

CHAPTER 35**REAL PROPERTY TAXATION OF RECREATION
AND CONSERVATION LANDS OWNED BY
NONPROFIT ORGANIZATIONS****Authority**

N.J.S.A. 54:4-3.63 et seq.

Source and Effective Date

R.2008 d.17, effective December 13, 2007.
See: 39 N.J.R. 2701(a), 40 N.J.R. 147(a).

Chapter Expiration Date

Chapter 35, Real Property Taxation of Recreation and Conservation Lands Owned by Nonprofit Organizations, expires on December 13, 2012.

Chapter Historical Note

Chapter 35, Real Property Taxation, was adopted as R.1975 d.179, effective June 25, 1975. See: 7 N.J.R. 203(a), 7 N.J.R. 310(b).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 35, Real Property Taxation, was extended by gubernatorial directive from July 1, 2006 to July 1, 2007. See: 38 N.J.R. 3164(a).

Chapter 35, Real Property Taxation, was readopted as R.2008 d.17, effective December 13, 2007. As a part of R.2008 d.17, Chapter 35, Real Property Taxation, was renamed Real Property Taxation of Recreation and Conservation Lands Owned by Nonprofit Organizations, effective January 7, 2008. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS**7:35-1.1 Purpose and scope**

To help satisfy the acute need in New Jersey for natural open space areas for public recreation and conservation purposes, the Legislature has found that it is "in the public interest to encourage the dedication of privately-owned open space to public use and enjoyment." (N.J.S.A. 54:4-3.63 et seq.). These rules are supplemental to and not in derogation of existing tax laws.

Amended by R.2008 d.17, effective January 7, 2008.
See: 39 N.J.R. 2701(a), 40 N.J.R. 147(a).

Substituted "To" for "In order to" and deleted "and regulations" following "rules".

7:35-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise.

"Act" means P.L. 1974, c. 167, an act concerning exemption from taxation of real property owned by certain nonprofit corporations (N.J.S.A. 54:4-3.63 et seq.).

"Application" means a request to the Department, filed in accordance with this chapter, for certification of eligibility for tax exemption on one parcel or a unified group of parcels intended for similar use.

"Certification of eligibility for tax exemption" means establishment by the Commissioner of eligibility for exemption pursuant to the provisions of the Act and this chapter.

"Change of use" means a use of land or property for other than recreation and conservation purposes.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her designated representative.

"Department" means the New Jersey Department of Environmental Protection.

"Land" or "lands" means real property, including any improvement, right-of-way, water, riparian and other rights, easements, privileges, and any other rights or interests in, relating to, or connected with real property.

"Nonprofit organization" means an organization or corporation that has applied for and received a determination letter from the U.S. Department of Treasury granting exemption from Federal income tax under Section 501(c)(3) of the Federal Internal Revenue Code.

"Parcel" means a piece of land with designated boundaries. A parcel may include multiple tax lots.

"Pretax year" means the year in which the nonprofit organization submits an application to the Department. The pretax year is the year prior to the year in which tax exemption is requested to begin.

"Program" means the Tax Exemption Program.

"Property" means land that is the subject of an application for tax exemption or land that has been certified as eligible for tax exemption.

"Public use" means a use or right of use available to the general public or some portion thereof for recreation and conservation purposes.

"Recreation and conservation purposes" means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation of natural resources, or both.

"Roll-back taxes" means taxes in an amount equal to the taxes that would have been payable on the property had it not been tax exempt, in the current tax year (the year of sale or change of use) and in each of the two tax years immediately preceding the current tax year during which the real property was exempt, with interest compounded at eight percent annually pursuant to N.J.S.A. 54:4-3.69.

Amended by R.2008 d.17, effective January 7, 2008.

See: 39 N.J.R. 2701(a), 40 N.J.R. 147(a).

In the introductory paragraph, substituted "chapter" for "Chapter"; added definitions "Act", "Change of use", "Land", "Parcel", "Program", "Property" and "Recreation and conservation purposes"; substituted definition "Certification of eligibility for tax exemption" for "Certification of tax exemption"; rewrote definitions "Application", "Nonprofit organization", "Pretax year", "Public use" and "Roll-back taxes"; in definition "Commissioner", inserted "or his or her designated representative"; in definition "Department", inserted "New Jersey"; and deleted definition "Public recreation and conservation purposes".

Case Notes

Appeal of tax exempt status recertification under Green Acres program appropriate to be heard as a trial de novo. *West Milford Twp. v. Garfield Recreation Committee, Inc.*, 194 N.J.Super. 148, 476 A.2d 333 (Law Div.1983).

7:35-1.3 Eligible organizations

Any nonprofit organization that qualifies for exemption from Federal income tax under Section 501(c)(3) of the Federal Internal Revenue Code and that owns land in the State of New Jersey and makes that land available for public use for recreation and conservation purposes is eligible to make application under this program.

Amended by R.2008 d.17, effective January 7, 2008.

See: 39 N.J.R. 2701(a), 40 N.J.R. 147(a).

Substituted the first occurrence of "that" for "which", inserted "Federal" and the second occurrence of "that", and inserted "and makes that land available for public use for recreation and conservation purposes".

Case Notes

Public recreation and conservation purposes definition cited; exemption statutes not impermissibly vague. *Wildlife Preserves, Inc. v. Boro. of Lincoln Park*, 151 N.J.Super. 533, 377 A.2d 706 (App.Div.1977).

Former regulation was invalid to the extent of deviation from statutory requirement. *Twp. of Princeton v. Bardin*, 147 N.J.Super. 557, 371 A.2d 776 (App.Div.1977), certification denied 74 N.J. 281, 377 A.2d 685 (1977).

7:35-1.4 Eligible real property

(a) To be eligible for tax exemption, real property must meet the following criteria:

1. The property must be a natural open space area not dominated by buildings or other structures. Any buildings or structures that are present must be used exclusively for, or in support of, recreation and conservation purposes, otherwise the buildings or structures and the portion of the property immediately around them shall not be eligible for tax exemption;

2. The property must be maintained and operated for the benefit of the public and be open for public use on an equal basis;

3. Tax exemption must be determined by the Commissioner to be in the public interest;

4. Fees charged for entrance onto or use of the property, if any, must be determined by the Commissioner to be non-discriminatory and reasonable; and

5. Restrictions on the use of the property by the public, if any, must be determined by the Commissioner to be necessary for proper maintenance and improvement of the property or because significant natural features of the property may be adversely affected by unrestricted access.

(b) If it is determined by the Department, at any time, that the property does not meet one or more of the criteria in (a) above, then the Department shall rescind the certification of eligibility for tax exemption and shall notify the nonprofit organization and the municipal tax assessor accordingly.

Amended by R.2008 d.17, effective January 7, 2008.

See: 39 N.J.R. 2701(a), 40 N.J.R. 147(a).

Rewrote the introductory paragraph of (a); rewrote (a)1 and (a)2; in (a)4 and (a)5, deleted "real" following "use of the" and inserted ", if any,"; in (a)4, substituted "and reasonable; and" for "fees consistent with the cost of maintenance or improvement of the property,"; in (a)5, substituted the third occurrence of "property" for "land"; and added (b).

7:35-1.5 Program information and forms; address for submission

Unless otherwise specified, information about the Program and application forms are available from, and any questions and all submissions required under this chapter should be directed to: Green Acres Program – Tax Exemption, New Jersey Department of Environmental Protection, 501 East State Street, P.O. Box 412, Trenton, NJ 08625-0412; 609-984-0500; www.nj.gov/dep/greenacres.

New Rule, R.2008 d.17, effective January 7, 2008.

See: 39 N.J.R. 2701(a), 40 N.J.R. 147(a).

Former N.J.A.C. 7:35-1.5, Application procedures, recodified to N.J.A.C. 7:35-1.6.

7:35-1.6 Application procedures for initial certification of eligibility for tax exemption

(a) An applicant for initial certification of eligibility for tax exemption must submit to the Department the following