

Public Act 96-480 (Senate Bill 543) creates a temporary “developers’ relief assessment” for platted and subdivided land in all counties except Cook County. Like the existing developers’ relief assessment under Section 10-30 of the Property Tax Code¹, the new enactment is a prohibition on increasing the assessed value of property that is in transition from vacant land to a residential, commercial, or industrial use. Public Act 96-480 **extends** what has been the traditional developers’ preferential assessment to sales of lots, qualifying transfers to mortgage holders, and subdivisions or portions thereof that are replatted.

The text from Section 10-31 follows in its entirety.

New Statute

35 ILCS 200/10-31 (new)

Subdivisions; counties of less than 3,000,000.

- (a) In counties with less than 3,000,000 inhabitants, the platting and subdivision of property into separate lots and the development of the subdivided property with streets, sidewalks, curbs, gutters, sewer, water and utility lines shall not increase the assessed valuation of all or any part of the property if:
 - (1) The property is platted and subdivided in accordance with the Plat Act;
 - (2) The platting occurs after January 1, 1978;
 - (3) At the time of platting the property is in excess of 5 acres and;
 - (4) At the time of platting the property is vacant or used as a farm as defined in Section 1-60.
- (b) Except as provided in subsection (c) of this Section, the assessed valuation of property so platted and subdivided shall be determined based on the assessed value assigned to the property when last assessed prior to its last transfer or conveyance. An initial sale of any platted lot, including a lot that is vacant, or a transfer to a holder of a mortgage, as defined in Section 15-1207 of the Code of Civil Procedure, pursuant to a mortgage foreclosure proceeding or pursuant to a transfer in lieu of foreclosure, does not disqualify that lot from the provisions of this subsection (b).
- (c) Upon completion of a habitable structure on any lot of subdivided property, or upon the use of any lot, either alone or in conjunction with any contiguous property, for any business, commercial or residential purpose: (i) the provisions of subsection (b) of this Section shall no longer apply in determining the assessed valuation of the lot, (ii) each lot shall be assessed without regard to any provision of this Section, and (iii) the assessed valuation of the remaining property, when next determined, shall be reduced proportionately to reflect the exclusion of the property that no longer qualifies for valuation under this Section. Holding or offering a platted lot for initial sale shall not constitute a use of the lot for business, commercial or residential purposes unless a habitable structure is situated on the lot or unless the lot is otherwise used for a business, commercial or residential purpose. The replatting of a subdivision or portion of a subdivision does not disqualify the replatted lots from the provisions of subsection (b).
- (d) This Section applies on and after the effective date of this amendatory Act of the 96th General Assembly and through December 31, 2011. (Effective date: August 14, 2009.)

¹ 35 ILCS 200/10-31 *et seq.*

Key Provisions

Key elements of this enactment are listed below.

Qualifications

The new preferential assessment for subdivided and platted land applies if all of the following conditions are met:

- 1) The property is platted and subdivided in accordance with the Plat Act;
- 2) The platting occurs after January 1, 1978;
- 3) At the time of platting the property is in excess of 5 acres and;
- 4) At the time of platting the property is vacant or used as a farm as defined in Section 1-60 of the Property Tax Code.

These qualifications are identical to those in Section 10-30 of the Property Tax Code. Therefore, the same physical and legal requirements must be met for property to be eligible for assessment under Section 10-31.

Valuation procedure

The assessed value is determined using the same valuation procedure before the property was platted and subdivided — generally, vacant land or farmland. This does not mean that the assessed value is “frozen” at the amount at which it was assessed before it was platted and subdivided; it does mean that the assessed value cannot increase because of new infrastructure (*e.g.*, streets, sidewalks, curbs, gutter, or sewer, water, and utility lines).

The declaratory language states that the assessed value of property meeting the legal and physical requirements is based on the assessed value assigned to that property when last assessed **prior to its last transfer or conveyance**. This is a verbiage change when compared to Section 10-30(b), which reads,

“...the assessed valuation of property so platted and subdivided shall be determined each year based on the estimated price the property would bring at a fair voluntary sale for use by the buyer for the same purposes for which the property was used when last assessed prior to its platting.”

This verbiage change may be intended to reflect Appellate Court decisions related to Section 10-30 valuations.

When to remove the preferential assessment

The preferential assessment **is** removed when one of the following events occur:

- 1) A habitable structure is completed (excludes qualifying model homes under Section 10-25 of the Property Tax Code).
- 2) Any lot, including a vacant lot, either alone or in conjunction with any contiguous property, is used for any business, commercial or residential purpose.

The preferential assessment **is not** removed in the following circumstances:

- 1) A subdivided lot is sold (whether it is sold to another developer or to another individual or entity).
- 2) The property is transferred to the mortgage holder
 - a) as part of a foreclosure proceeding, or
 - b) in lieu of foreclosure.
- 3) A subdivision or portion of a subdivision is replatted.

Note: The three circumstances listed above are a change from the traditional developers’ relief assessment under Section 10-30 (*i.e.*, any of these events *would* trigger a reassessment).

The Department of Revenue's Office of Legal Services advises that the language "[A]n initial sale of any platted lot, including a lot that is vacant" in subsection (b) would, by a plain reading, include any **first** sale to anyone (e.g., a sale to an individual who leaves the property vacant and does not use it, a sale of one or more lots to other developers).

Also note that the verbiage in Section 10-30(c) "Upon completion of a habitable structure...or upon the use of any lot...or upon the initial sale of any platted lot, **including a platted lot that is vacant...**" was one of the criteria used to remove the preferential assessment. That verbiage has been moved to subsection (b) and, as a result, these lots continue to be assessed under the new developers' preferential assessment in Section 10-31 of the Property Tax Code.

Finally, the last sentence in Section 10-31(c) specifically states that replatting a subdivision or portion thereof does not remove the preferential assessment.

Effective date

This enactment **temporarily replaces** the existing developer's preferential assessment for platted and subdivided land under Section 10-30 of the Property Tax Code beginning August 14, 2009. The preferential assessment under Section 10-30 of the Property Tax Code resumes January 1, 2012.

From a practical standpoint, the new preferential assessment is implemented January 1, 2010, because property is assessed as of its condition on January 1 under Section 9-155 of the Property Tax Code.²

Therefore, although the effective date of the enactment is August 14, 2009; qualifying properties will be assessed under Section 10-31 on January 1, 2010.

Example: Prior to the platting and subdivision, the property was assessed under the Farmland Assessment Law. On January 1, 2009, the subdivided land was assessed under Section 10-30 of the Property Tax Code and the equalized assessed value was based on the farmland values the Department of Revenue certified for the 2009 assessment year. On May 1, 2009, (prior to the enactment of Public Act 96-480), the property was transferred to a mortgage holder as part of a foreclosure proceeding. The property continues to be assessed under Section 10-30 for the remainder of 2009. The property is then valued as of its condition on January 1, 2010. The property qualifies for the new Section 10-31 preferential assessment valuation procedure and is assessed under Section 10-31 of the Property Tax Code.

Although the Department of Revenue is required to provide guidance on property tax matters, you still should consult with your state's attorney regarding this advice as he or she is the person who will defend your actions.

I hope that this information is helpful. If you have any questions, please contact the Property Tax Division at 217.782.3627.

² The "date upon which real estate is assessed in the State of Illinois is January 1 of each year." Doran v. P.J. Cullerton, 51 Ill.2d 553, 558 (1972). "[U]nless otherwise provided by law, a property's status for purposes of taxation is to be determined as of January 1 of each year." Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369, 373 (1st Dist. 1983). There are only two recognized exceptions for changing the status of property after January first of each year. *Id.* at 373. Section 9-180 permits a partial exemption of taxation where property becomes taxable or exempt after January 1 and Section 9-185 allows a proportionate assessment where there is new construction or property becomes uninhabitable. *Id.*