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Honorable Jerry B. Jones
Tax Assessor, Etowah County
Room 109, Courthouse
Gadsden, AL 35901

Ad Valorem Taxes -- Assessments

Recomputation at market value of property formerly assessed at current use value applies where property is actually converted to non-qualified use.

Additional taxes resulting from recomputation charged against owner on October 1 next succeeding year of conversion.

Recomputed fair market value of property based upon use at time of conversion.

Dear Mr. Jones:

In your request for an opinion dated December 21, 1982, you ask the following questions with respect to §6 of Act No. 135, 1978 Alabama Legislature, now codified at §40-7-25.3, Code of Alabama 1975:

1. Upon the sale or disposition of taxable property where the new owner does not apply for Current Use, is there a charge back for the 3 years it was assessed under Current Use?
2. If there is a charge back, to whom is the charge back assessed, the one who had assessed under Current Use or the new owner?
3. If the Use does change, is the charge back for the three years assessed as class 3 property or is the charge back assessed as class 2 property?

4. If a parcel of property is assessed under Current Use and this property is then subdivided into lots and the appraisal is based on a lot basis instead of acreage tract, is the charge back based on the value of each lot or is the charge back based on the appraisal of acreage tracts?
5. If a person has 100 acres assessed under Current Use and he deeds one of his children one acre and he builds a house on this one acre, is there a charge back on that one acre? If so, would the one acre be class 3 property or class 2 property for the 3 year charge back?
6. If an owner assesses a tract of land under Current Use and he later builds a house or commercial building on that tract of land, would there be a charge back on the portion of the tract that has become a homesite or business site?
7. Also, once a person has claimed Current Use under Act 135, can he later withdraw that parcel or a portion of that parcel from Current Use? If so, can he change the Use on the portion withdrawn without having a charge back on previous years?

Your question No. 1 is answered in the negative. Section 40-7-25.3 states that the tax recomputation provided therein will apply only where "the sale or other disposition of taxable property qualified for assessment based on its current use value results in or is followed by the conversion of such property, within two years from the date of sale or other disposition, to a use that is not so qualified." (Emphasis added) Therefore, the applicability of §40-7-25.3 is based upon the conversion of the property to a use which is not qualified to be assessed at current use value rather than being based upon the failure of the new owner to apply for current use valuation.

In answer to question No. 2, in those situations in which §40-7-25.3 applies, the recomputation, or charge back contained therein is made against the owner on October 1 next succeeding the year in which the property is converted to a non-qualified use. This section provides:

The owner of taxable property qualified for assessment at its current use value which is converted to a use not so qualified shall so notify the tax assessor of the county in which such property is located, on and after October 1 but not later than January 1 in the taxable year next succeeding the taxable year in which such conversion is made. . . . [the recomputed] amount shall be additional taxes to be levied and collected on the first assessment lists prepared subsequent to such conversion in the same manner and at the same time as other taxes and shall constitute a lien on such property to the same extent as other taxes, as provided in §40-1-3.

The above quoted portions of §40-7-25.3 provide that the taxpayer must notify the tax assessor of a conversion to a non-qualified use between October 1 and January 1 next succeeding the conversion. The tax assessor then recomputes additional taxes based on market value for the three prior years. The additional taxes are assessed as of October 1 next succeeding the date of conversion and are to be collected beginning on the following October 1 for the tax year next succeeding the year of conversion.

In answer to question No. 3, §40-7-25.3 requires that the tax assessor "compute the amount of ad valorem taxes that would have been payable with respect to such converted property if the sales price or the fair and reasonable market value of such property at the time of its conversion, whichever is greater, had been used instead of the current use value of such property in computing the amount of taxes payable with respect to such property for each of the three ad valorem tax years preceding the tax year beginning on October 1 next succeeding the conversion of such property." The fair market value at the time of the property's conversion would necessarily be based upon the use at the time of its conversion. It would be classified based upon this use. The purpose of the statute is to recapture for three years the taxes which would have been paid had the owner not been granted current use valuation. The assessment of the property for purposes of recomputing the taxes would therefore be based upon the class 3 assessment rate.

In answer to question No. 4, the recomputed value under §40-7-25.3 would be based upon the status of the property at the time of conversion. The fair market value at the time of conversion would be based upon the use of the property as an acreage tract.

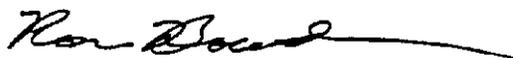
In answer to question No. 5, §40-7-25.3 provides that "if such converted property constitutes only a portion of a parcel so qualified on the assessment lists, the tax assessor shall apportion the assessment of such parcel on the first assessment lists prepared subsequent to the conversion and enter the apportioned amount attributable to the portion converted as a separately assessed parcel on the assessment lists. Such apportionment shall be made for each of the years to which additional taxes apply." In the situation which you describe, it appears that the conversion of the one acre to a homesite does not constitute the conversion of said one acre to a "use that is not so qualified" where the owner of the home occupies it. The recomputation provided in §40-7-25.3 applies only where the use of property assessed at its current use value is changed to a use which disqualifies the property for current use valuation. Your question is therefore answered in the negative if the home is occupied by the owner thereof. If the home is not occupied by its owner, then it constitutes class 2 property and the provisions of §40-7-25.3 apply to the one acre homesite. As stated in my answers to questions 3 and 4, the property would be classified based upon its use at the time of conversion for purposes of assessment. The one acre would be considered class 3 property for purposes of the recomputation.

Your question No. 6 is answered in the affirmative as to the business site. The same reasoning applicable to question No. 5 applies to this question. The answer as to the homesite depends on whether the homesite qualifies for current use valuation.

Question No. 7 is answered in the affirmative. A taxpayer may withdraw his application for current use valuation. The answer to the second part of question 7 depends upon the facts. A taxpayer who converts property to a non-qualified use may be charged back for certain periods in which the property was given current use valuation, even though he withdrew his application for current use valuation before the conversion, if the conversion takes place within three years of the withdrawal. The charge back is confined to the three "tax years preceding the tax year beginning on October 1 next succeeding the conversion of such property."

Sincerely,

CHARLES A. GRADDICK
Assistant Attorney General
By-



RON BOWDEN
Assistant Attorney General

RB:ccc