

House Bill 531 (AS PASSED HOUSE AND SENATE)

By: Representative Royal of the 140th

A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to general provisions regarding ad valorem taxation of property, so as to provide for preferential assessment of environmentally contaminated property; to change certain provisions regarding definitions; to change certain provisions regarding assessment of property; to provide for procedures, conditions, and limitations regarding preferential assessment of environmentally contaminated property; to provide for penalties; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to general provisions regarding ad valorem taxation of property, is amended in Code Section 48-5-2 by adding a new subparagraph at the end of paragraph (3), to be designated subparagraph (F), to read as follows:

"(F) Fair market value of 'brownfield property' as such term is defined in subsection (a) of Code Section 48-5-7.6 means:

(i) Unless sooner disqualified pursuant to subsection (e) of Code Section 48-5-7.6, for the first ten years in which the property is classified as 'brownfield property,' the value equal to the lesser of the acquisition cost of the property or the appraised fair market value of the property as recorded in the county tax digest at the time application was made to the Environmental Protection Division of the Department of Natural Resources for participation under Article 9 of Chapter 8 of Title 12, the 'Hazardous Sites Reuse and Redevelopment Act,' as amended;

(ii) Unless sooner disqualified pursuant to subsection (e) of Code Section 48-5-7.6, for the eleventh and following years, the fair market value of such property as determined by the provisions of this paragraph, excluding the provisions of this subparagraph."

SECTION 2.

Said article is further amended in Code Section 48-5-7, relating to assessment of tangible property, by adding a new subsection immediately following subsection (c.3), to be designated subsection (c.4), to read as follows:

"(c.4) Tangible real property which qualifies as brownfield property pursuant to the provisions of Code Section 48-5-7.6 shall be assessed at 40 percent of its fair market value and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of the property's fair market value. For the purposes of this subsection, the term 'fair market value' shall mean the fair market value of brownfield property pursuant to the provisions of subparagraph (F) of paragraph (3) of Code Section 48-5-2."

SECTION 3.

Said article is further amended by adding a new Code section immediately following Code Section 48-5-7.5, to be designated Code Section 48-5-7.6, to read as follows:

"48-5-7.6.

(a)(1) For the purposes of this Code section, 'brownfield property' means tangible real property where:

(A) There has been a release of hazardous waste, hazardous constituents, and hazardous substances into the environment; and

(B) The director of the Environmental Protection Division of the Department of Natural Resources, under Article 9 of Chapter 8 of Title 12, the 'Georgia Hazardous Site Reuse and Redevelopment Act,' as amended, has approved and not revoked said approval of the prospective purchaser's corrective action plan or compliance status report for such brownfield property; and

(C) The director of the Environmental Protection Division of the Department of Natural Resources, under Article 9 of Chapter 8 of Title 12, the 'Georgia Hazardous Site Reuse and Redevelopment Act,' as amended, has issued and not revoked a limitation of liability certificate for the prospective purchaser; and

(D) The Environmental Protection Division of the Department of Natural Resources has certified eligible costs of remediation pursuant to subsection (j) below.

(2) The preferential classification and assessment of brownfield property provided for in this Code section shall apply to all real property qualified by the Environmental Protection Division of the Department of Natural Resources under Article 9 of Chapter 8 of Title 12, the 'Georgia Hazardous Site Reuse and Redevelopment Act,' as amended, and any subsequent improvements to said property.

(3) 'Eligible brownfield costs' means costs incurred after July 1, 2003, and directly related to the receipt of a limitation of liability pursuant to Article 9 of Chapter 8 of Title

12, the 'Hazardous Sites Reuse and Redevelopment Act,' as amended, that are not ineligible costs.

(4) 'Ineligible costs' means expenses of the following types:

(A) Purchase or routine maintenance of equipment of a durable nature that is expected to have a period of service of one year or more after being put into use at the property without material impairment of its physical condition, unless the applicant can show that the purchase was directly related to the receipt of a limitation of liability, or the applicant can demonstrate that the equipment was a total loss and that the loss occurred during the activities required for receipt of applicant's limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the 'Hazardous Sites Reuse and Redevelopment Act,' as amended;

(B) Materials or supplies not purchased specifically for obtaining a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the 'Hazardous Sites Reuse and Redevelopment Act,' as amended;

(C) Employee salaries and out-of-pocket expenses normally provided for in the property owner's operating budget (i.e. meals, fuel) and employee fringe benefits;

(D) Medical expenses;

(E) Legal expenses;

(F) Other expenses not directly related to the receipt of a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the 'Hazardous Sites Reuse and Redevelopment Act,' as amended;

(G) Costs arising as a result of claims for damages filed by third parties against the property owner or its agents should there be a new release at the property during or after the receipt of a limitation of liability;

(H) Costs resulting from releases after the purchase of qualified brownfield property that occur as a result of violation of state or federal laws, rules, or regulations;

(I) Purchases of property;

(J) Construction costs;

(K) Costs associated with maintaining institutional controls after the certification of costs by the Environmental Protection Division of the Department of Natural Resources; and

(L) Costs associated with establishing, maintaining or demonstrating financial assurance after the certification of costs by the Environmental Protection Division of the Department of Natural Resources.

(5) 'Local taxing authority' means a county, municipal, school district, or any other local governing authority levying ad valorem taxes on a taxpayer's property. If a taxpayer's

property is taxed by more than one such authority, the term 'local taxing authority' shall mean every levying authority.

(6) 'Taxable base' means a value assigned to the brownfield property pursuant to the provisions of subparagraph (F) of paragraph (3) of Code Section 48-5-2.

(7) 'Tax savings' means the difference between the amount of taxes paid on the taxable base and the taxes that would otherwise be due on the current fair market value of the qualified brownfield property. Tax savings run with the qualified brownfield property regardless of title transfer and shall be available until the brownfield property is disqualified pursuant to subsection (e) below.

(b) In order for property to qualify under this Code section for preferential assessment as provided for in subsection (c.4) of Code Section 48-5-7, the applicant must receive the certifications required for brownfield property as defined in paragraph (1) of subsection (a) of this Code section.

(c) Upon receipt of said certifications, a property owner desiring classification of any such contaminated property as brownfield property in order to receive the preferential assessment shall make application to the county board of tax assessors and include said certifications with such application. The county board of tax assessors shall determine if the provisions of this Code section have been complied with, and upon such determination, the county board of tax assessors shall be required to grant preferential assessment to such property. The county board of tax assessors shall make the determination within 90 days after receiving the application and shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306. Failure to timely make such determination or so notify the applicant pursuant to this subsection shall be deemed an approval of the application. Appeals from the denial of an application for preferential assessment by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(d)(1) Property which has been classified by the county board of tax assessors as brownfield property shall be immediately eligible for the preferential assessment provided for in subsection (c.4) of Code Section 48-5-7; provided, however, that, for the purposes of determining the years of eligibility for preferential assessment, the tax year following the year in which the certification was filed with the county board of tax assessors pursuant to subsection (c) of this Code section shall be considered and counted as the first year of eligibility.

(2) Property which is subject to preferential assessment shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to preferential assessment.

(3) The local taxing authority shall enter upon the tax digest as the basis or value of a parcel of brownfield property a value equal to the lesser of the acquisition cost of the property or the assessment of the fair market value of the property as recorded in the county tax digest at the time application for participation in the Hazardous Site Reuse and Redevelopment Program was submitted to the Environmental Protection Division of the Department of Natural Resources under Article 9 of Chapter 8 of Title 12, the 'Georgia Hazardous Site Reuse and Redevelopment Act,' as amended. Property classified as brownfield property shall be recorded upon the tax digest as provided in this Code section for ten consecutive assessment years, unless sooner disqualified pursuant to subsection (e) of this Code section, and the notation 'brownfield property' shall be entered on the tax digest adjacent to the valuation of such property to indicate that the property is being preferentially assessed. The local taxing authority shall also enter upon the tax digest an assessment of the fair market value of the property each year, excluding the provisions of subparagraph (F) of paragraph (3) of Code Section 48-5-2.

(e)(l) When property has once been classified and assessed as brownfield property, it shall remain so classified and be granted the preferential assessment until the property becomes disqualified by any one of the following:

(A) Written notice by the taxpayer to the local taxing authority to remove the preferential classification and assessment;

(B) Sale or transfer of ownership to a person not subject to property taxation or making the property exempt from property taxation except a sale or transfer to any authority created by or pursuant to the Constitution of Georgia, statute or local legislation, including a development authority created pursuant to Code Section 36-62-4, constitutional amendment or local legislation, a downtown development authority created pursuant to Code Section 36-42-4, an urban redevelopment agency created pursuant to Code Section 36-61-18, a joint development authority created pursuant to Code Section 36-62-5.1 or a housing authority created pursuant to Code Section 8-3-4;

(C) Revocation of a limitation of liability by the Department of Natural Resources. The Department of Natural Resources has the authority to revoke a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the 'Georgia Hazardous Site Reuse and Redevelopment Act,' as amended. The sale or transfer to a new owner shall not operate to disqualify the property from preferential classification and assessment so long as the property continues to qualify as brownfield property, except as specified in subparagraph (B) of this paragraph; or

(D) The expiration of ten years during which the property was classified and assessed as brownfield property; or

(E) The tax savings accrued on the property equal the eligible brownfield costs certified by the Environmental Protection Division of the Department of Natural Resources and submitted to the local taxing authority.

(2) Except as otherwise provided in this Code section, if a property becomes disqualified pursuant to subparagraph (C) of this subsection, the decertification shall be transmitted to the county board of tax assessors by the Environmental Protection Division of the Department of Natural Resources and said assessors shall appropriately notate the property as decertified. Such property shall not be eligible to receive the preferential assessment provided for in this Code section during the taxable year in which such disqualification occurs.

(f) After a qualified brownfield property begins to receive preferential tax treatment the property owner shall:

(1) In a sworn affidavit, report his or her tax savings realized for each year to the local taxing authority. Such report shall include:

(A) The number of years preferential tax treatment pursuant to this Code section has been received;

(B) Total certified eligible brownfield costs;

(C) Tax savings realized to date;

(D) Transfers of eligible brownfield costs, if any;

(E) Eligible brownfield costs remaining;

(2) In the tax year in which the taxes otherwise due on the fair market value of the property exceed any remaining eligible brownfield costs, the taxpayer shall pay the taxes due on the fair market value of the property less any remaining eligible brownfield costs.

(g) A qualified brownfield property may be transferred or leased and continue to receive preferential tax treatment if:

(1) The transferee or lessee of the property is an entity required to pay ad valorem property tax on the qualified brownfield property or an interest therein;

(2) The transferee or lessee complies with all of the requirements of this Code section;

(3) The transferee or lessee meets the requirements of Code Section 12-8-206;

(4) The transferee or lessee continues any and all activities, if any are required, for the continuation of a limitation of liability pursuant to Article 9 of Chapter 8 of Title 12, the 'Georgia Hazardous Site Reuse and Redevelopment Act,' as amended;

(5) The transferee or lessee and the transferor notify the local taxing authority with respect to the transfer of the qualified brownfield property by filing a separate copy of the transfer with the local taxing authority no later than 90 days following the date of the transfer;

(6) Failure to timely notify one local taxing authority shall not affect any timely notification to any other local taxing authority; and

(7) The transfer of property shall not restart, reset or otherwise lengthen the period of preferential tax treatment pursuant to this Code section.

(h) A qualified brownfield property may be subdivided into smaller parcels and continue to receive preferential tax treatment if:

(1) All of the requirements of subsection (g) above are met; and

(2) The transferee and transferor agree and jointly submit to the local taxing authority a sworn affidavit stating the eligible brownfield costs being transferred to the subdivided property, to wit:

(A) A transferor's report to the local taxing authority shall include:

(i) The total certified eligible brownfield costs for the qualified brownfield property;

(ii) The tax savings realized to date;

(iii) The eligible brownfield costs being transferred;

(iv) The number of years of preferential tax treatment pursuant to this Code section has been received;

(v) The eligible brownfield costs remaining;

(vi) A request to establish the taxable base of the transferred property and reestablish the taxable base for the retained property pursuant to paragraph (3) below.

(B) Failure to file a sworn affidavit with one local taxing authority shall not affect any sworn affidavit submitted to any other local taxing authority.

(C) A transferee's first report to the local taxing authority shall include:

(i) A statement of the amount of the transferred eligible brownfield costs;

(ii) The number of years of preferential tax treatment the property received prior to transfer (carry over from transferor); and

(iii) A request to establish a taxable base for the property pursuant to paragraph (3) below.

(D) Subsequent reports made by a transferee shall include the same information provided by property owners in paragraph (1) of subsection (f) of this Code section.

(3) The taxable base for the subdivided property shall be established by the local taxing authority based on the ratio of acres purchased to total acres at the time of the establishment of the taxable base for the entire qualified brownfield property. Said ratio shall be applied to the taxable base as recorded in the county tax digest at the time the application was received by the Environmental Protection Division for participation in the Hazardous Site Reuse and Redevelopment Program. The taxable base on the retained qualified brownfield property shall be decreased by the amount of taxable base assigned to the subdivided portion of the property.

(4) The subdivision of property shall not restart, reset, or otherwise lengthen the period of preferential tax treatment pursuant to this Code section.

(i) In the year in which preferential tax treatment ends, the taxpayer shall be liable for any and all ad valorem taxes due on the property for which a certified eligible brownfield cost is not claimed as an offset.

(j) The Environmental Protection Division of the Department of Natural Resources shall review the eligible costs submitted by the applicant/taxpayer and shall approve or deny those costs prior to those costs being submitted to the local tax authority. Eligible costs to be certified as accurate by the Environmental Protection Division shall be submitted by the applicant to the division at such time and in such form as is prescribed by the division. Eligible costs may be submitted for certification only once for each assessment or remediation undertaken pursuant to Article 9 of Chapter 8 of Title 12, the 'Hazardous Sites Reuse and Redevelopment Act, as amended. The certification of costs shall be a decision of the director and may be appealed in accordance with subsection (c) of Code Section 12-2-2.

(k) The taxing authority shall provide an appropriate form or forms or space on an existing form or forms to implement this Code section.

(l) Taxpayers shall have the same rights to appeal from the determination of the taxable base and assessments and reassessments of qualified brownfield property as set out in Code Section 48-5-311.

(m) A penalty shall be imposed under this subsection if during the special classification period the taxpayer fails to abide by the corrective action plan. The penalty shall be applicable to the entire tract which is the subject of the special classification and shall be twice the difference between the total amount of tax paid pursuant to preferential assessment under this Code section and the total amount of taxes which would otherwise have been due under this chapter for each completed or partially completed year of the special classification period. Any such penalty shall bear interest at the rate specified in Code Section 48-2-40 from the date the special classification is breached.

(n) Penalties and interest imposed under this Code section shall constitute a lien against the property and shall be collected in the same manner as unpaid ad valorem taxes are collected. Such penalties and interest shall be distributed pro rata to each taxing jurisdiction wherein current use assessment under this Code section has been granted based upon the total amount by which such preferential assessment has reduced taxes for each such taxing jurisdiction on the property in question as provided in this Code section."

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