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SENATE BILL 237

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Short Title: Use Value Tax Changes.

(Public)

Sponsors:

Referred to:

February 22, 1995

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE USE VALUE TAX LAW, TO UPDATE THE LAW TO CONFORM TO MODERN FAMILY PROPERTY TRANSACTIONS, AND TO EXPAND THE CATEGORY OF RELATIVES WHO MAY QUALIFY FOR USE VALUE PROPERTY TRANSFERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-277.2 reads as rewritten:

"§ 105-277.2. Agricultural, horticultural, and forestland – Definitions.

For the purposes of G.S. 105-277.3 through G.S. 105-277.7 the following definitions shall apply: The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

(1) 'Agricultural land' means land Agricultural land. – Land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more

1 than one tract of agricultural land, but at least one of the tracts must
2 meet the requirements in G.S. 105-277.3(a)(1), and each tract must be
3 under a sound management program.

4 (1a) Business entity. – A corporation, a general partnership, a limited
5 partnership, or a limited liability company.

6 (2) ~~'Forestland' means land~~ Forestland. – Land that is a part of a
7 forest unit that is actively engaged in the commercial growing of trees
8 under a sound management program. Forestland includes wasteland
9 that is a part of the forest unit, but the wasteland included in the unit
10 shall be appraised under the use-value schedules as wasteland. A
11 forest unit may consist of more than one tract of forestland, but at
12 least one of the tracts must meet the requirements in G.S. 105-
13 277.3(a)(3), and each tract must be under a sound management
14 program.

15 (3) ~~'Horticultural land' means land~~ Horticultural land. – Land that is a part of a
16 horticultural unit that is actively engaged in the commercial production
17 or growing of fruits or vegetables or nursery or floral products under a
18 sound management program. Horticultural land includes woodland and
19 wasteland that is a part of the horticultural unit, but the woodland and
20 wasteland included in the unit shall be appraised under the use-value
21 schedules as woodland or wasteland. A horticultural unit may consist of
22 more than one tract of horticultural land, but at least one of the tracts
23 must meet the requirements in G.S. 105-277.3(a)(2), and each tract must
24 be under a sound management program.

25 (4) ~~'Individually owned' means owned by:~~ Individually owned. –
26 Owned by one of the following:

27 a. ~~A natural person; or person.~~ For the purpose of this
28 section, a natural person who is an income beneficiary of a
29 trust that owns land may elect to treat the person's beneficial
30 share of the land as owned by that person. If the person's
31 beneficial interest is not an identifiable share of land but can be
32 established as a proportional interest in the trust income, the
33 person's beneficial share of land is a percentage of the land
34 owned by the trust that corresponds to the beneficiary's
35 proportional interest in the trust income. For the purpose of
36 this section, a natural person who is a member of a business
37 entity that owns land may elect to treat the person's share of the
38 land as owned by that person. The person's share is a
39 percentage of the land owned by the business entity that
40 corresponds to the person's percentage of ownership in the
41 entity.

42 b. ~~A corporation~~ business entity having as its principal
43 business one of the activities described in subdivisions (1), (2),

1 and (3) and whose ~~shareholders~~ members are all ~~natural persons~~
 2 either a natural person actively engaged in the business of the
 3 ~~corporation~~ entity or a relative of a ~~shareholder~~ member who is
 4 actively engaged in the business of the ~~corporation~~ entity.

5 c. A trust that was created by a natural person who transferred the
 6 land to the trust and each of whose beneficiaries who is currently
 7 entitled to receive income or principal meets one of the following
 8 conditions:

9 1. Is the creator of the trust or the creator's relative.

10 2. Is a second trust whose beneficiaries who are currently
 11 entitled to receive income or principal are all either the
 12 creator of the first trust or the creator's relatives.

13 (4a) Member. – A shareholder of a corporation, a partner of a general or
 14 limited partnership, or a member of a limited liability company.

15 (5) ~~'Present use value' means the~~ Present-use value. – The value of
 16 land in its current use as agricultural land, horticultural land, or
 17 forestland, based solely on its ability to produce income, using a rate
 18 of nine percent (9%) to capitalize the expected net income of the
 19 property and assuming an average level of management.

20 (5a) ~~'Relative' means:~~ Relative. – Any of the following:

21 a. ~~Spouse;~~ A spouse or the spouse's lineal ancestor or descendant.

22 b. ~~A lineal ancestor;~~ ancestor or a lineal descendant.

23 c. ~~A lineal descendant;~~ A brother or sister, or the lineal
 24 descendant of a brother or sister. For the purposes of this sub-
 25 subdivision, the term brother or sister includes stepbrother or
 26 stepsister.

27 d. ~~A brother or sister, including a stepbrother or stepsister;~~ An aunt
 28 or an uncle.

29 e. ~~An adopted or adoptive child, parent, grandchild, or grandparent;~~
 30 ~~or~~

31 f. ~~A spouse of a person listed in paragraphs b. through e.~~ a. through
 32 d.

33 For the purpose of this subdivision, an adoptive or adopted relative is a
 34 relative and the term 'spouse' includes a surviving spouse.

35 (6) ~~'Sound management program' means a~~ Sound management
 36 program. – A program of production designed to obtain the greatest
 37 net return from the land consistent with its conservation and long-term
 38 improvement."

39 Sec. 2. G.S. 105-277.3 reads as rewritten:

40 "§ 105-277.3. Agricultural, horticultural ~~horticultural~~ and forestland –
 41 *Classifications.

1 (a) The following classes of property are hereby designated special classes of
2 property under authority of Article V, Sec. 2(2) of the North Carolina Constitution and
3 shall be appraised, assessed and taxed as hereinafter provided:

4 (1) Individually owned agricultural land consisting of one or more tracts,
5 one of which consists of at least 10 acres that are in actual production
6 and that, for the three years preceding January 1 of the year for which
7 the benefit of this section is claimed, have produced an average gross
8 income of at least one thousand dollars (\$1,000). Gross income includes
9 income from the sale of the agricultural products produced from the
10 land and any payments received under a governmental soil conservation
11 or land retirement program. Land in actual production includes land
12 under improvements used in the commercial production or growing of
13 crops, plants, or animals.

14 (2) Individually owned horticultural land consisting of one or more tracts,
15 one of which consists of at least five acres that are in actual production
16 and that, for the three years preceding January 1 of the year for which
17 the benefit of this section is claimed, have either:

18 a. Been used to produce evergreens intended for use as Christmas
19 trees and met the qualifying or gross income requirements
20 established by the Department of Revenue for the land; or

21 b. Produced an average gross income of at least one thousand
22 dollars (\$1,000). Gross income includes income from the sale of
23 the horticultural products produced from the land and any
24 payments received under a governmental soil conservation or
25 land retirement program. Land in actual production includes land
26 under improvements used in the commercial production or
27 growing of fruits or vegetables or nursery or floral products.

28 (3) Individually owned forestland consisting of one or more tracts, one of
29 which consists of at least 20 acres that are in actual production and are
30 not included in a farm unit.

31 (b) In order to come within a classification described in subdivision (a)(1), (2) or
32 (3), above, the property must, if owned by natural persons, ~~also~~ also satisfy one of the
33 following conditions:

34 (1) ~~Be~~ It is the owner's place of residence; or residence.

35 (2) ~~Have~~ It has been owned by the current owner or a relative of the current
36 owner for the four years preceding January 1 of the year for which the
37 benefit of this section is claimed.

38 (3) At the time of transfer to the current owner, it qualified for classification
39 in the hands of a business entity or trust which transferred the property
40 to the current owner who was a member of the business entity or a
41 beneficiary of the trust, as appropriate.

42 If owned by a ~~corporation~~ business entity or trust, the property must have been owned
43 by the ~~corporation~~ business entity or trust or by one or more of its ~~principal shareholders~~ as

1 ~~defined in G.S. 105-277.2(4)b~~ members, or by one or more of its creators in the case of a
2 trust, for the four years immediately preceding January 1 of the year for which the benefit
3 of this section is claimed. Notwithstanding the provisions of G.S. 105-277.2(4)b, ~~above~~, a
4 ~~corporation~~ a business entity qualifying for a classification described in G.S. 105-277.3
5 shall not lose the benefit of the classification by reason of the death of one of ~~the principal~~
6 ~~shareholders~~ provided its members if the decedent's ownership passes to and remains in a
7 relative of the decedent.

8 (e) ~~In addition, property may come within one of the classifications described in~~
9 ~~subsection (a) above, if decedent.~~

10 Property loses its eligibility for the classifications described in subsection (a) of this
11 section if ownership of the property passes to anyone other than a relative of the owner or
12 passes to or from a business entity or trust from or to anyone other than its members or its
13 creators or beneficiaries, respectively, except that property does not lose its eligibility if
14 both of the following conditions are met: (i) it was appraised at its present use value or
15 was eligible for appraisal at its present use value pursuant to that subsection at the time
16 title to the property passed to the present owner, and (ii) at the time title to the property
17 passed to the present ~~owner~~ owner, ~~the owner~~ owned other property classified under
18 subsection (a). ~~Classification pursuant to this subsection shall~~ The fact that property may
19 retain its eligibility because the preceding two conditions were met does not affect any
20 liability for deferred taxes under G.S. 105-277.4(c) if ~~such~~ those taxes were otherwise due
21 at the time title passed to the present owner.

22 (d) Enrollment in the federal Conservation Reserve Program authorized by Title
23 XII of the Food Security Act of 1985 (Pub. L. 99-198), as amended, shall not preclude
24 eligibility of land for present use value treatment solely on the grounds that the land is no
25 longer in actual production, and income derived from participation in the federal
26 Conservation Reserve Program may be used in meeting the minimum income
27 requirements of this section either separately or in combination with income from actual
28 production. Land enrolled in the federal Conservation Reserve Program shall be assessed
29 as agricultural land if it is planted in vegetation other than trees, or as forest land if it is
30 planted in trees."

31 Sec. 3. G.S. 105-277.4(c) reads as rewritten:

32 "(c) Property meeting the conditions ~~herein set forth~~ for classification under G.S.
33 105-277.3 shall be taxed on the basis of the value of the property for its present use. The
34 difference between the taxes due on the present-use basis and the taxes which would
35 have been payable in the absence of this classification, together with any interest,
36 penalties or costs that may accrue thereon, shall be a lien on the real property of the
37 taxpayer as provided in G.S. 105-355(a). The difference in taxes shall be carried forward
38 in the records of the taxing unit or units as deferred taxes, but shall not be payable, unless
39 and until (i) ~~the owner conveys the property to anyone other than a relative of the owner,~~ or (ii)
40 ownership of the property passes to anyone other than a relative by will or intestacy, or (iii)
41 ownership of the property passes to a corporation as defined in G.S. 105-277.2(4)b from anyone
42 other than its principal shareholders or from such a corporation to anyone other than its principal
43 shareholders, or (iv) the property loses its eligibility for the benefit of this classification for

1 ~~some other reason classification.~~ The tax for the fiscal year that opens in the calendar year
2 in which a disqualification occurs shall be computed as if the property had not been
3 classified for that year, and taxes for the preceding three fiscal years which have been
4 deferred as provided herein, shall immediately be payable, together with interest thereon
5 as provided in G.S. 105-360 for unpaid taxes which shall accrue on the deferred taxes due
6 herein as if they had been payable on the dates on which they originally became due. If
7 only a part of the qualifying tract of land loses its eligibility, a determination shall be
8 made of the amount of deferred taxes applicable to that part and that amount shall
9 become payable with interest as provided above. Upon the payment of any taxes deferred
10 in accordance with this section for the three years immediately preceding a
11 disqualification, all liens arising under this subsection shall be extinguished."

12 Sec. 4. This act becomes effective January 1, 1995. Notwithstanding the
13 provisions of G.S. 105-277.4(a), an application for the benefit provided in this act for the
14 1995-96 tax year shall be considered timely if it is filed on or before September 1, 1995.