

BUILDERS INVENTORY DEFERMENT



Beginning in 2010, Builders can apply for a deferment of a portion of the property taxes due on completed but unsold homes. This legislation provides temporary tax relief for small builders during the current recession. The property taxes that are deferred will accrue interest, and become a lien on the property until they are paid. Any of a number of "disqualifying" events, explained below, makes these taxes due and payable. The legislation has a sunset provision, making it expire in 2013. However, the accrued property taxes already deferred will continue to be subject to a disqualifying event, i.e., the taxes and interest do not automatically become due and payable upon expiration of this provision in 2013.

A "Builder" as defined by G.S. 105-273(3a) is a licensed General Contractor who is engaged in the business of buying real property, making improvements to it, and then reselling it. Only the General Contractor can apply, and must provide the General Contractor license number on the application. Merely having a licensed General Contractor as an employee is not sufficient for making application under this legislation.

The deferral applies only to taxes due for the value of the residential structure and improvements, not for the land. The land will still be assessed and taxed at its full annual levy. In order for the house to qualify for deferment, 1) it must be complete- a certificate of occupancy must have been issued prior to January 1, and, 2) it must be unoccupied and unsold as of January 1.

Applications must be submitted to the Assessor's Office during the listing period between January 1 and January 31. Applications will be available through the Assessor's Office and online, beginning January 1, 2010 through the listing period.

Once a property is approved for the Builders Inventory Deferment, the owner is obligated to notify the Assessor's Office when a disqualifying event occurs. Again, all deferred taxes are a lien upon the property, and a disqualifying event will result in recapture of the taxes and interest.

Any of the following occurrences constitute a disqualifying event.

1. The builder transfers the residence.
2. The residence becomes occupied.
3. Five years have elapsed since the time the improved property was first subject to being listed for taxation by the builder.
4. Three years have elapsed since the time the improved property first received the property tax benefit under NC G.S. 105-277.1D Inventory property tax deferral.

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QUESTIONS & ANSWERS

Excerpts of a letter from the North Carolina Department of Revenue, dated October 15, 2009

Question--Must the owner be a builder and must the owner have a general contractor's license?

Answer---Yes. The owner must be a builder who has a valid general contractor's license.

Question--How can the license be verified?

Answer---The license number and holder's name can be verified at this page on the N.C. Licensing Board for General Contractors:

http://www.nclbqc.net/lic_fr.html

Question--The benefit is for the residence. Does the term "residence" include detached items?

Answer---The Property Tax Division recommends including as "residence" the detached garages, pools, gazebos, tennis courts, etc. if located on the dwelling home-site and if they were built in conjunction with the dwelling.

Question--Does the term "residence" include manufactured homes and modular homes?

Answer---It is the opinion of NCDOR that the term "residence" includes manufactured homes and modular homes. They are improvements made to the land by a builder, even though most of the construction was completed at a manufacturing facility. The owner would still have to meet the definition of "builder" and the property must have received a certificate of occupancy.

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QUESTIONS & ANSWERS

Question--What are the disqualifying events?

Answer---A disqualifying event occurs at the EARLIEST of (1) when the builder transfers the residence, (2) when the residence is occupied by the builder or by someone other than the builder with the builder's consent, (3) five years from the time, the improved property was first subject to being listed for taxation by the builder, and (4) three years from the time the improved property first received the property tax benefit.

Question--One of the disqualifying events occurs when the builder transfers the residence. Does this mean that any transfer will be a disqualifying event, even if between related entities?

Answer---Yes. The statute clearly states that a transfer is a disqualifying event, with no exceptions. If a deed is recorded that transfers the property, with or without consideration, the property will be disqualified.

Question--One of the disqualifying events occurs five years from the time the improved property was first subject to being listed for taxation by the builder. Does the five-year period start when the completed property was first subject to being listed for taxation?

Answer---No. The five year period starts when the improved property, whether still under construction or complete, is first subject to being listed. The property is improved once the construction of the improvements begins. The improvements may or may not be complete but they are subject to listing, thus starting the five-year period.

Question--What is the maximum number of years that a builder can receive the property tax deferral?

Answer---Three years.

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Question--When is the first year that property is eligible for deferment?

Answer---2010. The "effective date" language in S.L. 2009-308 reads: "This act is effective for taxes imposed for taxable years beginning on or after July 1, 2010." which is the...way of saying that it is effective for the 2010 tax year.

It is clear that if the builder was not receiving the property tax benefit prior to 2013, they cannot receive any benefit for 2013 or later.

Mecklenburg County NC et al (2009). Edited by Durham County Office of Tax Administration