S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 05-046

Greenbelt Rollback Liability upon Voluntary Transfer to a Governmental Entity

QUESTION

Whether rollback taxes are due pursuant to the Agricultural, Forest, and Open Space Land Act of 1976 (Tenn. Code Ann. §§ 67-5-1001 *et seq.*), commonly called the "Greenbelt Law," in the case of a voluntary conveyance of greenbelt property to a government entity where the property will remain in greenbelt use.

OPINION

No, rollback taxes are not due when greenbelt property is conveyed to a government entity and that entity maintains the property's greenbelt use. Both the language and the policy of the statute suggest that only a change to a non-greenbelt use of the property by the government would operate to trigger rollback.

ANALYSIS

The Agricultural, Forest, and Open Space Land Act (Tenn. Code Ann. §§ 67-5-1001 *et seq.*) was adopted in 1976 for the purpose of encouraging the owners of open space land in areas pressured by growing urbanization and development to maintain such land (hereinafter, greenbelt land, area, or property) in its present use. *See* Tenn. Code Ann. § 67-5-1003. This so-called "Greenbelt Law" identifies three types of land to receive the benefit of the Act's favorable tax treatment. The first is agricultural land, which consists of a farm unit "engaged in the production or growing of agricultural products" or which has been farmed by the owner or the owner's spouse for at least 25 years and is being used as a residence without being inconsistent with agricultural use. Tenn. Code Ann. § 67-5-1004(1)(A). Agricultural land must also consist of a single tract of at least 15 acres, or two non-contiguous units within the same county, one of which is at least 15 acres and the other at least 10 acres, but together being one farm unit. Tenn. Code Ann. § 67-5-1004(1)(B). The second classification is forest land, which consists of "land constituting a forest unit engaged in the growing of trees under a sound program of sustained yield management or any tract of fifteen (15) or more acres having tree growth in such quantity and so managed as to constitute a forest." Tenn. Code Ann. § 67-5-1004(4). The third and final type of greenbelt land is open space land, which is any tract of three or more acres "characterized principally by open or natural condition"

which is not being used for agricultural or forest purposes and the maintenance of which would effectuate the policies of the Act. Tenn. Code Ann. § 67-5-1004(8).

The Act incentivizes the maintenance of qualifying land in the above uses by providing the owners of such land with a tax benefit if they apply for classification as greenbelt property and maintain the particular conforming use. When a parcel of land qualifies for greenbelt status and is so classified by the jurisdiction's tax assessor, the owner of the land may then apply for classification in the appropriate category. Tenn. Code Ann. § 67-5-1005(a)(1); Tenn. Code Ann. § 67-5-1006(a)(1); Tenn. Code Ann. § 67-5-1007(b)(1). Barring a change in ownership, no re-application is required. *Id*. The tax assessment for such a greenbelt parcel is to be based upon the premise that its current use is its best use, with the property's value for any other use or purpose having no bearing on this present use value assessment. Tenn. Code Ann. § 67-5-1008(a)(1). "[I]n enacting this legislation, the legislature has issued an invitation to property owners to voluntarily restrict the use of their property for agricultural, forest, or open space purposes." *Marion Co. v. State Bd. of Equalization*, 710 S.W.2d 521 at 523 (Tenn. Ct. App. 1986). The result is an assessed value that is "its fair market value for agricultural purposes," albeit lower than it would be if other, potentially more lucrative uses of the land were considered in determining its value. *Id*.

To prevent landowners from taking advantage of the Greenbelt Law to capture temporary tax benefits without committing their property to the long-term greenbelt use envisioned by the Act, the legislature provided for the levying of rollback taxes under certain circumstances. Upon the occurrence of such an event, the relevant tax assessor is instructed by the statute to compute the difference between the present use value assessment and the standard method of value assessment as described in Tenn. Code Ann. § 67-5-601 *et seq.* for each of the preceding three years (or five years if the land was classified as open space). Tenn. Code Ann. § 67-5-1008(d)(1). The value of this difference is then to be assessed as the rollback tax on that greenbelt property.

The methods for triggering rollback are provided for in Tenn. Code Ann. § 67-5-1008. Tenn. Code Ann. § 67-5-1004(13). According to Tenn. Code Ann. § 67-5-1008(d)(1), the assessor shall notify the trustee that rollback taxes are payable if:

> (A) Such land ceases to qualify as agricultural land, forest land, or open space land as defined in § 67-5-1004;
> (B) The owner of such land requests in writing that the classification as agricultural land, forest land, or open space land be withdrawn; or
> (C) Such land is covered by a duly recorded subdivision plat, unless the owner of the property proves to the assessor that such owner meets the agricultural income requirements set out in § 67-5-1005(a)(3).

Nothing in this subsection specifically contemplates the rollback tax consequences of a transfer to the government. Barring a written request for withdrawal or a duly recorded subdivision plat, a transfer to the government would clearly not run afoul of § 1008 if the use remained the same (that is, conforming to greenbelt requirements), as in the instant situation. It makes sense that this

subsection not address government-owned property because the government's property is exempt from taxation, making the purpose of seeking greenbelt classification, the tax break, meaningless for the government.

The Greenbelt Law does suggest that a loss of classification creates rollback tax liability in Tenn. Code Ann. § 67-5-1008(f):

> If the sale of agricultural, forest or open space land will result in such property being disqualified as agricultural, forest or open space land due to conversion to an ineligible use *or otherwise*, the seller shall be liable for rollback taxes unless otherwise provided by written contract. If the buyer declares in writing at the time of sale an intention to continue the greenbelt classification but fails to file any form necessary to continue the classification within ninety (90) days from the sale date, the rollback taxes shall become solely the responsibility of the buyer. (emphasis added)

The language of the statute was broadened in 1998 from "property being converted to a use other than those stipulated herein" to the "property being disqualified as agricultural, forest or open space land due to conversion to an ineligible use or otherwise" language above (this amendment also added the second sentence of the current subsection). 1998 Tenn. Pub. Acts 683, §1. The implication is that not only will a change in use trigger rollback tax liability, but that *any* disqualification from greenbelt, such as a loss of classification, will do so.

As with § 1008(d), however, this new language does not seem specifically to contemplate government involvement. The clear rationale for assessing rollback taxes upon a loss of classification, and not waiting for a change in use, is to ease the administrative burden of monitoring property not presently classified as greenbelt to ensure that it remains in a conforming use. To this end, the Greenbelt Law was further amended in 1999 to require new owners of land classified as greenbelt to re-apply in their own name to maintain that classification. Tenn. Code Ann. § 67-5-1005 to -1007; 1999 Tenn. Pub. Acts 141, §§ 2, 4-5. The rationale for requiring re-application clearly does not apply here because the government need only decide to maintain the property in its current use to avoid a change in use, rather than monitoring the use of property by private individuals. A common sense reading of the statute would then indicate that where transfers to the government are concerned, the only relevant rollback consideration is the continuing greenbelt use of the property, since government has no need to seek greenbelt classification and the evils to be avoided from not re-classifying conforming property are not present in such a scenario.

This reading of the relationship between the government and rollback tax liability is strongly supported by Tenn. Code Ann. § 67-5-1008(e)(1), the only provision in § 1008 that specifically contemplates government participation in a transfer of greenbelt property. This provision specifies that if greenbelt land is "converted to a use other than those stipulated herein by virtue of a taking by eminent domain or other involuntary proceeding, except a tax sale, such land or any portion thereof involuntarily converted to such other use shall not be subject to rollback taxes by the

landowner, and the agency or body doing the taking shall be liable for the rollback taxes." Tenn. Code Ann. § 67-5-1008(e)(1) (2003). Since this event requires that both the use be changed and the taking be involuntary, it is implicit that if the use were not changed, then there would be no rollback liability despite an involuntary taking. This makes sense within the context of § 67-5-1008(d)(1). In the case of an involuntary taking for a non-greenbelt use, rollback tax liability is triggered by the change in use. Regardless of how ownership is in fact transferred, rollback tax becomes payable under § 1008(d)(1)(A) only when the use is altered. Therefore, if § 1008(e)(1) implies that involuntary takings that leave greenbelt use undisturbed would not trigger rollback, then logically a voluntary transfer to the government that maintains greenbelt use should also not act as a trigger. This is in contrast to a situation in which the use does change, where it is clear that "[a] 'tax exempt' owner who converts land classified under the Act to another use would also be liable for the rollback tax only where the other use would not be an exempt use." Op. Tenn. Att'y. Gen. No. 79-222 (December 7, 1979). Thus the conclusion is that, if property is maintained in a use that conforms with the requirements of the Greenbelt Law, then a transfer to the government will not trigger rollback taxes.

This conclusion is very much in keeping with past opinions of this Office that the key to determining whether rollback tax is triggered is a change in use and that a transfer of ownership cannot, in and of itself, trigger rollback taxes. *See* Op. Tenn. Att'y. Gen. No. 79-222 (December 7, 1979). It is also consistent with the policy underlying the Greenbelt Law itself, which holds that "the preservation of open space is a public purpose necessary for sound, healthful, and well-planned urban development." Tenn. Code Ann. § 67-5-1003 (2003). To this end, the legislature defined greenbelt land in §§ 67-5-1004 to -1007, making it the policy of this state to encourage the preservation of such land in its agricultural, forest, or open space use by its particular owner. This policy is effectuated just as well if the government is maintaining these uses as if private individuals are doing so. From the perspective of the Greenbelt Law then, the identity and legal status of the owner are unimportant, as long as the protected use continues. Rollback taxes exist to recapture tax benefits enjoyed by landowners who are no longer effectuating the policy of the statute, but an owner who transfers his or her land to the government to be used in the same way is doing nothing to contravene that policy, so the reasoning for rollback tax is not implicated. Moreover, assessing rollback liability after land transfers to the government would act as a restriction on the owner's range of options in disposing of the property. Such a restriction would create a cost attendant to applying for greenbelt classification that would result in an incentive not to apply for classification. This incentive would run contrary to the statute's policy and would be a perverse result in light of Tenn. Code Ann. §§ 67-5-1002, -1003.

It is the opinion of this Office, then, that rollback taxes will not become due upon a transfer of greenbelt property to the government unless the use is changed.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

BRAD H. BUCHANAN
Assistant Attorney General

Requested by:

John G. Morgan
Comptroller of the Treasury
State Capitol
Nashville, Tennessee, TN 37243-0260