

86-00064

OFFICE OF THE ATTORNEY GENERAL



TO THE EXTENT THERE IS A CONFLICT,
THIS OPINION HAS BEEN MODIFIED BY THE
OPINION ISSUED TO HON. ANDREW
BENNETT, ASSISTANT TAX ASSESSOR,
BESSEMER DIVISION/JEFFERSON COUNTY,
DATED 12-17-14, A.G. NO. 2015-021.

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DEC 2 1985

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Honorable Charles E. Howard
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P. O. Box 696
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Ad Valorem Taxes - Current Use -
Exemptions

Tax recapture provisions of
current use law not applicable to
property converted to tax exempt
use.

Dear Mr. Howard:

In your request for an opinion, you ask whether property being valued based on its current use value, which is sold to a tax exempt entity, is subject to the so called chargeback contained in §40-7-25.3, Code of Alabama 1975. Said section, as amended, provides that upon the sale or other disposition of property that is qualified for current use valuation which results in the conversion, within two years of the date of sale, to a use that is not so qualified, additional taxes are due for the three years next preceding the conversion. Such additional taxes are due only "[i]f taxable property qualified for assessment at its current use value is converted to a use not so qualified." The evident intent of the Legislature in providing for additional taxes when current use property is converted to another use is to recapture some of the taxes on property that was assessed at current use value where the property may have been held for future commercial development or other speculative purposes and is sold and converted to a non-qualified use. Where the statute speaks of property being converted to a "use not so qualified" it appears to be speaking of a taxable use that does not qualify for current use treatment. The procedure to be followed by the tax assessor in recapturing tax for previous years indicates that such a taxable use is contemplated by the statute:

The tax assessor shall compute the amount of ad valorem property 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 each of the three ad valorem tax years preceding the tax year beginning on the October 1 next succeeding the conversion of such property. Such amounts 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 portion of the statute shows that the prior years' taxes are recaptured from the purchaser rather than the seller of current use property that is converted to a non-qualified use. By providing an exemption from taxation for certain uses of property, the Legislature has shown its intent that this property not be taxed. To construe §40-7-25.3 in such a way as to allow the taxation of property that the Legislature has stated should be exempt would frustrate the intent of the Legislature. Bearing in mind the evident intent of the Legislature in enacting §40-7-25.3, it is the opinion of this office that it does not apply to situations in which property that is qualified for current use treatment is converted to a tax exempt status. Your question is therefore answered in the negative.

CHARLES A. GRADDICK
Attorney General

By-



RON BOWDEN
Assistant Attorney General

RB:je