

Tax Proration and Rollback Taxes

St. Mary's University School of Law and Texas Land Title Association Present:

The 18th Annual

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TEXAS LAND TITLE INSTITUTE

December 4-5, 2008

San Antonio, Texas

Labry Welty

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Tax Proration: Who Pays?

- Goals typically based upon economic benefit of property
 - Sellers = preclosing
 - Buyers = postclosing
- Negotiated terms control
- Property taxes generally prorated based upon the number of days

Tax Proration: Who Pays?

- Federal income tax deductibility – can only deduct taxes owed as determined under the Code
- Tax filing responsibility
- BUT what about Rollback Taxes?

Rollback Taxes

- Texas pays tribute to Agriculture
 - Texas Constitution, Article VIII, section 1-d
 - Texas Constitution, Article VIII, section 1-d-1
- PENALTY imposed for taking land out of agricultural production or use
- Special appraisal NOT exemption from tax
 - Agricultural Use Value
 - Market Value

Section 1-d

- “Agricultural Use” Provisions -
 - Continuously devoted to agricultural for 3 previous years
 - Owned by an individual whose primary occupation is agriculture
 - Time measurement
 - Gross income measurement
 - Apply annually

Section 1-d

- Tax/penalty triggered
 - Sale
 - Nonagricultural use - as determined by Chief Appraiser
- Tax lien attaches to land
 - Date of Sale
 - Date change of use occurs

Section 1-d-1

- “Open Space” Provisions – most common
 - “Qualified Open-Space Land”
 - Principally devoted to agriculture to degree of intensity generally accepted in the area
 - 5 of preceding 7 years OR ecological lab used by university
 - Primary purpose controls

Section 1-d-1

- Agricultural Use
 - Cultivating soil
 - Crop production
 - Floriculture, viticulture, and horticulture
 - Exotic Animals for Commercial Value (not recreation)
 - Timber
 - Wildlife Management
 - Idle use in conjunction with governmental programs

Section 1-d-1

- Tax/penalty triggered
 - Change of Use - as determined by Chief Appraiser
- Tax lien attaches to land
 - Date change of use occurs

Section 1-d-1

- No penalty if Change of Use occurs as a result of:
 - Sale for a right-of way
 - Condemnation
 - Transfer of property to the State
 - Transfer of property from the state for economic development purposes if use of land will generate revenue in excess of 20 times the Rollback tax (including interest)

Section 1-d-1

- Ineligible land
 - Located within city limits unless
 - No public services provided OR
 - Devoted to agricultural use for previous 5 years
 - Owned by nonresident alien or foreign government if required to register ownership or acquisition of property – Is this Constitutional?
 - Owned by a corporation, partnership, trust, or other legal entity if required to register ownership or acquisition of property AND nonresident alien or foreign government owns majority interest - Is this Constitutional?

Section 1-d-1

- Change of Use
 - Physical change required
 - Agricultural use drops below “degree of intensity generally accepted for the area” – NO rollback taxes triggered but lose special valuation privilege
 - Cessation of agricultural use – TAX IMPOSED

Penalties Imposed

- Market Value less Agricultural Use Value
 - Ex: *Pizzitola v. Galveston County Central Appraisal District*
\$7,302 per acre Market Value v. \$90 per acre Ag Value
- Section 1-d: 3 years plus interest
- Section 1-d-1: 5 years plus interest
- May not protest market valuations for previous years!
- New tax! As such proration clauses do not adequately address

Penalties Imposed

- Required disclosure by seller of vacant land
- Failure to provide disclosure allows buyer to recover rollback taxes from seller for change in use that occur as late as the 5th anniversary of the date of transfer
- CHECK PROPERTY TAX CERTIFICATE FOR SPECIAL APPRAISAL METHOD

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