105-277.10], a subsequent application is not required, and this is true even with regard to classified property acquired after the application is approved so long as the property is used in a manufacturing process.¹⁵

In addition to these general application requirements, special rules apply when an exclusion is sought for residential property owned by the low-income eld-

¹⁴ *Id.* § 105-282.1(a)(3).

¹⁵ *Id.* § 105-282.1(a)(4).

erly or disabled (the "homestead" exclusion) or use-value assessment is sought for certain agricultural or horticultural property, or forestland. Notice of the availability of the homestead exclusion must be included on the abstract or on a separate sheet distributed with the abstract.¹⁶ Contrary to the general rule that applications must be filed during the listing period, an application for the homestead exclusion of \$20,000 of the value of the owner's residence may be filed at any time until April 15 preceding the tax year for which the exclusion is claimed.¹⁷ The applicant must demonstrate that he or she meets the age and income qualifications for the exclusion, and most counties use a two-part application for this purpose. The general application, with the statement of age, may be part of the abstract or mailed with the abstract; the statement of income is a separate application because it is not a public record,¹⁸ and assessors must keep it separate from the abstract. If the applicant is seeking the exclusion on the ground that he or she is totally and permanently disabled, then the application must be accompanied by a certificate to that effect from a North Carolina licensed physician or a government agency authorized to determine eligibility for disability benefits.¹⁹ Applications for use-value classification ordinarily must be made during the listing period of the year in which the classification is first claimed, but an application may also be filed within thirty days of the date of a notice of a change in value of the property in either a revaluation or nonrevaluation year. This thirty-day period is commenced only by a change in the value of the land because only the land can qualify for use-value appraisal. A change in the value of an improvement on the land does not trigger the thirty-day application period.²⁰ Once property has been approved for use-value assessment, a new application is not required unless the property is transferred or becomes ineligible for use-value classification.²¹

As stated above, in most cases the application must be filed during the listing period, which is the month of January but can be extended for thirty days in nonrevaluation years and for sixty days in revaluation years.²² An applicant who fails to file during the listing period may, however, be allowed to file a late application with the board of equalization and review, board of county commissioners, or municipal governing board, provided the applicant can make a showing of

"good cause" for his failure to make a timely filing.²³ The statute does not define "good cause," so it is whatever the reviewing board in its discretion finds it to be. But the exercise of this discretion by a board in finding that good cause was not shown is reviewable by the Property Tax Commission and the courts.²⁴ Even if approved, however, a late application is effective to obtain an exclusion or exemption only for the calendar year in which it is filed and is not retroactive.²⁵ For example, if a taxpayer files an application in June of 1999 and shows that the property qualified for an exemption as of January 1, 1997, the governing board can grant an exemption only for 1999; it cannot grant it retroactively for 1997 and 1998.²⁶

Grant or denial of the application and appeals

An application for exemption or exclusion must be directed to the assessor, and the property owner has the burden of establishing that the property meets the conditions for exemption or exclusion.²⁷ The assessor may make the decision whether to grant or deny the application on the basis of the application itself and any accompanying documents, or the assessor may find it necessary to inspect the property. If the assessor ap-

²³ *Id.* § 105-282.1(a)(5).

²⁴ *In re Laurel Hill Paper Co.*, 93 P.T.C. 430, Oct. 26, 1994. In this case, the taxpayer did not receive its certification regarding resource recovery and recycling facilities from DEHNR until July 27, 1993, and did not apply to the board of commissioners for an exclusion until August 2, 1993. The board of commissioners rejected the application as untimely filed. The Property Tax Commission, without discussing its reasons, ordered that the taxpayer's application be approved for 1993. *See also*, *In re K-Mart Corp.*, 319 N.C. 378, 354 S.E.2d 468 (1987), concerning the general reviewability of county and municipal decisions to deny applications for exemption and exclusion.

²⁵ N.C. Gen. Stat. § 105-282.1(a)(5).

²⁶ *See*, *In re Full Gospel Tabernacle*, 88 P.T.C. 23, Sept. 5, 1989, in which a church applied for an exemption on March 31, 1988, for tax years 1987 and 1988, and the board of commissioners granted the exemption for 1988 but not for 1987; the PTC affirmed the board's decision; and *In re Covenant Church*, 94 P.T.C. 514, Mar. 14, 1995, in which a church acquired property in 1987 that it improved prior to January 1, 1998, but it did not apply for an exemption until 1990; the board of commissioners granted the exemption for 1990 but not for prior years; the PTC affirmed the board's decision.

²⁷ N.C. Gen. Stat. § 105-282.1(a).

¹⁶ *Id.* § 105-309(f).

¹⁷ *Id.* § 105-277.1(c).

¹⁸ *See id.* § 153A-148.1.

¹⁹ *Id.* § 105-277.1(c)(2).

²⁰ *In re Johnson*, 89 P.T.C. 329 (Sept. 19, 1990).

²¹ N.C. Gen. Stat. § 105-277.4(a).

²² *Id.* § 105-307.

proves the application, the law does not require the assessor to notify the property owner; however, if the assessor denies the application, he is required to send notice to the owner in time for the owner to appeal the denial to the board of equalization and review.²⁸ The property owner may appeal an adverse decision by the board of equalization and review to the Property Tax Commission.²⁹

Role of municipalities

Municipalities may choose to play a role independent of the county in granting or denying exemptions and exclusions. First, a municipality is not required to accept the assessor's granting of an exemption or exclusion but may require that a separate application be filed with a municipal official, and the municipality may deny the application even though the county has granted it.³⁰ Second, a municipality may make an independent decision whether to grant a late application; it is not bound by the county's decision.³¹ Finally, when the assessor denies an application he is required to send a copy of the application and his notice of denial to the municipal governing board, if the property is located in a municipality. The municipal governing board must then advise the owner whether it will accept the county board's decision on the appeal or require a separate appeal. If the municipal governing board requires a separate appeal and renders a decision adverse to the owner, the owner has a right of appeal to the Property Tax Commission.³²

Municipalities rarely exercise these independent powers to review applications, and this restraint is prudent for two reasons. First, few municipalities have a staff person with the training and experience to evaluate applications, and second, the interests of uniform and equitable tax administration are not served in a situation where two units of government make contrary decisions on the same application.

Discoveries

Property that is ineligible for exemption or exclusion can be discovered in two different situations. In the first one, the owner neither lists the property for tax-

tion nor files an application for exemption or exclusion. In this case, the assessor should discover the property pursuant to G.S. 105-312.³³ The owner may then appeal the discovery to the board of equalization and review or the board of commissioners, and if the board hearing the appeal finds that the property meets the conditions for exemption or exclusion it may approve it.³⁴ The authority to grant the exemption is cast in discretionary language—"may approve"—which means this authority is similar to that granted boards to approve late applications. Thus, it may be assumed that the "good cause" rule applies here as well: if the owner of the property subject to discovery shows good cause why an application was not timely filed, the board may approve the exemption or exclusion anyway. And presumably the board's decision in such an instance to deny the late application may also be appealed to the Property Tax Commission and the courts.

The second situation in which a discovery can be made is when property has been exempted or excluded for one or more tax years and the assessor determines that it no longer qualifies for the exemption or exclusion, and perhaps has not qualified for a number of years. For example, in making the annual review of one-eighth of the property exempted and excluded from taxation that is required by G.S. 105-296(j) and (l) suppose the assessor determines in 1999 that church property that was exempted in 1985 has not been used for church purposes since September of 1996. The assessor can discover this property for 1997, 1998, and 1999. G.S. 105-273(6b), in defining what it means to "discover property," expressly provides that a determination that property granted an exemption or exclusion for which it did not qualify is subject to discovery.³⁵ When such a discovery is made, all of the provisions of G.S. 105-312 apply, including late-listing penalties and the presumption that the property should have been listed for taxes in each of the preceding five years. A special rule applies to the discovery of prop-

³³ *Id.* § 105-282.1(c).

³⁴ *Id.*

³⁵ This has not always been so. In *re Church of the Creator*, 102 N.C. App. 507, 402 S.E.2d 874 (1991), held that to revoke an exemption the assessor had to give notice of his intention before January 1 of the year for which the revocation was to occur, and as a result there could be no discovery for prior years. The 1991 General Assembly reversed this decision by enacting Chapter 34, 1991 Session Laws, the relevant provisions of which are now codified in G.S. 105-273(6b). For a history of this controversy, see William A. Campbell, Joseph S. Ferrell, and David M. Lawrence, "1991 Legislation Affecting Local Tax Administration," *Property Tax Bulletin* No. 90 (Sept. 1991).

²⁸ *Id.* § 105-282.1(b).

²⁹ *Id.*; see *In re K-Mart Corp.*, 319 N.C. 378, 354 S.E.2d 468 (1987).

³⁰ N.C. Gen. Stat. § 105-282.1(b).

³¹ *Id.* § 105-282.1(a)(5).

³² *Id.* § 105-282.1(b).

erty that has received the homestead exclusion under G.S. 105-277.1 and no longer qualifies. This rule provides that if the owner gives notice to the assessor by

April 15 of the first year in which the property is disqualified, no late-listing penalty may be imposed.³⁶

³⁶ N.C. Gen. Stat. § 105-309(f).

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