



CHICAGO BULL

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WATCH OUT!! Builder & Developer deferrals, exemptions and recaptures for recent improvement (Effective 7/1/2019)

CAUTION: All tax bills for residences built since 2008 as well as for commercial, business or subdivision property *improved* since 2013 must be very closely analyzed! For any closing, the certifying attorney should obtain written certification from the tax office if possible to assure that all recapture is addressed and the appropriate tax valuations are determined for title certification and escrow calculations, *prior to closing!* The recent deferral and exemption provisions are very technical and the timelines create complexity.

ALERT: ANY CLOSING BETWEEN JANUARY 1 AND JULY 1 MAY TRIGGER RECAPTURE; THE EXEMPTION WILL BE TERMINATED! G.S. 105-285(d)

Here's why!

Property Tax 101: Tax listing is as of January 1 of the year, but is for the fiscal year beginning July 1 of that year. And if *exempt* property is conveyed between January 1 but prior to July 1 to a nonexempt owner, the exemption terminates, retroactive to January 1. G.S. 105-285(d).

Tax deferrals for new residences, G.S. 105-277.1D: In the heart of the economic crisis, back in 2009, the Legislature passed [S.L. 2009-308](#), "An Act to Defer a Portion of the Property Tax Due on Real Property Held for Sale by a Builder." This statute allowed a builder to *defer* paying taxes on "the increase in value of property attributable solely to improvements resulting from the construction by the builder of a residence on the property." The deferral lasted until a disqualifying event, i.e. sale or occupying the residence, 5 years from first listing of any improvements by the builder or 3 years from first deferral. A "builder" was defined as a licensed general contractor under G.S. 87-1 (deleted in 2015) and included a business entity of which the builder was a member ([S.L. 2010-140](#)) who is engaged in the business of buying real property, making improvements to it, and then reselling it." (The 2015 changes below substantially broaden those who can qualify.) This application was done annually through the standard Form AV-10 at time of listing. Residence was typically interpreted as including detached garages, pools, gazebos, tennis courts, etc. if located on the dwelling home site and if they were built in conjunction the dwelling, as well as manufactured or modular homes affixed to the property as a permanent improvement. This took effect for tax years beginning July 1, 2010, but was repealed for tax years on or after July 1, 2013, except the deferral continued if the property was already eligible and continued to be at that time ([S.L. 2010-95](#), § 21). So this provision has sunset, *but the taxes must be checked as always!*

Site infrastructure improvement deferrals, G.S. 105-277.15A: Then in 2013, the Legislature enacted [S.L. 2013-130](#), effective for tax years beginning July 1, 2013, and after, allowing for a deferral of taxes for “site infrastructure improvements,” enacted as G.S. 105-277.15A (effective July 1, 2013). This allowed for deferral of the “increase in value of the property attributable solely to improvements” and increases from the change in use, applicable for tracts over 100 acres, zoned for industrial use, office use or both, on which there is no primary building or structure and no building permit issued for same. Effective for tax years beginning July 1, 2015, this was limited to valuation based on current zoning the year prior to application. ([S.L. 2014-39](#)) The disqualifying events included failure to invest in the improvements within 5 years of first deferral, 10 years’ classification for this deferral, the site is rezoned other than industrial and/or office use, the land is transferred *or* a building permit for a primary building or structure is issued.

AND, NOW – THE LATEST ACT – EXEMPTIONS, G.S. 105-277.02!! In 2015, effective for tax years beginning on or after July 1, 2016 (i.e. subdivision or improvements made on or after July 1, 2015, and to be listed as of January 1, 2016 and after), [S.L. 2015-223](#) was enacted which created an annual EXEMPTION from property taxes for increases in value for qualifying residential *and* for qualifying commercial property. ***This substantially changed the tax listings, valuations and potential recapture from those of the prior years’ provisions above.*** The latest provisions:

- (1) change the deferrals to exemptions,
- (2) significantly broaden the definitions of who can qualify as well as residential and commercial real property improvements affected,
- (3) change the disqualifying events,
- (4) for taxable years beginning on or after July 1, 2019, under [S.L. 2019-123](#), require application under G.S. 105-282.1(a)(2)c. initially during the listing period and “whenever new or additional property is acquired or improvements are added or removed, necessitating a change in the valuation or the property, or there is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the benefit” (rather than the *annual* application earlier required), and
- (5) require loss of exemption (i.e. *recapture*) if the disqualifying event (depending on if residential or commercial) occurs before July 1 of the year!

Under G.S. § 105-277.02(d), “[i]n appraising property classified under this section, the assessor shall specify what portion of the value is an increase attributable to subdivision or other improvement by the builder.”

A new annual application form, the [AV-65 form](#), was created specifically for this purpose and is available on-line at the NC Department of Revenue website.

New G.S. § 105-277.02, Certain real property held for sale classified for taxation at reduced valuation, applicable for taxable years beginning on or after July 1, 2016, and applicable to subdivision of or other improvements made on or after July 1, 2015 (yes, 2015!), provides as follows :

- (a) Residential Real Property. – Residential real property held for sale by a builder is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. For purposes of this subsection, “residential real property” is real property that is intended to be sold and used as an individual’s residence immediately or after construction of a residence, and the term excludes property that is either occupied by a tenant or used for commercial purposes such as residences shown to prospective buyers as models. Any increase in value of this classified property attributable to subdivision of, improvements other than

buildings, or the construction of either a new single-family residence or a duplex on the property by the builder is excluded from taxation under this Subchapter as long as the builder continues to hold the property for sale. In no event shall this exclusion extend for more than three years from the time the improved property was first subject to being listed for taxation by the builder.

(b) Commercial Property. – Commercial real property held for sale by a builder is designated a special class of property under authority of Article V, Sec. 2(2) of the North Carolina Constitution. For purposes of this subsection, "commercial real property" is real property that is intended to be sold and used for commercial purposes immediately or after improvement. Any increase in value of this classified property attributable to subdivision of or other improvements made to the property, by the builder, is excluded from taxation under this Subchapter as long as the builder continues to hold the property for sale. The exclusion authorized by this subsection ends at the earlier of the following:

- (1) Five years from the time the improved property was first subject to being listed for taxation by the builder.
- (2) Issuance of a building permit.
- (3) Sale of the property.

For further information, see:

- The North Carolina General Assembly [Bill Summary](#) dated July 21, 2015
- “[New Exclusion for Improvements to Residential and Commercial Real Property](#),” by Christopher B. McLaughlin, Property Tax Bulletin No. 169, UNC School of Government, September 2015
- “[New Exclusions for Residential and Commercial Real Property Improvements](#)” by McLaughlin (blog)
- Coates' Canons has posted a new item, '[More Questions About the New Builders' Inventory Exclusion](#)'