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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Andrew Bennett
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Jefferson County, Bessemer Division
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Tax Assessors – Current Use Valuation –
Ad Valorem Taxes – Jefferson County

The new owner of property, who is tax exempt, would be responsible for the roll-back charges expressed in section 40-7-25.3 of the Code of Alabama if the property in question was not being used exclusively for charitable purposes as of the October 1 next succeeding conversion of the property.

Even though the developer changed the current use of Portion "B" in November 2013, it is the owner of property as of October 1 who is responsible for the ad valorem taxes levied on a particular parcel of land.

Section 40-7-25.3 of the Code authorizes a tax assessor to apportion an assessment to a particular parcel of land. Accordingly, the amount assessed in ad valorem taxes should stand alone as to Portion "B."

Dear Mr. Bennett:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) Will the new owner, who is tax exempt, be responsible for the roll-back charges on Portion "B?"

(2) Since the developer changed the current use of Portion "B" in November 2013, can the developer be charged a rollback on Portion "B?"

(3) If the answer to Question 2 is yes, should that charge stand alone as to Portion "B," or should it be charged under the parcels prior to the split off of Portion "B?"

(4) Since the current use was changed within two years of being sold, section 40-7-25.3 states when a conversion of the use takes place, the parcel should be taxed based on the three prior years' value. Should the original owner, who was granted a current-use status and had nine years of tax breaks, be liable for any roll-back charges when the property is converted within two years of sale?

(5) Who is responsible for the roll-back charges on Portion "B?"

FACTS AND ANALYSIS

In your letter of request, you stated the following:

Since 2005, a parcel of land has been granted a current-use value for taxation under the qualifying factor of timber. In November 2013, the owner sold portions of the parcel and retained ownership of other portions. The current use was changed on both the portion where ownership was retained, Portion "A," as well as the portion that was sold, Portion "B." Both have been cleared and development is well underway as of early 2014. Portion "B" sold to a developer in November 2013 and was conveyed a second time in December 2013. The second and now current owner of Portion "B" is a nonprofit, exempt organization.

Portion "A," which has been retained by the owner granted current-use value, will be charged a rollback for three years of ad valorem taxes in 2015 as per section 40-7-25.3 of the Code of Alabama.

In the several questions you pose to this Office, you seek guidance regarding whether roll-back charges should be assessed to a particular property, and if so, who would be responsible for such an assessment. Section 40-7-25.3 of the Code sets forth the manner in which Class III property, which has been designated for current use but subsequently converted to a different taxable use, should be handled.

In addressing your inquiry, it is important to note that property or ad valorem taxes are assessed once yearly on October 1 for the values attributed to that parcel of land in the preceding year. When a property receives an assessment under the current-use valuation, such property is actually being exempt from the normal ad valorem tax valuation schedule. *See, generally, Jefferson Cnty. Bd. of Equalization & Adjustments v. Chichester*, 586 So. 2d 921, 923 (Ala. Civ. App. 1991). Whether a property qualifies for assessment based on current use is dependent on the use of that property on October 1. ALA. CODE § 40-7-25.1(a) (2011). It is incumbent on an owner of Class III property to request appraisal at current-use value. *Id.* Only Class III property is subject to a current-use valuation. *Id.*; *State v. Delaney's, Inc.*, 668 So. 2d 768, 769 (Ala. Civ. App. 1995).

In the present matter, the initial landowner sold the property in November 2013. As such, this Office assumes that all portions of the property, particularly Portion "B," were still being used in a manner that was permitted by the current-use factor of timber exemption on October 1. After the property was sold, the new owner then converted or changed the designated use of the property. Because this change came within two years of the date of sale, section 40-7-25.3 states that additional taxes are to be levied and collected with respect to that property "in the ad valorem tax year beginning on the October 1 next succeeding the conversion of such property." ALA. CODE § 40-7-25.3 (2011).

Based on the foregoing, section 40-7-25.3 requires the land described as Portion "B" to be levied and assessed ad valorem tax with respect to that portion of land for the three ad valorem tax years preceding the conversion of Portion "B" from current-use valuation status. *See* ALA. CODE § 40-7-25.3 (2011) (noting the ability of a tax assessor to apportion and separately assess parcels of property). The apparent confusion comes from the fact that the current owner is a tax-exempt entity. Yet, whether ad valorem tax is levied is not based on the owner of the property, but instead, ad valorem tax is imposed on the land based

on the manner in which such real property is being used. See ALA. CODE § 40-7-25.3 (2011) (stating that the amount of taxes that would have been payable with respect to converted property shall constitute a lien on such property to the same extent as other taxes).

Section 40-9-1 of the Code authorizes the exemption of certain real property from ad valorem taxation. ALA. CODE § 40-9-1 (2011). Subsection (1) of section 40-9-1 of the Code exempts property based on its exclusively charitable use, not on the tax-exempt status of the entity owning the property. See *Surtees v. Carlton Cove, Inc.*, 974 So. 2d 1013, 1019 (Ala. Civ. App. 2007) (referencing opinion to Honorable Charles H. Crim, Jefferson County Tax Assessor, dated May 25, 2001, A.G. No. 2001-191). Section 40-9-1(1) of the Code states, in pertinent part, as follows:

[A]ll property, real and personal, used exclusively for religious worship, for schools or for purposes purely charitable; provided, that property, real or personal, owned by any educational, religious or charitable institution, society or corporation let for rent or hire or for use for business purposes shall not be exempt from taxation, notwithstanding that the income from such property shall be used exclusively for education, religious or charitable purposes. . . .

ALA. CODE § 40-9-1(1) (2011).

Based on this provision, the Supreme Court of Alabama has determined that property is exempt from ad valorem taxation only if the property is “used exclusively . . . for purposes purely charitable” as defined by Alabama law. See *Surtees*, 974 So. 2d at 1020. The crux of your inquiry turns on whether Portion “B” was being used exclusively for charitable purposes on the October 1 next succeeding the conversion of the property from current-use status. This particular inquiry—whether the tax-exempt entity was using Portion “B” exclusively for purposes purely charitable—is a question of fact that this Office is unable to answer. It is, however, the opinion of this Office that if Portion “B” was not being used exclusively for a charitable purposes as of October 1, such property would be subject to the three-year rollback provisions expressed in section 40-7-25.3 of the Code, regardless of the tax-exempt status of the owner of the property.

To the extent this opinion conflicts with the conclusions expressed in the opinion to Honorable Charles E. Howard, Revenue Commissioner, Morgan

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County, dated December 2, 1985, A.G. No. 86-00064, that opinion is hereby modified.

Finally, this Office notes that this opinion does not take into account whether the qualifying tax-exempt entity mentioned in your request is the State of Alabama or the federal government. If the entity in your inquiry is either the state or federal government, no such tax should be imposed. ALA. CODE § 40-9-1 (2011).

CONCLUSION

The new owner of property, who is tax exempt, would be responsible for the roll-back charges expressed in section 40-7-25.3 of the Code if the property in question was not being used exclusively for charitable purposes as of the October 1 next succeeding conversion of the property.

Even though the developer changed the current use of Portion "B" in November 2013, it is the owner of property who is responsible for the ad valorem taxes levied on a particular parcel of land.

Section 40-7-25.3 of the Code authorizes a tax assessor to apportion an assessment to a particular parcel of land. Accordingly, the amount assessed in ad valorem taxes should stand alone as to "B."

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:



BRENDA F. SMITH

Chief, Opinions Division

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