

ARCHIVE: Archived to clarify tax exemptions under the VAP and to reflect the Ohio Supreme Court's statutory interpretation provided in the Court's decision Columbus Bd. of Edn. v. Wilkins (2004), 101 Ohio St.3d 112. Refer to VA30000.05.001 for the updated document.

TITLE: Tax Exemptions under the Voluntary Action Program

DATE

EFFECTIVE: June 2001

QUESTION: What are the issues of concern related to tax exemptions for properties for which a covenant not to sue has been issued?

ANSWER: If a remedy or remedial activities are conducted at a property under the Voluntary Action Program and the Director of Ohio EPA issues a covenant not to sue for the property, the Ohio Department of Taxation will issue an order exempting the property from real property taxation of the increase in the assessed value of the property as indicated on the current tax lists at the time the exemption order is issued. The Department of Taxation will send copies of the exemption order to the owner of the property and the County Auditor's Office. The County Auditor's Office maintains the list of properties in the county that are subject to taxes and exemptions.

Ohio EPA's Role in the Tax Exemption Process

Ohio Revised Code ("ORC") 5709.87(B) provides that the Director of Ohio EPA, after issuing a covenant not to sue for a property under ORC 3746.12 and determining that remedies or remedial activities have commenced or been completed at that property to the satisfaction of the Director of Ohio EPA, shall certify to the Tax Commissioner of the Department of Taxation and to the Director of the Department of Development that such a covenant has been issued and such remedies or remedial activities have occurred at that property.

This certification is completed in the form of an interoffice memorandum from Ohio EPA to the Department of Taxation and the Department of Development ("tax certification memorandum").

The only purpose of this tax certification memorandum is to notify the Departments of Taxation and Development that a remedy or remedial activities were conducted at a property and a covenant not to sue was

issued for the property. ORC 5709.87(B) requires Ohio EPA to include in the tax certification memorandum a description of the property in sufficient detail for the Departments of Taxation and Development to determine the boundaries of the property entitled to the tax exemption.

Ohio EPA includes in the tax certification memorandum the name, address, parcel number(s), and legal description of the property, the name of the county and taxing district in which the property is located, and the date the covenant not to sue was issued. Ohio EPA obtains the information presented in the tax certification memorandum from the no further action (“NFA”) letter issued by the certified professional.

Upon delivery of the tax certification memorandum, Ohio EPA has completed its responsibilities under ORC 5709.87. Ohio EPA does not track the tax exemption process to completion to ensure that a tax exemption was granted and applied to the property.

Application of Tax Exemption

The Department of Taxation issues the tax exemption order after receiving the tax certification memorandum from Ohio EPA. The exemption order provides an exemption from real property taxation of the increase in the assessed value of the land at the time the exemption order is issued as indicated on the current tax lists, and of the increase in the assessed value of the improvements, buildings, fixtures, and structures situated on the land at the time the exemption order is issued as indicated on the current tax lists. (See ORC 5709.87(C)). The exemption applies for ten (10) tax years, beginning with the tax year the exemption order is issued.

The Department of Taxation sends copies of the exemption order to the owner of the property and the County Auditor’s Office. The County Auditor’s Office applies the abatement according to the exemption order. If the volunteer or owner of the property wants to know the actual date of the abatement, the volunteer or owner should contact the local County Auditor’s Office.

To assist volunteers, Ohio EPA will include a copy of the tax certification memorandum along with the certified copy of the covenant not to sue sent to the volunteer. From that point, the volunteer must track the process to ensure the tax abatement is properly applied to the property.

Transfer or Subdivision of Property

It is important that Ohio EPA and the Department of Taxation have the correct and most current information about the property in order to issue a covenant not to sue and a tax exemption order. It is common for a property to be transferred or subdivided during the voluntary action cleanup. If the property is transferred or subdivided after the NFA letter is issued, but before the covenant not to sue is issued, the volunteer, owner, and/or certified professional must submit an addendum to the NFA letter notifying Ohio EPA of the change in ownership or change in parcel numbers prior to the issuance of the covenant not to sue.

CONTACT:

For further information regarding this issue, please contact the VAP Staff at (614) 644-2924.