Coates' Canons Blog: New Property Tax Deferral Aimed at Economic Development Properties

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[UPDATE: S.L. 2014-39 amended the site infrastructure deferral by eliminating the requriement that the property have previously been participating in the present use value deferral program for farmland and by changing the deferral calculation. The updated post below reflects these changes.]

This past year witnessed several milestones for deferred property taxes. We celebrated the 40th birthday of the first deferred tax program, the present-use value deferral aimed at farmland and forestland that debuted in 1973 (G.S. 105-277.4). We welcomed the newest member of the family, the “site infrastructure” deferral aimed at land that might be ripe for economic development (G.S. 105-277.15A; more on this new arrival below). And we said goodbye to the home builders’ inventory deferral (G.S. 105-277.1D), which sunset in 2013.

We now have ten different deferrals in the Machinery Act, including the home builders’ inventory which although it closed for additional properties last year can still offer one last year of deferrals to properties that were in the program as of 2012. The full list:

1. protected natural areas owned by non-profits (G.S. 105-275(12))
2. future site of historic structure (G.S. 105-275(29a))
3. circuit breaker (G.S. 105-277.1B)
4. home builders’ inventory (G.S. 105-277.1D)
5. present-use value (G.S. 105-277.4)
6. working waterfronts (G.S. 105-277.14)
7. wildlife conservation (G.S. 105-277.15)
8. site infrastructure land (G.S. 105-277.15A)
9. historic property (G.S. 105-278(b))
10. future low-income housing (G.S. 105-278.6(e))

The New “Site Infrastructure Land” Deferral (G.S. 105-277.15A)

This deferral hopes to encourage owners of land that might be good sites for industrial or commercial projects to build the infrastructure needed to attract developers. In its original formulation, the program was available only for agricultural land or forestland that was receiving the present-use value (“PUV”) deferral program. The site infrastructure land deferral permitted an owners to continue to receive the PUV deferral despite the fact that they stop farming their land and begin preparing it for development. (For background on the PUV deferral, see this post.)

But the site infrastructure land (“SIL”) deferral changed as of the 2015 tax year thanks to S.L. 2014-39. Under the new rules, property can be eligible for the SIL deferral even if it is not currently receiving the PUV deferral. But the deferral calculation was changed so that the program will provide a substantial benefit only if the land was recently rezoned to permit office or industrial use.

Here are the nitty-gritty details:

To be eligible for the SIL deferral, property must be:

1. Zoned for industrial or office use;
2. Free of any substantial structures and not be the subject of a building permit for any such structures; and,
3. 100 contiguous acres or larger.

Once a property qualifies for the SIL deferral, the owner will be permitted to defer taxes on any infrastructure (grading, utilities, streets, and the like) *and* any increased taxes that result from a rezoning that occurred in the calendar year prior to the deferral application. If the land was zoned for office or industrial use more than one year prior to the SIL application, the owner will not receive much of a benefit because the deferral will then be limited to the increased taxes resulting from infrastructure improvements (which might not be made for several years).

The property will lose its eligibility for the deferral when one of four "disqualifying events" occurs:

1. The owner fails to make a minimum investment in infrastructure improvements within five years of first receiving the deferral. The minimum investment is the total amount of taxes deferred on the property for those five years.
2. The property is rezoned to exclude industrial or office use.
3. The property is transferred or a building permit is obtained.
4. Ten years go by without any of the above three disqualifying events occurring.

The SIL deferral is unique in that its "rollback"—that is, the number of years of deferred taxes that become due and payable—varies based on the type of disqualifying event that occurs.

Disqualifying Event	**Rollback**
Rezoning	All years
No minimum investment	5 years
10 years in deferral	5 years
Transfer or building permit	1 year

There are two exceptions to the rules for disqualifying events. First, property receiving the SIL deferral can move back into the PUV program without triggering an obligation to pay any deferred taxes. Second, if a portion of SIL property is disqualified because it is transferred or is the subject of a building permit, the additional portion of the property may remain in the SIL program even if it is smaller than 100 acres.

Let's walk through a hypothetical situation to see how these rules might play out in practice.

Farmer Roy owns Parcel A, which is 150 contiguous acres. County economic development officials think Parcel A is ripe for industrial development and just a few moths ago successfully petitioned for the area surrounding Parcel A to be rezoned to permit industrial use. They approach Farmer Roy and convince him to stop farming the land and, with the help of state and local grants, invest in infrastructure improvements that will (hopefully) attract industrial development.

Farmer Roy agrees to give it a shot. He applies for and receives the SIL deferral beginning with the 2015 tax year. This means he will be able to defer both the increased property taxes resulting from any infrastructure improvements he makes to the land and the increased property taxes resulting from the recent rezoning of Parcel A to permit industrial use. Assume that before he makes any infrastructure improvements to the Parcel A the annual deferral is $5,000 due to the impact of the rezoning.

To remain eligible for the SIL deferral, Farmer Roy must spend at least $25,000 (the total deferral for the first five years) on infrastructure improvements to Parcel A by July 1, 2019, which is five years from the first day of the fiscal year in which he first receives the SIL deferral. It doesn't matter whether Farmer Roy pays for those improvements himself or gets help from third-parties. If Roy doesn't make $25,000 of infrastructure improvements by that date, he will be booted from the SIL deferral and will be liable for all five years of deferred taxes in 2019.

Assume Farmer Roy makes the minimum investment. In 2020 he sells 90 acres of Parcel A to Big Bad Development Corp. One year of deferred taxes on those 90 acres will be due and payable as a result of the transfer. Either Farmer Roy or Big Bad could be held responsible for those deferred taxes if they were not paid at closing.

The remaining 60 acres of Parcel A (let's call them Parcel B) will remain eligible for the SIL deferral through tax year 2023-24. If Farmer Roy fails to find a buyer by the end of that year, Parcel B will be booted from the SIL deferral and Farmer Roy will be liable for the most recent five years of deferred taxes (which would be those for tax years 2019-20 to 2023-24).

However, Farmer Brown could choose to begin farming the property again and seek the PUV deferral for agricultural land. To do so, Farmer Brown would need to satisfy the PUV income requirements, which for agricultural land is an average gross farming income of $1,000 for the previous three years. If he could satisfy that income requirement by 2024, then Farmer Brown could move Parcel B from the SIL program to the PUV program without triggering liability for any deferred taxes.

Links

- www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2013-2014/SL2014-39.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-277.4
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-277.15A
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-277.1D
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-275
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-277.1B
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-277.14
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-277.15
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=105-278.6
- canons.sog.unc.edu/?p=6672