S T A T E   O F   T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

May 9, 2012

Opinion No. 12-51

Greenbelt Rollback Tax Liability on Land Purchased Through the Wetlands Acquisition Fund

QUESTION

Is the State of Tennessee required to pay rollback taxes on greenbelt property it purchases and converts to tax-exempt use when that land is purchased with funds from the Wetlands Acquisition Fund?

OPINION

No. The statutory requirement that the government pay rollback taxes on greenbelt land it acquires through eminent domain and converts to exempt status does not apply when the land is purchased through the Wetlands Acquisition Fund, which does not acquire land through eminent domain. Furthermore, Tenn. Code Ann. § 11-14-406 specifically excludes land acquired by the Wetlands Acquisition Fund from the rollback tax.

ANALYSIS

This request concerns the relationship between the Wetland Acquisition Fund, created by Tenn. Code Ann. § 67-4-409(g), and the assessment of "rollback" property taxes in certain cases where property loses its status as "agricultural, forest, or open space land" under the Agricultural, Forest and Open Space Land Act, codified at Tenn. Code Ann. §§ 67-5-1001 to -1050.

The General Assembly has authorized a process for the State to acquire wetlands and forests to "preserve certain wetlands and bottomland hardwood forests in our state." Tenn. Code Ann. § 11-14-401(b)(1). As part of this process, the Director of the Tennessee Wildlife Resources Agency may use funds from the Wetland Acquisition Fund, created by Tenn. Code Ann. § 67-4-409(g), to "acquire wetlands and bottomland hardwood forests" when the acquisition is "necessary and desirable to ensure the proper management of such wetlands and forests." Tenn. Code Ann. § 11-14-401(b)(2).

Tenn. Code Ann. § 67-4-409(g)(1) defines the creation and purpose of the Wetland Acquisition Fund as follows:

> Three and one fourth cents (3.25¢) of the tax levied by subsection (a) [Tenn. Code Ann. § 67-4-409(a)] shall, subject to the annual appropriations act, be credited to a special agency account in the state general fund known as the "1986 wetland

> acquisition fund." If such an appropriation is not made in the appropriations act, then the amount shall be credited to the general fund. The funds shall not be obligated or expended to acquire any interest in real property through condemnation or the power of eminent domain. Expenditures from the fund shall only be made to implement and effectuate the purposes of title 11, chapter 14, part 4. The fund may be expended to maintain property purchased pursuant to title 11, chapter 14, part 4. Funds deposited in the fund shall not revert at the end of any fiscal year, and all interest accruing on investments and deposits of the fund not otherwise expended shall be returned to and made a part of the fund.

The Agricultural, Forest, and Open Space Land Act was adopted in 1976 for the purpose of encouraging owners of such land in areas pressured by growing urbanization and development to continue to maintain the land in its present undeveloped use. *See* Tenn. Code Ann. § 67-5-1003. This Act, commonly referred to as the "Greenbelt Law," incentivizes the non-development of qualifying land by providing the owners with a property tax benefit if they apply for classification as greenbelt property and maintain the particular conforming use outlined in the Greenbelt Law. *See* Tenn. Code Ann. §§ 67-5-1005 to -1008. Under this law, when a parcel of land qualifies for greenbelt status and is so classified by the jurisdiction's tax assessor, the tax assessment for the greenbelt parcel is then calculated upon the premise that its current undeveloped use is its "best" use, and the property's potentially higher value for any other use or purpose is not considered. Tenn. Code Ann. § 67-5-1008(a)(1). As explained by the Tennessee Court of Appeals, "in enacting this legislation, the legislature has issued an invitation to property owners to voluntarily restrict the use of their property for agricultural, forest, or open space purposes." *Marion Co. v. State Bd. of Equalization*, 710 S.W.2d 521, 523 (Tenn. Ct. App. 1986).

To prevent landowners from taking advantage of the Greenbelt Law to capture temporary property tax savings without truly committing their property to the long-term greenbelt use envisioned by the Act, the General Assembly provided for the levying of rollback taxes under certain circumstances. As explained by this Office in an earlier opinion on a similar issue, when land for which greenbelt status has previously been obtained ceases to meet the requirements of the Greenbelt Law,

> the relevant tax assessor is instructed by the statute to compute the difference between the present use value assessment and the standard method of value assessment as described in Tenn. Code Ann. § 67-5-601 *et seq.* for each of the preceding three years (or five years if the land was classified as open space). Tenn. Code Ann. § 67-5-1008(d)(1). The value of this difference is then to be assessed as the rollback tax on that greenbelt property.

Op. Tenn. Att'y Gen. 05-046, at 2 (Apr. 12, 2005).

There are currently six enumerated circumstances that trigger rollback taxes, Tenn. Code Ann. § 67-5-1008(d)(1)(A) through (F), with only the last circumstance relevant to the question posed in this request. Rollback taxes are to be calculated and the local property tax assessor is required to "notify the trustee that such amount is payable, if . . . (F) The land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt." Tenn. Code Ann. § 67-5-1008(d)(1)(F). As noted by this Office in a prior opinion, the rollback tax trigger outlined in subsection (F), which was added to the code in 2008,

> is not tied to the use of the land, but rather requires rollback taxes to be assessed if the greenbelt property is rendered "exempt" from taxes. Thus, pursuant to the 2008 amendment, greenbelt property conveyed to a government entity that maintains the property's greenbelt use would be subject to rollback taxes simply if the conveyance results in the property becoming exempt from property taxes.

Op. Tenn. Att'y Gen. 10-71, at 3 (May 21, 2010).

As a general rule, property owned by a government entity and used exclusively for governmental purposes is exempt from property taxes. Tenn. Code Ann. § 67-5-203. Thus, per Tenn. Code Ann. § 67-5-1008(d)(1)(F), in most circumstances when greenbelt property is conveyed to a government entity it becomes exempt and therefore triggers the assessment of rollback taxes. In short, absent statutory authorization to the contrary, greenbelt property conveyed to the government that takes on exempt status is subject to the assessment of rollback taxes regardless of whether the greenbelt use of that property is continued by the government after the conveyance.

However, as recognized by this office in Op. Tenn. Att'y Gen. 10-71, the government is only responsible for rollback taxes under Tenn. Code Ann. § 67-5-1008(e)(1) if the government "sought" the transfer and "had the power of eminent domain." Op. Tenn. Att'y Gen. 10-71, at 5. Here, the Wetlands Acquisition Fund under its enabling statute is expressly prohibited from acquiring "any interest in real property through condemnation or the power of eminent domain." Tenn. Code Ann. § 67-4-409(g)(1). Thus the Wetlands Acquisition Fund cannot be responsible for the payment of rollback taxes under Tenn. Code Ann. § 67-5-1008(e)(1). *See* Op. Tenn. Att'y Gen. 10-71, at 5.

Furthermore, the provisions of the Tennessee Code compensating the local government for the loss of these rollback taxes expressly exclude property acquired under the Wildlife Acquisition Fund from the rollback taxes under the Greenbelt Act. Tenn. Code Ann. § 11-14-406(b) expressly states that no rollback taxes are due on property solely because it was acquired by funds from the Wetland Acquisition Fund as described in Tenn. Code Ann. § 67-4-409(g). Tenn. Code Ann. § 11-14-406, which is part of the "U.A. Moore Wetlands Acquisition Act," creates a "special agency account in the general fund to be known as the compensation fund" to be used to "reimburse each affected city and county" for property tax revenue lost to government acquisition of land under the U.A. Moore Wetlands Acquisition Act. Tenn. Code Ann. § 11-14-406(a). The statute expressly states that "[a]cquisition pursuant to this part[1] of property classified under title 67, chapter 5, part 10 [the Greenbelt Law], shall not constitute a change in the use of the property, *and no rollback taxes shall become due solely as a result of such acquisition*." Tenn. Code Ann. § 11-14-406(b) (emphasis added). Thus, conveyance of greenbelt property to

[1] Part 4 of Title 11 of the Tennessee Code, along with the provisions of Tenn. Code Ann. § 67-4-409(g), comprise the "U.A. Moore Wetlands Acquisition Act." *See* Tenn. Code Ann. § 11-14-401(a).

the government through purchase with funds from the Wetland Acquisition Fund does not trigger rollback taxes even though the greenbelt property is converted to tax-exempt status.[2] However, the local government should receive compensation directly from the State compensation fund as outlined in Tenn. Code Ann. § 11-14-406(b). *See* Op. Tenn. Att'y Gen. 10-71, at 4-6.

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

GREGORY O. NIES
Assistant Attorney General

Requested by:

Mr. Ed Carter
Executive Director
Tennessee Wildlife Resources Agency
Ellington Agricultural Center
P.O. Box 40747
Nashville, Tennessee 37204

[2] Tenn. Code Ann. § 65-5-1008(e)(1) does state that greenbelt land converted to an exempt use through an involuntary taking by an agency with eminent domain power requires the agency doing the taking to pay rollback taxes. However, this opinion addresses an agency without eminent domain power that voluntarily acquires greenbelt property. *See* Tenn. Code Ann. § 67-4-409(g)(1) (stating funds from the Wetlands Acquisition Fund shall not be expended "to acquire any interest in real property through condemnation or the power of eminent domain").