

**STATE OF TENNESSEE**  
**OFFICE OF THE**  
**ATTORNEY GENERAL**  
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**NASHVILLE, TENNESSEE 37202**

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Opinion No. 10-71

Greenbelt Rollback Tax Liability on Land Converted to Exempt Status

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**QUESTIONS**

1. Tenn. Code Ann. § 67-5-1008(d)(1)(F) requires rollback taxes to be paid if “land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt.” Does that law cause all acquisitions of open, forest or agricultural land by government agencies to result in the assessment of rollback taxes even if the land is to be left as open or forest land?

2. Tenn. Code Ann. § 67-5-1008(e)(1) requires the government to pay rollback taxes when property is taken by eminent domain or other involuntary proceeding. This section goes on to provide that “[p]roperty transferred and converted to an exempt or nonqualifying use shall be considered to have been converted involuntarily if the transferee or an agent for the transferee sought the transfer and had power of eminent domain.” Does this section apply when a state agency purchases land using funds such as the State Land Acquisition Fund (T.C.A. Section 67-4-409(j)) that specifically bars the use of condemnation or the power of eminent domain? In that case, who would be obligated to pay the rollback taxes?

**OPINIONS**

1. Yes. As a matter of general application, when greenbelt land is acquired by the government and converted to tax-exempt status, rollback taxes should be assessed even if the greenbelt use is continued. However, greenbelt land purchased by the government through the State Lands Acquisition Fund is not subject to rollback taxes.

2. No. The 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 State Land Acquisition Fund, which cannot be used for takings through eminent domain. In such a case, no “rollback taxes” are incurred, but rather the local government is to be reimbursed for the amount of the lost property tax revenue through annual disbursements from the Compensation Fund created under Tenn. Code Ann. § 11-14-406.

## ANALYSIS

1. The Agricultural, Forest, and Open Space Land Act, codified in Tenn. Code Ann. §§ 67-5-1001 *et seq.*, 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. 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 legislature 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 had 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 (Apr. 12, 2005).

There are currently six enumerated circumstances that trigger rollback taxes. Pursuant to the Greenbelt Law, rollback taxes are to be calculated and the local property tax assessor is required to

notify the trustee that such amount is payable, if:

(A) Such land ceases to qualify as agricultural land, forest land, or open space land as defined in § 67-5-1004;

(B) The owner of such land requests in writing that the classification as agricultural land, forest land, or open space land be withdrawn;

(C) The land is covered by a duly recorded subdivision plat or an unrecorded plan of development and any portion is being developed; except that, where a recorded plat or an unrecorded plan of development contains phases or sections, only the phases or sections being developed are disqualified;

- (D) An owner fails to file an application as required by this part;
- (E) The land exceeds the acreage limitations of § 67-5-1003(3); or
- (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)(A) through (F).

Prior to June 13, 2008, the Greenbelt Law contained only the first three of the above-listed triggers for assessment of rollback taxes. Accordingly, in a 2005 opinion, this Office concluded that absent a written request for withdrawal or a duly recorded subdivision plat, no rollback taxes are due when greenbelt property is conveyed to a government entity that maintains the property's greenbelt use; rather, only a conversion to a non-greenbelt use would trigger a rollback tax assessment. Op. Tenn. Att'y Gen. 05-046 (Apr. 12, 2005).

Chapter No. 1161, § 5, of the 2008 Public Acts amended Tenn. Code Ann. § 67-5-1008(d)(1) in relevant part by providing three additional triggers for rollback taxes, now codified as subsections (D), (E), and (F). These amendments became effective on June 13, 2008. Of particular relevance to this Opinion is subsection (F), which requires that rollback taxes be assessed when any greenbelt property "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). This new rollback tax trigger 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.

As a general rule, property owned by a government entity and used exclusively for government purposes is exempt from property taxes. Tenn. Code Ann. § 67-5-203. Thus, 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, all greenbelt property conveyed to the government that takes on exempt status is subject to assessment of rollback taxes regardless of whether the greenbelt use of that property is continued by the government after the conveyance.

Tenn. Code Ann. § 67-5-1008, as discussed above, sets forth the basic requirements for the assessment of rollback taxes on greenbelt property under the Greenbelt Law. However, other portions of the Tennessee Code provide for limited exceptions to certain provisions of the Greenbelt Law. One such exception is provided in the statutes controlling property purchased through the State Lands Acquisition Fund. It is a well established principle of construction that "[t]ax statutes are to be construed *in pari materia*." *Tennessee Farmer's Co-op v. State*, 736 S.W.2d 87, 91 (Tenn. 1987). Accordingly, upon examination of all of the relevant tax statutes, it becomes apparent that when a government entity purchases greenbelt property through the State Lands Acquisition Fund, no rollback taxes are due; rather, the local government is to be remunerated by the State through a special compensation fund for its loss of property tax revenue resulting from the now exempt status of the government-owned property.

Tenn. Code Ann. § 67-4-409 sets forth collection requirements for the real estate transfer privilege tax and mandates the disbursement of the revenues collected from this tax. The revenues from this tax are disbursed through multiple funds, including the State Lands Acquisition Fund, as outlined in Tenn. Code Ann. § 67-4-409(j). The Commissioner of Environment and Conservation is authorized to use funds from the State Lands Acquisition Fund to acquire land for certain prescribed uses, such as historic sites, state parks, state forests, trails and protective easements. Tenn. Code Ann. § 67-4-409(j)(2)(A). However, the code prohibits the use of any funds from the State Lands Acquisition Fund for the acquisition of “any interest in real property through condemnation or the power of eminent domain.” Tenn. Code Ann. § 67-4-409(2)(B). Additionally, the controlling statutes provide that

[t]he first three hundred thousand dollars (\$300,000) deposited in the state lands acquisition fund shall be transferred and credited to the compensation fund created under § 11-14-406. *Following the procedure set forth in that section, the commissioner of finance and administration shall annually reimburse each city and county the amount of lost property tax revenue resulting from any purchase of land by the department of environment and conservation which renders such land tax exempt.*

Tenn. Code Ann. § 67-4-409(j)(3) (emphasis added). Accordingly, local governments which have greenbelt property removed from their property tax rolls because the property became exempt upon conveyance to the State through the State Lands Acquisition Fund are reimbursed for this lost revenue pursuant to the procedures set forth in the statutes pertaining to the State Compensation Fund created under Tenn. Code Ann. § 11-14-406.

The State Compensation Fund is a “special agency account in the state general fund” used to “reimburse each affected city and county” for property tax revenue lost to government acquisition of land.<sup>1</sup> Tenn. Code Ann. § 11-14-406(a). The statute expressly states that “[a]cquisition pursuant to this part 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 the government through purchase with funds from the State Lands Acquisition Fund does not trigger rollback taxes even though the greenbelt property is converted to tax-exempt status. However, the local government should receive compensation directly from the State Compensation Fund as outlined in Tenn. Code Ann. § 67-4-409(j)(3) and § 11-14-406(b).

2. The Greenbelt law outlines who is responsible for payment of rollback taxes when a conveyance of greenbelt property results in the assessment of such taxes. Generally, “if the sale of agricultural, forest or open space land will result in such property being disqualified as agricultural, forest or open space land due to conversion to an ineligible use or otherwise, the

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<sup>1</sup> While Tenn. Code Ann. § 11-14-406, the Compensation Fund statute, was written in a manner directly addressing local government compensation for the Wetland Acquisition Fund, the State Lands Acquisition Fund statute expressly states that its compensation program is to follow the same procedures outlined in this statute. *See* Tenn. Code Ann. § 67-4-409(j)(3).

seller shall be liable for rollback taxes, unless otherwise provided by written contract.” Tenn. Code Ann. § 67-5-1008(f). However, the Greenbelt law also states:

[i]n the event that any land classified under this part as agricultural, forest, or open space land or any portion thereof is converted to a use other than those stipulated herein by virtue of a taking by eminent domain or other involuntary proceeding, except a tax sale, such land or any portion thereof involuntarily converted to such other use shall not be subject to rollback taxes by the landowner, and the agency or body doing the taking shall be liable for the rollback taxes. Property transferred and converted to an exempt or non-qualifying use shall be considered to have been converted involuntarily if the transferee or an agent for the transferee sought the transfer and had power of eminent domain.

Tenn. Code Ann. § 67-5-1008(e)(1). Accordingly, rollback taxes on greenbelt property transferred and converted to exempt status or nonconforming use are to be assessed against the seller, unless the government “sought” the transfer and “had the power of eminent domain.”

The right of eminent domain, by which the State is authorized to take private property for public use, is “an inherent governmental right.” *Metropolitan Development and Housing Agency v. Eaton*, 216 S.W.3d 327, 336 (Tenn. Ct. App. 2006). The State may also delegate this power to other specified entities. *American Tel. & Tel. Co. v. Proffitt*, 903 S.W.2d 309, 314 (Tenn. Ct. App. 1995). *See generally* Tenn. Code Ann. title 29, chapter 17.

The first sentence of Tenn. Code Ann. § 67-5-1008(e)(1) states that the government (not the selling landowner) is to pay rollback taxes on greenbelt property transferred and converted to exempt status or a nonconforming use only if the government acquired the property “by virtue of a taking” through eminent domain or “other involuntary proceeding.” The second sentence clarifies that any such transfer and conversion of greenbelt property is considered “involuntary” if the government agency: 1) “sought” the transfer, and 2) “had the power of eminent domain.” Thus, the mere fact that the acquiring government agency possesses the power of eminent domain is insufficient to shift the rollback tax burden from the selling landowner to the government. Rather, the government must have also “sought” the transfer, thus making the sale “involuntary” as defined in Tenn. Code Ann. § 67-5-108(e)(1).<sup>2</sup> Conversely, as a matter of general application, when a landowner voluntarily sells greenbelt property to a government agency resulting in the property being converted to exempt status or a nonconforming use, that landowner is responsible for the rollback taxes.

However, the statute governing the State Lands Acquisition Fund expressly prohibits the expenditure of Fund resources for acquisition of land “through condemnation or the power of eminent domain.” Tenn. Code Ann. § 67-4-409(j)(2)(B). Accordingly, the government could never seek to acquire land through the State Lands Acquisition Fund through its power of eminent domain. As noted in the answer to question one above, pursuant to Tenn. Code Ann. §§

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<sup>2</sup> We note that this is also the position held by the State Board of Equalization in its published materials. “If the government is buying greenbelt property, and the land is converted to another uses, the rollback assessment is against the government unless the land is voluntarily sold.” *Greenbelt: A Taxpayer’s Guide*, available at <http://www.tn.gov/comptroller/sb/pdf/GreenbeltBrochure1-25-06.pdf>.

67-4-409(j)(3) and 11-14-406(b), greenbelt property acquired by the government through the State Lands Acquisition Fund is not subject to rollback taxes. Therefore, the answer to the question of who would be obligated to pay the rollback taxes under such a scenario is neither the seller nor the government. Rather, the local government is compensated for the lost revenue through the Compensation Fund created under Tenn. Code Ann. § 11-14-406.

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