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**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NATURAL & HISTORIC RESOURCES**

**Real Property Taxation**

**Readopted with Amendments: N.J.A.C. 7:35**

Authorized by: Lisa P. Jackson, Commissioner,  
Department of Environmental Protection

Proposed: August 6, 2007 at 39 N.J.R. 2701 (a)

Filed: 2007 as R. d. , **without change.**

Authority: N.J.S.A. 54:4-3.63 et seq.

DEP Docket Number: 15-07-07/594

Effective Date:

Expiration Date:

The Department of Environmental Protection is readopting with amendments the Real Property Taxation Rules, N.J.A.C. 7:35 (the rules). These rules are promulgated pursuant to P.L. 1974, Chapter 167, an act concerning exemption from taxation of real property owned by certain nonprofit corporations, N.J.S.A. 54:4-3.63 et seq. (the Act). This Act established the Tax Exemption Program, which is administered by the Green Acres Program in the New Jersey Department of Environmental Protection (Department). The Tax Exemption Program allows nonprofit organizations qualifying for exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code that own natural open space land in the State of New Jersey to seek exemption from real property taxes on the open space land. The Department has reviewed the rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. The Department is readopting the rules with amendments to provide more clarity concerning the current requirements and procedures of the Tax Exemption Program and to establish changed and new requirements.

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The proposal was published in the New Jersey Register on August 6, 2007 at 39 N.J.R. 2701(a). No public hearing was held. The comment period closed on October 5, 2007.

### **Summary of Public Comments and Agency Responses:**

The Department received written comments on the proposal from one individual, as follows:

#### **Name – Affiliation**

1. Barbara Sachau, no affiliation provided

The following is a summary of the comments timely submitted on the proposal and the Department’s responses. The number in parenthesis after the comment identifies the commenter listed above.

#### **General**

1. COMMENT: Nonprofit groups should not be exempt from paying real estate taxes. The commenter expressed the opinion that some groups do not operate in the public interest. Examples cited by the commenter include Audubon, The Nature Conservancy, and the Morris County Park Commission. (1)

RESPONSE: The Real Property Taxation Rules, N.J.A.C. 7:35 (the rules) are promulgated pursuant to P.L. 1974, Chapter 167, an act concerning exemption from taxation of real property owned by certain nonprofit corporations, N.J.S.A. 54:4-3.63 et seq. (the Act). The Act was created by the State Legislature, approved by the Governor, and became law in 1974. The Act states, in part, that “The Legislature hereby finds and declares that natural open space areas for public recreation and conservation purposes are

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rapidly diminishing; that public funds for the acquisition and maintenance of public open space should be supplemented by private individuals and conservation organizations; and that it is therefore in the public interest to encourage the dedication of privately-owned open space to public use and enjoyment as provided for in this act.” (N.J.S.A. 54:4-3.63). The Act and the rules specify that a nonprofit organization must agree to make its land open to the public on an equal basis for recreation and conservation purposes and must meet all other requirements of the Act and the rules in order to obtain a certification of eligibility for tax exemption from the Commissioner of the Department. Thus, not all nonprofit organizations that own land in New Jersey are exempt from paying real property taxes; only those that apply to the Tax Exemption Program and are certified as eligible under the Act and the rules can receive exemption. The Department believes that, as long as an organization continues to qualify as a nonprofit organization under the Act and the land remains open to the public on an equal basis for recreation and conservation purposes and otherwise satisfies the requirements of the rules, tax exemption is an appropriate means to encourage protection of such land from development or other uses.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (as amended by P.L. 1995, c.65) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The rules readopted with amendments are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards, or requirements. Although one of the requirements for eligibility for tax exemption referenced in the Act (N.J.S.A. 54:4-3.64 and 3.65), and incorporated in the rules, is that the nonprofit organization be qualified for exemption from Federal Income Tax under Section 501(c)(3) of the Internal Revenue Code, the Act and the rules are not related to the Federal Internal Revenue Code. “Federal income tax

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exemption standards have no relation to state law governing property tax exemption.” (Paper Mill Playhouse v. Millburn Tp., 95 N.J. 503, 529 n.2 (1984) (Clifford and Schreiber, JJ., dissenting) (citation omitted). Accordingly, as there are no Federal Standards exceeded by this rule, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not call for a Federal standards analysis for these rules.

**Full text** of the rules readoption with amendments follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from the proposal indicated in brackets with asterisks \*[thus]\*):

(No changes from proposal.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purposes and expected consequences of this readoption with amendments. I hereby authorize this readoption with amendments.

Date: \_\_\_\_\_

\_\_\_\_\_

Lisa P. Jackson, Commissioner  
Department of Environmental Protection