



COPY

November 1, 1989

Charles L. Moore
County Attorney
Gaston County
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Re: Application of G.S. 105-285(d) to transfers of real property which had qualified for special property tax exclusion afforded the elderly and the disabled; G.S. 105-277.1

Dear Mr. Moore:

As Gaston County Attorney, you request our opinion as to a possible conflict between G.S. 105-285(d) and 105-277.1. The former statute provides in pertinent part that where property not subject to taxation on January 1 because of "its exempt status" is acquired prior to July 1, it must be listed for taxation by the transferee on the date of its acquisition, appraised as of the preceding January 1 and taxed for that fiscal year. Under G.S. 105-277.1, real property belonging to the elderly or disabled has been classified for partial exclusion from taxation, where certain minimum "disposable income" levels are not exceeded. Your letter recognizes that there is a school of thought which contends that the "reassessment" provisions of G.S. 105-285(d) do not extend to the special classification granted by G.S. 105-277.1.

In our opinion, G.S. 105-285(d) applies to G.S. 105-277.1. While G.S. 105-285(d) speaks of property which was not taxed due to its "exempt" status, we do not believe the legislature used that word in a restrictive, technical sense, to be distinguished from "exclusions" which flow from general statutes as opposed to "exemptions" which are specifically set forth in the North Carolina Constitution. As we view the situation, the better interpretation is that the word "exempt" has been used in a general sense to connote any form of tax-preference. Consequently, G.S. 105-285(d) extends to the exclusion created by G.S. 105-277.1 as well as to those provided by G.S. 105-275.

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Although the elderly and the disabled are favorites of the law, nothing substantive within G.S. 105-277.1 supports a conclusion that it is beyond the reach of G.S. 105-285(d). While it has been suggested to us that the elderly exclusion is different from other preferences by focusing upon the personal characteristics of the property's owner, and not upon the property itself, the same can also be said of many exclusions embodied in G.S. 105-275. We are unable to see any meaningful distinction between the tax preference allowed the elderly and other exemptions and exclusions within the Machinery Act.

We hope you find the foregoing of assistance.

Yours very truly,

LACY H. THORNBURG
Attorney General

George W. Boylan
Special Deputy Attorney General

GWB/swg:crmor.00

bc: C. B. (Bart) McLean