

GENERAL ASSEMBLY OF NORTH CAROLINA  
1995 SESSION

CHAPTER 454  
SENATE BILL 237

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 PERSONS 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~~ 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 than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program.
- (1a) Business entity. – A corporation, a general partnership, a limited partnership, or a limited liability company.
- (2) ~~'Forestland' means land~~ Forestland. – Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit shall be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a sound management program.
- (3) ~~'Horticultural land' means land~~ Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit,

but the woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program.

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

- a. ~~A natural person; or person.~~ For the purpose of this section, a natural person who is an income beneficiary of a trust that owns land may elect to treat the person's beneficial share of the land as owned by that person. If the person's beneficial interest is not an identifiable share of land but can be established as a proportional interest in the trust income, the person's beneficial share of land is a percentage of the land owned by the trust that corresponds to the beneficiary's proportional interest in the trust income. For the purpose of this section, a natural person who is a member of a business entity that owns land may elect to treat the person's share of the land as owned by that person. The person's share is a percentage of the land owned by the business entity that corresponds to the person's percentage of ownership in the entity.
- b. ~~A corporation–business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose shareholders–members are all natural persons–either a natural person actively engaged in the business of the corporation–entity or a relative of a shareholder–member who is actively engaged in the business of the corporation–entity.~~
- c. A trust that was created by a natural person who transferred the land to the trust and each of whose beneficiaries who is currently entitled to receive income or principal meets one of the following conditions:
  1. Is the creator of the trust or the creator's relative.
  2. Is a second trust whose beneficiaries who are currently entitled to receive income or principal are all either the creator of the first trust or the creator's relatives.
- d. A testamentary trust that meets all of the following conditions:
  1. It was created by a natural person who transferred to the trust land that qualified in that person's hands for classification under G.S. 105-277.3.
  2. At the time of the creator's death, the creator had no relatives as defined in this section as of the date of death.
  3. The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific,

literary, cultural, charitable, or religious purposes as defined in G.S. 105-278.3(d).

- (4a) Member. – A shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.
- (5) ~~'Present-use value' means the~~ Present-use value. – The value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income, using a rate of nine percent (9%) to capitalize the expected net income of the property and assuming an average level of management.
- (5a) ~~'Relative' means:~~ Relative. – Any of the following:
- a. ~~Spouse;~~ A spouse or the spouse's lineal ancestor or descendant.
  - b. ~~A lineal ancestor;~~ ancestor or a lineal descendant.
  - c. ~~A lineal descendant;~~ A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.
  - d. ~~A brother or sister, including a stepbrother or stepsister;~~ An aunt or an uncle.
  - e. ~~An adopted or adoptive child, parent, grandchild, or grandparent; or~~
  - f. ~~A spouse of a person listed in paragraphs b. through e.~~ a. through d.

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

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

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

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

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

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

- (2) Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have either:
  - a. Been used to produce evergreens intended for use as Christmas trees and met the qualifying or gross income requirements established by the Department of Revenue for the land; or
  - b. Produced an average gross income of at least one thousand dollars (\$1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products.
- (3) Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

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

- (1) ~~Be~~ It is the owner's place of residence; or residence.
- (2) ~~Have~~ It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.
- (3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust which transferred the property to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

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

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

Property loses its eligibility for the classifications described in subsection (a) of this section if ownership of the property passes to anyone other than a relative of the owner or passes to or from a business entity or trust from or to anyone other than its members or its creators or beneficiaries, respectively, except that property does not lose its eligibility if both of the following conditions are met: (i) it was appraised at its present

use value or was eligible for appraisal at its present use value pursuant to that subsection at the time title to the property passed to the present owner, and (ii) at the time title to the property passed to the present ~~owner~~ he-owner, the owner owned other property classified under subsection (a). ~~Classification pursuant to this subsection shall~~ The fact that property may retain its eligibility because the preceding two conditions were met does not affect any liability for deferred taxes under G.S. 105-277.4(c) if ~~such~~ those taxes were otherwise due at the time title passed to the present owner.

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

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

"(c) Property meeting the conditions ~~herein set forth for classification under G.S. 105-277.3~~ shall be taxed on the basis of the value of the property for its present use. The difference between the taxes due on the present-use basis and the taxes which would have been payable in the absence of this classification, together with any interest, penalties or costs that may accrue thereon, shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes shall be carried forward in the records of the taxing unit or units as deferred taxes, but shall not be payable, unless and until (i) ~~the owner conveys the property to anyone other than a relative of the owner, or (ii) ownership of the property passes to anyone other than a relative by will or intestacy, or (iii) ownership of the property passes to a corporation as defined in G.S. 105-277.2(4)b from anyone other than its principal shareholders or from such a corporation to anyone other than its principal shareholders, or (iv) the property loses its eligibility for the benefit of this classification for some other reason.~~ classification. The tax for the fiscal year that opens in the calendar year in which a disqualification occurs shall be computed as if the property had not been classified for that year, and taxes for the preceding three fiscal years which have been deferred as provided herein, shall immediately be payable, together with interest thereon as provided in G.S. 105-360 for unpaid taxes which shall accrue on the deferred taxes due herein as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land loses its eligibility, a determination shall be made of the amount of deferred taxes applicable to that part and that amount shall become payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection shall be extinguished."

Sec. 4. This act becomes effective January 1, 1995. Notwithstanding the provisions of G.S. 105-277.4(a), an application for the benefit provided in this act for

the 1995-96 tax year shall be considered timely if it is filed on or before September 1, 1995.

In the General Assembly read three times and ratified this the 18th day of July, 1995.

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Dennis A. Wicker  
President of the Senate

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Harold J. Brubaker  
Speaker of the House of Representatives