

Rolling Back Clean and Green Rollback Taxes for Oil and Gas Operations

Pennsylvania Senate Passes Amendment to Resolve Inconsistent Application of Rollback Taxes

With the flurry of activity related to the “gas rush” for drilling to the Marcellus shale geologic formation, there has been an inconsistent interpretation and application of rollback taxes under the Farmland and Forest Land Assessment Act of 1974, 72 Pa. Cons. Stat. §§ 5490.1-5490.13, also known as “Clean and Green”. The Pennsylvania Senate recently passed an amendment to Clean and Green that would limit the application of rollback taxes only to the percentage of acreage actually used for the well pad, as estimated from the operator’s drilling permit submitted to the Pennsylvania Department of Environmental Protection.

Clean and Green is a program that provides landowners with the ability to obtain a preferential property tax assessment based on the actual use-value of the property rather than the highest and best use value. The program is available to agricultural and forested properties and is largely based on the yield value of the soil rather than the development value of the parcel.

Clean and Green requires that the landowner continue to use the property for agricultural or forested uses in order to be eligible for enrollment in the program. If the landowner opts to withdraw from the program, the landowner may be subject to “rollback” taxes if the land use is converted to an ineligible use. Rollback taxes represent the seven-year difference between the tax rate paid by the landowner under the preferential assessment and the rate he would have paid if not enrolled.

The rollback provisions of Clean and Green were being applied inconsistently by municipalities as landowners sold leases to oil and gas companies for access to extract natural gas from the Marcellus shale geologic formation. Some municipalities were applying the rollback taxes on the entire parcel subject to the lease because, in their view, the property was not being used strictly for agricultural or forested uses. However, other municipalities were not applying rollback taxes at all because the use of the property had not changed, just expanded.

In an effort to clarify how to consistently apply rollback taxes under the Clean and Green program, the Pennsylvania Senate passed amendments that provided for the severance of the portions of the property that could no longer be cultivated. The amendments provide that portions of the property actually used for the well pad, or other alternative use such as cell phone tower, wind turbine or alternative energy source, could be severed from the portion of the property enrolled in Clean and Green, thus permitting the remaining land which continued to be cultivated or forested to be preferentially assessed and not subject to rollback taxes. The Senate amendments also explicitly permit portions of the property used for the transmission of oil or gas to remain eligible for the preferential assessment.

These amendments, if adopted by the Pennsylvania House and Governor, will help to clarify the treatment of rollback taxes for municipalities and landowners. It will also help landowners understand how their property taxes may be affected if they are still considering leasing their property to an oil and gas company. 🌱

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