



North Carolina Department of Revenue

Michael F. Easley
Governor

E. Norris Tolson
Secretary

February 5, 2004

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment
and Natural Resources
1646 Mail Service Center
Raleigh, NC 27699-1646

Dear Mr. Nicholson:

This letter is in response to your letter dated October 23, 2003, regarding brownfield properties found in the statutes at G.S. 105-277.13. Our office hopes that the following information will of use to you and the people you are providing assistance to. We will be providing this information to the counties as well. We have answered your questions below. If other questions or situations should arise please contact our office and we will gladly try to assist you.

1. An owner of land is entitled to the partial exclusion provided by this section for the first five taxable years beginning after completion of qualifying improvements made after the later of July 1, 2000, or the date of the brownfields agreement. The five-year period begins the first January following the completion of the improvements.
2. The owner should make a one-time application as required under 105-282(a)(2)c. It should be noted that documentation should be provided to the assessor's office to show that the property is eligible for the exclusion. This would include providing a copy of the brownfields agreement with the application as well as documentation that the improvements had been completed.
3. During the month of January, which is the regular listing period. This would be the listing period after completion of the improvements.
4. Yes, for the property that is receiving the brownfields exclusion. It could pass to new owners after a new application is made and approved. For properties that have not gone under redevelopment the exclusion does not exist. Both the brownfields agreement and the construction of qualifying improvements (made after July 1, 2000) must exist.

5. File a new application with the assessor's office during the month of January, which is the regular listing period, following the transfer of the property.

Yes, after qualifying improvements have been made the taxpayer would need to make an application for exclusion. If the property is a vacant out parcel then the property only is valued as a vacant tract.

6. No. The counties will use the schedule of values that were adopted by the County Commissioners to value all property in the county. Market value as of the counties last reappraisal is the standard in North Carolina.

7. The statutes do not specify any particular type of property. Criteria are established in the statutes. G.S. 105-277.13 (b). states:

"qualifying improvements on brownfields properties" and "qualifying improvements" mean improvements made to real property that is subject to a brownfields agreement entered into by the Department of Environment and Natural Resources and the owner pursuant to G.S. 130A-310.32.

Any improvements made to real property that is subject to a brownfields agreement are eligible for the exclusion.

8. Yes, each phase or out parcel would have its own five-year period. For example, if a parcel has five apartment buildings built on it in different years then each building's starting period of the exclusion would be at different times. This will possibly be difficult for the counties to administer but our office believes that each qualifying improvements has its own five-year period. Separate tax parcel for each improvement or phase would make it easier to administer but is not required.

9. Yes, if it is qualifying improvements on a brownfields property and a new application is made and approved. The new owner would be entitled to the remaining year(s) of the exclusion.

10. That would need to be addressed by the buyer and seller. Neither our department nor the county will address prorating of property taxes. That is strictly between the two parties involved in the sale. The owner as of January 1 is considered the owner for the tax year that begins July 1 of that year.

11. If the example for this question were pertaining to a parcel with qualifying improvements (improved real property) as outlined in the statutes the answer would be yes. Remember a new application is required of the new owner. Parcels that are vacant are not entitled to the exclusion. Real estate improvements that are part of the sale we would say yes. If only vacant land is sold from a tract that has improvements then the answer would be no until new improvements are made to the vacant tract.

12. No. The property or individual parcel would not receive the exclusion until the property was entered into a brownfields agreement and after completion of qualifying improvements had been made. See also #8.

Other Issues:

1. Improvements, which are only partially completed as of January 1, will be appraised in accordance with the degree of completion on January 1 and the exclusion does not apply to these partially completed improvements until they are completed. The exclusion starts the first January following the completion of the improvements provided the proper application for exclusion has been timely filed by the owner.
2. Brownfields, which have improvements on them already, are not eligible for the exclusion unless new improvements are made to the property after July 1, 2000. These new improvements can be in the form of new buildings and improvements or renovation of existing buildings and improvements.

If our office can be of further assistance please feel free to contact us at (919) 733-7711.

Sincerely,

David B. Baker, Director
PROPERTY TAX DIVISION

**NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES**

DIVISION OF WASTE MANAGEMENT

MICHAEL F. EASLEY, GOVERNOR
WILLIAM G. ROSS JR., SECRETARY
DEXTER R. MATTHEWS, DIRECTOR



October 23, 2003

Sent Via E-mail and USPS

David B. Baker
Director, Property Tax Division
NC Department of Revenue
501 N. Wilmington Street
P.O. Box 871
Raleigh, NC 27602-0871

Dear Mr. Baker:

This letter is a follow-up the meeting the Brownfields (BF) Program staff had with you and Michael Brown on September 24, 2003 concerning the interpretation of Senate Bill 1252, G.S. §105-277.13. We have identified a number of specific questions relating to the implementation of this statute, which are itemized below. Once we have your answers to our questions, we would also like to create a more general guidance document for providing information to prospective developers in the Brownfields Program. You have most generously offered to review for us, and we will forward that on to you when we had a chance to review the response to our questions and have drafted the guidance document.

It is also our understanding from our meeting that the Property Tax Division, after defining the intent of the statute, will notify the 100 county tax assessor offices with instructions on procedures for implementing the Brownfields special class tax exclusion. If you could provide us a copy of that letter you are sending out, it will help us out in getting the information to the developers on what the tax assessor's office will need to implement the Brownfields Property tax exclusion. The questions we have generated follow:

1. When does the five-year period of tax exclusion begin for a given brownfields property?
2. What will a prospective developer (PD) or property owner have to do in order to receive the BF tax exclusion?
3. When does a property owner have to file the application for the BF exclusion?
4. Will the BF exclusion pass to future owners? This question is two fold, for an exclusion already in place, as well as a BF property that has not yet undergone re-development.
5. If the property is sold after the tax exclusion period begins, what does the new owner have to do to receive the remaining exclusion? Is this the same procedure for an owner of an outparcel that has been carved from the BF property and developed at a later date?
6. Will the Department of Revenue (DR) ask the counties to routinely establish a pre-BF tax exclusion valuation baseline? If not, what valuation will be used?

7. What criteria does the DR consider in defining eligible improvements at a Brownfields property? Are criteria different for residential, commercial and industrial properties?
8. Will each *phase* or each *outparcel* of development within the original BF footprint have its own 5-year period of exclusion? If so, will the property have to be broken into different tax parcels prior to application of the first phase's tax exclusion, if a phased approach is used?
9. If the property is sold after the tax exclusion period begins, will the new owner receive the remaining exclusion? In the specific circumstance of a property with common building(s) but separate ownership such as individual owners of a condo/townhouse within a redevelopment, or a single retail property within a complex of such properties, will the new owner receive the remaining years of tax exclusion?
10. If a property is sold during the tax exclusion period, should the current year taxes be pro-rated between the buyer and seller outside the DR's jurisdiction i.e. at the closing of the property transfer)?
11. If the 5-year tax exclusion starts on a parcel that is later subdivided, will the owner of the new parcel receive the remaining years of exclusion?
12. If the original BF property is subdivided into different tax parcels, is there any time limit on completion of the development of these "outparcels" in order to receive the five-year tax exclusion benefit?

I apologize if some of these questions may seem redundant, but they are based on questions that we receive and many of the possible scenarios that seem to occur have variations that need to be addressed. Please feel free to give us any other information you think is pertinent to the interpretation of this statute, even if we have overlooked asking for it. We very much appreciate you taking the time to do this, and hopefully it will help making this exclusion consistently applied across the state, as well as save time for everyone involved (county tax assessors, Tax Property Division staff, prospective developers, and Brownfields staff) in the future.

Most of the Brownfields staff will be out of the office next week, October 27-30th. Please feel free to call me before or after that time should you have any questions concerning this letter. I can be reached at 733-2801 ext. 353 or via e-mail at Bruce.Nicholson@ncmail.net.

Sincerely,

Bruce Nicholson
Brownfields Program Manager
Division of Waste Management

cc: Linda Culpepper
Rob Gelblum