

CHAPTER 35

REAL PROPERTY TAXATION

Chapter Expiration Date

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SUBCHAPTER 1. GENERAL PROVISIONS

Authority

Unless otherwise expressly noted, all provisions of this Subchapter were adopted pursuant to authority of N.J.S.A. 54:4-3.63 et seq. and were filed and became effective June 25, 1975, as R.1975 d.179. See: 7 N.J.R. 203(a), 7 N.J.R. 310(b).

7:35-1.1 Purpose and scope

In order 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. 54:4-3.36 et seq.). These rules and regulations are supplemental to and not in derogation of existing tax laws.

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.

"Application" means a request for certification of tax exemption on one contiguous land holding, or several holdings intended for similar use.

"Certification of tax exemption" means establishment by the Commissioner of eligibility for exemption pursuant to the provisions of P.L. 1951, c.135 (N.J.S.A. 54:4-4.4).

"Commissioner" means the Commissioner of the Department of Environmental Protection.

"Department" means the Department of Environmental Protection.

"Nonprofit organization" means those organizations or corporations who have applied for and received a determination letter under Section 501(c)(3) of the Federal Internal Revenue Code.

"Pretax year" means the year in which the application is submitted.

"Public recreation and conservation purposes" means the use of lands for parks, natural and historic areas, nature education, forests, camping, fishing, water reserve, wildlife preservation, hunting, boating, recreation centers, winter sports and similar uses for public recreation and conservation of natural resources.

"Public use" means a use or right of use available to the general public or some portion thereof for conservation or recreation purposes. Such use, and any limits thereon, shall be based on the uses best suited to the land, the capacity of the facility and the public benefits or advantages to be derived therefrom.

"Roll-back taxes" means taxes in the amount equal to the taxes which would have been payable on the property had it not been exempt in the current tax year (the year of sale or change in use), and in each of the two tax years immediately preceding in which the real property was exempt, with interest compounded at eight per cent annually.

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 which qualifies for exemption from Federal income tax under Section 501 (c)(3) of the Internal Revenue Code and owns natural open space land in the State of New Jersey is eligible to make application under this program.

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) Real property must meet the following qualifications in order to gain tax exemption:

1. It must include a natural open space area which is not dominated by buildings or other structures;

2. It must 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 real property must be determined by the Commissioner to be nondiscriminatory fees consistent with the cost of maintenance or improvement of the property;
5. Restrictions on the use of the real property by the public must be determined by the Commissioner to be necessary for proper maintenance and improvement of the property or because significant natural features of the land may be adversely affected by unrestricted access.

7:35-1.5 Application procedures

(a) An applicant must submit to the Department three copies of the following documents by August 1 of the pretax year:

1. The Department's application form DEP/TE 101;
2. The Federal Internal Revenue Service 501(c)(3) letter of ruling determination;
3. Statement by counsel or other competent declarer attesting to applicant's ownership of the specific property;
4. The property tax bill(s) for the pretax year for all property for which application is being made;
5. The tax map(s) for all property for which application is being made and a municipal map showing the location of the property;
6. The State form I.S. Rev. June 1970 (the initial statement for Exemption of Real Property from Taxation pursuant to N.J.S.A. 54:4-4.4);
7. A copy of the applicant's certificate of incorporation, articles of association or the charter and bylaws.

(b) The Department has the right to enter upon the land for the purposes of a site inspection after application has been made.

(c) A public hearing will be held on the first Thursday after the first Monday in September of the pretax year or at such time as designated by the Commissioner. The Commissioner will advertise the time and location of the hearing in an official advertising newspaper of the area in which the property is located, at the expense of the applicant. The advertising cost is payable in advance of the hearing.

(d) Prior to the hearing two copies of each item submitted in application will be sent to the local tax assessor. A copy of the Department of Environmental Protection letter of notification of receipt will be sent to the applicant and to the applicable county board of taxation, with original to local tax assessor.

(e) On or before September 15 of the pretax year the Commissioner will make a declaration of certification and shall notify the applicant, the local tax assessor and the county board of taxation. The Commissioner may consult with the Natural Areas Council and others prior to making a determination.

(f) Not later than July 1 of every third-calendar year succeeding the year of certification the applicant shall submit a form DEP/TE 102 "Application for Recertification of Exemption from Real Property Taxes" and form F.S. Rev. June 1970 "Further Statement" informing the Department of current land use.

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).

Trial-type public hearing is neither mandated nor appropriate for application determination. *Wildlife Preserves, Inc. v. Boro of Lincoln Park*, 151 N.J.Super. 533, 377 A.2d 706 (App.Div.1977).

7:35-1.6 Change of status

When real property which is exempted under the provisions of this Act is applied to a use other than public recreation and conservation purposes, or is sold to an organization not qualifying for tax exemption under the Federal Internal Revenue Service Section 501(c)(3), then the applicant shall notify the Department that property shall be subject to roll-back taxes.

7:35-1.7 Save Harmless liability

The nonprofit organization, its servants, licensees, agents or invitees shall accept all liability arising out of the use of the certified property.

7:35-1.8 Amendments

The Commissioner, in consultation with the Director of the Division of Taxation, shall have the power to adopt, amend and repeal administrative rules to effectuate the purpose of this Act.