

Chapter Tax 18

ASSESSMENT OF AGRICULTURAL PROPERTY

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Note: Chapter Tax 18 was created as an emergency rule effective January 29, 1986. Chapter Tax 18 was repealed and recreated by emergency rule effective December 6, 1995. Chapter Tax 18 as it existed on August 31, 1996 was repealed and a new chapter Tax 18 was created effective September 1, 1996.

Tax 18.04 Purpose. The purpose of this chapter is to provide definitions and procedures for the department and municipal assessors to classify certain real property as agricultural or other, and to value such property for property tax purposes.

History: Cr. Register, September, 1997, No. 501, eff. 10-1-97; CR 13-036: am. Register December 2013 No. 696, eff. 1-1-14.

Tax 18.05 Definitions. In this chapter:

(1) "Agricultural use" means any of the following:

(a) Activities included in subsector 111 Crop Production, set forth in the North American Industry Classification System (NAICS), United States, 1997, published by the executive office of the president, U.S. office of management and budget.

(b) Activities included in subsector 112 Animal Production, set forth in the North American Industry Classification System, United States, 1997, published by the executive office of the president, U.S. office of management and budget.

Note: Subsector 111 Crop Production and subsector 112 Animal Production, set forth in the North American Industry Classification System, United States, 1997, published by the executive office of the president, U.S. office of management and budget, are reproduced in full in the Wisconsin property assessment manual under s. 73.03 (2a), Stats. In addition, copies are on file with the department and the legislative reference bureau.

(c) Growing Christmas trees or ginseng.

(d) Land without improvements subject to a federal or state easement or enrolled in a federal or state program if all of the following apply:

1. The land was in agricultural use under par. (a), (b), or (c) when it was entered into the qualifying easement or program, and

2. Qualifying easements and programs shall adhere to standards and practices provided under the January 31, 2014 No. 697 version of s. ATCP 50.04, 50.06, 50.71, 50.72, 50.83, 50.88, 50.91, 50.96, or 50.98. The Wisconsin Property Assessment Manual, authorized under s. 73.03 (2a), Stats., shall list the qualifying easements and programs according to the ATCP provisions, and

3. a. The terms of the temporary easement or program do not restrict the return of the land to agricultural use under par. (a), (b), or (c) after the easement or program is satisfactorily completed, or

b. The terms of an easement, contract, compatible use agreement, or conservation plan for that specific parcel authorized an agricultural use, as defined in par. (a), (b), or (c), for that parcel in the prior year.

Note: In *Applegate-Bader Farm, LLC v. Department of Revenue*, Green County Circuit Court, Case No. 16CV48, a declaratory judgment under s. 227.40, Stats., was entered providing as follows:

"Pursuant to Wis. Stat. 227.40 (4) (a), administrative rule Tax 18.05 (1) (d) is declared invalid because the Department of Revenue failed to follow proper rulemaking procedures."

The defendants' motion for a stay pending appeal was granted on July 25, 2018. The stay will remain in force until 30 days after remittitur to the trial court.

(2) "Council" means the farmland advisory council under s. 73.03 (49), Stats.

(3) "Department" means the department of revenue.

(4) "Land devoted primarily to agricultural use" means land in an agricultural use for the production season of the prior year, and not in a use that is incompatible with agricultural use on January 1 of the assessment year.

(5) "Other" means agricultural buildings and improvements and the land necessary for their location and convenience.

(6) "Parcel of agricultural land" means land, contained within a single legal description, that is devoted primarily to agricultural use.

History: Cr. Register, September, 1997, No. 501, eff. 10-1-97; am. (1) (a), (b) and (d), cr. (1) (e), Register, July, 2000, No. 535, eff. 1-1-01; CR 13-036: am. (intro.), (1) (a) Register December 2013 No. 696, eff. 1-1-14; CR 13-102: r. and recr. (1) (d), r. (1) (e) Register June 2015 No. 714, eff. 7-1-15.

Tax 18.06 Land classified agricultural; categories of agricultural land. (1) An assessor shall classify as agricultural land devoted primarily to agricultural use. Land devoted primarily to agricultural use shall typically bear physical evidence of agricultural use, such as furrows, crops, fencing or livestock, appropriate to the production season. If physical evidence of agricultural use is not sufficient to determine agricultural use, the assessor may request of the owner or agent of the owner such information as is necessary to determine if the land is devoted primarily to agricultural use.

(2) For each legal description of property that includes a parcel of agricultural land, the assessor shall indicate on the property record card, by acreage, the category of agricultural land. Categories of agricultural land are the following:

- (a) First grade tillable cropland.
- (b) Second grade tillable cropland.
- (c) Third grade tillable cropland.
- (d) Pasture.
- (e) Specialty land.

History: Cr. Register, September, 1997, No. 501, eff. 10-1-97.

Tax 18.07 Use-value. (1) (a) Beginning in 1997 and each year thereafter, the council shall adopt and the department shall publish in the Wisconsin property assessment manual a use value per acre for each category of agricultural land, except specialty land, in each municipality. Use value per acre of specialty land shall be adopted and published for the municipalities in which specialty land is located. Use value per acre for each category of agricultural land in each municipality shall be calculated by dividing the net rental income per acre for that category of agricultural land in that municipality calculated under par. (b) by the capitalization rate for that municipality calculated under par. (c).

(b) *Net rental income per acre.* 1. Beginning in 2006 and in each year thereafter, net rental income per acre for each category of agricultural land in each municipality shall be calculated according to the income attributable to a landowner under a crop-share lease. The department shall assume a lease agreement where the income and direct operating costs are distributed equally between the landowner and farm operator. The department shall adhere to professionally accepted appraisal practices in determining gross income, cost of production, and net income that are attributable to a landowner under a crop-share lease. Net income shall be calculated by subtracting average total cost of

production per acre under subd. 3. from average gross income per acre under subd. 2.

2. Beginning in 2006 and in each year thereafter, the landowner's average gross income per acre for each category of agricultural land in each municipality shall be calculated by multiplying the category's 5-year average corn yield per acre, adjusted for the typical productivity of that category, by the 5-year average corn market price per unit of output. The product shall be reduced by 50% to reflect a crop-share lease with equal distribution of income. Yield per acre shall be based on the natural resource conservation service's soil productivity indices and corn market price data shall be obtained from the Wisconsin department of agriculture, trade and consumer protection. If the natural resource conservation service and the Wisconsin department of agriculture, trade and consumer protection are unable to provide, or to provide timely, soil productivity indices and corn market price data, respectively, comparable data shall be obtained from other generally acceptable sources.

3. Beginning in 2006 and in each year thereafter, the landowner's average total cost of production per acre for each category of agricultural land shall be calculated by multiplying the category's 5-year average corn yield per acre, adjusted for the typical productivity of that category, by the 5-year average cost of corn production. In calculating the 5-year average cost of corn production, the department shall include the direct operating costs incurred by the landowner under a crop-share lease, which shall include the cost of seed, fertilizer, lime, manure, chemicals, commercial drying, interest on operating capital, or their equivalent. The total cost of corn production is reduced by 50% to reflect a crop-share lease with equal distribution of direct operating costs. The 5-year average cost of corn production shall not include those costs incurred by a farm operator under a crop-share lease, which includes labor, opportunity cost of unpaid labor, machinery, fuel, repairs, overhead, or their equivalent. An additional landowner cost for operational management, equal to 7.5% of the average gross income determined in subd. 2., shall be subtracted from the average gross income calculation in subd. 2. Property taxes are not a farm expense for purposes of calculating average total cost of production per acre. Yield per acre shall be based on the natural resource conservation service's soil productivity indices and cost of corn production data shall be obtained from the Wisconsin department of agriculture, trade and consumer protection. If the natural resource conservation service and the Wisconsin department of agriculture, trade and consumer protection are unable to provide, or to provide timely, soil productivity indices and cost of corn production data, respectively, comparable data shall be obtained from other generally acceptable sources.

(c) *Capitalization rate.* Beginning in 1997 and each year thereafter, the capitalization rate for each municipality shall be determined as follows:

1. The department shall survey each federal land credit association (FLCA) and each agricultural credit association (ACA) in Wisconsin to obtain the interest rate charged by that association for a medium-sized, 1-year adjustable rate mortgage (ARM), as of January 1 of the year prior to the assessment year. In addition, the survey shall obtain each association's stock purchase requirement, if any, for such a mortgage. The 1997 survey shall include each association's 1-year ARM rate and the stock purchase requirement for a medium-sized loan, as of January 1 for the years 1993 to 1997.

Note: If an FLCA and an ACA merge, the combined association's interest rate and stock purchase requirement shall be obtained.

Note: Each FLCA and each ACA divides loans into 3 to 5 tiers based on loan size and sets a 1-year ARM rate for each tier. Although the dollar amount of a medium-sized loan may vary among FLCAs and ACAs, each FLCA and each ACA offers medium-sized or middle tier loans at a specific 1-year ARM rate as of January 1.

2. The effective 1-year ARM rate of each FLCA and ACA for each year shall be calculated by dividing that association's 1-year

ARM rate by one minus that association's stock purchase requirement as of January 1 of the same year, expressed as a percentage of the loan.

Example: If an FLCA or an ACA has a 2% stock purchase requirement, a borrower receives \$98,000 of a \$100,000 loan. If the 1-year ARM rate is 9%, the effective rate of the loan is 9.18% [$9 / (1 - .02)$].

3. The statewide average effective rate for each year shall be calculated by averaging the effective 1-year ARM rates under subd. 2.

4. The statewide average effective rate for the year prior to the assessment year shall be averaged with the statewide average effective rates for the 4 prior years to obtain a statewide 5-year moving average rate.

5. The capitalization rate for each municipality for each assessment year shall be 11% or the sum of the statewide 5-year moving average rate for the year prior to the assessment year and the net tax rate of that municipality for the property tax levy 2 years prior to the assessment year, whichever is greater.

(d) 1. Beginning in 2006 and in each year thereafter, increases and decreases in the use values for each category of agricultural land in each municipality shall be limited to the prior year's percentage change in the statewide equalized value. When determining the percentage change in the statewide equalized value, the department shall exclude the value of agricultural land and new construction. New construction shall include increases in land value due to higher land use, new subdivisions, and increases in improvement value due to new construction, completion of improvements partially assessed, remodeling and additions, and land improvements such as addition of curb, gutter, sewer, water, or their equivalent. The amount of new construction shall be reduced by the loss of land utility and loss of property value due to full or partial destruction, removal, contamination, or their equivalent.

2. The department shall calculate the percentage change from the previous year's use-values to the current year's use-values according to the formula in s. Tax 18.07 (1) (b). Increases and decreases in the use values for each category of agricultural land in each municipality shall be limited to the percentage change determined in subd. 1. If the increase or decrease is less than the percentage change determined in subd. 1., the use value per acre will equal the value calculated by the department according to the formula in s. Tax 18.07 (1) (b).

(2) Not later than January 1 of each year, the department shall provide assessors with the use value per acre for each category of agricultural land in each municipality, calculated under sub. (1). The use value per acre for each category of agricultural land in each municipality shall be published annually in the Wisconsin property assessment manual.

(3) (a) The assessor shall determine the use value of each parcel of agricultural land based on the use value per acre for that category of agricultural land in that municipality provided by the department.

(b) The assessor shall equate the use value of each parcel of agricultural land to the general level of assessment in the taxation district in which that parcel of agricultural land is located.

History: Cr. Register, September, 1997, No. 501, eff. 10-1-97; emerg. cr. (1) (b) 4., 5., and (c) 6., eff. 10-3-03; CR 03-104: cr. (1) (b) 4., 5., and (c) 6. Register April 2004 No. 580, eff. 5-1-04; emerg. cr. (1) (b) 6., 7. and (c) 7. eff. 12-29-04; CR 05-035: cr. (1) (b) 6., 7., and (c) 7. Register August 2005 No. 596, eff. 9-1-05; CR 05-063: am. (1) (b) 1. to 3., (c) 5., and (3) (a), r. (1) (b) 4. to 7., (c) 6. and 7., cr. (1) (d) 1. and 2. Register October 2005 No. 598, eff. 11-1-05; CR 13-036: am. (2) Register December 2013 No. 696, eff. 1-1-14.

Tax 18.09 Assessment of other property. An assessor shall assess property classified as other according to s. 70.32 (1), Stats.

History: Cr. Register, September, 1997, No. 501, eff. 10-1-97.