



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

October 15, 2009

MEMORANDUM

TO: County Tax Assessors

FROM: David B. Baker, Director
Property Tax Division

SUBJECT: G.S. 105-277.1D—Builder's Inventory Property Tax Deferral—Questions and Answers

The new builder's inventory property tax deferral created by the new G.S. 105-277.1D has resulted in a number of questions. This memo is not an exhaustive description of the program but listed below are some of the frequently asked questions with our responses.

Q. Must the owner be a builder and must the owner have a general contractor's license?

A. Yes. The owner must be a builder who has a valid general contractor's license.

Q. How can the license be verified?

A. The license number and holder's name can be verified at this page on the N. C. Licensing Board for General Contractors: http://www.nclbgc.net/lic_fr.html

Q. Is an annual application required?

A. Yes. An annual application is required for each year that the builder wishes to defer taxes. Absent an exception in G.S. 105-282.1 or a special provision in the specific exemption/exclusion statute itself, an annual application is required.

Q. Is NCDOR creating a separate application for this deferral?

A. No. The general exemption/exclusion form AV-10 is being re-designed and will include this deferral. The application will ask for the general contractor's license number and a copy of the certificate of occupancy. We will notify you when the revised application is available on our website.

Q. The benefit is for the residence. Does the term "residence" include detached items?

A. The Property Tax Division recommends including as "residence" the detached garages, pools, gazebos, tennis courts, etc. if located on the dwelling homesite and if they were built in conjunction

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with the dwelling. This is consistent with the definition used for the Elderly/Disabled Exclusion in G.S. 105-277.1(b)(3). Granted, the Elderly/Disabled Exclusion is a different provision in the Machinery Act but it is the only guide that we have.

Q. Does the term "residence" include manufactured homes and modular homes?

A. It is the opinion of NCDOR that the term "residence" includes manufactured homes and modular homes. They are improvements made to the land by a builder, even though most of the construction was completed at a manufacturing facility. The owner would still have to meet the definition of "builder" and the property must have received a certificate of occupancy.

Q. What are the disqualifying events?

A. A disqualifying event occurs at the EARLIEST of (1) when the builder transfers the residence, (2) when the residence is occupied by the builder or by someone other than the builder with the builder's consent, (3) five years from the time the improved property was first subject to being listed for taxation by the builder, and (4) three years from the time the improved property first received the property tax benefit.

Q. One of the disqualifying events occurs when the builder transfers the residence. Does this mean that any transfer will be a disqualifying event, even if between related entities?

A. Yes. The statute clearly states that a transfer is a disqualifying event, with no exceptions. If a deed is recorded that transfers the property, with or without consideration, the property will be disqualified.

Q. One of the disqualifying events occurs five years from the time the improved property was first subject to being listed for taxation by the builder. Does the five year period start when the completed property was first subject to being listed for taxation?

A. No. The five year period starts when the improved property, whether still under construction or complete, is first subject to being listed. The property is improved once the construction of the improvements begins. The improvements may or may not be complete but they are subject to listing, thus starting the five year period.

Q. What is the maximum number of years that a builder can receive the property tax deferral?

A. Three years.

Q. When is the first year that property is eligible for deferment?

A. 2010. The "effective date" language in S.L. 2009-308 reads: "This act is effective for taxes imposed for taxable years beginning on or after July 1, 2010." which is the General Assembly's technical way of saying that it is effective for the 2010 tax year.

Q. When is the last year that property is eligible for deferment?

A. This is open to interpretation based on the actual statutory language versus the stated intent of the legislation. The "effective date" language in S.L. 2009-308 reads: "This act is repealed for taxes imposed for taxable years beginning on or after July 1, 2013. Residences receiving the property tax benefit provided by this act are not affected by the repeal of this act until the occurrence of a disqualifying event."

It is clear that if the builder was not receiving the property tax benefit prior to 2013, they cannot receive any benefit for 2013 or later.

It is less clear whether a builder who first received the benefit in 2011 or 2012 could continue to receive the benefit for additional two years, despite the fact that the benefit has been repealed for 2013. The issue is the interpretation of the sentence: "Residences receiving the property tax benefit provided by this act are not affected by the repeal of this act until the occurrence of a disqualifying event." Assuming no other disqualifying events occur, one interpretation is that a builder who first received the benefit in 2011 could also qualify for 2012 and 2013, despite the 2013 repeal. Likewise, a builder who first received the benefit in 2012 could also qualify for 2013 and 2014, despite the 2013 repeal. Another interpretation is that no benefits can be claimed for 2013 because of the repeal, but the 2011 and 2012 deferred taxes may remain deferred until a disqualifying event occurs, despite the repeal.

While this will not affect the taxpayer directly for a few years, the counties must decide how to write the programming code now. After discussing the issue with several of the parties involved in the legislative process for this statute, it appears that the intent of the legislation was that a builder who first received the benefit in 2011 could also qualify for 2012 and 2013, despite the 2013 repeal. Likewise, a builder who first received the benefit in 2012 could also qualify for 2013 and 2014, despite the 2013 repeal. The counties would probably be well advised to write their programming code assuming that this interpretation will prevail. It is likely that the statute will be clarified by the General Assembly in the near future to reflect this previously stated intent.

I hope this information is helpful. Please do not hesitate to contact our office at 919-733-7711 if you have any questions or if we can be of any assistance.