

NOTICE OF OPPORTUNITY TO DECLINE VAP PROPERTY TAX EXEMPTION

New legislation effective 3/29/07 (H.B. 699)

Introduction

As VAP certified professionals, you may be familiar with the VAP tax exemption provision under ORC 5709.87. Basically, ORC 5709.87 states that if remedial activities are conducted at a property under the Voluntary Action Program (VAP) and the Director of Ohio EPA issues a covenant not to sue (CNS) for the property under ORC 3746.12, the Director shall also provide notice of the issuance of the covenant to the Ohio Department of Taxation. Upon receipt of Ohio EPA's notice, the Tax Commissioner issues an order exempting the identified property for ten years from real property taxation for the increase in the assessed value of the property as reflected on the current tax lists on tax lien day of the year that the exemption order is issued.

New Ohio legislation provides two limited opportunities to decline this automatic tax exemption.

For property issued a tax exemption order on or after March 29, 2007:
the current owner may decline the exemption - within 60 days after receipt of the order

Amended Substitute House Bill (HB) 699, known as the 2006 capital budget bill of the 126th General Assembly, was signed by the Governor on December 28, 2006. That bill includes an amendment to ORC 5709.87(C), which becomes effective on March 29, 2007. The amendment states as follows:

“(C)(1)(b) **Within sixty days** after receiving the commissioner's order, the owner of record of the property may notify the commissioner in writing that the owner does not want the exemption from real property taxation provided under division (C)(1) of this section to apply. Upon receiving such a notification from the property owner of record, the commissioner shall issue a subsequent order rescinding the previously granted exemption.” (Emphasis added.)

The change in the statute allows the current owner of the CNS Property to determine if the owner wants to decline the automatic property tax exemption in accordance with the new language of ORC 5709.87(C)(1)(b). The current owner of record (at the time the Tax Commissioner issues the tax exemption order) has up to 60 days after receiving the exemption order to send to the Tax Commissioner a written notice of the declined tax exemption.

Ohio EPA is not involved in this notice process, or in verifying that the rescission of the tax exemption is granted. The owner of the identified CNS Property is responsible for determining the potential benefits or detriments of maintaining the exemption versus electing to request that the exemption be rescinded.

For property with previously-granted VAP tax exemption:

the current owner has 90 days after the effective date of new law - until June 26, 2007 - to elect to discontinue exemption

The legislature included an uncodified provision in HB 699 that allows the current owner of properties that are subject to tax exemptions granted under 5709.87(C) to elect to discontinue any exemption for the remainder of the exemption term. Uncodified section 515.10 of HB 699 provides as follows:

“Within ninety days after the effective date of the amendment by this act of section ORC 5709.87 of the Revised Code, the current owner of record of real property that is subject to an ongoing exemption previously granted under division (C)(1)(a) of that section may notify the Tax Commissioner in writing that the owner elects to discontinue the exemption for the remainder of its term. Upon receiving such a notification, the commissioner shall issue an order restoring the property to the tax list beginning with the year in which the notification was received.” (Emphasis added.)

Under this provision, the current owner of record of the property that has received, but no longer wants, the tax exemption granted previously under ORC 5709.87 may elect to discontinue the exemption. To do so, the current property owner must send written notice to the Tax Commissioner of the election **within 90 days of the effective date of the new revisions to ORC 5709.87.**

The revisions to ORC 5709.87 become effective on March 29, 2007. Therefore, the current owners of tax-exempted property will need to act on the option to discontinue the tax exemption after March 29, 2007 but before June 26, 2007. Based on the bill language, quoted above, **this opportunity for owners to elect to discontinue the tax exemption is very limited – it will become available on March 29, 2007 and will expire after June 26, 2007.**

Ohio EPA suggests that the written notice be sent to the Tax Commissioner by certified mail, and that a courtesy copy be sent to the county auditor of the county where the VAP CNS property is located. It is not necessary to provide Ohio EPA with notice of the request to discontinue the tax exemption under ORC 5709.87.