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# Wisconsin Briefs

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## FARMLAND USE-VALUE ASSESSMENT

The farmland use-value assessment law, enacted in 1995 Wisconsin Act 27, and amended by 1999 Wisconsin Act 9 and 2001 Wisconsin Act 109, significantly changed the way agricultural land is valued for property tax purposes. It provides that farmland be taxed on its ability to produce income from agricultural uses, rather than on its potential market value to developers. The purpose of the law is to slow urban sprawl and allow farmers to keep their land in agricultural production without burdensome taxation. It is also intended to preserve wildlife habitat and opportunities for hunting and other outdoor recreational activities.

Act 109 made a major change to the monetary penalty owed by owners of farmland who convert it to nonagricultural use. The constitutionality of the use-value assessment law was upheld by the Wisconsin Supreme Court on June 25, 2002.

### BACKGROUND

Under traditional property tax methods, farmland had been assessed, like other real estate, at the value for which it could be sold. Originally, in the days before the income tax, the potential sales value of land was assumed to reflect the income produced by the property. This system, required by the “uniformity clause” of the Wisconsin Constitution (Article VIII, Section 1), worked well early in the state’s

history when most people made their living from farming and land was the chief productive asset. Today, the “fair market” value of farmland may greatly exceed the value of the income produced by the land through farming, particularly in areas on the fringe of expanding cities and suburbs. Inflated property values and low income in relation to the taxes paid are among the factors influencing many farmers to sell their land to developers who may then transform cornfields and pastures into housing subdivisions and shopping malls.

**Constitutional Amendment Permits Farmland Preference.** A constitutional amendment adopted on April 2, 1974, by a 353,377-to-340,518 vote, permitted targeted property tax relief for farmland. The modification of the uniformity clause permitted the legislature to allow different rates of taxation for agricultural land and undeveloped land from other real property.

### FARMLAND USE-VALUE ASSESSMENT LAW

**Agricultural Land to be Taxed on Income Producing Ability.** 1995 Wisconsin Act 27 created Section 70.32 (2r), Wisconsin Statutes, which froze the assessments on agricultural land that were in place as of January 1, 1995, effective January 1, 1996. It established a formula for a phased-in implementation of the

law, beginning January 1, 1998, and ending no later than December 31, 2008. To implement the law, the Wisconsin Department of Revenue (DOR) promulgated Chapter Tax 18, Wisconsin Administrative Code, which described what constitutes "agricultural use" (tillable cropland and pastureland suitable for the production of crops, livestock and animal specialties, growing Christmas trees or ginseng, and land eligible for enrollment in various federal agricultural and conservation programs); and set the method for calculating the use-value per acre of each category of agricultural land based upon the net income per acre that could be generated from its rental for agricultural use. The use-value is a five-year rolling average based on factors including farmland prices, costs of production, soil productivity, and mortgage rates. Sellers of agricultural land are required to inform buyers that the property is subject to use-value assessment.

**Farmland Advisory Council.** Act 27 created the Farmland Advisory Council, appointed by DOR, to: 1) advise DOR on the assessment of agricultural land and reducing expansion of urban sprawl through use-value assessment; 2) report annually to the legislature on the usefulness of the law as a way to preserve farmland and to reduce its conversion to other uses; 3) recommend adjustments to the state shared revenue and equalized value formulas so as to compensate taxing districts adversely affected by use-value assessment; and 4) calculate estimated per acre values of income generated from rental of land for agricultural use.

**Penalty for Conversion to Nonagricultural Use.** Effective January 1, 2003, a person who owns land assessed as agricultural land and converts it to a non-agricultural use must pay a penalty to the county in which that land is located. Under Section 74.485, Wisconsin Statutes, that penalty is based upon the number of acres converted multiplied by the difference between the fair market value of agricultural land sold and the equalized use-value of agricultural land in that county in the year pre-

vious to the conversion. The penalty assessed for conversion to nonfarm use is 10% of the difference between the two values if the conversion is of less than 10 acres, 7.5% of the difference if the conversion is of 10 to 30 acres, and 5% of the difference if the conversion is of more than 30 acres. For example, if 20 acres of agricultural land that is use-value assessed at \$1,000 per acre is sold for development at the price of \$10,000 per acre, the total penalty would be \$13,500 (the \$9,000 difference between fair and use values multiplied by 20 acres, multiplied by the 7.5% penalty). The penalty is not applicable to land converted to swamp or waste land, forest, and certain other uses, such as farm buildings. If the difference is less than \$25 per acre, the penalty will not be collected.

The new law requires the DOR to annually determine, for each county, the per acre fair market value of agricultural land sold in each county and the equalized value of use-value assessed agricultural land. The fair market value in a particular county is calculated based on the sales in that county of parcels of 38 acres or more in which the buyer intends to continue the land in agricultural use.

The revised penalty was included in 2001 Wisconsin Act 109. Under previous law enacted by 1999 Wisconsin Act 9, the penalty was the difference between full market value of a parcel sold and its use-value assessment for the two previous years. Municipalities were responsible for collecting and distributing penalty monies.

**County Role.** County treasurers are now responsible for administering the penalty law. Counties retain 50% of the penalty, and distribute the remainder to the municipality in which the land is located. A treasurer may defer the penalty if the owner of the property can demonstrate that the land will be used for qualifying agricultural uses in the succeeding year and to waive the penalty if the property is subsequently classified as agricultural property in the succeeding year. Penalties not paid within 30 days of when they are imposed are subject to interest at the rate of 1% per month.

**Tax Savings on Farmland.** The DOR calculates that the use-value assessment law has saved farmers a net total of about \$644 million in avoided property taxes through 2002. About \$767 million in taxes was shifted away from agricultural land, but this was partially offset by about \$123 million in increases in taxes on farm homes, barns, and other improvements, which are taxed at market rates. The department estimates that farmland use values will fall to a statewide average of \$136 an acre in 2003, down from \$191 an acre in 2002.

## ACCELERATED IMPLEMENTATION

On October 18, 1999, the Farmland Advisory Council recommended accelerated implementation of full use-value assessment. The council took this action after Wisconsin farm organizations, prompted by a crisis in farm profitability, had submitted a formal petition. On December 14, 1999, the DOR promulgated an emergency administrative rule that implemented full use-value assessment, beginning in 2000, rather than using a full ten year phase-in period. A permanent rule, Tax 18.08, took effect on August 1, 2000.

**Legal Challenges – Law Upheld.** Mayors of Milwaukee and other large cities, along with the League of Wisconsin Municipalities, challenged the law as being unconstitutional because it places an unfair burden on urban taxpayers, who must assume a larger portion of municipal expenses. In June 1997, the Wisconsin Supreme Court dismissed the suit, stating in *Norquist v. Zeuske*, 211 Wis. 2d 241, that the action was premature, and that a deter-

mination of the law's constitutionality must await a more developed record of demonstrable harm to affected individuals.

In a formal opinion requested by the Senate Committee on Organization, Attorney General James Doyle stated on January 14, 2000, that DOR could not promulgate an administrative rule, emergency or otherwise, that contravenes the legislatively-mandated ten year phase-in of the use-value assessment law. On February 28, 2000, a suit was filed in Dane County Circuit Court challenging the accelerated phase-in. The plaintiffs contended that the legislation required phasing-in the law over the full ten year period, while the state argued that the law allowed ten years, but did not require that the entire period be used to fully implement use-value assessment.

On June 25, 2002, the Wisconsin Supreme Court, in *Mallo vs. Department of Revenue*, 253 Wis. 2d 391, ruled that the DOR had the authority to accelerate the phase-in of full use-value assessment. On the same day, a continuation of the case challenging the constitutionality of the basic use-value assessment law was dismissed as moot (*Norquist vs. Zeuske*, 253 Wis. 2d 445).

## FOR MORE INFORMATION

Copies of the statutes mentioned above may be downloaded at <http://www.legis.state.wi.us/rsb/stats.html>, and administrative code sections at <http://www.legis.state.wi.us/rsb/code/index.html>. For questions about the law, call the Department of Revenue's Bureau of Assessment at (608) 266-8131, or visit the department's website at <http://www.dor.state.wi.us>.