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Introduction to Property Valuation

According to Minnesota law, all property is to be valued at its market value. The market value is to be stated so that any amount under \$100 is rounded up to \$100 and any amount exceeding \$100 shall be rounded to the nearest \$100. When valuing property, the assessor should not adopt a lower or different standard of value because the assessment is to be used for the basis of taxation.

If a property is leased, it must be valued at its market value and not at the value of the leasehold interest. Thus, for the income approach to value, the assessor must use a market rent and should not take into account whether a property is currently leased at a level that is above or below market rent.

Assessors must determine the value of the land only, the value of the structures and improvements only, and the total market value of the property (land plus structures/improvements).

Among other elements and factors affecting market value, assessors must consider any environmental factors in the vicinity of the property, its location with reference to roads and streets, and the location of roads and streets on or over the property. The accessibility of land to a good road enhances its value. The volume of traffic accessible to a given location may influence its value for commercial use tremendously. While these influences are taken into account, the assessor must also allow for the reduction in acreage or area caused by the location of roads over a tract of land. When a public road is on a land easement, the acreage in the tract subject to this easement is not reduced. The assessor should however account for the area actually in public roads and base the assessment on the remaining land. The same is true for land in county and judicial ditches. The land that is actually in the ditch should be excluded in determining the value of the parcel that contains the ditch.

In some instances, fee interest in land in public highways has been acquired and a new description of the remaining land has been listed on the assessment record. Here the acreage taken for highway purposes has been excluded from the parcel. In these instances, the assessor includes all the land listed in determining its value. Assessors are urged to check carefully whether a parcel has been separated from the land in roads before making an acreage deduction in the valuation.

It is also the duty of every assessor when estimating the market value to consider and give due weight to lands which are comparable in character, quality, and location, so that all lands similarly located and improved will be assessed on a uniform basis and without discrimination.

For agricultural land, the assessor must also consider and give recognition to its earning potential as measured by its free market rental rate. However, the value of a property should not include the value of any crops being grown on the property. The assessor must also determine, and list separately on the records, the market value of the homestead dwelling and the one acre of land on which that dwelling is located. If any farm buildings or structures are located on this homesteaded acre of land, their market value shall not be included in this separate determination.

If a property includes a mine or quarry, the value of the property should include the mine or quarry. When mineral, clay, or gravel deposits exist on a property and their extent, quality, and costs of

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extraction are well-known enough so as to influence market value, such deposits shall be recognized in valuing the property, with the following exceptions:

- mineral deposits and energy-resource deposits are subject to the net proceeds tax imposed under Minnesota Statutes, section 298.015; and
- taconite and iron-sulphide deposits which are exempt from the general property tax under Minnesota Statutes, section 298.25.

The *net proceeds tax*, as outlined in Minnesota Statutes, section 298.015, is imposed on “*all mineral and energy resources mined or extracted within the state of Minnesota except for sand, silica sand, gravel, building stone, crushed rock, limestone, granite, dimension granite, dimension stone, horticultural peat, clay, soil, iron ore, and taconite concentrates.*”

If a property is subject to a conservation easement or restriction, its value **may** be adjusted to reflect valuation influences as long as the restriction or easement is recorded and the property is being used in accordance with the restriction or easement. Keep in mind that the simple existence of a conservation easement may not decrease the property's value and may, in fact, add to a property's value. In addition, the value of neighboring properties may also be enhanced due to their proximity to land that is subject to a conservation easement. Please see the section regarding valuing property that is subject to conservation easements later in this module.

The above limitations also apply to Local and County Boards of Appeal and Equalization, the State Board of Equalization and the Commissioner of Revenue.

The assessor's estimate of market value is prima facie valid correct. The burden of proof is on the taxpayer to prove that the assessor's value is in error. This is stated in Minnesota Statutes, section 271.06, which discusses the provisions of Tax Court and states in part that:

“...All such parties shall have an opportunity to offer evidence and arguments at the hearing; provided, that the order of the commissioner or the appropriate unit of government in every case shall be prima facie valid...”

This has been affirmed in numerous court cases over the years. These include but are not limited to:

- An assessor's valuation is prima facie valid, and burden rests on taxpayer to prove that valuation is excessive, and if assessor's valuation is arrived at in violation of statutory mandates with reference thereto, court's findings upholding valuation will nevertheless be sustained by Supreme Court if there is other competent and proper evidence sufficient to sustain them. (*Schlieff v. Freeborn County*, 1950, 231 Minn. 389, 43 N.W.2d 265)
- To show discrimination in the valuation process, the taxpayer must demonstrate that his property was valued on a different basis from other comparable property in the same taxing district, and that this other property was systematically or arbitrarily undervalued. (*Matter of McCannel*, 1980, 301 N.W.2d 910)

- County assessor's estimate of value for real estate tax purposes is prima facie valid, and taxpayers carries burden of proving that value is excessive. (*TMG Life Ins. Co. v. County of Goodhue*, 1995, 540 N.W.2d 848)
- Taxpayer has burden of showing that valuation reached by assessor for tax purposes is excessive. (*Hansen v. County of Hennepin*, 1995, 527 N.W.2d 89)

Definition of Market Value

The value determined by the assessor as the price the property would likely sell for on the open market is called the estimated market value (EMV). This value is determined each year on the assessment date of January 2. Taxpayers may appeal their EMV to boards of appeal and equalization and/or to Tax Court.

There are a number of widely accepted definitions of market value. The statutory definition of market value is found in Minnesota Statutes, section 272.03, subdivision 8, which states that:

“‘Market value’ means the usual selling price at the place where the property to which the term is applied shall be at the time of assessment; being the price which could be obtained at a private sale or an auction sale, if it is determined by the assessor that the price from the auction sale represents an arm’s-length transaction. The price obtained at a forced sale shall not be considered.

The Appraisal Institute defines market value as:

“The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.” (The Appraisal of Real Estate, 12th edition, Appraisal Institute [2001], page 22)

The International Association of Assessing Officers defines market value as:

“...cash price a property would bring in a competitive and open market. In such a market, sufficient time has been allowed for a sale, the buyer and seller are not subject to undue pressure, and both are well informed.” (Property Appraisal and Assessment Administration, International Association of Assessing Officers [1990], page 35)

The various definitions of market value generally imply the consummation of a sale, as of a specific date, under the following conditions:

1. The buyer and seller are typically motivated;
2. Both parties are well-informed or well-advised and each is acting in what is considered to be their own best interest;
3. A reasonable time is allowed for exposure to the open market;

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4. Payment is made in cash or its equivalent;
5. Financing, if any, is on terms generally available in the community at the specified date and typical for the property type in its locale; and
6. The price represents a normal consideration for the property sold unaffected by the special financing amounts and/or terms, services, fees, costs or credits incurred in the transaction.

In summary, market value is the price that would tend to prevail under typical, normal, competitive open-market conditions.

“It is up to the assessor to form an opinion of the market value even when there is no market or sales to aid in fixing values. Where there have been no actual sales for a long period of time, there is no way of determining values except by the judgment and opinion of people acquainted with the lands, their adaptability for use, and the circumstances of the surrounding community. (State v. Fritch, 175 Minn. 478, 221 N.W. 725)

Primary Statutory References: 272.03, 273.11, 273.12, 273.13

Highest and Best Use

Inherent to the concept of market value is the term “highest and best use.” Highest and best use is a common appraisal concept used by appraisers in estimating the market value of property. This principle of appraisal states that appraisers should value property as though it was being put to the use that provides the highest return to the land. This use must be physically possible, financially feasible, legally permissible, and maximally productive. Again, this concept surrounds the valuation of land. For assessment purposes, property should always be valued at its highest and best use.

Assessors should consider all factors when trying to identify the highest and best use of property, including but not limited to:

- zoning (what types of uses are allowed by local zoning ordinances, and the likelihood that the zoning of a property may change);
- any covenant restrictions on the property;
- any environmental regulations on the property;
- the use of surrounding properties;
- local building codes (more restrictive codes may discourage development);
- setback and height restrictions;
- size and shape of the site (some shapes may preclude development);
- accessibility of a parcel (landlocked or water-locked);
- location and capacity of public utilities;
- topography;
- soil conditions; and
- potential income derived from different uses.

Limited Market Value

Limited Market Value (LMV) was created by the legislature in an effort to “limit” the increase in value that a property owner could be taxed on each year. Since LMV was simply a statutory calculation, the assessor had no control over it. It has no effect on the assessor’s EMV, and it could not be appealed to any boards of appeal and equalization or to Tax Court.

In actual practice, the LMV provisions resulted in tax shifts that many felt were unfair and did not necessarily keep property taxes from increasing. Therefore, LMV was allowed to expire with the 2009 assessment. In 2009, no properties should be subject to LMV.

Primary Statutory Reference: 273.11, subdivision 1a

Taxable Market Value

Taxable Market Value (TMV) refers to the amount of value that is actually used in calculating property taxes. This can differ from EMV due to special programs in which the property may be enrolled such as Plat Law, Green Acres, etc. Some of these programs will be described in more detail later in this module.

Referendum Market Value

Definition

The term “*referendum market value*” refers to the market value of all taxable property excluding property classified as class 2 (agricultural land, rural vacant land, managed forest land, private airport, land with a commercial aggregate deposit), class 4c(1) seasonal residential recreational non-commercial – cabins, and class 4c(4) post-secondary student housing. The portion of class 2a property consisting of the house, garage, and surrounding one acre of land on an agricultural homestead property **is** included in referendum market value.

Any classification of property or any portion of a classification of property that is included in the definition of referendum market value and that has a classification rate of less than 1 percent shall have a referendum market value equal to its net tax capacity multiplied by 100. This affects:

- class 1b blind/disabled homesteads which have a classification rate of 0.45 percent on the first \$50,000 of TMV;
- class 1c seasonal residential recreational – commercial property (“Ma & Pa” resort that includes a homestead of the owner/operator) which has a first-tier classification rate of 0.50 percent on the first \$600,000 of TMV; and
- class 4d qualifying low-income rental housing which has a classification rate of 0.75 percent.

Referendum market value is used to calculate all **school operating referendum levies**. These voter-approved levies are used for the day-to-day general operations of schools. **School bonding referendum levies** are voter-approved levies for long-term debt obligations such as constructing a new school or building an addition onto an existing school. These bonding referendum levies are

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calculated on net tax capacity (rather than referendum market value) and are paid for by **all** classes of property, including those that are exempt from market value-based operating referendum levies.

Note: Other local units of government, including counties, cities, towns, and special taxing districts may have voter-approved referendum levies for either operating or bonding purposes. All of these non-school referendum levies are calculated on market value. None of them are calculated on net tax capacity.

Primary Statutory Reference: 126C.01, 275.61

Sample calculations of referendum levies will be included in the tax calculation section of Module 6.

**Referendum Market Value Definitions
for All Taxing Districts
Taxes Payable in 2010**

<u>Class</u>	<u>Property Description</u>	<u>Referendum Market Value</u>
1b	Class 1b - Blind/Disabled Homestead Agricultural HS - First \$50,000 Residential HS – First \$50,000	45% of TMV 45% of TMV
1c	Class 1c - Ma & Pa Resort First \$600,000	50% of TMV
2a	Ag homestead land and buildings (excluding HGA) First \$890,000 Over \$890,000	\$0 \$0
2b	Timber; private airports and Non-homestead Ag land	\$0
2c	Managed Forest Land	\$0
4c(1)	SRR – non-commercial (cabins)	\$0
4c(4)	Post-secondary student housing	\$0
4d	Qualifying low-income rental property	75% of TMV
	All other classes of property	100% of TMV

Valuation Laws, Principles and Procedures

Solar, wind, methane gas systems

The market value of real and personal property that is solar, wind, or agriculturally derived methane gas system used as a heating, cooling, or electric power source of a building or structure shall be excluded from the market value of that building or structure if the property is not used to provide energy for sale and the property was installed prior to January 1, 1984.

Primary Statutory Reference: 273.11, subdivision 6

Fire-safety sprinkler systems

For the purposes of property taxation, the market value of automatic fire-safety sprinkler systems installed in existing buildings after January 1, 1992, and meeting the standards of the Minnesota Fire Code shall be excluded from the market value of:

1. Existing multifamily residential real estate containing four or more units and used or held for use by the owner or by the tenants or lessees of the owner as a residence; and
2. Existing real estate containing four more or contiguous residential uses for use by customers of the owner, such as hotels, motels, and lodging houses; and
3. Existing office buildings or mixed use commercial-residential buildings, in which at least one story capable of occupancy is at least 75 feet above the ground.

The market value exclusion under this section expires if the building is sold.

Primary Statutory Reference: 273.11, subdivision 6a

Limited equity cooperative apartments

“Limited equity cooperatives” are corporations organized under Minnesota Statutes, chapter 308A (Cooperatives) or 308B (Cooperative Associations), which has as its primary purpose the provision of housing and related services to its members, and whose members meet one of the following criteria:

1. A minimum of 75 percent of members must have incomes at less than 90 percent of the area median income;
2. A minimum of 40 percent of members must have incomes at or less than 60 percent of area median income; or
3. A minimum of 20 percent of members must have incomes at or less than 50 percent of area median income.

A “limited equity cooperative apartment” is a dwelling unit that is owned by a limited equity cooperative.

“Occupancy entitling cooperative share or membership” is the ownership interest in a cooperative organization which entitles the holder to an exclusive right to occupy a dwelling unit owned or leased by the cooperative.

Valuation Laws, Principles and Procedures

“Member income” means that the income of a member existing at the time the member acquires cooperative membership, and median income shall mean the Minneapolis-St. Paul metropolitan area median income as determined by the United States Department of Housing and Urban Development.

In addition, the cooperative must also meet the following requirements:

- a. The articles of incorporation set the sale price of occupancy-entitling cooperative shares or memberships at no more than a transfer value determined as provided in the articles of incorporation. That value may not exceed the sum of the following:
 - i. The consideration paid for the membership or shares by the first occupant of the unit as shown in the records of the corporation;
 - ii. The fair market value, as shown in the records of the corporation, of any improvements to the real property that were installed at the sole expense of the member with the prior approval of the board of directors;
 - iii. Accumulated interest, or an inflation allowance not to exceed the greater of a 10 percent annual noncompounded increase on the consideration paid for the membership or share by the first occupant of the unit, or the amount that would have been paid on that consideration if interest had been paid on it at the rate of the percentage increase in the revised Consumer Price Index for All Urban Consumers for the Minneapolis-St. Paul metropolitan area prepared by the United States Department of Labor, provided that the amount determined pursuant to this clause may not exceed \$500 for each year or a fraction of the year the membership or share was owned; plus
 - iv. Real property capital contributions shown in the records of the corporation to have been paid by the transferor member and previous holders of the same membership, or of separate memberships that had entitled occupancy to the unit of the member involved. These contributions include contributions to a corporate reserve account the used or which is restricted to real property improvements or acquisitions, contributions to the corporation which are used for real property improvements or acquisitions, and the amount of principal amortized by the corporation on its indebtedness due to the financing of real property acquisition or improvement or the averaging of principal paid by the corporation over the term of its real property-related indebtedness.
- b. The articles of incorporation require that the board of directors limit the purchase price of stock or membership interests for new member-occupants or resident shareholders to an amount which does not exceed the transfer value for the membership or stock as defined in paragraph (a).
- c. The articles of incorporation require that the total distribution out of capital to a member shall not exceed that transfer value.
- d. The articles of incorporation require that upon liquidation of the corporation any assets remaining after retirement of corporate debts and distribution to members will be conveyed to a charitable organization described in section 501(c)(3) of the Internal Revenue Code or a public agency.

For the purposes of taxation, the assessor must value a unit owned by a limited equity cooperative at the lesser of its market value or the value determined by capitalizing the net operating income of a comparable apartment operated on a rental basis at the capitalization rate used in valuing comparable buildings that are not limited equity cooperatives. If a cooperative fails to operate in accordance with the provisions outlined above, the property shall be subject to additional property taxes in the amount of the difference between the taxes determined in accordance with this subdivision for the last ten years that the property had been assessed pursuant to this subdivision and the amount that would have been paid if the provisions of this law had not applied to it.

The additional taxes, plus interest at the rate specified in Minnesota Statutes, section 549.09, must be extended against the property for the current year.

The articles of incorporation of the organization should specify under which chapter the corporation is organized, and what the primary purpose of the organization is.

Primary Statutory Reference: 273.11, subdivision 8

Condominium property

Condominium property must be valued in accordance with this provision.

- a. A structure or building that is initially constructed as condominiums must be identified as separate units after filing a declaration. The market value of the residential units in that structure or building and included in the declaration shall be valued as condominiums.
- b. When 60 percent or more of the residential units in a structure or building being converted to condominiums have been sold as condominiums including those units that the converters retain for their own investment, the market value of the remaining residential units in that structure or building which are included in the declaration shall be valued as condominiums. If not all of the residential units in the structure or building are included in the declaration, the 60 percent factor shall apply to those in the declaration. A separate description shall be recognized with a declaration is filed. "Retain" means units that are rented and completed units that are not available for sale.
- c. "Sale" is defined as the date when the first written document for the purchase or conveyance of the property is signed unless that document is revoked.

The Department of Revenue's opinion is that common areas of condominium complexes should be assessed as follows:

1. All common areas should be valued at their market value. The assessor must be able to identify the value that has been attributed to the various common area components.
2. The total value of the common areas should be equally distributed among all the units of the condominium complex.

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Distributing the common area valuation prevents problems in the event of non-payment of tax and forfeiture proceedings. In addition, it allows individual unit owners to receive homestead benefits on both their units and their share of the common elements.

Timeshares

The department has been asked how to value and classify timeshares or interval interests in the past. Typically, in such cases, the covenant for the development will specify that each owner of an interval interest will pay a certain share of expenses and property taxes based on their percentage of ownership in the timeshare. It is not the responsibility of the county to split the taxes to the owners of the timeshares. It is the responsibility of the developer. Typically, the units are classified as seasonal residential recreational-non-commercial property. Each parcel should be assessed and taxed using normal methodology. It is then up to the developer to apportion the taxes to the timeshare owners and make sure that the taxes are paid.

Primary Statutory Reference: 273.11, subdivision 9

Valuation of restored or preserved wetland

Wetlands that have been restored by the federal, state, or local government, or by a nonprofit organization, or those that have been preserved under the terms of a temporary or perpetual easement by the federal or state government, must be valued by assessors at their wetland value.

“Wetland value” means the market value of wetlands in any potential use in which the wetland character is not permanently altered. The wetland value must not reflect potential uses of the wetland that would violate the terms of any existing conservation easement, or any onetime payment received by the wetland owner under the terms of a state or federal conservation easement. The wetland value must also reflect any potential income consistent with a property’s wetland character, including but not limited to lease payments for hunting or other recreational uses.

The term “wetlands” as used in this context means lands that are transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purposes of this definition, wetlands must have the following attributes:

1. A predominance of hydric soils;
2. Are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
3. Supports a prevalence of such vegetation under normal circumstances.

In September 1991, the Department of Revenue issued a bulletin to all assessors regarding proper valuation of such wetlands. In that bulletin, the department stated that this provision applied to taxable wetlands that have been either:

1. restored (through plugging of tile lines or similar action) by the government (state, federal, or local) or by a nonprofit organization; **or**
2. preserved wetlands under the terms of a temporary or perpetual easement by the federal or state government (i.e. CRP, RIM, Water Bank, U.S. Fish and Wildlife easements, etc.)

“Wetlands” are broadly defined under this law to include wet meadows, woody swamps, and other wetlands that are not exempt under Minnesota Statutes, section 272.02, subdivision 11. (That section exempts class 3, 4, and 5 wetlands. For additional information, please refer to the Exempt Module). Therefore, the deciding factor in determining if the wetland is eligible for valuation under this provision should be whether or not the wetland has been either restored by a government or nonprofit agency, or preserved under an easement to the government.

The provisions of this law only apply to the actual acreage of wetland that has been restored, or to the actual acreage of land protected by easements. Property owners do not have to apply for valuation under this law and no special landowner eligibility requirements apply.

In general, wetland value is the price a property would bring in an arm’s-length sale to a buyer intending to maintain the property as a wetland.

Wetland value **should** reflect any market value influences consistent with a property’s permanent wetland character. These may include:

- the value of any available opportunities to lease the wetland for recreational uses such as waterfowl hunting; and
- any value attributable to agricultural uses that do not involve draining, filling, or otherwise permanently altering the wetland, such as mowing for hay or grazing when conditions permit.

Wetland value **should not** reflect the following:

- any potential uses of the property that would permanently alter its wetland character, such as draining, filling, and/or any other activity that would violate the terms of any existing protective easement on the property;
- any value of any one-time payments made to landowners at the time they enter into easement agreements, such as payments under the Reinvest in Minnesota (RIM) program as these payments are received by the landowner originally entering into the easement agreement and would not increase the property’s market value in any subsequent sale.

Wetland value may reflect this income stream to the wetland for wetlands subject to easements which are accompanied by ongoing annual compensation payments that may, in some cases, be assumed by a subsequent buyer (such as wetlands enrolled in the federal CRP program). However, any value adjustments made on this basis must be well-supported by comparable sales of other

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enrolled properties and accurately reflect the remaining flow of payments to be received by the particular property.

Primary Statutory Reference: 273.11, subdivision 11

Neighborhood land trusts

Neighborhood land trusts are defined in Minnesota Statutes, section 462A.30, subdivision 8, which states that they are a city or a nonprofit corporation organized under chapter 317A that complies with section 462A.31 and that qualifies for tax exempt status under United States Code, title 26, section 501(c)(3) of the Internal Revenue code, and that meets all other criteria for neighborhood land trusts set by the agency.

- a. A neighborhood land trust, as defined under chapter 462A, is:
 - i. A community-based nonprofit corporation organized under chapter 317A, which qualifies for tax exempt status under 501(c)(3), or
 - ii. A “city” as defined in section 462C.02, subdivision 6, which has received funding from the Minnesota Housing Finance Agency (MHFA) for purposes of the neighborhood land trust program. The Minnesota MHFA shall set the criteria for neighborhood land trusts.
- b. All occupants of a neighborhood land trust building must have a family income of less than 80 percent of the greater of:
 - i. the state median income, or
 - ii. the area or county median income, as most recently determined by the Department of Housing and Urban Development. Before the neighborhood land trust can rent or sell a unit to an applicant, the neighborhood land trust shall verify to the satisfaction of the administering agency or the city that the family income of each person or family applying for a unit in the neighborhood land trust building is within the income criteria provided in this paragraph. The administering agency or the city shall verify to the satisfaction of the county assessor that the occupant meets the income criteria under this paragraph. The property tax benefits under paragraph (c) shall be granted only to property owned or rented by persons or families within the qualifying income limits. The family income criteria and verification is only necessary at the time of initial occupancy in the property.
- c. A unit which is owned by the occupant and used as a homestead by the occupant qualifies for homestead treatment as class 1a (residential homestead) under section 273.13, subdivision 22. A unit which is rented by the occupant and used as a homestead by the occupant shall be class 4a (rental housing with 4 or more units) or 4b (residential non-homestead 1-3 units not qualifying for class 4bb) property, under section 273.13, subdivision 25, whichever is applicable. Any remaining portion of the property not used for residential purposes shall be classified by the assessor in the appropriate class based upon the use of that portion of the property owned by the neighborhood land trust. The land upon which the building is located shall be assessed at the same class rate as the units within the building, provided that if the building contains some units assessed as class 1a and some units assessed as class 4a

or 4b, the market value of the land will be assessed in the same proportions as the value of the building.

According to Minnesota Statutes, section 462A.31, a neighborhood land trust must have as one of its purposes (under the organization's articles of incorporation) the holding of land and the leasing of land for the purpose of preserving the affordability of housing on that land for persons and families of low and moderate income.

A neighborhood land trust may have any or all the powers permitted to a nonprofit corporation under chapter 317A, except that a neighborhood land trust must have the power to buy and sell land, to mortgage and otherwise encumber land, and to negotiate and enter into ground leases with an initial term of up to 99 years.

A ground lease where the lessor is a neighborhood land trust must contain provisions designed to preserve the affordability of housing on the land. Each ground lease must reserve to the neighborhood land trust the first option to purchase any building or improvement on the land, or any condominium or cooperative unit located in a building on the land, at a limited equity price specified in the ground lease. Each ground lease must grant to the MHFA the right to exercise that first option to purchase if the neighborhood land trust does not, for any reason, exercise their first option. Each ground lease must exempt sales to persons and families of low and moderate income from the provisions granting the first option to purchase to the neighborhood land trust and to MHFA. Sales to persons and families of low and moderate income are not exempt from the limited equity price. The ground lease may also contain appropriate restrictions on: subletting or assigning the ground lease, construction and renovation of buildings and other improvements; and sale of buildings and improvements.

A ground lease with a neighborhood land trust must prohibit the lessee from mortgaging the lessee's interest in the lease or in buildings or other improvements without the consent of the neighborhood land trust. A ground lease may obligate a neighborhood land trust as lessor and fee title holder to consent to, join in, or subordinate its interest to, a mortgage entered into by the lessee as mortgagor for the purpose of obtaining financing for acquisition, construction, or renovation of housing on the land. A lease provision so obligating a neighborhood land trust must specify that the mortgage must provide to the neighborhood land trust the right to receive from the mortgagee prompt notice of default in the mortgage and the right to cure the default or to purchase the mortgagee's interest in the mortgage. The limited equity price and provisions above do not apply if the lessee or the neighborhood land trust fails to cure the default or purchase the mortgagee's interest in the mortgage.

A ground lease with a neighborhood land trust must provide that the neighborhood land trust will not, during the term of the lease, mortgage or otherwise encumber its interest in the property or permit any liens on its interest in the property to exist. This prohibition does not apply to mortgage that require the mortgagee to subordinate the lien of its mortgage to a mortgage entered into by a

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lessee as mortgagor for the purpose of obtaining financing for acquisition, construction, or renovation of housing on the land.

A ground lease with a neighborhood land trust must provide that heirs of the lessee may assume the lease, if the heirs agree to occupy the lease property as their homestead. "Heirs" means the heir or heirs of a lessee who dies intestate or the devisees of a lessee who dies testate.

A city may by resolution determine to act as a neighborhood land trust with the powers and duties described above.

Any ground leases held by a neighborhood land trust must include the legal description of the real property subject to the ground lease and shall be recorded with the county recorder where the property is located.

A few years ago, the Department of Revenue was asked how to tax properties where the land was owned by a neighborhood land trust and leased for 99 years to the owner of the structure. The specific question concerned who should receive the tax statement. At that time, we concluded that there were two options.

Option #1 – Mail the tax statement to the neighborhood land trust. As the owner of the real estate, the land trust is technically responsible for payment of the tax. This is a bit more complicated than mailing the tax statement directly to the person who owns the structure and is thus the one responsible for making payment of the real estate taxes. However, if the neighborhood land trust did not receive the tax statement and the tax forfeits due to non-payment by the owner of the home, the neighborhood land trust's interest in the property would forfeit as well.

The department also suggested that if county policy allowed the auditor to do so, it would be a nice gesture to send a courtesy copy of the tax statement to the owner of the structure, who according to the agreement provided was responsible for paying the taxes. Or, the owners could request a duplicate statement as provided for under Minnesota Statutes, section 276.041, which states that:

"Fee owners, vendees, mortgagees, lienholders, escrow agents, and lessees of real property may file their names and current mailing addresses with the county auditor in the county where the land is located for the purpose of receiving notices affecting the land that are issued under sections 276.04, 281.23, and 279.091. A person filing shall pay a filing fee of \$15 to the county auditor for each parcel. The filing expires after three years. The county auditor shall give a copy of the list of names and addresses to the county treasurer. Taxpayers of record with the county auditor and mortgagees who remit taxes on their behalf shall receive tax statements and other notices and are not required to file and pay fees under this section."

Option #2 – Mail the tax statement to the owner of the structure. This option, although technically incorrect, would be easier to administer. Since the owner of the house is required by contract to pay

real estate taxes on both the land and structures, the simplest method of collecting the tax would be to send the statement directly to the person responsible for the taxes. However, if the tax went unpaid and became delinquent or forfeited for non-payment of tax, the county would encounter a host of potential legal issues.

In no case should two separate tax statements be issued – one for the structure and one for the land. The structure is part of the real estate and must be assessed as such.

Homes that are located on land owned by a neighborhood land trust are eligible for homestead so long as all other requirements for homestead are met. See Module 4 on Homesteads for additional information.

Primary Statutory Reference: 273.11, subdivision 12, 276.041, 462A.30, 462A.31

Land abutting bodies of water (riparian rights)

Real property that is located next to lakes or rivers includes riparian rights, which relate to land under the water or inside the high water mark. When a lake is public (navigable), riparian rights extend to the land between the high water and low water marks. Ownership of this land goes with the shore land and is not absolute, but subject to certain public rights.

When land abuts a private (non-navigable) lake, the riparian rights of ownership extend to the middle of the lake.

In either case, the assessor should consider the value of these rights. Where a private lake has been drained or has dried up, the value of the additional land should be included in the assessment of the described parcel to which the lake bed attaches.

“Public waters” are defined as:

1. Water basins assigned a shoreland management classification by the Commissioner of Natural Resources;
2. Waters of the state that have been finally determined to be public waters or navigable waters by a court of competent jurisdiction;
3. meandered lakes, excluding lakes that have been legally drained;
4. Water basins previously designated by the Commissioner of Natural Resources for management for a specific purpose such as trout lakes and game lakes pursuant to applicable laws;
5. Water basins that have been specifically designated as scientific and natural areas under section 84.033;
6. Water basins located within and totally surrounded by publicly owned lands;
7. Water basins where the state of Minnesota or the federal government holds title to any of the beds or shores, unless the owner declares that the water is not necessary for the purposes of the public ownership;

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8. Water basins where there is a publicly owned and controlled access that is intended to provide for public access to the water basin;
9. Natural and altered watercourses with a total drainage area greater than two square miles;
10. Natural and altered watercourses designated by the Commissioner of Natural Resources as trout streams; and
11. Public waters wetlands

“Public waters wetlands” are class 3, 4, and 5 wetlands as defined in United States Fish and Wildlife Service Circular No. 39 (1971 edition), not included within the definition of public waters, and that are 10 or more acres in size in unincorporated areas or 2 ½ acres in incorporated areas.

Public waters are not determined exclusively by the proprietorship of the underlying, overlying, or surrounding land or by whether it is a body or stream of water that was navigable in fact or susceptible of being used as a highway for commerce at the time this state was admitted to the union.

Primary Statutory Reference: 103G.005, 103F.201 to 103F.221

Valuation of vacant hospitals

In valuing a hospital that is located outside a metropolitan county (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington), that is vacant on the date of sale, and is not used for hospital purposes or for any other purpose, the assessor's estimated market value for the current assessment year shall be no greater than the sale price of the property, including both the land and buildings, as adjusted for terms of financing. If the sale is made later than December 15, the market value determined under this subdivision shall be used for the following assessment year. This only applies if the sale price of the property was determined under the conditions of an arms-length transaction.

Primary Statutory Reference: 273.11, subdivision 15

Assessment of Personal Property

In general, personal property can be considered to be anything that is not real property. The main characteristic of personal property is that it is movable without causing damage to itself or the real estate it is part of. In general, most personal property in the state of Minnesota is exempt from ad valorem property tax. However, there are exceptions to this rule.

Minnesota Statutes, section 272.02, subdivision 9, states that:

“Except for the taxable personal property enumerated below, all personal property and the property described in section 272.03, subdivision 1, paragraphs (c) and (d), shall be exempt.

The following personal property shall be taxable:

- (a) personal property which is part of an electric generating, transmission, or distribution system or a pipeline system transporting or distributing water, gas, crude oil, or petroleum products or mains and pipes used in the distribution of steam or hot or chilled water for heating or cooling buildings and structures;*
- (b) railroad docks and wharves which are part of the operating property of a railroad company as defined in section 270.80;*
- (c) personal property defined in section 272.03, subdivision 2, clause (3);*
- (d) leasehold or other personal property interests which are taxed pursuant to section 272.01, subdivision 2; 273.124, subdivision 7; or 273.19, subdivision 1; or any other law providing the property is taxable as if the lessee or user were the fee owner;*
- (e) manufactured homes and sectional structures, including storage sheds, decks, and similar removable improvements constructed on the site of a manufactured home, sectional structure, park trailer or travel trailer as provided in section 273.125, subdivision 8, paragraph (f); and*
- (f) flight property as defined in section 270.071.”*

Personal property that is defined in section 272.03, subdivision 2, clause (3), includes all improvements upon land owned by the federal government, and all improvements upon land the title to which is vested in any corporation whose property is not subject to the same mode and rule of taxation as other property.

In addition, assessors sometimes refer to property that is “assessed as personal property.” In such cases, the tax lien is assessed against the person rather than against the real property. This generally occurs where manufactured homes, park trailers, and taxable travel trailers are located on land that is leased from another person. In addition, some leasehold interests as outlined in section 272.01, subdivision 2; 273.124, subdivision 7; or 273.19, subdivision 1, where the property that would

Assessment of Personal Property

otherwise be exempt from property tax but it is leased and therefore, that leasehold interest becomes taxable. Taxable leasehold estates are discussed later in this module.

Listing of Personal Property

As is the case with real property, all personal property subject to taxation is valued and classified according to its use on January 2. Generally, personal property assessments are made, and taxes are billed and collected, in the same way as real property assessments. However, manufactured homes, park trailers and travel trailers that are assessed as personal property are valued and taxes are collected in the same year. This is discussed in greater detail later in this module.

Primary Statutory References: 273.01, 272.01, 272.02

Situs

Personal property should be assessed in the town, city, county, or district where the property is situated. When the situs is in doubt between places in the *same* county, the place for listing and assessment is to be determined by the county board of equalization. If the situs is in doubt between *different* counties, or places in different counties, the Commissioner of Revenue will determine the appropriate place for listing and assessment.

All elevators and warehouses, with the machinery and fixtures therein, situated upon the land of any railroad company, which are not in good faith owned, operated, and exclusively controlled by such company, shall be listed and assessed as personal property in the town or district where situated. They should be listed in the name of the owner, if known, and, if not known, as “owner unknown.”

Personal property of electric light and power companies having a fixed situs in any city in Minnesota shall be listed and assessed where situated, without regard to where the principal or other place of business of the company is located. Transmission lines that are 69 kv or higher in voltage, along with all attachments and appurtenances, shall be listed and assessed in the same manner unless they are located in an unorganized township.

Primary Statutory References: 273.36, 273.48

Manufactured Homes

The information presented on the property assessment of manufactured homes, park trailers, travel trailers and manufactured home parks in Minnesota was first distributed to assessors in a Department of Revenue bulletin issued in June 2008. That information is repeated here with several updated statutory citations.

Definitions

A ***manufactured home*** is a structure that is transportable in one or more sections and also meets all of the following criteria:

- is eight body feet or more in width or 40 body feet or more in length in the traveling mode or, when erected on-site, is 320 or more square feet;
- is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities; and
- contains the plumbing, heating, air conditioning, and electrical systems in it.

A manufactured home includes any accessory structure which is an addition or supplement to the manufactured home and, when installed, becomes a part of the manufactured home.

Statutory Reference: 327.31, subdivision 6 and 273.125, subdivision 8

A ***manufactured home park*** means any site, lot, field or tract of land upon which two or more occupied manufactured homes are located, either free of charge or for compensation. A manufactured home park includes any building, structure, tent, vehicle or enclosure used or intended for use as part of the equipment of the manufactured home park.

Statutory Reference: 327.14, subdivision 3

A ***park trailer*** is a trailer that exceeds 8.5 feet in width in traveling mode but is no larger than 400 square feet when the collapsible components are fully extended or at a maximum horizontal width, and is used as temporary living quarters. Park trailers do not include manufactured homes.

Statutory Reference: 168.002, subdivision 23

A ***sectional structure*** is a building or structural unit that has been in whole or substantial part manufactured or constructed at an off-site location to be wholly or partially assembled on-site along or with other units, and is attached to a permanent foundation.

Statutory Reference 273.125, subdivision 8, paragraph (d)

A ***modular home*** is a building or structural unit that has been wholly or substantially manufactured or constructed at an off-site location to be wholly or partially assembled on-site as a single-family dwelling. Please also note that:

- Construction of the modular home must comply with applicable standards adopted in Minnesota Rules authorized under Minnesota Statutes, chapter 16B.

Assessment of Personal Property

- A modular home does **not** include a structure subject to the requirements of the National Manufactured Home Construction and Safety Standards Act of 1974 or prefabricated buildings as defined in Minnesota Statutes, section 327.31, subdivision 6.

Statutory Reference 272.02, subdivision 85

A *travel trailer* is a trailer, mounted on wheels, that:

- is designed to provide temporary living quarters during recreation, camping, or travel;
- does not require a special highway movement permit based on its size or weight when towed by a motor vehicle; and
- does not exceed 8.5 feet in width or 45 feet in length (including the tow bar).

Statutory Reference: 168.002, subdivision 36, 169.80, subdivision 2, and 169.81, subdivision 2

It is important to note that many of these definitions are found in the statutes regulating motor vehicles and places of lodging. While these definitions may be helpful to describe the types of properties observed, the definitions are not determinative of their tax status.

Manufactured Homes: License Plates and Certificate of Title

License Plates

Manufactured homes and park trailers are no longer registered or taxed as motor vehicles and they are not issued license plates. . While they are exempt from motor vehicle registration taxes, they are subject to property taxation as either real or personal property.

Travel trailers are subject to motor vehicle taxation and must be issued a license plate. Travel trailers displaying current license plates are not eligible for the assessment. However, travel trailers become subject to property taxes if they are occupied as human dwelling places and do not conspicuously display current registration plates on the assessment date. If an assessor comes across a travel trailer that does not have current registration plates conspicuously displayed **and** it is occupied as a human dwelling place, the assessor must include the travel trailer on the tax rolls.

Only manufactured homes, modular model homes, and park trailers held by a licensed dealer as inventory are exempt (under certain conditions). These exemptions are explored further in the Exempt Module (Module 5).

It is important to know that it is generally unlawful in Minnesota to operate a vehicle on the roads and highways if the vehicle is more than 8.5 feet wide. In general, if you want to move a vehicle or structure in excess of 8.5 feet, you must apply for and receive a special moving permit.

It is also important to note that the manufactured homes industry uses terms in ways that are not consistent with Minnesota statutory terms used for taxation. For example, the term “park trailer” under Minnesota law means a structure more than 8.5 feet in width, but if you browse the Internet, you will see that structures/vehicles called park trailers come in various sizes, some smaller than 8.5 feet in width. For assessment purposes, a vehicle that is called a “park trailer” but is less than 8.5 feet in width is a travel trailer and would be subject to motor vehicle registration fees **unless** it does not display current registration plates and it is being occupied as a dwelling unit. In that case, it is subject to property taxes. For assessment purposes, a vehicle 8.5 feet or less in width is a travel trailer no matter its length and would be subject to motor vehicle registration fees **unless** it does not display current registration plates and it is being occupied as a dwelling unit. It may be illegal to drive this vehicle on the roads, but it remains a travel trailer for assessment purposes.

Assessors must list all manufactured homes, sectional structures (modular homes), and park trailers on the tax rolls except those manufactured homes, sectional structures (modular homes), and park trailers held by a licensed dealer as inventory. In the course of an assessment, if an assessor finds a travel trailer without current license plates and it is being used as a human dwelling place on the assessment date, the assessor must include that property on the tax rolls as well.

Similarly, if an assessor happens to find a trailer that meets the definition of a park trailer in that it exceeds 8.5 feet in width, but it has license plates on it, it must still be assessed by the assessor. Motor vehicle registrars throughout the state have the same issues as assessors when trying to categorize these structures. People will come to the registrar to license what they portray to be a

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travel trailer but, in reality, the structure is a park trailer. Registrars issue licenses based on the information with which they are provided.

Certificate of Title

A certificate of title is required for a manufactured home. The certificate must include the following notice: “THIS TITLE DESCRIBES A MANUFACTURED HOME NOT A MOTOR VEHICLE.” Once a manufactured home is titled, the certificate of title serves as a bill of sale in a transfer of ownership.

The title to a manufactured home cannot be transferred unless the application for transfer of title is accompanied by a statement from the county auditor or county treasurer where the manufactured home is presently located, stating that all *personal property taxes levied on the unit in the name of the current owner* at the time of transfer have been paid. This applies even if the transfer of title is requested prior to tax statements for the current year since these taxes are considered to be levied as of January 1 of the payable year rather than May 30 as indicated in other areas of the law.

This provision does not apply to:

- a manufactured home which is sold or otherwise disposed of pursuant to section 504B.271 (abandonment of leased property), or section 504B.265 (death of tenant), by the owner of a manufactured home park; or
- an owner of a manufactured home park as defined in section 327.14, subdivision 3, who provides to the county auditor or treasurer a notarized statement that the manufactured home is to be destroyed or moved to a site and destroyed.

Primary Statutory References: 168A.02, 168A.05

Movement of Manufactured Homes

The Commissioner of Transportation and local authorities, with respect to highways under their jurisdiction, may, in their discretion, upon application in writing and good cause being shown thereof, issue a special permit, in writing, authorizing the applicant to move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified in this chapter, or otherwise not in conformity with the provisions of this chapter, upon any highway under the jurisdiction of the party granting such permit and for the maintenance of which such party is responsible.

Permits relating to over-width, over-length manufactured homes shall not be issued to persons other than manufactured home dealers or manufacturers for movement of new units owned by the manufactured home dealer or manufacturer, until the person has presented a statement from the county auditor and treasurer where the unit is presently located, stating that all personal and real property taxes have been paid. Upon payment of the most recent single-year delinquent personal property or current-year taxes only, the county auditor or treasurer must issue a taxes-paid statement to a manufactured home dealer or a financial institution desiring to relocate a manufactured home that has been repossessed. This statement must be dated within 30 days of the contemplated move. The statement from the county auditor and treasurer where the unit is presently located, stating that

all personal and real property taxes have been paid, may be made by telephone. If the statement is obtained by telephone, the permit shall contain the date and time of the telephone call and the names of the person in the auditor's office and treasurer's office who verified that all personal and real property taxes had been paid.

Primary Statutory References: 169.86, subdivision 1

Assessment of Manufactured Homes

Generally, when making a determination as to whether a manufactured home should be assessed as real property or personal property, the deciding factor is the ownership of the land on which the manufactured home sits. If the unit is owned by the owner of the land, the manufactured home should be assessed as real property. If the unit sits on leased land, it should be assessed as personal property.

Assessed as Personal Property

A manufactured home that meets each of the following criteria must be treated as personal property; the appropriate classification applies and the valuation is subject to review and the taxes payable in the manner provided in this section:

- the **owner of the unit is a lessee of the land** under the terms of a lease, or the unit is located in a manufactured home park but is not the homestead of the park owner;
- the unit is affixed to the land by a permanent foundation; or is installed at its location in accordance with the Manufactured Home Building Code; or is affixed to the land like other real property in the taxing district; and
- the unit is connected to public utilities, has a well and septic system, or is serviced by water and sewer facilities comparable to other real property in the taxing district.

Valuation Notice

Each manufactured home shall be valued each year by the assessor and be assessed with reference to its value on January 2 of that year. Notice of the value shall be mailed to the person to be assessed at least 10 days before the meeting of the local board of appeal and equalization as is the case for all other property.

Return of Assessment Books

On or before May 1, the assessor shall return to the county auditor the assessment books relating to the assessment of manufactured homes. The county auditor must determine the taxes by applying the tax rates of the current year (as levied in the preceding year). As such, taxes levied on manufactured homes that are assessed as personal property are additional taxes since the values are not included in determining the local tax rate. The auditor must supply a list of the taxes of the calculated taxes to the county treasurer by May 30.

Assessment of Personal Property

Tax Statements; Penalties; Collections

Taxes on manufactured homes assessed as personal property are assessed and taxed in the current year rather than assessed in one year with taxes payable in the following year as is the case for all other property. Not later than July 15 in the year of assessment, the county treasurer shall mail to the taxpayer a statement of tax due on a manufactured home. The taxes shall be due as follows:

- if the tax exceeds \$50, one-half of the amount due may be paid on August 31, and the remainder on November 15; or
- if the tax is less than \$50, the tax is due in full on August 31.

Taxes are considered to be delinquent if any amount remains unpaid after the due date. Pursuant to section 273.125, subdivision 3, all property tax statements for manufactured homes must include a sentence notifying the taxpayer that title to the manufactured home may not be transferred unless personal property taxes are paid.

Court Petitions

Appeals may be filed in either district court or Tax Court by October 1 of the year the tax is payable year (also the year of assessment).

Payment of Tax to Continue Petition

The right to continue prosecution of the petition shall be conditioned upon the payment of the tax when due unless the court permits the petitioner to continue prosecution of the petition without payment, or with a reduced payment, pursuant to section 278.03, subdivision 2. The petitioner, upon 10 days notice to the county attorney and to the county auditor, given at least 10 days prior to the last day of August, may apply to the court for permission to continue prosecution of the petition without payment or with a reduced payment.

Correcting the Tax

If either the local or county board of appeal and equalization changes the assessor's valuation of a manufactured home, the change shall be transmitted to the county auditor, who shall immediately re-compute the tax and advise the treasurer of the corrected tax. If the property is entitled to homestead classification, the auditor shall also take appropriate action to reflect the reduction in tax.

Tax is Personal Property Tax

The tax assessed on manufactured homes assessed as personal property is a personal property tax in that it is assessed as a lien against a person and not against the property. In the case of a delinquency, the county may pursue a judgment via revenue recapture proceedings or other methods allowed by law.

Rules

The Commissioner of Revenue may adopt rules pursuant to the Administrative Procedure Act for the purpose of establishing additional criteria for the classification of manufactured homes and sectional structures under this subdivision.

Primary Statutory References: 273.125

Assessed as Real Property

A manufactured home that meets each of the following criteria must be valued and assessed as an improvement to real property; the appropriate real property classification applies, and the valuation is subject to review and the taxes payable in the manner provided for real property:

- the **owner of the unit holds title to the land** on which it is situated;
- the unit is affixed to the land by a permanent foundation, or is installed at its location in accordance with the Manufactured Home Building Code, or is affixed to the land like other real property in the taxing district; and
- the unit is connected to public utilities, has a well and septic system, or is serviced by water and sewer facilities comparable to other real property in the taxing district.

Primary Statutory References: 273.125

Because anything is possible with property that is movable, a situation may occur where the owner of the land owns the manufactured home but the manufactured home is not permanently affixed to the land or does not meet all there criteria listed above. In these cases, the assessor should treat the manufactured home as personal property. For example, if a person is constructing a new home on their property but brings in a manufactured home to occupy temporarily while the new home is being constructed, the assessor should assess the manufactured home as personal property.

Improvements

Storage Sheds; Decks; Other Improvements

Storage sheds, decks, or similar improvements constructed on property that is leased or rented as a site for a manufactured home, sectional structure, park trailer, or travel trailer are taxable. The taxable value that should be assessed to the owner of the unit should include the value of the unit and the value of all ancillary structures as well.

However, certain improvements on sites leased to travel trailers that are assessed as personal property are exempt. Improvements (e.g. a deck, storage shed, etc.) on leased sites occupied by travel trailers, both licensed and unlicensed, are taxable only if the combined estimated market value exceeds \$1,000. This only applies to travel trailers that are located on leased sites, e.g. trailer parks. If the owner of the travel trailer owns the land it is located on, this exemption does not apply. This exemption does not apply to either park trailers or manufactured homes.

There are numerous campgrounds, often located on rivers or lakes, which rent or lease sites for travel trailers on a seasonal basis. In most instances, the travel trailers are moved at the end of each season. The travel trailers are properly licensed and as such, are not taxable as either real or personal property even if they are not moved at the end of the season. If the owner of the travel trailer is allowed to construct a shed, deck or other similar improvement on the leased property and the value of the improvement exceeds \$1,000, the improvement is subject to a personal property tax if the structure is not owned by the owner of the land. The tax bill is sent to the owner of the travel trailer. In this case, the travel trailer is not taxed by the ancillary improvement but is subject to a personal property tax.

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To properly administer this law, the value of all improvements on the site leased for the travel trailer should be added together. For example, if a site contained a deck valued at \$700 and storage shed valued at \$400 the value of the improvements would be added together. The result of this aggregation of improvement value would equal \$1,100. Consequently, the entire amount would be assessed. However, if the site contained only a \$700 deck, the entire \$700 amount would be exempted because the improvements did not total more than \$1,000.

The property is taxable as personal property to the lessee of the site if it is not owned by the owner of the site. The property is taxable as real estate if it is owned by the owner of the site.

As a condition of permitting the owner of the manufactured home, sectional structure, park trailer, or travel trailer to construct improvements on the leased or rented site, the owner of the site must obtain the permanent home address of the lessee or user of the site. The site owner must provide the name and address to the assessor upon request.

Primary Statutory Reference: 273.125

General Rules

1. Every manufactured home, except manufactured homes that are inventory of a licensed dealer, is subject to property tax.
2. Every park trailer that is wider than 8.5 feet, except park trailers that are inventory of a licensed dealer, is subject to property tax.
3. Even if a manufactured home or park trailer that is more than 8.5 feet wide is displaying current registration plates, the manufactured home or park trailer is subject to property tax. By law, the manufactured home or park trailer should not be registered/licensed and the owner should apply to the motor vehicle registrar for a refund.
4. Travel trailers (and park trailers that are 8.5 feet or less in width) are subject to motor vehicle registration/license fees.
5. Travel trailers (and park trailers that are 8.5 feet or less in width) that are not displaying current license plates or tabs on the assessment date of January 2 are subject to property tax if they are used as human dwelling places.
6. If the owner of the land is the owner of the manufactured home (including park trailers and taxable travel trailers) and the manufactured home is on a permanent foundation and it is connected to utilities, has a well or septic system or is serviced by municipal water and sewer, the land and manufactured home is subject to property tax as real property.
7. If the owner of the land also owns the manufactured home but the manufactured home is not permanently affixed to the land, the land is taxed as real property and the manufactured home is taxed as personal property.
8. A manufactured home on leased property is always taxed as personal property.

Tips

1. In Minnesota, a vehicle over 8.5 feet in width needs a special permit to be on the roads and highways. If you are looking at a vehicle or structure that is wider than 8.5 feet, it is likely taxable whether it has a current license plate or not. Assessors should begin from the premise that the structure is taxable. The owner would need to provide proof that it is not taxable. Current registration alone does not prove that the structure is not taxable.
2. The terms we use for taxation do not have universal definitions. For example, a park trailer is defined in our law as a structure that is wider than 8.5 feet. But, there are structures that people refer to as park trailers that are less than or equal to 8.5 feet in width. We would refer to a structure that is 8.5 feet in width or less as a travel trailer. If it is more than 8.5 feet wide, it is taxable. If it is 8.5 feet wide or less, assessors should decide whether it is currently registered and if it is being used as a dwelling unit. If the unit does not have current license plates conspicuously displayed and it is being used as a dwelling unit, it is taxable.
3. Many “campgrounds” usually located on a lake or river, are used seasonally. Campers, trailers, mobile homes and other recreational vehicles are parked there “permanently” for the season but are moved from the site when the season ends. These vehicles are typically not wider than 8.5 feet; they are probably displaying current license plates; and they are probably not taxable. These vehicles probably meet the definition of travel trailers. Any ancillary structure that is constructed on the campground by the owner of the travel trailer is taxable if the assessor determined that the ancillary structure has a value over \$1,000. In these cases, the travel trailer may not be taxable but the ancillary structure may be taxable.
4. We have been asked about park trailers that have a current license plate and have been moved over the road in the past year. Remember general rule #2 – a park trailer (by definition over 8.5 feet wide) is subject to tax. To be moved it requires a special permit, not a license. If it was improperly licensed, the owner may ask for a refund of the license exempt from property tax was repealed in 1995 as part of the same legislation establishing that park trailers are subject to property tax.

Manufactured Home Park Cooperatives

We are aware of at least two manufactured home park cooperatives in Minnesota and several others are in the process of converting to cooperatives. Lessees of manufactured home park sites have had little control over management of the park and had no control over the owner's decision to sell or close the park. If a park closes or is sold, the lessee probably has the legal right to move the manufactured home but many parks will not accept manufactured homes over a certain age or in less than very good condition. In addition, it is expensive to move the manufactured home. Lessees may lose significant dollars when decisions are made about their futures but they have no voice in those decisions.

Manufactured home park cooperatives allow lessees to create an association that buys the park itself, manages the park and guarantees every member of the association a site upon which to locate a manufactured home. Formation of manufactured home park cooperatives can have property tax implications. Manufactured home parks are classified as class 4c(5). However, some or all of a manufactured home park cooperative's estimated market value may qualify for a residential

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homestead (class 1a) under the provisions of Minnesota Statutes, section 273.124, subdivision 3(a), which states that:

“When a manufactured home park is owned by a corporation or association organized under chapter 308A, and each person who owns a share or shares in the corporation or association is entitled to occupy a lot within the park, the corporation or association may claim homestead treatment for each lot occupied by a shareholder. Each lot must be designated by legal description or number, and each lot is limited to not more than one-half acre of land for each homestead. The manufactured home park shall be valued and assessed as if it were homestead property within class 1 if all of the following criteria are met:

- (1) the occupant is using the property as a permanent residence;*
- (2) the occupant or the cooperative association is paying the ad valorem property taxes and any special assessments levied against the land and structure either directly, or indirectly through dues to the corporation; and*
- (3) the corporation or association organized under chapter 308A is wholly owned by persons having a right to occupy a lot owned by the corporation or association.*

A charitable corporation, organized under the laws of Minnesota with no outstanding stock, and granted a ruling by the Internal Revenue Service for 501(c)(3) tax-exempt status, qualifies for homestead treatment with respect to member residents of the manufactured home park who hold residential participation warrants entitling them to occupy a lot in the manufactured home park.”

A manufactured home park cooperative should be valued the same as any other manufactured home park. However, the classification may be different. In order to determine if any sites or the entire park is eligible for residential homestead treatment under section 273.124, the assessor should confer with the cooperative association to review the number and configuration of the lots.

Example

A new manufactured home park cooperative has been formed in County Z and the assessor is working with the representatives of the cooperative association to determine how the park and the manufactured homes will be valued, classified and taxed. The park is 10 acres in size and there are 50 pads for manufactured homes plus several common buildings such as a laundry, community center and storage and maintenance sheds. Since this is a new park, there are no manufactured homes yet on site but the cooperative association has laid out the location and size of the 50 pads. Of course, the pads are not all the same size and not all 50 locations have the same amenities—some are closer to the entrance road, some overlook the pond, some are in a more secluded area, etc.

The assessor has estimated the market value of the ten acres plus common buildings at \$500,000. The association needs the assessor to split this total value into values per pad for the purposes of

setting association fees for members and rental fees for nonmembers. Since the pads are not equal, the assessor and the cooperative association representatives agree that the total value cannot be equally distributed. After discussion, both parties agree on a methodology to distribute the total value to each individual pad. It is important to establish the methodology since the total value will change over time and neither party wants to redistribute the value each year on a pad-by-pad basis.

The cooperative association has 32 members who have the right to occupy a pad in the park. Eighteen pads will be available for lease but the goal of the cooperative association is to attract 18 new cooperative members so that eventually all pads will be occupied by members.

Now is the opportunity for the assessor and the association management or leadership to set the ground rules for their future responsibilities. The assessor explains the rules for establishing a homestead as manufactured homes are brought in and situated on the pads. Whether the new resident is an association member or a lessee, the manufactured homes are valued and assessed as personal property but may be eligible for homestead treatment. As the association is dealing with the new member or lessee, this is the perfect time to get the homestead applications completed. The association can forward the new applications to the assessor's office. The association can furnish lists of both members and lessees to the assessor on a regular basis so the assessor's records remain current and the billing process works.

If the 32 members all move their manufactured homes into the park and all qualify as homesteads, a portion of the value of the park will qualify for classification as homestead. We suggest that the assessor add the values of these 32 pads together (as determined originally) and compare the value to the \$500,000 total value. In this example we will assume that the value of the 32 pads is 75% of the total value; therefore, 75% of the value of the park qualifies for homestead classification. Only the value of pads occupied by association members can be added together. In this example, \$325,000 is classified as class 1a homestead and the remaining \$125,000 is classified as class 4c manufactured home park. There will be 51 tax statements. The first statement is the real estate tax statement for the park as a whole (the underlying land plus common buildings) and is sent to the park owner, the cooperative association. The next 50 statements are personal property tax statements for each manufactured home occupying a pad (assuming 100% occupancy) and the statements are sent to the manufactured home owners.

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Taxable Leaseholds

Several types of leasehold estates are subject to taxation as personal property. These are relatively few in number since many of the common leaseholds have been given real estate status. All property, or the use thereof, which is taxable under these provisions must be valued at the market value of the property and not at the value of the leasehold interest in such property or at a value that is less than its market value.

Primary Statutory Reference: 273.11

Generally, these taxable leasehold estates are found in Minnesota Statutes, sections 272.01 and 273.19. Minnesota Statutes, section 272.01, subdivision 2, states in part that:

“(a) When any real or personal property which is exempt from ad valorem taxes, and taxes in lieu thereof, is leased, loaned, or otherwise made available and used by a private individual, association, or corporation in connection with a business conducted for profit, there shall be imposed a tax, for the privilege of so using or possessing such real or personal property, in the same amount and to the same extent as though the lessee or user was the owner of such property.(Emphasis added)

This provision will not apply to most categories of tax exempt property because in most cases, a for-profit use will negate the basis for exemption. Therefore, the most likely situation in which this provision will apply is when the property is “immune” from taxation (i.e. exempt regardless of use), which generally only happens when the property is owed by the federal or state government. Even then, this tax may not apply because of the exemptions provided in either paragraph (b) or subdivision 3.

For example, a religious congregation builds a new church across the street from the old one and abandons religious usage of the old church. The congregation leases the old church to a for-profit restaurant at market rates. The old church is no longer exempt under section 272.02 because it is no longer used for church purposes and it is not covered by section 272.01, subdivision 2, paragraph (a).

Minnesota Statutes, section 273.19, states in part that:

“Except as provided in subdivision 3 or 4, tax-exempt property held under a lease for a term of at least one year, and not taxable under section 272.01, subdivision 2, or under a contract for the purchase thereof, shall be considered, for all purposes of taxation, as the property of the person holding it. In this subdivision, “tax-exempt property” means property owned by the United States, the state, a school, or any religious, scientific, or benevolent society or institution, incorporated or unincorporated, or any corporation whose property is not taxed in the same manner as other property. This subdivision does not apply to property exempt from taxation under section 272.01, subdivision 2, paragraph (b), clauses (2), (3), and (4), or to property exempt from taxation under section 272.0213.

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This provision also has limited application. It applies only if each of the following criteria is met:

- the property belongs to:
 - the United States government,
 - the State of Minnesota,
 - a school,
 - a church,
 - a charity, or
 - a corporation that is subject to gross earnings taxation in lieu of property taxes (as railroads used to be);
- the property, in the absence of the lease would be exempt from property tax;
- the lease does not negate an exemption that is based on *ownership and use* by the owner;
- the lease did not trigger an assessment under section 272.01, subdivision 2; and
- none of the exemptions in section 273.19, subdivisions 2, 3 or 4 apply.

For example, a religious congregation builds a new church across the street from the old one and abandons a religious usage of the old church. Rather, the congregation leases the old church to a non-profit medical clinic. The old church is not exempt because it is no longer being used for church purposes, and it is not covered by section 273.19.

However, in another example, the Minnesota Department of Natural Resources leases lakeshore lots at market rates to private individuals for recreational use. Whether leased or not, the state's land is "immune" from taxation. However, section 273.19 provides a means to tax the person who is leasing and using the land.

In February 2008, the Department of Revenue developed a bulletin for county assessors regarding the proper assessment and taxation of federal, state, county and city leases. It is provided on the following pages.

Primary Statutory References: 272.01, 273.19

Elevators and Warehouses on Railroad Property

All elevators and warehouses, with the machinery and fixtures therein, situated upon the land of any railroad company, which are not in good faith owned, operated, and exclusively controlled by such company, shall be listed and assessed as personal property in the town or district where situated, in the name of the owner, if known, and if not known, as "owner unknown."

Primary Statutory References: 273.32

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Government-Owned Leased Property

Note: The information in this section is repeated from the bulletin “Taxation of federal, state, county and city leases,” issued by the Department of Revenue in February 2008. The bulletin did not address leases of land from an Indian government or mining leases.

We have been asked to review the current assessment practices surrounding the classification, valuation and taxation of property owned by either the United States (managed by the Bureau of Land Management) or the State of Minnesota (managed by the Department of Natural Resources and counties) and leased to private individuals, usually for periods of 10 or 20 years. We have been told that the assessment and taxation of these leased properties varies widely from county to county. Based on conversations with lessees and assessors, the department concurs that the valuation and taxation of these leased properties is inconsistent.

The department concludes that assessors should review the property records for the federal, state, county and city leases currently subject to personal property taxes. For state lands leased by the DNR under Minnesota Statutes, section 92.46, the land is exempt but the improvements are subject to tax based on the value of the improvements only. For federal, county and city lands, and state-owned tax-forfeited land, the land and improvements must be valued as if the lessee actually owns the property and must be taxed accordingly.

State leases

To determine the scope of the problem, we contacted Kathy Lewis who manages the DNR properties on behalf of the State of Minnesota. Ms. Lewis advised us that less than 140 hunting cabin leases still exist. The typical lease includes two to three acres, has a 10-year period and the annual lease payment is around \$310 per year. The usual lessees are hunters who use the leased properties on a seasonal basis. The DNR has other leases (boathouse leases on Lake Vermillion, “squatter leases,” driveway/easement leases, mineral leases) but the hunting cabin leases are the issue here. Ms. Lewis further advised me that DNR wants to be out of the business of managing these leases since the income is insignificant compared to the work involved. In some few instances, Ms. Lewis believes that counties may still have some properties that are very similar and are being leased for recreational purposes. [We have confirmed that several counties and cities own properties that they lease to individuals for recreation purposes.] In addition, we have confirmed that some counties lease state-owned tax-forfeited land for recreational purposes under Minnesota Statutes, section 282.04.

The DNR’s authority to enter into and manage these leases is in Minnesota Statutes, section 92.46. This section provides that certain state lands may be designated as public campgrounds and leased for cottage and camp purposes with an annual lease payment equal to 5 percent of the appraised value of the land only. Minnesota Statutes, section 272.02, subdivision 18, exempts section 92.46 land from taxation even if the land is leased to a private party. **However, any improvements to the land are taxable and valued by the local assessors.** The tax is considered a personal property tax and the tax statement is sent to the lessee. **Only DNR lands leased under section 92.46 are exempt.** Any other state leases are subject to the same rules as federal land.

Federal leases

There are approximately 430 parcels of property owned by the United States in the Chippewa and Superior National Forests that are managed by the Bureau of Land Management (BLM) and leased to private individuals for recreational purposes. Ordinarily, these parcels are lakeshore properties. The process for leasing and managing these parcels is governed by federal laws. There are restrictions on how the properties can be improved by the lessees. Generally, the main structure cannot exceed 900 square feet and cannot exceed one story. Decking may not exceed 200 square feet, and the garage or storage area is also restricted. The lease excludes a strip of 25 feet from the high water mark that is retained by the federal government for public access. Lessees are responsible for all improvements including structures, septic systems, electrical service and road/access maintenance. Leases are generally for a 20-year period and are usually eligible for renewal, but renewal is not guaranteed. If the lessee terminates the lease or if either party does not renew the lease, the lessees must remove all improvements and restore the property to its natural state.

Federal law requires that the lease payments be set by BLM at 5 percent of the appraised value of the land. The BLM must appraise the properties every 10 years and adjust the annual payments according to the appraised value. The lease then adds a Cost of Living Adjustment (COLA) for each of the succeeding nine years. The next reappraisal is scheduled for 2008. Lessees have looked at what has happened to the values of recreational properties in the last 10 years and are expecting the worst. In one example of a lease on Lake Winnibigoshish in Itasca County with 125 feet of lakeshore improved with a 900-square-foot cabin, the 2007 lease payment is approximately \$860. The lessee has been told to expect that amount to at least triple after the 2008 reappraisal process is completed.

Taxation

Minnesota cannot impose ad valorem taxes on federal lands. However, Minnesota can and does impose personal property taxes on persons who enjoy the use of the otherwise exempt property. Minnesota Statutes, section 273.19, subdivision 1, specifically imposes a tax on the lessee's use of exempt federal property. Subdivision 1 provides that the property shall be considered, for purposes of taxation, as the property of the lessee. This is a personal property tax billed to the lessee. Pursuant to section 273.19, Minnesota assessors should value the land and improvements as if the land was not exempt.

Based on conversations with lessees and assessors, the valuation and taxation of these federally leased properties is inconsistent. Based on these conversations, some assessors value the land at its estimated market value, others discount the value of the land because of the restrictions on use contained in the leases and still others value the improvements only and place no value on the land. We will address these three methodologies in reverse order.

1. Some assessors value the improvements only and place no value on the land. We believe these assessors are relying on Minnesota Statutes, section 272.01, subdivision 3, clause (a). This section of the law is **not applicable to these properties**. Lessees have argued that imposing taxes on the land results in a form of double taxation. They point out that federal law requires that 25 percent of all lease payments, royalties or other revenue generated by

Assessment of Personal Property

federally owned and managed properties must be returned to the counties where the properties are situated. The lessees argue that federal law recognizes that a state cannot tax federal land but if income is generated from exempt land, a portion of the income should be returned to the local jurisdiction as a “payment in lieu of taxes” (PILT). In fact, the federal government does make such payments to Minnesota counties. (St. Louis County receives about \$750,000 annually.) Section 272.01, subdivision 3, says that the personal property taxes imposed by section 272.01, subdivision 2, shall not apply to federal property for which payments are made in lieu of taxes. But, the tax imposed on these federal leases is governed by section 273.19, not section 272.01. Therefore, subdivision 3 does not prevent the valuation and taxation of these lands.

2. Assessors discount the value of the land because of the restrictions on use contained in the leases. Assessors argue a lessee has few options to improve the property, the use in terms of years is limited, the use of the 25-foot strip is limited and there is no market for the transfer of leases. There is no widespread market data on federally-owned leasehold properties, but there is no evidence of lessees giving up their leases so the assessor can conclude that the restrictions are not so onerous as to cause a discount in the value. **Assessors must value the land as if it were owned by the lessee in fee simple, with no restrictions or covenants. Improvements must be valued at their fair market value.**
3. Exempt county- and city-owned property and state-owned tax-forfeited land managed by the counties and leased to individuals for recreation purposes are taxable on both land and structures. There is no provision in Minnesota laws comparable to section 92.46 that exempts certain state-owned land. Therefore, section 273.19 applies just as it applies to the federal leases. Assessors **may not** “equalize” the taxes between state leased properties and federal, county or city leased properties. This type of “equalization” is a legislative prerogative.

As stated earlier in this document, the department concludes that assessors should review the property records for the federal, state, county and city leases currently subject to personal property taxes. For state lands leased by the DNR under section 92.46, the land is exempt but the improvements are subject to tax based on the value of the improvements only. For federal, county and city lands, and state-owned tax-forfeited land, the land and improvements must be valued as if the lessee actually owns the property and must be taxed accordingly. The department is directing assessors to correct all records on these leases in accordance with applicable Minnesota laws for the 2008 assessment.

In 2008, the Minnesota Legislature enacted section 272.0213 which states that a county board may elect, by resolution to exempt property that:

- is owned by a county, city, town, the state or the federal government;
- is rented by the entity for noncommercial seasonal residential recreational use; and
- was rented for the purposes specified above and was exempt from property taxes payable in 2008.

This provision has extremely limited applicability. In 2007, the department received reports that counties were improperly exempting such leases. Upon researching this issue it was determined that such leased properties were being inconsistently assessed from county to county. Some counties were taxing them, and some were exempting them. When faced with this issue, the legislature enacted the provision listed above that allows the counties who were improperly exempting such leases for the 2007 assessment to continue that assessment practice upon resolution of the county board. This provision does not allow those counties who were properly taxing those properties for the 2007 assessment to exempt them going forward.

Primary Statutory Reference: 272.0213

Attorney General Opinions

The Attorney General has issued several opinions on issues involving taxable leasehold interests. They are excerpted below.

Landowner who deeded property to state for park purposes with reservation of a life estate for duration of his occupancy of the premises is not personally liable for real property tax as beneficial owner of exempt property under Minnesota Statutes, section 272.01, subdivision 2, since the property is not exempt during the term of the life estate. However, if the tax is not paid, the life tenancy will be forfeited under the tax forfeiture procedure of chapter 279. *Op.Atty.Gen. 232d, Nov. 6, 1968.*

Property acquired by nonprofit corporation curling club and conveyed to the city, and thereafter leased back to the curling club would be taxable as leased property. *Op.Atty.Gen. 4j, Oct. 1, 1962.*

Municipally owned property leased to private enterprise is not exempt from taxation. *Op.Atty.Gen. 414-A-11, June 14, 1954.*

Where Navy department proposed to develop housing project for occupancy by military and civilian personnel on land which would be ceded to United States, and site would be leased to a private corporation for construction and operation of project, leasehold interest of corporation would be subject to taxation. *Op.Atty.Gen. 414-A-2, Jan. 19, 1953.*

Subject of a long-term lease by the State Agricultural Society to a private party would be taxed either under section 272.01, subdivision 2 if the business is conducted for profit, or under section 273.19 if the business concerned is not one conducted for profit, and upon the termination of the lease and the reversion of the property to the state, the property would no longer be taxable. *Op.Atty.Genl, 4j, Oct. 1, 1962.*

State-Assessed Properties

State-Assessed Properties

As briefly outlined in Module 1, the Commissioner of Revenue is required by law to assess several types of real and personal property. The properties that are assessed by the commissioner are as follows.

Airflight Property

The authority to tax aircraft in Minnesota is found in Article X, section 5, of the Constitution of the State of Minnesota. It states that:

“The legislature may tax aircraft using the air space overlying the state on a more onerous basis than other personal property. Any such tax on aircraft shall be in lieu of all other taxes. The legislature may impose the tax on aircraft of companies paying taxes under any gross earnings system of taxation notwithstanding that earnings from the aircraft are included in the earnings on which gross earnings taxes are computed. The law may exempt from taxation aircraft owned by a nonresident of the state temporarily using the air space overlying the state.”

Definitions

The following words and phrases, when used in Minnesota Statutes, sections 270.071 to 270.079, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in section 270.071.

The term “*air commerce*” includes, but is not limited to:

- operating under a certificate of convenience and necessity or under the authorization from the United States Department of Transportation;
- an intermittent or irregularly timed flight;
- a flight arranged at the convenience of an airline and the person contracting for transportation;
- a charter flight; or
- any airline company that makes three or more flights in or out of Minnesota during a calendar year.

Air commerce does not include casual transportation for hire by aircraft commonly owned and used for private airflight purposes if the person furnishing the transportation is not engaged regularly in transportation for hire.

The term “*aircraft*” means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air.

The term “*airline company*” means any person, fiduciary, or entity who is in the business of air commerce, either directly or indirectly.

“*Commissioner*” refers to the Minnesota Commissioner of Revenue.

“*Equated plain hours*” means hours spent by aircraft in flight weighted according to the cargo capacity of each aircraft.

“*Flight property*” is all aircraft and flight equipment used in connection with the airline company, including spare flight equipment. Flight property also includes computers and computer software used in operating, controlling, or regulating aircraft and flight equipment.

“*Person*” refers to any individual, corporation, firm, co-partnership, company, or association, and includes any guardian, trustee, executor, administrator, receiver, conservatory, or any person acting in any fiduciary capacity therefore.

A “*small or medium sized community*” means a home rule charter or statutory city or town in Minnesota with a population of 100,000 or fewer that is not located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington counties.

Primary Statutory Reference: 270.071

Assessment of Flight Property

All real property of an airline company and all personal property thereof, except flight property, shall be taxed as otherwise provided by law.

The flight property that is owned by or is leased, loaned, or otherwise made available to an airline company operating in Minnesota shall be assessed and appraised by the Commissioner of Revenue with reference to its value on January 2 of the assessment year as prescribed by Minnesota Statutes, sections 270.071 to 270.079. Aircraft with a gross weight of less than 30,000 pounds and used on intermittent or irregularly timed flights shall be excluded from the provisions of sections 270.071 to 270.079.

Each year, on or before July 1, every airline company engaged in air commerce in Minnesota must file a report under oath with the Commissioner of Revenue that sets forth the information prescribed by the commissioner to enable the commissioner to make the assessment required in these sections, unless the commissioner determines that the airline should be excluded from filing because its activities do not constitute air commerce. If necessary, the commissioner may extend the deadline for companies to submit their reports for up to 30 days.

Taxes imposed on flight property are a lien on all real and personal property of the airline within Minnesota. The lien attaches on January 1 of each year for taxes payable in the following year.

Primary Statutory Reference: 270.072

State-Assessed Properties

Penalties

If an airline does not file its annual report by the July 1 deadline, a penalty of 5 percent of the tax being assessed may be imposed on that company. On August 1, and on the first day of each succeeding calendar month, an additional 5 percent penalty may be imposed if the report is not filed by the due date. Penalties for late filers are limited to the lesser of \$25,000 or 25 percent of the tax.

The Commissioner of Revenue may impose a penalty of 10 percent of the tax on a company that exhibits a pattern of repeated failures to file timely reports.

Pursuant to Minnesota Statutes, section 289A.60, if the Commissioner of Revenue determines that an airline company has filed a frivolous report, a penalty of 25 percent of the tax owed may be imposed on the company. The Commissioner of Revenue may impose a penalty of 50 percent of the tax if an airline files a false or fraudulent annual report with the intent to evade or defeat the tax. All penalties are added to the tax amount and are collected as part of the tax by the Aeronautics Division.

Primary Statutory Reference: 270.0725

Valuation of Flight Property, Methods of Apportionment, and Ratio of Tax

The Commissioner of Revenue determines an estimated market value of all flight property that is operated or used by an airline company which engages in air commerce in the state of Minnesota. The valuation data must represent the company's operations for the prior calendar year and must be apportioned using three equally-weighted operating factors as noted below:

- Factor 1 pertains to the total tonnage of passengers, express, and freight that is *first received* by the airline company in Minnesota plus the total tonnage of passengers, express, and freight *finally discharged* by the airline company within Minnesota as compared to the total tonnage *first received* by the airline company and *finally discharged* at the system-wide level.
- Factor 2 pertains to the equated plane hours or the total time that the airline company's aircraft are in flight. This ratio represents the Minnesota in-flight hours to the in-flight hours at the system-wide level.
- Factor 3 pertains to the number of revenue ton miles of passengers, mail, express and freight flown by the airline company within Minnesota as compared to the total number of revenue ton miles flown at the system-wide level.

The method described above will presumably determine a fair and accurate allocation of the value of the airline's flight property market value. If an airline company disagrees with the valuation of its airflight property or the application of the apportionment methods used, it may petition the Commissioner of Revenue to use another method of the valuation or the apportionments of its property. If the commissioner finds that the application of the methods used are unfair to the airline, the commissioner may allow the use of other methods that will reasonably the valuation or apportionment of the estimated market values.

State-Assessed Properties

The net tax capacity of the flight property of every airline company is 40 percent of the market value prescribed above. "Quiet aircraft" refers to turboprops and aircraft defined as stage III or IV by the Federal Aeronautics Administration (FAA). Due to the FAA's "quiet aircraft" regulations, all aircraft tax capacities are calculated at 40 percent of the market value. The Commissioner of Revenue may adopt rules providing additional qualifications for quiet aircraft as necessary.

In addition, an airline may be eligible to reduce the 40 percent rate by half, if the airline meets the following two qualifications:

1. A majority of the aircraft operated by the airline must be turboprops, and
2. The airline must provide passenger service in six or more months during the year to three or more airports anywhere that serve small or medium sized communities. A small or medium sided community is a home rule charter or statutory city or town in Minnesota with a population of 100,000 or fewer that is not located in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington counties.

Primary Statutory Reference: 270.074

Tax Levy

The Commissioner of Revenue shall determine the rate of tax to be levied and collected against the net tax capacity to generate revenues sufficient to fund the airflight property tax portion of each year's state airport fund appropriation as certified by the Commissioner of Transportation. The property tax portion of the state airport fund appropriation is the difference between the total fund appropriation and the estimated total fund revenues from other sources for the state fiscal year in which the tax is payable. If a levy amount has not been certified by September 1 of a levy year, the commissioner shall use the last previous certified amount to determine the rate of tax.

As soon as possible, but not later than December 1 following the levy of the tax, the Commissioner of Revenue shall give actual notice to the airline company of the net tax capacity and the total tax. The taxes imposed shall become due and payable on January 1 following the levy thereof. If any tax is not paid on the due date, or if an appeal is made within 60 days after notice of an increased tax, a late payment penalty of 5 percent of the unpaid tax shall be assessed. If the tax remains unpaid for more than 30 days, an additional penalty of 5 percent of the unpaid tax is imposed for each additional 30 days or fraction of 30 days that the tax remains unpaid. The penalty imposed must not exceed the lesser of \$25,000 or 25 percent of the unpaid tax. The unpaid tax and penalty shall bear interest from the time such tax should have been paid until paid. All interest and penalties shall be added to the tax amount and collected as part of the tax.

Primary Statutory Reference: 270.075

State-Assessed Properties

Appeals

The net tax capacity notices and tax orders of the Commissioner of Revenue must be issued in accordance with the agreements set forth by the airline advisory panel and the Commissioner of Revenue in 1996. There are no provisions for an administrative review. If an airline appeals the net tax capacity notice and/or the tax order, the company may appeal to Minnesota Tax Court.

If an airline company appeals the commissioner's notice and/or tax orders, the company must pay, on the due date, 90 percent of the tax. However, the Tax Court may waive or otherwise adjust the net tax capacity or tax order.

If the litigation proceedings should result in sustaining the assessment and levy, or in the finding that the amount paid by the airline company is insufficient, the delinquent taxes plus the accrued interest will be due and payable. If the final determination of the Tax Court or Supreme Court results in any increasing assessment above that which was made final by the order of the commissioner from which the appeal is taken, the taxes on such increased assessment shall be delinquent 30 days after the notice of the amount of the increased tax shall have been given to the airline by the commissioner.

All taxes levied must be credited to the state airports fund.

If any of the provisions surrounding the taxation of airflight property are contrary to any provision of any federal law, hereinafter enacted, providing for or relating to the ad valorem taxation by a state of aircraft or flying equipment of an airline company, such provision will be of no effect and the Commissioner of Revenue is authorized and directed to prescribe by rule any necessary provisions to make the provisions described here conform to the federal act provided that such rules do not prescribe a rate of taxation or a net tax capacity that is higher than that provided in these sections.

The Commissioner of Revenue may enter into agreements with commissioners or other tax officials from another state for the interpretation and administration of the acts of their several states providing for the taxation of flight property of airline companies for the purpose of promoting uniformity of taxation of such companies.

Primary Statutory Reference: 270.076, 270.077, 270.078, 270.079

Pipelines

Assessment of Natural Gas and Petroleum Pipelines

All real property of natural gas, crude oil, and petroleum pipeline companies should be assessed by the local assessor of the taxing district in which the real property is located. Real property includes not only the land but also all structures on the land such as pumping stations, terminal stations, meter stations, fences, foundations, and supporting bases and tanks. The pumps, motors, control equipment and associated pipe on the site of the pumping or terminal station are considered to be fixtures to real property. Real property does not include the pipeline itself.

The Commissioner of Revenue is responsible for assessing the personal property which consists of the pipeline system of mains, pipes, and equipment attached thereto of pipeline companies and others engaged in the operations or business of transporting natural gas, gasoline, crude oil, or other petroleum products by pipelines. The commissioner will provide those values to the city or county assessor by order, on or before June 30 of each year.

This does not apply to the assessment of either the products transported through the pipelines; the lines of local commercial gas companies engaged primarily in the business of distributing gas to consumers for retail purposes; or to pipelines used by the owner thereof to supply natural gas or other petroleum products exclusively for said owner's own consumption and not for the resale to others. If more than 85 percent of the natural gas or other petroleum products actually transported over the pipeline is used for the owner's own consumption and not for resale to others, then this subdivision does not apply provided that in that event, the pipeline shall be assessed in proportion to the percentage of gas actually transported over such pipeline that is not used for the owner's own consumption.

Primary Statutory References: 273.33

State-Assessed Properties

Railroad Property

All railroad property is valued and assessed in accordance with Minnesota Rules, chapter 8106. This section provides a high-level summary of the procedures used in the assessment of railroad operating property that is situated in Minnesota.

Additional information is available online at the Minnesota Office of the Revisor of Statutes website, at: <https://www.revisor.leg.state.mn.us/rules/?id=8106>. If you require additional information or have questions, please direct them to the State-Assessed Property Section at: sa.property@state.mn.us.

Definitions

The following definitions are those commonly used in the taxation of railroad property.

A “***railroad company***” means:

1. Any company which as a common carrier operates a railroad or a line or lines of railway situated within or partly within Minnesota; or
2. Excluding a common carrier railroad, any company owning or operating a railway section that is principally used for transportation of taconite concentrates from the plant at which the taconite concentrates are produced in shipping form to a point of consumption or port for shipment beyond the state; or
3. Any company that produces concentrates from taconite in the course of the concentrating process and before the concentrating processes completed to a concentrating plant located within the state over a railroad that is not a common carrier and shall not use a common carrier or taconite railroad company as defined in #2 above for the movement of the concentrate to a point of consumption or port for shipment beyond the state.

“***Operating property***” means all property owned or used by a railroad company in the performance of railroad transportation services including without limitation franchises, rights-of-way, bridges, trestles, shops, docks, wharves, buildings and structures.

“***Non-operating property***” includes all property other than operating property. It includes real property which is leased or rented or available for lease or rent to any person which is not a railroad company. Vacant land shall be presumed to be available for lease or rent if it has not been used as operating property for a period of one year preceding the valuation date. Non-operating property also includes land which is not necessary and integral to the performance of railroad transportation services and which is not used on a regular and continual basis in the performance of these services. Non-operating property also includes that portion of a general corporation office building and its proportionate share of land which is not used for railway operation or purpose.

The “***Commissioner***” refers to the Commissioner of Revenue.

Taxation and Assessment

The Commissioner of Revenue is required to determine the market value of all railroad companies that operate in Minnesota. The market values are determined on the operating property which is used by the railroad for its business operations within Minnesota. Non-operating property of every railroad company doing business in Minnesota shall be assessed by the appropriate assessor.

The Commissioner of Revenue has the exclusive primary jurisdiction to differentiate between operating property and non-operating property. In making this determination, the commissioner shall solicit information and opinions from outside the department and afford all interested persons an opportunity to submit data or views on the subject in writing or orally. Local assessors may submit written requests to the commissioner, asking for a determination of the nature of specific property owned by a railroad and located within their assessing jurisdiction. Any determination made by the commissioner may be appealed by the assessor to Tax Court.

Reports

All railroad companies doing business in Minnesota are required to file the Minnesota Form RR-100 Annual Report of Railroad Companies with the Commissioner of Revenue on or before March 31. The requested information is used by the commissioner to determine the market value to be apportioned to the local taxing jurisdictions. If a railroad company can provide the commissioner with good cause, the commissioner may, at the request of the company, grant the company a filing extension through April 15.

The commissioner has the power to examine any books, papers, records, or memoranda relevant to the determination of the valuation of the operating property as provided by law. The commissioner may also require the attendance of any person having knowledge or information on the premises to compel the production of books, papers, records or memoranda by persons required to attend, to take testimony on materials and to administer any oath or affirmation. The commissioner also has the ability to issue subpoenas to compel testimony or to provide records.

If any railroad company refuses or neglects to file the appropriate report, or refuses or neglects to permit an inspection and examination of its property, records, books, accounts, or refuses or neglects to appear before the commissioner or appointed person, the commissioner shall make the valuation against the railroad company according to the commissioner's best judgment using the best information available.

Annual Valuation of Operating Property

Each year between March 31 and May 31, the commissioner shall estimate the market value of the operating property of every railroad company doing business in the state as of January 2 of that year. The commissioner must employ generally accepted appraisal principles and practices including the unit method of determining value.

State-Assessed Properties

To a certain extent, federal law limits the methods used to value railroad property in the Railroad Revitalization and Regulatory Reform Act which was enacted in 1976. This act prohibits states from taxing railroads any differently or at a higher rate than other commercial-industrial businesses in the state.

Upon completion of the annual valuation, the commissioner must give notice to the railroad company of the valuation by first class mail, overnight delivery, or messenger service.

Apportionment and Equalization of Valuation

As stated previously, railroad property is generally valued as a whole unit (unit valuation method) rather than on a parcel-by-parcel basis. Once the overall market value is established, it is apportioned to each of the counties that have railroad operating property and to the taxing districts therein, in conformance with fair and reasonable rules and standards developed by the commissioner.

In establishing such rules and standards, the commissioner may consider the physical situs of all station houses, depots, docks, wharves, and other buildings and structures with an original cost in excess of \$10,000; the proportion that the length and type of all the tracks used by the railroad in such county and taxing district bears to the length and the type of all the track used in the state; and other facts as will result in a fair and equitable apportionment of value.

After making the apportionment, the commissioner determines the equalized valuation of the operating property in each county by applying to the apportioned value, an estimated current year median sales ratio for all commercial and industrial property in that county. If there are insufficient sales to determine a median commercial-industrial sales ratio, an estimated current year countywide median sales ratio for all property will be applied to the apportioned value. No equalization shall be made to the market value of the operating property if the median sales ratio is within 5 percent of the assessment ratio of the railroad operating property.

Final Certification

After making the annual determination of the equalized market value of the operating property of each company in each of the respective counties and in the taxing districts therein, the commissioner shall certify the equalized market value to the county assessor on or before June 30. The equalized value of the operating property of the railroad company in the county and the taxing districts therein is the value on which taxes must be levied and collected in the same manner as on the commercial and industrial property of such county and taxing districts therein.

Primary Statutory References: 270.80 through 270.87; 273.372

Elevators and Warehouses on Railroad Property

All elevators and warehouses that are located upon the land of any railroad company and are not owned, operated and exclusively controlled by the railroad company must be listed and assessed as

State-Assessed Properties

personal property in the name of the owner, if known, or as “owner unknown” if the owner is not known.

Primary Statutory Reference: 273.32

Railroad Lands Becoming Taxable

The Commissioner of Revenue must annually compile a list of railroad operating property which is sold or otherwise becomes non-operating property. On or before December 15 of each year, the commissioner must certify the lands for taxation to the auditors of each county. The commissioner must also obtain lists of lands reverting to and being used as operating property by the railroad companies by reason of the forfeiture of contracts, and certify those to the auditors. The auditor shall then remove such lands from the tax lists. The railroad companies must report such sales and forfeitures to the Commissioner of Revenue by December 1 of each year. All forfeited lands not reported shall be held for taxes accruing thereon.

Primary Statutory Reference: 272.20

Sale of Railroad Lands

When a railroad company owning lands that are assessed and taxed as operating property sells, assigns, transfers, or disposes of any estate, right, title, or interest in the land, that right, title, estate, or interest shall become assessed and taxed in the same manner as comparable real property.

Primary Statutory Reference: 272.21

State-Assessed Properties

Utilities

Introduction

The responsibility for the valuation and assessment of the real and personal property, tools and machinery, transmission and distribution lines of electric companies, and pipeline systems of gas, water and petroleum companies is divided between local or county assessors and the Commissioner of Revenue.

Since the Commissioner of Revenue by law must assess some of the utility property in the state of Minnesota, has general oversight responsibilities for all assessments of property, and may increase or decrease values as necessary to achieve equalization, the commissioner will estimate the valuation of the entire system of a utility company operating in Minnesota pursuant to Minnesota Administrative Rule 8100.0200.

Rule 8100.0200 states that the commissioner establishes the unit value for each utility company operating within the state. The entire system is valued utilizing data relating to the cost of the property, the earnings of the company owning or operating the property, as well as other indicators of value if applicable. The resulting valuation is allocated to each state in which the utility company operates. The value of the property located in Minnesota that is exempt from property tax or that is locally assessed is subtracted from the value allocated to Minnesota.

Next, the portion allocated to Minnesota is distributed by the process of apportionment to the various taxing districts within the state. The data used in the valuation, allocation, and apportionment process is drawn from reports submitted to the Department of Revenue by the utility companies on or before March 31. The department conducts periodic examinations of the supporting data for these reports.

Finally, the value is equalized based on sales/assessment ratios determined by the Department of Revenue. The commissioner's values for the properties that are assessed by local or county assessors are strictly advisory in nature. The commissioner must certify the assessments to the county auditors on or before October 1 of each year.

Electric Light and Power Utilities Real Property

All real property of electric light and power utilities should be assessed by the city or township assessor of the taxing district where the real property is located.

Where structures are situated on land that is owned by a utility, both the land and structures should be assessed as real estate. The same rule applies where the structures are situated upon land held by the utility by virtue of a lease for a term of three or more years from the state or from any religious, scientific or benevolent society or institution, and where the structures are situated upon land held by the utility by virtue of a lease for any period of time from a private individual or private corporation. It is only when the structures are situated on a leased portion of railroad right-of-way or on land leased from the state for a term of less than three years that the structures should be assessed as personal property.

State-Assessed Properties

The term “structures” includes all buildings, fences, concrete foundations, substation poles and supporting frames. It also includes all electric substations, generating stations, transformer stations, and switching stations. All such structures should be assessed as real estate. The appropriate classification is class 3a commercial-industrial property.

All tools implements and machinery which are fixtures to real property should be assessed as part of the real estate. These should also be class 3a property. Minnesota Statutes, section 273.13, subdivision 24, paragraph (a), clauses (2) and (3), state that:

“(2) All personal property that is: (i) part of an electric generation, transmission, or distribution system; or (ii) part of a pipeline system transporting or distributing water, gas, crude oil, or petroleum products; and (iii) not described in clause (3), and all railroad operating property has a class rate as provided under clause (1) for the first tier of market value and the remaining market value. In the case of multiple parcels in one county that are owned by one person or entity, only one first tier amount is eligible for the reduced rate.

(3) The entire market value of personal property that is: (i) tools, implements, and machinery of an electric generation, transmission, or distribution system; (ii) tools, implements, and machinery of a pipeline system transporting or distributing water, gas, crude oil, or petroleum products; or (iii) the mains and pipes used in the distribution of steam or hot or chilled water for heating or cooling buildings, has a class rate as provided under clause (1) for the remaining market value in excess of the first tier.”

Personal Property of Utilities

Minnesota law defines as personal property, “all gas, electric, and water mains, pipes, conduits, subways, poles, and wires of gas, electric light, water, heat or power companies, and all tracks, roads, conduits, poles, and wires of street railway...”

Ordinarily, personal property is exempt from ad valorem property tax. However, the law also indicates that “personal property which is part of an electric generating, transmission, or distribution system or pipeline system transporting or distributing water, gas, crude oil, or petroleum products or mains and pipes used in the distribution of steam or hot or chilled water for heating or cooling buildings and structures; and personal property” listed in the above paragraph are taxable personal property. Therefore, only that personal property which is operational and part of the utility’s system is taxable.

Primary Statutory References: 272.02, 272.03, 273.13

The personal property of gas and water companies shall be listed and assessed in the town or district where it is located, without regard to where the principal or other place of business of the company may be located. The responsibility for the assessment of personal property for electric light and power utilities is divided between local assessors and the Commissioner of Revenue.

State-Assessed Properties

Personal property of an electric light and power company which is located within a city or outside the corporate limits of a city is assessed by the local assessor for that jurisdiction. In addition, transmission lines having a voltage of 69 kv or higher, as well as all attachments and appurtenances, are assessed by the local assessor for the jurisdiction, unless they are located in an unorganized township.

Transmission lines that are located in an unorganized township are assessed by the Commissioner of Revenue. The commissioner also assesses all transmission lines that with a voltage of less than 69 kv. The commissioner certifies the values to county auditors on or before June 30 of each year.

Note: Electric power distribution lines and their attachments and appurtenances that are used primarily for supplying electricity to farmers at retail are exempt from taxation pursuant to Minnesota Statutes, section 272.02, subdivision 19.

Primary Statutory References: 273.36, 273.37, 272.02, subdivision 19

Cooperative Electric Light and Power Associations

The majority of cooperatively-owned electric utilities are financed by the federal government under the Rural Electrification Administration (REA). These REA cooperatives are not exempt from taxation simply by reason of being federally financed. Their property should be assessed on the same basis as that of other cooperative electric light and power associations. All real and personal property of cooperative electric light and power associations, which is located within the boundaries of any incorporated city is subject to assessment in the same manner as the real and personal property of privately-owned electric light and power utilities.

“Rural” in this case means any area of the state not included within the boundaries of any incorporated city, and shall also include both farm and nonfarm population thereof.

Cooperative associations that are organized under the provisions of Laws 1923, chapter 326 and are engaged in electrical heat, light or power business upon a mutual, non-profit and cooperative plan in rural areas are recognized as quasi-public in nature and purpose. Such cooperative associations must pay an annual membership tax of \$10 per one hundred members and fraction thereof, which is imposed annually by the Commissioner of Revenue on December 31 of each tax year. The membership tax is due and payable on or before March 1 of the succeeding year. This tax is in lieu of all personal property taxes, state, county or local, that are made upon distribution lines and the attachments and appurtenances thereto of such associations located in rural areas. If the tax is not paid by the deadline, a penalty may be charged.

All property of cooperative associations that are organized as referenced above, including both transmission and distribution lines, located within the corporate limits of cities, continues to be subject to ad valorem assessment and taxation by the local assessor. All real property of cooperative electric light and power associations situated in rural areas should be assessed by the appropriate

State-Assessed Properties

local or county assessor in the same manner as real property owned by a privately-owned electric light and power utilities is assessed.

The township or county assessor does not assess the transmission and distribution lines and equipment attached thereto of cooperative electric light and power associations in rural areas. Those distribution lines pay the annual membership tax that is outlined above. However, the township assessor should assess all other personal property that is part of an electric generating transmission or distribution system located in the township and owned by cooperative electric light and power associations.

City or county assessors should assess all property, both real and personal, of cooperative light and power associations situated within the corporate limits of a city.

Primary Statutory References: 273.36, 273.37, 273.39, 273.40, 273.41

Assessment of Privately-Owned Gas, Water, Sewer, and Central Heating Systems

All real and personal property owned by **privately-owned** gas, water, sewer and heating systems should be assessed by the city, township or county assessor of the taxing district where the property is located. This property is assessed and taxed in the same manner as other real property.

Assessment of Municipally-Owned Light, Heat, Power, Gas and Water Systems

Generally, both real and personal property of **municipally-owned** utilities is exempt from taxation as public property used for a public purpose in both the Minnesota Constitution and Minnesota Statutes, section 272.02, subdivision 8.

Numerous municipally-owned utilities extend their lines outside the boundaries of the municipality for the purpose of serving private customers and are exempt from taxation if they convey electricity, heat, gas or water, which is surplus, and the sale of which is incidental to the public purpose of supplying the municipality. However, if the lines are used to convey utility services to a substantial extent to customers outside the corporate limits, they may be subject to assessment.

Municipally-owned property that is leased to private parties becomes subject to taxation.

Primary Statutory References: 272.02, 272.03, 273.35

State-Assessed Properties

Proceedings and Appeals for Utility and Railroad Valuations

The policies and procedures for appealing the valuation and classifications of state-assessed property are slightly different from the appeals process provided for other properties subject to ad valorem taxation. As such they are summarized in this section rather than in the Appeals Module (Module 8) of this manual.

An appeal by a utility or railroad company regarding property for which the Commissioner of Revenue has provided the city or county assessor with ordered or recommended values must be brought against the commissioner and not against the county or taxing district where the property is located.

This governs administrative appeals as well as court appeals of a claim where the utility or railroad operating property has been partially, unfairly, or unequally assessed, or assessed at a valuation greater than its real or actual value, misclassified or that the property is exempt. This applies only to railroad operating property, pipelines, gas and water companies and electric light and power companies (not airflight or wind energy), and only with regard to taxable net tax capacities that have been provided to the local jurisdiction by the commissioner and which have not been changed by the local jurisdiction.

This section does not apply if the taxable net tax capacity being appealed is different from that established by the commissioner, or if the appeal claims that the tax rate applied against the property is incorrect or that the tax has been paid.

Contents and Filing of Petition

All court appeals that stem from the tax that results from the implementation of the commissioner's order, certification or recommendation, must be brought against the Commissioner of Revenue under Minnesota Statutes, chapter 278, unless that chapter is in conflict with section 273.372. If that is the case, section 273.372 shall prevail. The appeal petition that has initiated the appeal against the commissioner must be filed with the Minnesota Tax Court in Ramsey County.

If the court appeal stems from an order of the commissioner, the appeal must be brought under Minnesota Statutes, chapter 271, unless that chapter is in conflict with section 273.372. If that is the case, section 273.372 shall prevail.

The court petition must include all parcels encompassed by that order which the petitioner claims have been partially, unfairly, or unequally assessed, assessed at a valuation in excess of their market value, are misclassified or are exempt from property tax. An order of the commissioner is either:

- a certification or notice of valuation by the commissioner for the railroad or utility property types described above; or
- the final determination by the commissioner of either an administrative appeal conference or informal administrative appeal.

Administrative Appeals

Railroad or utility companies that submit their required reports by the due dates specified in law or by the date specified by the Commissioner of Revenue in an extension may appeal administratively to the commissioner prior to bringing a court action. The administrative appeal must be submitted in writing within 10 days after the date of the commissioner's valuation certification or notice to the company or by May 15, whichever is earlier.

After a written request for appeal is received, the commissioner shall conduct the conference upon the commissioner's entire file and record and any additional information that may be offered by the company. The conference must be held no later than 20 days after the date of the commissioner's valuation certificate or notice to the company, or by the date specified in an extension. Within 60 days after the conference the commissioner shall make a final determination of the matter and shall notify the company of the final determination. The conference is not a contested case hearing.

In addition to the opportunity for a conference, the commissioner shall also provide the railroad and utility companies the opportunity to discuss any questions or concerns relating to the values established by the commissioner through certification or notice in a less formal manner. This does not change or modify the deadline for requesting a conference, the deadline to appeal an order of the commissioner or the deadline for appealing to Tax Court.

Primary Statutory References: 273.372

Wind Energy Production Tax

Wind Energy Production Tax

The Wind Energy Production Tax, as outlined in Minnesota Statutes, section 272.029, subdivision 1, is a tax that is imposed on the production of electricity from a wind energy conversion systems installed after January 1, 1991, and used as an electric power source.

The Minnesota Legislature enacted the wind energy production tax during the 2002 legislative session. The law imposed a production tax beginning with taxes payable in 2004 on the production of electricity from wind energy conversion systems installed after January 1, 1991, in lieu of the property tax. However, the land on which the systems are located is subject to property tax.

Definitions

“Large wind energy conversion system” or **“LWECS”** means any combination of WECS with a combined nameplate capacity of 5,000 kilowatts or more.

“Small wind energy conversion system” or **“SWECS”** means any combination of WECS with a combined nameplate capacity of less than 5,000 kilowatts.

“Wind energy conversion system” or **“WECS”** means any device such as a wind charger, windmill, or wind turbine and associated facilities that converts wind energy to electrical energy.

The production tax rates are based on the size of the wind energy conversion system. They are as follows:

- large-scale system (nameplate capacity of more than 12 megawatts) pays 0.12 cents per kilowatt-hour;
- medium-scale system (nameplate capacity between two and 12 megawatts) pays 0.036 cents per kilowatt-hour;
- small-scale system (nameplate capacity of two megawatts or less) pays 0.012 cents per kilowatt-hour; and
- very small conversion systems with a nameplate capacity of 0.25 megawatts or less and small-scale systems (two megawatts or less) that are owned by a political subdivision are exempt from the production tax.

Reporting

Annually, on or before February 1, the owner of the wind energy conversion system must file a Minnesota Form M25 with the Commissioner of Revenue detailing the amount of electricity produced in the previous calendar year. The filing date was March 1 for 2004, but the 2005 Legislature changed the date to February 1 to allow DOR and local governments more time for administrative and budget planning purposes.

A developer of a new or existing wind energy conversion system, as defined under section 272.029, subdivision 2, may negotiate with the county where the wind energy conversion system is located to establish a payment in lieu of the wind energy production tax imposed under section 272.029. The in-lieu payment is to provide fees or compensation to the host jurisdictions to maintain public

Wind Energy Production Tax

infrastructure and services. A host jurisdiction includes a city or town and the county in which a facility is located. The payment in lieu of the wind energy production tax may be based on production capacity, historical production, or other factors agreed upon by the parties. The payment in lieu of tax agreement must be signed by the parties and filed with the Commissioner of Revenue and the county recorder. Exemption from the tax under section 272.029 shall be effective for the same duration as the in-lieu payments under this section are in effect.

Distribution of WEPT Revenues

The tax, based on the size of the wind conversion system, must be paid to the county on or before May 15 and October 15, and distributed along with the regular property tax settlements made by the county treasurer to the local governments in the following percentages: 80 percent to counties; 14 percent to cities and townships; and 6 percent to school districts. The state is not included in the distribution of the WEPT revenues.

Collection, Interest and Penalties

The production tax determined must be paid to the county treasurer at the same time and in the same manner provided for payment of property taxes in section 272.029, subdivision 3. If unpaid, the production tax is subject to the same enforcement, collection, and interest and penalties as delinquent personal property taxes.

County Auditor Report to the Commissioner of Education.

The county auditor, on the first Wednesday after such settlement, shall report to the Commissioner of Education, the amount distributed to each school district under section 272.029, subdivision 6.

Assessment Notice

Upon completion of the wind energy production tax calculation, companies are mailed a tax order notice. Typically, issues related to the tax calculation are resolved through email correspondence. All tax issues must be settled and the tax amounts must be certified to the county assessors and auditors no later than February 28. After the tax notices are sent to the county the only recourse for an appeal is with the tax court or district court.

Wind Energy Appeals

Appeals of wind energy production tax amounts determined by the department may be taken against the Commissioner of Revenue prior to February 28. However, if a taxpayer wants to appeal the production tax notice, they can appeal to the Minnesota Tax Court or to a small claims district court. The total production tax, penalty and interest cannot exceed \$5,000.00. A judgment issued by the small claims division is final and cannot be appealed by the Department of Revenue.

If you require additional information, please email your questions to the State-Assessed Property Section at sa.property@state.mn.us.

Primary Statutory Reference: 272.029

Much of the information on the wind energy production tax is based on the Primer on Minnesota's Property Taxation of Electric Utilities, Minnesota House of Representatives Research Department, Updated: January 2006.

Special Valuation and Tax Programs

Special Valuation and Tax Programs

There are several special valuation and tax programs available for qualifying properties in Minnesota. This section will provide a comprehensive overview of those programs.

Valuation Exclusion for Certain Improvements (This Old House)

The initial law, commonly referred to as “This Old House” was enacted in 1993 and made effective for improvements made before January 2, 2003. It was intended to lead to the revitalization of older neighborhoods in cities and rural communities by providing owners of older, deteriorated homes with an incentive to restore or renovate their houses. Minnesota Statutes, section 273.11, subdivision 16, provided for exclusion from property tax for all or a portion of the value of improvements made to homes that were at least 45 years of age or more. This program ended with the 2003 assessment. However, some properties may still be receiving the valuation exclusion under this program.

Value Reduction for Homestead Property Damaged by Mold

In 2005, the Minnesota Legislature enacted a special program for properties damaged by mold. The program is a one-time valuation reduction for the estimated cost to cure the mold damage. This program is not designed to replace a value reduction made by the assessor due to the damage to the property. Rather, it is a supplement to that reduction.

In many cases, it may be more than one year from the time the mold problem is identified, when the determination is made as to who will pay for the damage and when the work is completed. As such, the assessor's estimated market value may reflect the loss in value attributed to the mold damage over several assessment years. In these cases, it is important to remember that the value of the affected structure should be returned to the "pre-mold" value before granting the one-year abatement provided by this program by subtracting the amount of the estimated cost to cure the damage.

The owner of homestead property may file an application with the assessor for a reduction in the market value of a property that has been damaged by mold. The notification must include the estimated cost, provided by a licensed contractor, to cure the mold condition. The estimated cost to cure must be at least \$20,000 to receive a reduction in market value. Upon completion of the work, the owner must file an application on a form prescribed by the Commissioner of Revenue, accompanied by the copy of the contractor's estimate.

If the conditions listed above are met, the county board must grant a one year reduction in the market value of the homestead dwelling equal to the estimated cost to cure the mold condition. If a property owner applies for a reduction between January 1 and June 30 of any year, the reduction should be applied to the current year's assessment for taxes payable in the following year. If the owner applies for a reduction between July 1 and December 31 of any year, the reduction applies for the following year's assessment.

The value reduction must be approved by the county board of commissioners. A denial by the county board of commissioners may be appealed to Minnesota Tax Court. If the county board fails to take action within 90 days of the receipt of the application, it is considered to be an approval.

For the year following the assessment year in which the reduction is granted, any market value added by the assessor to the property resulting from curing the mold condition must be considered to be new construction.

Note: Applications were sent to all county assessors. A copy is also included in the Supplemental Information Module of this manual.

Primary Statutory Reference: 273.11, subdivision 21

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Lead Hazard Market Value Reduction

Owners of property classified as follows may apply for a lead hazard market value reduction:

- Class 1a (Residential Homestead)
- Class 1b (Blind/Disabled Homestead)
- Class 1c (Ma & Pa Resorts)
- Class 2a/2b (Agricultural Homestead/Ag and Rural Vacant Land)
- Class 4b (Residential Non-homestead 1-3 units or Agricultural Non-homestead HGA)
- Class 4bb (Residential Non-homestead – single unit)
- Class 4d (Low Income Rental Housing)

The property must be located in a city which has authorized valuation reductions under this program. A city that chooses to authorize reductions under this program must establish guidelines for qualifying lead hazard reduction projects and must designate an agency within the city to issue certificates of completion of qualifying projects. For the purposes of this program, the term “lead hazard reduction” has the same meaning as in M.S. 144.9501, subdivision 17, which states that “...*abatement or interim controls undertaken to make a residence, child care facility, school, or playground lead-safe by complying with the lead standards and methods adopted under section 144.9508.*”

A qualifying property is eligible for a one-year valuation reduction equal to the actual cost incurred to clean up the lead, up to a maximum of \$20,000.

The property must obtain a certificate from the city agency charged with administering this program. The certificate must state that:

1. The project has been completed; and
2. The total cost incurred by the owner, which must be at least \$3,000.

Only projects originating after July 1, 2005, and completed before July 1, 2010, will qualify for a reduction in value under this program. The property owner must file an application with the assessor and include a copy of the certificate of completion from the agency. The content and format of the application is at the discretion of the assessor.

If a property owner applies to the assessor between January 1 and June 30 of any year, the reduction should be applied to the current year's assessment for taxes payable in the following year. If a property owner applies to the assessor between July 1 and December 31 of any year, the reduction should be applied to the following year's assessment. Any additional market value resulting from the lead hazard removal must be considered to be new construction.

Primary Statutory References: 273.11 subdivision 22, 144.9501 subdivision 17

Plat Law

Minnesota law provides for a phase-in of a property's estimated market value when raw land is platted into a subdivision. The phase-in period depends on whether a property is located in a metropolitan county or a non-metropolitan county.

Vacant Land Platted – Metropolitan County

All land that is platted and located in a metropolitan county (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott or Washington) and not improved with a permanent structure is to be assessed as provided below unless it is eligible for the new plat law provisions enacted by the Minnesota Legislature in 2008 (see the section on Certain Vacant Land Platted – Metropolitan Counties). Under this provision, the assessor must determine the market value of each individual lot based upon the highest and best use of the property as unplatted land. In establishing the market value of the property, the assessor shall consider the sale price of the unplatted land or comparable sales of unplatted land of similar use and with similar availability of public utilities.

The market value determined in the above paragraph shall be increased as follows for each of the three assessment years immediately following the final approval of the plat: one-third of the difference between the property's unplatted market value and the market value based upon the highest and best use of the land as platted property shall be added in each of the three subsequent assessment years.

Any increase in market value after the first assessment year following the plat's final approval shall be added to the property's market value in the next assessment year. If construction begins, or if the property has been sold or transferred, before the expiration of the three-year phase-in period, the lot is eligible for revaluation in the next assessment year.

Example

Bowling Green subdivision is a new residential subdivision located in Carver County. The developers are platting the 100-lot subdivision from a 45-acre parcel of agricultural property. The date of final approval of the plat is September 25, 2008. The value of the agricultural parcel for the 2008 assessment is \$100,000. It is estimated that the residential lots will sell for approximately \$50,000 each once the subdivision is completed.

The 45-acre agricultural parcel is subdivided into 100 lots. When splitting a property after the assessment date of January 2, the value and classification cannot change during the year of the split. Therefore, in this case, the agricultural parcel of property is subdivided into 100 lots, each with an agricultural classification and each valued at \$1,000 for the 2008 assessment.

Please see the following page for the specific phase-in calculations.

Special Valuation and Tax Programs

Step 1 – Calculate the total amount to be phased in:

$$\begin{array}{rcl} \$50,000 & - & \$1,000 & = & \$49,000 \\ \text{(EMV as platted)} & & \text{(2008 EMV} & & \text{(total amount to be} \\ & & \text{before platting)} & & \text{phased in)} \end{array}$$

Step 2 – Calculate the amount to be phased in each year:

$$\begin{array}{rcl} \$49,000 & / & 3 \text{ years} & = & \$16,333 \text{ or } \$16,300 \text{ (rounded)} \\ \text{(total phase-in)} & & \text{(phase-in period)} & & \text{(phase-in amount per year)} \end{array}$$

Step 3 – Calculate the taxable market value (TMV) for 2009:

$$\begin{array}{rcl} \$16,300 & + & \$1,000 & = & \$17,300 \\ \text{(phase-in amount)} & & \text{(2008 EMV of lot} & & \text{(one-third of} \\ & & \text{before platting)} & & \text{the value is phased in)} \end{array}$$

Step 4 – Calculate the TMV for 2010:

$$\begin{array}{rcl} \$17,300 & + & \$16,300 & = & \$33,600 \\ \text{(2009 TMV)} & & \text{(amount to be} & & \text{(two-thirds of the} \\ & & \text{phased in each year)} & & \text{value is phased in)} \end{array}$$

Step 5 – For the 2011 assessment, the parcel goes to full value - \$50,000.

Note: This example assumes there is no change in the market for residential lots during the phase-in period. It also assumes the lot was not sold or transferred and that no construction began on the land during the phase-in period.

Vacant Land Platted – Non-Metropolitan County

The procedure for phasing in the market value of newly platted property is the same in non-metro counties except that the phase-in period is seven years.

Example

Use the previous example, except that Bowling Green subdivision is now located in Olmsted County, thus the phase-in period is seven years. The subdivision was platted in September 2008, the values for the agricultural parcel (\$100,000) and the subsequent estimated market value of the lots (\$50,000) are the same.

Step 1 – Calculate the total amount to be phased in:

$$\begin{array}{rcl} \$50,000 & - & \$1,000 & = & \$49,000 \\ \text{(EMV as platted)} & & \text{(2008 EMV} & & \text{(total amount to be} \\ & & \text{before platting)} & & \text{phased in)} \end{array}$$

Special Valuation and Tax Programs

Step 2 – Calculate the amount to be phased in each year:

$$\begin{array}{rcl}
 \$49,000 & / & 7 \text{ years} & = & \$7,000 \\
 \text{(total phase-in)} & & \text{(phase-in period)} & & \text{(phase-in amount per year)}
 \end{array}$$

Step 3 – Phase in one-seventh of the value (\$7,000) to the taxable market value for each of the next seven assessment years as follows:

<u>Assessment Year</u>	<u>TMV</u>	<u>EMV</u>
2008 Assessment =	\$ 1,000 (initial EMV before platting)	\$50,000
2009 Assessment =	\$ 8,000	\$50,000
2010 Assessment =	\$15,000	\$50,000
2011 Assessment =	\$22,000	\$50,000
2012 Assessment =	\$29,000	\$50,000
2013 Assessment =	\$36,000	\$50,000
2014 Assessment =	\$43,000	\$50,000
2015 Assessment =	\$50,000 full value	\$50,000

Note: This example assumes there is no change in the market for residential lots during the phase-in period. It also assumes the lot was not sold or transferred and that no construction began on the land during the phase-in period.

Certain Vacant Land Platted – Metropolitan County

In 2008, the Legislature enacted a variation to provisions for platted land in metropolitan counties when certain specific conditions are met. This provision is expected to have very limited application.

Land located in a metropolitan county that was platted after August 1, 2001, and has not been approved with a structure, is to be assessed as provided below as long as:

- the property was classified as homestead in the assessment year prior to the year of the initial plat;
- the property has been owned or partially-owned by the same person for the past 10 consecutive years prior to the initial plat year; and
- the property remains under the same ownership in the current assessment year.

All other provisions of the Plat Law remain the same except that a subdivision that qualifies under this paragraph will receive a **seven-year** phase-in period. An owner of eligible property platted before July 1, 2008, must file an application with the assessor in order to receive the special phase-in for the remainder of the seven-year period. (Please see the Supplemental Information Module (Module 9) for a copy of the application).

Special Valuation and Tax Programs

Frequently Asked Questions

What happens in a declining market where the estimated market value decreases after the initial platting process?

Answer: The Department of Revenue has said in the past that the amount of the phase-in does not change. Rather, the time period for phasing in the market value will occur over a shorter time period. Using the previous example of the Bowling Green subdivision located in a non-metro county, the assessor finds after two years that the estimated market value has decreased by 20 percent to \$40,000. In this case, the plat will be at full value after six assessment years rather than seven assessment years.

Step 1 – Calculate the total amount to be phased in:

$$\begin{array}{rcl} \$50,000 & - & \$1,000 & = & \$49,000 \\ \text{(EMV as platted)} & & \text{(2008 EMV before platting)} & & \text{(total amount to be phased in)} \end{array}$$

Step 2 – Calculate the amount to be phased in each year:

$$\begin{array}{rcl} \$49,000 & / & 7 \text{ years} & = & \$7,000 \\ \text{(total phase-in)} & & \text{(phase-in period)} & & \text{(phase-in amount per year)} \end{array}$$

Step 3 – phase in one-seventh of the value (\$7,000) for each of the next seven assessment years as follows:

<u>Assessment Year</u>	<u>TMV</u>	<u>EMV</u>
2008 Assessment =	\$ 1,000 (initial EMV before platting)	\$50,000
2009 Assessment =	\$ 8,000	\$50,000
2010 Assessment =	\$15,000	\$50,000
2011 Assessment =	\$22,000	\$40,000
2012 Assessment =	\$29,000	\$40,000
2013 Assessment =	\$36,000	\$40,000
2014 Assessment =	\$40,000 full value	\$40,000
2015 Assessment =	No Plat Law reduction – full EMV	Full EMV

If a subdivision is replatted, does it receive a new phase-in period?

Answer: In our opinion, if there is no land added to or deleted from the original plat, no potential exists for a new phase-in period.

Can a developer rescind their plat in order to benefit from lower taxes and, if so, can they get a new Plat Law exclusion if the property is platted again at a later date?

Answer: In our opinion, if no lots have been sold or constructed on, the potential may exist to legally dissolve the plat and return the property to its original configuration. However, dissolving the plat may or may not result in tax benefits for the developer. In addition, there may be legal fees, recording fees, etc., associated with dissolving the plat. If the property were to be platted again at a later date, we are not aware of anything in current law that would preclude them from receiving a new phase-in period.

Primary Statutory References: 273.11, subdivisions 14a, 14b, & 14c

Metropolitan Agricultural Preserves

Introduction

Established in 1980, the Metropolitan Agricultural Preserves Act (“Ag Preserve”) was designed to encourage agricultural-use retention on land specifically located in close proximity to the Minneapolis/St. Paul metropolitan area. The structure of this law is similar to that of Green Acres (Minnesota Statutes, section 273.111) in that the land is valued based solely on the land’s agricultural use. However, land enrolled in Ag Preserve is protected from tax increases by limiting the annual tax capacity rate increases to 105 percent of the average statewide levy. The land is also protected from special assessments and eminent domain rights of local governments. Unlike land enrolled in Green Acres, land that is enrolled in Ag Preserve is not required to repay taxes or special assessments that have been deferred. Therefore, it is the land not the landowner that determines the qualification under Ag Preserve.

Although no penalty is imposed upon withdrawal of the land from Ag Preserve, landowners are required to commit the property for a minimum of eight years. In addition, an eight-year termination notice is required before the land can be removed from the program.

Public Policy Statement

Minnesota Statutes, section 473H.01, contains a public policy statement regarding the Metropolitan Ag Preserve program. It states that *“it is the policy of the state to encourage the use and improvement of its agricultural lands for the production of food and other agricultural products. It is the purpose of sections 473H.02 to 473H.17 to provide an orderly means by which lands in the metropolitan area designated for long-term agricultural use through the local and regional planning processes will be taxed in an equitable manner reflecting the long-term singular use of the property, protected from unreasonably restrictive local and state regulation of normal farm practices, protected from indiscriminate and disruptive taking of farmlands through eminent domain actions, protected from the imposition of unnecessary special assessments, and given such additional protection and benefits as are needed to maintain viable productive farm operations in the metropolitan area.”*

Definitions

For the purposes of Metropolitan Agricultural Preserves Act only, the following terms have meanings as stated in Minnesota Statutes, section 473H.02.

Agricultural use means the production for sale of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, or bees and apiary products. Wetlands, pasture, and woodlands accompanying land in agricultural use shall be deemed to be in agricultural use.

Authority means the unit government exercising planning and zoning authority for the land specified in an application as provided under Ag Preserves and pursuant to county planning and zoning, city planning and zoning, or township planning and zoning. If both a county and township have adopted

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zoning regulations, the authority shall be the unit of government designated to prepare a comprehensive plan under section 473.861, subdivision 2.

Certified long-term agricultural land means land certified as eligible for Ag Preserve.

Covenant means a restrictive covenant initiated by the owner and contained in the application provided for in Ag Preserve whereby the owner places the limitations on specified land and in return receives the protections and benefits contained within the Ag Preserve program.

Date of application means the date the application is determined to be complete by the authority.

Long-term agricultural land means land located in the metropolitan area designated for agricultural use in local or county comprehensive adopted and reviewed pursuant to sections 473.175 and 473.851 to 473.871, and which has been zoned specifically for agricultural use permitting a maximum residential density of not more than one unit per quarter-quarter (40 acres).

Metropolitan area means the seven-county metropolitan area including the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

Owner means a resident of the United States owning land specified in the Ag Preserve application and includes an individual, legal guardian or family farm corporation as defined in section 500.25, having a joint or common interest in the land. If the land is owned via a contract for deed, the owner means the vendor in agreement with the vendee.

Eligibility

The eligibility requirements for land enrolled in Ag Preserve are more restrictive than for Green Acres. Ag Preserve status may be granted to land:

1. Located within the seven-county metro area;
2. That is at least 40 acres* in size; and
3. That is zoned specifically for long-term agricultural use by the local planning board.

**Note:* Non-contiguous parcels may be included to achieve the minimum acreage requirement of 40 acres provided that each parcel is at least 10 acres in size and provided that the separate parcels are farmed together as a unit.

35-acre exception – the minimum acreage requirement of 40 acres may be reduced to 35 acres provided the land is a single quarter-quarter parcel and the amount less than 40 acres is due to a public road right-of-way or perturbation in the rectangular survey system resulting in a quarter-quarter of less than 40.

20-acre exception – contiguous long-term agricultural land comprising at least 20 acres and surrounded by eligible land on two or more sides shall be eligible for Ag Preserve, provided the

authority by resolution determines the land as meeting the qualifications under section 473H.03, subdivision 4.

Contiguous long-term agricultural land that meets the total acreage requirements but is located in two or more authorities so that the minimum acreage requirement of 40 acres is not met in one or more of the authorities shall be eligible if joint resolution is made by the authorities.

Contiguous long-term agricultural land not meeting the total acreage requirements but under the same ownership as an Ag Preserve parcel adjoining it on at least one side shall be eligible for Ag Preserve.

Designation of Agricultural Preserve Area

Each authority (city, township, county) in the metropolitan area that has land used for agricultural purposes must certify by resolution and using appropriate maps which lands, if any, are eligible for designation as Ag Preserve. Maps must be in sufficient detail as to identify eligible lands by property boundaries. The authority must publish notice of its intended action in a newspaper having a general circulation within the area of jurisdiction of the authority at least two weeks prior to adoption of the resolution.

Land will cease to be eligible for designation as Ag Preserve when the comprehensive plan and zoning for the land have been amended so that the land is no longer planned and no longer zoned for long-term agricultural use, evidenced by a maximum residential density permitting more than one unit per 40 acres. When changes have been made, the authority shall certify by resolution and appropriate maps which lands are no longer eligible for Ag Preserve. The authority shall again publish a notice of its intended action in a newspaper having general circulation within the area of jurisdiction of the authority at least two weeks before the resolution is to be adopted.

Local authorities must provide the Metropolitan Council with maps showing lands that have been certified or decertified as eligible for Ag Preserve. The Metropolitan Council must maintain the maps of the metropolitan area showing all certified long-term agricultural lands.

Application and Covenant Agreement

An owner of certified long-term agricultural land may apply to the authority (city, township, county) with jurisdiction over the land on forms provided by the Minnesota Commissioner of Agriculture for Ag Preserve by March 1 to be effective for the current assessment year (for taxes payable the following year). At a minimum, the application must contain:

- the legal description of the area proposed to be designated as Ag Preserve, the parcel identification numbers, and the certificate of title number if the land is registered;
- the name and address of the owner;
- an affidavit by the authority indicating that the land is certified as long-term agricultural land at the date of the application; and
- a restrictive covenant that states that the land shall be kept in agricultural use and shall be used in accordance with the rules of the program which exist on the date of the application,

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and provides that the covenant shall be binding on the owner, owner's successor or assignee, and shall run with the land.

Authorities may charge an application fee to defray administrative costs. The application fee cannot exceed \$50.

Re-enrollment

If a property was initially granted Agricultural Preserve status but the owner of the property filed an Ag Preserve termination notice on that property, the owner may re-enroll the property in the program. In lieu of the requirements specified earlier, the county may allow a property owner to re-enroll by completing a one-page affidavit or form as prepared by the county. The county may require whatever information is deemed necessary. The approval by the city or township where the property is located must also be required on the form or affidavit. The county may charge a re-application fee to defray any administrative costs. The fee may not exceed \$10. Re-enrolling is only allowed if the same property owner or owners wish to re-enroll the same property under the same conditions as previously approved under the original application.

Notification

Within five days of receipt of the completed application, the authority must forward the completed and signed application to the county recorder and copies to the county auditor, county assessor, Metropolitan Council, and the county soil and water conservation district. The county recorder shall record the application containing the restrictive covenant upon the certificate of title. The authority shall be notified by the recorder or registrar of titles that the application has been recorded.

The county auditor shall determine local tax rates, assessments and taxes involving the property enrolled in Ag Preserve in compliance with specifications outlined in this provision. The auditor must also maintain records of taxes assessed and paid on Ag Preserve land in a manner prescribed by the Commissioner of Revenue.

The county assessor must value and assess the land enrolled in Ag Preserve in compliance with specifications outlined in this provision.

The Metropolitan Council must maintain maps illustrating certified long-term agricultural lands; and lands subject to restrictive covenants under the Ag Preserve program. The council shall make yearly reports to the Minnesota Department of Agriculture and other agencies the council deems appropriate.

The county soil and water conservation district may prepare an advisory statement of existing and potential conservation problems for the Ag Preserve land. The statement shall be forwarded to both the owner of the property and the authority.

Commencement of Preserve

The land shall be deemed an Ag Preserve and subject to all the benefits and restrictions beginning 30 days from the date of the completed application.

Duration

Ag Preserve designation shall continue until either the owner or the authority initiates expiration.

A landowner may initiate expiration by notifying the authority on a form provided by the Commissioner of Agriculture. The notice must describe the property for which the expiration is desired and shall state the date of expiration, which shall be at least eight years from the date of the notice. The notice and expiration may be rescinded by the owner at any time during the first two years following the notice.

The authority may initiate expiration by notifying the property owner by registered letter on a form provided by the Commissioner of Agriculture, provided that before notification:

- the comprehensive plan and the zoning for the land have been officially amended so that the land is no longer planned and no longer zoned for long-term agriculture, evidenced by a maximum residential density permitting more than one unit per quarter/quarter (40 acres); and
- the authority has certified such changes in accordance with section 473H.08.

The notice must describe the property for which expiration is desired and shall state the date of expiration, which shall be at least eight years from the date of the notice.

Upon receipt of a landowner's intention to withdraw or an authority's intention to initiate expiration, the authority shall forward the original notice to the county recorder for recording or to the registrar of titles if the land is registered and shall notify the county auditor, county assessor, Metropolitan Council, and the county soil and water conservation district of the date of expiration. Designation as an Ag Preserve and all benefits and limitations for the preserve shall cease on the date of expiration. The restrictive covenant shall terminate on the date of expiration.

Termination of an Ag Preserve earlier than a date derived through application may be permitted only in the event of a public emergency upon petition from the owner or authority to the governor by executive order which identifies the Ag Preserve, the reasons requiring the action and the date of termination.

Valuation

Real property located within an Ag Preserve shall be valued using normal methodology at its market value pursuant to Minnesota Statutes, section 273.11. In addition, all land used for agricultural purposes, exclusive of buildings, shall be valued solely with reference to its appropriate agricultural valuation. In determining the value, the assessor shall not consider any added values resulting from non-agricultural factors.

Computation of Tax

- A. After the assessor has estimated the market value of all land valued according to the provisions of Ag Preserve, the assessor must compute the net tax capacities of those properties by applying the appropriate classification rates. When computing the rate of tax

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pursuant to section 275.08, the county auditor shall include the net tax capacity of land as provided in this clause.

- B. The county auditor shall compute the tax on Ag Preserve land and non-residential buildings by multiplying the net tax capacity by the total local tax rate for all purposes as provided in paragraph A above.
- C. The county auditor shall compute the tax on Ag Preserve land and non-residential buildings by multiplying the net tax capacity by the total local tax rate for all purposes as provided in paragraph A above, subtracting \$1.50 per acre of land in the preserve.
- D. The county auditor shall then compute the maximum property tax on the Ag Preserve land and non-residential buildings by multiplying the net tax capacity by 105% of the previous year's statewide average local tax rate levied on property located within townships for all purposes.
- E. The tax due and payable by the owner of the land valued as Ag Preserve land and non-residential buildings will be the amount determined in paragraph C or paragraph D, whichever is less. The State of Minnesota will reimburse the taxing jurisdictions for the amount of the difference between the net tax determined under this clause and the gross tax in paragraph B.

Residential buildings will continue to be valued and classified as they would be in the absence of this section, and the tax on those buildings shall not be subject to the limitation contained in this program.

The county may transfer money from the county conservation account created in Minnesota Statutes, section 40A.152, to the county revenue fund to reimburse the fund for the tax lost as a result as a result of Ag Preserves or to pay taxing jurisdictions within the county for the tax lost. On or before June 1, the county auditor must certify to the Commissioner of Revenue the total amount of tax lost to the county and taxing jurisdictions located within the county as a result of this section, and the extent to which the tax lost exceeds funds available in the county conservation account. Payment shall be made by the state on December 26 to each of the affected taxing jurisdictions, other than school districts, in the same proportion that the ad valorem tax is distributed if the county conservation account is insufficient to make the reimbursement. Under section 40A.151, there is annually appropriated from the Minnesota conservation fund to the Commissioner of Revenue an amount sufficient to make the reimbursement provided under this provision. If the amount available in the Minnesota conservation fund is insufficient, the balance that is needed shall be appropriated from the general fund.

Limitation on Certain Public Projects

Notwithstanding Chapter 429 (Local Improvements; Special Assessments), construction projects for public sanitary sewer systems and public water systems benefiting land or buildings in Ag Preserves shall be prohibited. New connections between land or buildings in Ag Preserve and sanitary sewers or water systems shall be prohibited. Public sanitary sewer systems, public storm water sewer systems, public water systems, public roads, and other public improvements built on, adjacent to or in the vicinity of land enrolled in Ag Preserve after August 1, 1993, are deemed to no benefit to the land and buildings in Ag Preserve.

For the purposes of this section, *public storm water sewer systems* means any wholly or partially piped system which is owned, operated and maintained by the authority that is designed to carry storm water runoff, surface water or other drainage primarily for the benefit of land which is not in Ag Preserves.

Protection for Normal Farm Practices

Local governments and counties shall be prohibited from enacting or enforcing ordinances or regulations within an Ag Preserve which would unreasonably restrict or regulate normal farm structures or farm practices that are contrary to the purposes of this section, unless the restriction or regulation bears a direct relationship to an immediate and substantial threat to the public health and safety. This applies to the operation of farm vehicles and machinery in planting, maintenance and harvesting of crops and in the care and feeding of farm animals, the type of farming and the design of farm structures, exclusive of residences.

Annexation

Ag Preserve land that is located within a township shall not be annexed to a municipality without a specific finding by the chief administrative law judge of the Office of Administrative Hearings that either:

- the expiration period has begun;
- the township, due to size, tax base, population or other relevant factors would not be able to provide normal governmental functions and services; or
- the Ag Preserve would be completely surrounded by lands within a municipality.

This does not apply to annexation agreements that were approved prior to creation of the Ag Preserve.

Eminent Domain

Any entity possessing the powers of eminent domain under Chapter 117 must follow the procedures contained in section 473H.15 before acquiring any land or easement with a gross area over 10 acres in size within Ag Preserve; or advancing a grant, loan, interest subsidy or other funds for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities that could be used to serve non-farm structures within Ag Preserve.

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At least 60 days prior to any eminent domain action, a notice of intent must be filed with the Environmental Quality Board (EQB). The notice of intent shall contain a report justifying the proposed action, including an evaluation of alternatives which would not require acquisition within Ag Preserve.

The EQB, in consultation with affected units of government, shall review the proposed action to determine the effect of the action on the preservation and enhancement of agriculture and agricultural resources within an Ag Preserve and the relationship to local and regional comprehensive plans. If the EQB finds that the proposed action might have an unreasonable effect on an Ag Preserve, the EQU shall issue an order within the 60-day period for the party to desist from such action for an additional 60-day period.

During the 60-day period, the EQB shall hold a public hearing concerning the proposed action at a place within the affected preserve or otherwise easily accessible to the preserve upon notice in a newspaper having a general circulation within the area of the Ag Preserve land, and individual written notice to the municipalities whose territory includes land in Ag Preserve, the entity proposing to take the action and any public agency having the power of review of or approval of the action in a manner conducive to the wide dissemination of the findings to the public.

The required review process may be conducted jointly with any other environmental impact review conducted by the EQB. The EQB may request the attorney general to bring an action to enjoin any entity from violating the provisions of section 473H.15. This section does not apply to an emergency project which immediately necessary for the protection of life and property. The EQB is empowered to suspend any eminent domain action for up to one year which it determines to be contrary to this section and for which it determines there are feasible and prudent alternatives which have less of a negative impact on Ag Preserve property. The AgPreserve designation and all benefits and limitations accruing for the Ag Preserve land and the restrictive covenant for that portion of the Ag Preserve land taken via eminent domain shall cease on the date the final certificate is filed with the court administrator.

Conservation

Land enrolled in Ag Preserve shall be farmed and otherwise managed according to sound soil and water conservation management practices. Management practices which are not sound shall be any use of the land resulting in wind or water erosion in excess of the soil loss tolerance for each soil type as found in the United States Soil Conservation Service, Minnesota Technical Guide.

The authority shall be responsible for enforcement of this conservation provision. Upon receipt of a written complaint stating the conditions or land management practices which are believed to be in violation, the authority shall consult with the county's soil and water conservation district (SWCD). The SWCD shall determine the average soil loss in tons per acre per year for each field cited in the complaint according to the universal soil loss equation and the wind erosion equation, and shall issue a report to the authority showing the average soil loss in tons per acre per year for each field and a list of alternative practices that the landowner can use to reduce the soil loss to the allowable limit.

After consultation and, if in the judgment of the authority, the land is not being managed properly as required in this section, the authority shall adopt a resolution to this effect and shall seek corrective measures from the owner. At the request of the landowner, the SWCD shall assist in the planning, design and application of the practices selected to reduce the soil loss to an acceptable level and the SWCD shall give such landowners a high priority for providing technical and cost share assistance.

An owner who fails to implement the corrective measures to the satisfaction of the authority within one year of notice from the authority may be subject to a civil penalty of up to \$1,000. The authority may recover the penalty via a civil court action. Any costs incurred by the authority in the enforcement of these provisions may be charged to the property owner. Any charges that are not timely paid may be placed on the tax rolls and collected as a special assessment against the real property.

Land Use

Land enrolled in Ag Preserve must be maintained for agricultural production. The average maximum density of residential structures within an Ag Preserve shall not exceed one unit per 40 acres. The location of any new structure shall conform to locally applicable zoning regulations. Commercial and industrial uses shall not be permitted unless a separate parcel is created after the user is issued a permit by the authority. The authority is responsible for enforcing this provision.

Commercial and industrial operations are not allowed on land located within an Ag Preserve except:

- small on-farm commercial or industrial operations normally associated with and important to farming in the Ag Preserve area;
- storage use of existing (before August 1, 1987) farm buildings that does not disrupt the integrity of the Ag Preserve; and
- small commercial use of existing (before August 1, 1987) farm buildings for trades not disruptive to the integrity of the agricultural preserve such as carpentry shop, small scale mechanics shop, and similar activities that a farm operator might conduct.

When a separate parcel is created for an allowable residential structure, commercial or industrial use, the parcel shall cease to be an agricultural preserve unless the eligibility requirements are met. However, the separate parcel shall remain under the maximum residential density restrictions in effect for the original preserve at the time it was placed into Ag Preserve until the Ag Preserve status for the original parcel ends.

Transfer from Green Acres Treatment

When land that has been receiving the Green Acres tax deferral becomes an Ag Preserve, the payment of deferred tax and special assessments as provided in section 273.111 shall not be made. Special assessments deferred under Green Acres shall continue to be deferred for the duration of the Ag Preserve status. For the purpose of this section “deferred special assessments” includes the total amount of special assessments deferred under Green Acres, including any portion of the deferred special assessments which have not yet been levied at the time the property transfers to the Ag Preserve program. All special assessments so deferred shall be payable within 90 days of the date of

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expiration unless other terms are mutually agreed upon by the authority and the owner. In the event of early termination of an Ag Preserve or a portion of it, all special assessments accruing to the terminated portion plus interest shall be payable within 90 days of the date of termination unless otherwise deferred or abated by executive order of the governor. In the event of an eminent domain taking, all special assessments accruing to the taken portion plus interest shall be payable within 90 days of the date the final certificate is filed with the court administrator.

Primary Statutory Reference: Chapter 473H

Non-Metropolitan Agricultural Preserves

Introduction

Minnesota Laws, Chapter 40A (Agricultural Land Preservation Program), allows non-metropolitan counties to participate in agricultural land preservation. Currently, we are only aware of three counties – Waseca, Winona, and Wright – that participate in this program. As stated in Minnesota Statutes, section 40A.01, the goals of the program are to:

- preserve and conserve agricultural land, including forest land, for long-germ agricultural use in order to protect the productive natural resources of the state, maintain the farm and farm-related economy of the state, and assure continued production of food and timber and agricultural uses;
- preserve and conserve soil and water resources; and
- encourage the orderly development of rural and urban land uses.

According to the law, these goals will best be met by combining the state policies and guidelines with local implementation and enforcement procedures and private incentives. This provision was enacted in 1984 with pilot counties selected by the Commissioner of Agriculture by January 1, 1985.

Definitions

For the purposes of Non-Metropolitan Agricultural Preserves only, the following terms have meanings as stated in Minnesota Statutes, section 40A.02.

Agricultural use means the production of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, or bees and apiary products. It also includes wetlands, pasture, forest land, wildlife land, and other uses that depend on the inherent productivity of the land.

Board means the Board of Water and Soil Resources (BWSR).

Commissioner means the Commissioner of Agriculture.

Crop Equivalent Rating (CER) means a rating that reflects the net economic return per acre of soil when managed for cultivated crops, permanent pasture, or forest, whichever provides the highest net return.

Department means the Minnesota Department of Agriculture.

Development means the subdivision and partitioning of land or the construction of residences on land or the conversion to competing land uses.

District means a Soil and Water Conservation District (SWCD).

Agricultural Preserve or Preserve means a preserve created under this chapter.

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Forest land means land that is at least 10 percent stocked by trees of any size and capable of producing timber, or of exerting an influence on the climate or on the water regime; land that the trees described above have been removed from to less than 10 percent stocking and that has not been developed for other use; and afforested areas.

Local government means a county or municipality.

Metropolitan area means the area over which the Metropolitan Council has jurisdiction, including only the counties of Anoka; Carver; Dakota excluding the city of Northfield; Hennepin excluding the cities of Hanover and Rockford; Ramsey; Scott excluding the city of New Prague; and Washington.

Municipality means a statutory or home rule charter city or town.

Official controls or controls means legislatively defined and enacted policies, standards, precise detailed maps, and other criteria, all of which control the physical development of a municipality or a county or any part thereof or any detail thereof, and are the means of translating into ordinances all or any part of the general objectives of the comprehensive plan. Such official controls may include but are not limited to ordinances establishing zoning, subdivision controls, site plan rules, sanitary codes, building codes, housing codes, and official maps.

Soil survey means the comprehensive inventory and classification of soil types being conducted by the Minnesota Cooperative Soil Survey.

Statewide Agricultural Land Preservation

A county located outside the metropolitan area may submit a proposed agricultural land preservation plan and proposed official controls implementing the plan to the Commissioner of Agriculture and to the appropriate regional development commission. If possible, submission of the proposal must coincide with the completion of the county soil survey. The commissioner in consultation with the regional development commission shall review the plan and controls for consistency with the provisions of this program and shall submit written comments to the county within 60 days of receipt of the proposal. If the commissioner determines that the plan and controls are consistent, the county may adopt the controls within 90 days of the completion of the commissioner's review. If the commissioner determines that the plan and controls are not consistent, the comments must include the additional elements that must be addressed. The county may amend its plan and controls to include recommendations made by the commissioner and to address those additional elements. The amended plan and controls may be adopted within 120 days of completing of the commissioner's review.

Non-Metropolitan City

A city that is located partially within a county in the metropolitan area but is not included in the definition of the metropolitan area may elect to be governed as follows. The city may:

- request that the county where it is partially located include the city in the agricultural land preservation plan and controls of the county under section 394.32; or
- perform the duties of a county independently.

If the city does not elect to be governed by this section, the city may perform the duties of an authority under Chapter 473H (Metropolitan Agricultural Preserve).

Elements of Plans and Official Controls

The plans and official controls prepared under Minnesota Statutes, chapter 40A must be adopted in accordance with the provisions of chapter 394 (Planning, Development, Zoning) or chapter 462 (Housing Redevelopment, Planning, Zoning) that apply to comprehensive plans and official controls and must also contain the elements of section 40A.05.

A plan must address at least the following elements:

- integration with comprehensive county and municipal plans;
- relationship with shoreland, surface water, and other land use management plans;
- identification of land currently in agricultural use, including the type of agricultural use, the relative productive value of the land based the CER and the existing level of investment in buildings and equipment;
- identification of forest land;
- identification of areas in which development is occurring or is likely to occur during the next 20 years;
- identification of existing and proposed public water and sanitary sewer systems;
- classification of land suitable for long-term agricultural use and its current and future development;
- determination of present and future housing needs representing a variety of price and rental levels and an identification of areas adequate to meet the demonstrated or projected needs; and
- a general policy statement as to how the county will achieve the goals of the program.

Official controls implementing a plan must be consistent with the plan and must address at least the following elements:

- designation of land suitable for long-term agricultural use and the creation of exclusive agricultural use zones, allowing for conditional compatible uses that do not conflict with long-term agricultural use;
- designation of urban expansion zones where limited growth and development may be allowed;
- residential density requirements and minimum lot sizes in exclusive agricultural use zones and urban expansion zones; and
- standards and procedures for county decisions on rezoning, subdivision, and parcel divisions.

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Contested Case Hearings; Judicial Review

If a county or municipality in the county disputes the determination of the Commissioner of Agriculture relating to whether the plan and controls address the elements required under Chapter 40A, the county or municipality may request that the commissioner initiate a contested case proceeding within 30 days after receiving the determination. In addition, 10 or more eligible voters of the county who own real estate within the county may request a contested case proceeding. The commissioner shall initiate the proceeding within 30 days of receiving the request. Judicial review of the contested case decision is as provided in Chapter 14 (Administrative Review).

Municipal Agricultural Land Preservation

If a county has not submitted a proposed agricultural land preservation plan and proposed official controls to the commissioner and regional development commission (if one exists), a municipality within the county may request by resolution that the county submit them. If the county does not do so within one year of receipt of the municipality's resolution, the municipality may perform the duties of the county with respect to land under its jurisdiction.

Nothing in this chapter limits a municipality's power to plan or adopt official controls under other laws, or to adopt official controls that are consistent with or more restrictive than those enacted by the county. Municipalities shall revise existing plans and official controls to conform with the county-approved agricultural land preservation plan and official controls and shall initiate implementation of the revised plans and controls within one year after receiving the county-approved agricultural land preservation plan and controls.

Agricultural Preserve Eligibility

An owner or owners of land that has been designated for exclusive long-term agricultural use under a plan submitted to or approved by the commissioner is eligible to apply for the creation of an Agricultural Preserve. Eligibility continues unless the commissioner determines that the plan and official controls do not address the elements contained in this chapter or unless the county fails to implement the plan and official controls as required by this program.

Application for Creation of Agricultural Preserve

A property owner may apply to the county in which the land is located for the creation of an Agricultural Preserve on forms prescribed by the Commissioner of Agriculture. If a preserve is located in more than one county, the application must be submitted to the county in which the majority of the land is located. The application shall be executed and acknowledged in the same manner as a deed and must contain at least the following information as well as any other information the commissioner deems necessary:

- a legal description of the area to be designated and parcel identification numbers where designated by the county auditor;
- name and address of the property owner; and
- a restrictive covenant that states that the land will be kept in exclusive agricultural use and will be used in accordance with the provisions of this program that exist on the date of

application and that the restrictive covenant will be binding on the owner or the owner's successor or assignee and will run with the land.

Upon receipt of an application, the county shall determine if all required information has been submitted and if so shall deem the application to be complete. As used in this section the *date of application* means the date the application is determined to be complete by the county. The county shall send a copy of the application to the county assessor, the regional development commission if applicable and the SWCD where the land is located. The district shall prepare an advisory statement of existing and potential conservation problems in the zone. The district shall send the statement to the owner of record and to the commissioner. A copy of the application and a legal description of the property must also be sent to the Commissioner of Agriculture.

Within five days of the date of application, the county must forward the application to the county recorder for recording or to the registrar of titles for filing if the land is registered. The recorder must record the application containing the restrictive covenant and return it to the applicant. If the land is registered, the registrar of titles shall place the application containing the restrictive covenant upon the certificate of title.

The land is considered to be in an Ag Preserve and is subject to the benefits and restrictions of this chapter commencing 30 days from the date of application. The county may require an application fee that is not to exceed \$50. The commissioner shall maintain Ag Preserve maps illustrating land that is enrolled in Ag Preserve.

Duration of Ag Preserve

The Ag Preserve continues in existence until either the owner or the county initiates the expiration proceedings. The date of expiration must be at least eight years from the date of notice.

The owner may initiate expiration of an Ag Preserve by notifying the county on a form prepared by the commissioner and available in each county. The notice must describe the property involved and must state the date of expiration. The notice may be rescinded by the owner during the first two years following the notice. The county may initiate expiration of the Ag Preserve by notifying the owner by registered mail on a form provided by the commissioner.

Before notification, the agricultural land preservation plan and official controls must have been amended so that the land is no longer designated for long-term agricultural use, and the commissioner must have reviewed and approved the amended plan and official controls for consistency with the guidelines of this chapter. The notice must describe the property involved and must state the date of expiration.

When the county receives notification that an owner wants to initiate expiration of the zone or serves notice to a property owner that the county wants to initiate expiration proceedings, the county shall forward the original notice to the county recorder for recording or to the registrar of titles if the land is registered, and shall notify the regional development commission, the commissioner and the

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county SWCD. Designation as an Ag Preserve and the benefits and limitations contained in the program and the restrictive covenant filed with the application cease on the date of expiration.

An Ag Preserve may be terminated earlier than as provided above only in the event of a public emergency upon petition from the owner or county to the governor. The determination of a public emergency must be made by the governor by executive order which identifies the Ag Preserve, the reasons requiring the action and the date of expiration.

Protection for Normal Agricultural Practices

Local governments may not enact ordinances or regulations that may restrict or regulate normal agricultural practices within an Ag Preserve unless the restriction or regulation has a direct relationship to public health and safety. This applies to the operation of vehicles and machinery for planting and maintaining and harvesting crops and timber and for caring and feeding farm animals, to the type of farming and to the design of farm structures, except for residences.

Annexation

Land that is located in a township and is included within an Ag Preserve cannot be annexed to a municipality unless the Chief Administrative Law Judge of the Office of Administrative Hearings finds that:

- the owner or the county has initiated termination of the zone;
- because of size, tax base, population or other relevant factors, the township would not be able to provide normal governmental functions and services; or
- the zone would be completely surrounded by lands within a municipality.

This prohibition does not apply to annexation agreements approved prior to creation of the Ag Preserve.

Eminent Domain

Any entity with the power of eminent domain except certain public utilities, municipal electric or gas utilities, municipal power agencies, cooperative electric associations, or pipelines operating under the authority of the Natural Gas Act must follow the procedures specified in law before:

- acquiring land or an easement in land with a total area over ten acres located in an Ag Preserve; or
- advancing a grant, loan, interest subsidy, or other funds for the construction of dwellings, commercial or industrial facilities, or water or sewer facilities that could be used to serve structures in areas that are not for agricultural use that require an acquisition of land or an easement in an exclusive agricultural zone.

Notices of intent of such acquisitions must be filed at least 60 days before an action with the Environmental Quality Board (EQB). The notice of intent must contain the information specified by the EQB on a form required by the EQB and must contain a report justifying the proposed action, including an evaluation of alternatives that would not affect land within an Ag Preserve.

The EQB and the affected local governments must review the proposed action to determine its effect on the preservation and enhancement of agriculture and agricultural uses within the zone, and the relationship to local and regional comprehensive plans. If the EQB finds that the proposed action might have an unreasonable effect on a zone, the EQB may issue an order within 60 days of the notice of intent for the party to refrain from the proposed action for up to an additional 60 days.

During the additional 60 days, the EQB must hold a public hearing concerning the proposed action at a place within the affected zone or easily accessible to the zone. Notice of the public hearing must be published in a newspaper with general circulation within the area of the zone. Individual written notice must be given to the local governments with jurisdiction over the entity proposing to take the action, the owner of land in the zone, and any public agency having the power of review or approval of the action.

The review process may be conducted jointly with any other environmental impact review by the EQB. The EQB may suspend an eminent domain action for up to one year if it determines that the action is contrary to the purposes of Chapter 40A and that there are feasible and prudent alternatives that may have a less negative impact on the zone.

Designation as an Ag Preserve and all benefits and limitations of the program, including the restrictive covenant for the portion of the zone taken, ends on the date the final certificate is filed with the court administrator. The EQB may request the attorney general bring action to preclude an entity from violating this provision. This section does not apply to an emergency project that is immediately necessary for the protection of life and property.

Limitation on Certain Public Projects

Generally, construction projects for public sanitary sewer systems, public water systems and public drainage systems are prohibited in exclusive agricultural use zones. New connections between land or buildings in a zone and public projects are prohibited. Land in a zone may not be assessed for public projects built in the vicinity of the zone. This prohibition does not apply to public projects necessary to serve land in primarily agricultural use or if the owner of the land in an Ag Preserve elects to use and benefit from a public project.

Conservation Practices

An owner of land in an Ag Preserve must manage the land with sound soil conservation practices that prevent excessive soil loss according to the model ordinance adopted by the commissioner. The model ordinance and sections relating to soil loss apply to all land in an exclusive agricultural zone. A sound soil conservation practice prevents excessive soil loss or reduces soil loss to the most practical extent.

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Agricultural Land Preservation and Conservation Awareness Program

An Agricultural Land Preservation and Conservation Awareness Program was created under section 40A.14. Its purpose is to promote and increase public awareness of:

- the need for agricultural land preservation and conservation and the consequences of resource degradation;
- the physical, environmental, and social factors that affect agricultural land use; and
- the availability and effectiveness of agricultural land preservation and conservation approaches and technologies.

The Commissioner of Agriculture administers the program in order to develop a working partnership between the state and local governments.

In addition, the commissioner must survey awareness of agricultural land preservation and conservation problems, technologies, and available technical and financial resources. The survey must include:

- an assessment of related efforts of the United States Department of Agriculture, the Board of Water and Soil Resources, the Minnesota Association of Soil and Water Conservation Districts, and other related public and private organizations;
- an assessment of programs in other states; and
- an assessment of attitudes among a variety of target audiences in Minnesota that are involved in or affected by land use decisions.

Agricultural Land Preservation and Conservation Assistance Program

Section 40A.15 established an Agricultural Land Preservation and Conservation Assistance Program to provide technical and financial assistance for agricultural land preservation and conservation activities. The program also helps counties and municipalities prepare agricultural land preservation plans and official controls. The Commissioner of Agriculture administers the program under the rules in Chapter 14. The commissioner must actively seek the involvement of local government officials in the rulemaking process.

All counties within the state, municipalities that prepare plans and official controls instead of a county, and districts are eligible for assistance under the program. Counties and districts may apply for assistance on behalf of other municipalities. To be eligible for financial assistance, a county or municipality must agree to levy at least 0.01209 percent of taxable market value for agricultural land preservation and conservation activities, to otherwise spend the equivalent amount of local money on those activities, or to spend \$15,000 of local money, whichever is less.

In administering the program, the commissioner shall time the promotion of public awareness and the distribution of technical and financial assistance in order to maximize the use of available resources, facilitate the agricultural land preservation process and promote sound soil conservation practices.

The commissioner shall administer grants for up to 50 percent of the cost of the activity to be funded. Grants may not be used to reimburse the recipient for activities that have already been

completed. Grants may be used to employ and train staff, contract with other units of government or private consultants, and pay other expenses related to promoting and implementing agricultural land preservation and conservation activities. The commissioner shall prepare and publish an inventory of sources of financial assistance. To the extent possible, the commissioner shall assist recipients in obtaining matching grants from other sources.

The commissioner shall also provide for technical assistance for eligible recipients. The commissioner shall provide model plans and model official controls for the preservation of land for long-term agricultural use. To the extent possible, the commissioner shall provide technical assistance through existing administrative structures. The commissioner may contract for the delivery of technical assistance by a regional development commission, a district, any state or federal agency, any political subdivision of the state or private consultants. The commissioner shall prepare and publish an inventory of sources of technical assistance, including studies, publications, agencies, and persons available.

Minnesota Conservation Fund

The Minnesota Conservation Fund is established as an account in the state treasury. County conservation fees must be deposited in the state treasury and credited one-half to the Minnesota Conservation Fund account and one-half to the general fund. Money in the fund is annually appropriated to the Commissioner of Revenue to reimburse taxing jurisdictions for credits as provided in sections 273.119 (Conservation Tax Credits) and 473H.10 (Metropolitan Ag Preserves Credit).

County Conservation Fee Account

Counties in the seven-county metropolitan area (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington) that have allowed exclusive agricultural zones to be created under Chapter 40A must impose an additional fee of \$5 per transaction on the mortgage registration tax imposed under section 287.05 and an additional \$5 on the deed tax imposed under section 287.21. One-half of the fee must be deposited in a special conservation account to be created in the county's general revenue fund and one half must be transferred to the Commissioner of Revenue for deposit into the state treasury pursuant to the provisions of the Minnesota Conservation Fund as outlined above.

Money from the county's conservation account must be spent to reimburse the county and taxing jurisdictions within the county for revenue lost under the conservation tax credit under section 273.119 or the valuation of Ag Preserves under section 473H.10. If expenditures from other county funds for the same purposes remain at least equal to the amount spent in the previous county budget year, money remaining in the account after the reimbursements are made may be spent for the following purposes:

- agricultural land preservation and conservation planning and implementation of official controls under either Chapter 40A or Chapter 473H;
- soil conservation activities and enforcement of soil loss ordinances;
- incentives for landowners who create exclusive agricultural use zones; or
- payments to municipalities within the county for the three purposes listed above.

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Money in the county's conservation account that is not encumbered within one year of deposit in the account must be transferred to the Commissioner of Revenue for deposit into the state treasury.

Interagency Cooperation

The board, districts, agency, and the Minnesota Department of Natural Resources shall cooperate with and assist the Commissioner of Agriculture in developing and implementing the agricultural land preservation and conservation awareness and assistance programs. The commissioner may enter into agreements where staff members from those agencies are loaned to the Department of Agriculture for the purpose of administering the programs.

Report

The Commissioner of Agriculture shall report to the Legislature on January 1 of each year on activities under Chapter 40A.

Land Use

Land within an Ag Preserve must be maintained for agricultural production. The average maximum density of residential structures within a preserve and the location of a new structure must conform to locally applicable plan or zoning regulations. Commercial or industrial uses are not permitted except for the following uses if issued a permit by the local government, which is responsible for enforcing this section:

- small on-farm commercial or industrial operations normally associated with and important to farming in the Ag Preserve area;
- storage use of existing (in existence on August 1, 1989) farm buildings that does not disrupt the integrity of the Ag Preserve; and
- small commercial use of existing (in existence on August 1, 1989) farm buildings for trades not disruptive to the integrity of the Agricultural Preserve such as a carpentry shop, small scale mechanics shop and similar activities that a farm operator may conduct.

If a separate parcel is created for a residential structure, commercial, or industrial use permitted above, the parcel is no longer an Ag Preserve unless the eligibility requirements are met. However, the separate parcel must remain under the maximum residential density restrictions in effect for the original preserve at the time it was placed into the preserve until the Ag Preserve status for the original parcel ends.

Transfer from Green Acres Treatment

When land that has been receiving Green Acres treatment as provided in section 273.111 becomes an Ag Preserve, the recapture of deferred tax and special assessments may not be made. Special assessments deferred under Green Acres at the date of the commencement of the Ag Preserve, must continue to be deferred for the duration of the preserve. All these deferred special assessments are payable within 90 days of the date of expiration unless other terms are mutually agreed upon by the authority and the owner. In the event of early termination of an Ag Preserve or a portion of a preserve, all special assessments accruing to the terminated portion plus interest are payable within 90 days of the date of the termination unless otherwise deferred or abated by executive order of the

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governor. In the event of an eminent domain taking, all special assessments accruing to the taken portion plus interest are payable within 90 days of the date the final certificate is filed with the appropriate court administrator.

Primary Statutory Reference: Chapter 40A

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Open Space

Introduction

Minnesota's Private Outdoor Recreational, Open Space and Park Land Tax, commonly referred to as Open Space, was originally enacted in 1969. It provides a tax deferral for property that is currently used as open space but has a highest and best use that is something other than open space, such as a commercial development or a residential housing development. For example, if a property is currently used as a golf course but would command a higher price if it were sold and converted into a residential subdivision, the golf course would likely qualify for the reduced valuation provided by the Open Space provision if all other eligibility requirements are met. The assessor would continue to value the property at its highest and best use (as a subdivision), but would also value the property at its current use (as a golf course). The difference in value would be deferred until the property is sold or is no longer used as a golf course. At that time, the owner would pay back the difference in taxes on the two values for the current year plus the prior six years.

Policy Statement

The Open Space provision in Minnesota Statutes, section 273.112, contains the following policy statement: *"The present general system of ad valorem property taxation in the state of Minnesota does not provide an equitable basis for the taxation of certain private outdoor recreational, open space and park land property and has resulted in excessive taxes on some of these lands. Therefore, it is hereby declared that the public policy of this state would be best served by equalizing tax burdens upon private outdoor, recreational, open space and park land within this state through appropriate taxing measures to encourage private development of these lands which would otherwise not occur or have to be provided by governmental authority."*

Requirements

Real estate is eligible for the reduced valuation provided under this program if it is:

- actively and exclusively devoted to golf, skiing, lawn bowling, croquet, polo, or archery or firearms range recreational use or other recreational uses carried on at the establishment;
- at least five acres or more in size, except in the case of lawn bowling, croquet greens, or archery or firearms ranges; and
- in the case of golf courses, the course must be devoted to golf without discrimination on the basis of sex during the time when the facility is open for public use or by members; except that use for golf may be restricted on the basis of sex no more frequently than one, or part of one, weekend each calendar month for each sex and no more than two, or part of two weekdays each week for each sex.

In addition, the property must be:

- operated by private individuals or, in the case of a lawn bowling or croquet green, by private individuals or corporations, and open to the public;
- operated by firms or corporations for the benefit of employees or guests; or
- operated by private clubs having a membership of 50 or more, or open to the public, provided that the club does not discriminate in membership requirements or selection on the basis of sex or marital status.

If a golf club membership allows use of golf course facilities by more than one adult per membership, the use must be equally available to all adults entitled to use the golf course under that membership. The use may be restricted on the basis of sex under certain conditions (e.g. men's days and women's days). Memberships that permit play during restricted times may be allowed only if the restricted times apply to all adults using the membership. A golf club may not offer a membership or golfing privileges to a spouse of a member that provides greater or lesser access to the golf course than is provided to that person's spouse under the same or a separate membership in that club. The terms of a membership may, however, provide that one spouse may have no right to use the golf course at any time while the other spouse may have either limited or unlimited access to the golf course.

A golf club may have or create an individual membership category which entitles a member to a reduced rate to play during restricted hours as established by the club. The club must keep a record of written requests by members for such membership.

Those golf clubs with food or beverage facilities or services must also allow equal access to those facilities and services for both men and women members in all membership categories at all times. This provision must not be misconstrued to require service or access to facilities to those who are under the legal drinking age of 21 years old.

In 1989, the Legislature directed the Department of Revenue to develop guidelines to provide assistance in interpreting and uniformly applying the eligibility requirements of private golf clubs. These guidelines are listed on the following page.

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Private Golf Club Non-Discrimination Guidelines (July 1989)

1. A private golf club may not use gender as selection criteria for membership. For example, a private golf club may not limit membership to either men or women only. A club also cannot specify that men or women may only have a social membership with no golf course access while the spouse has golfing privileges. The club may not discriminate in membership selection on the basis of sex, and each type of membership must be available to both sexes.
2. A private golf club may restrict access to the golf course on the basis of sex if the club does not do so more than the following permitted amounts: two days per week and one weekend per month, per sex. Parts of a day or parts of a weekend will count as a day or weekend for these purposes.

For example, it would be permissible for a club to restrict access to the golf course to men only on Wednesdays, Friday afternoons, and the second weekend of each month. A club could also allow golfing for women only on Tuesday and Thursday mornings and the third Saturday of each month. In this case, the combination of these restricted-access times would be allowed. Even though the total number of hours of “men only” and “women only” access times are not equal, the permitted restrictions of two days a week and one weekend per month per sex are not exceeded, so the unequal treatment is allowed.

3. When a private golf club membership allows more than one adult to use the golf course, the use must be equally available to all adults allowed to use the golf course under the membership, subject to the permitted restrictions for access to the golf course. For example, if a father and his adult daughter are allowed to use the golf course facilities under one family membership, the daughter must be allowed to golf at the same time, and just as frequently, as the father, except for the permitted restrictions. This would be true for any adults allowed to use the golf course under the joint membership. Unlike the case of a spouse, an adult child may request, in writing, a separate membership with golf course privileges which are more limited than other family members have under a separate membership.
4. If a husband and wife have either a joint membership or separate memberships, or a spouse of a member has golfing privileges in the same private golf club, they must each be allowed equal access to the golf course unless one spouse has no right to golf at any time. The restrictions on the basis of sex (two weekdays per week and one weekend per month) would still be permitted. However, beyond this allowed restriction, the access the spouses have to the golf course must be the same unless one spouse does not golf at all at that course.

Example 1 – A joint membership that allowed a wife unlimited golf course use, but only allowed her husband to golf on Wednesdays would not be allowed. The husband and wife must be able to golf at the same time as the other spouse, except for the permitted restrictions.

Example 2 – A husband and wife each have individual memberships at a private golf club. The husband may golf any time except Thursdays and the third weekend of each month, both of which are restricted to female golfers only. The wife may golf at any time since there are no “men only” days. This situation would be allowed since other than the permitted restrictions, the couple would have equal access to the golf course.

Example 3 – A husband and wife have a joint membership at a private golf club. The wife is not allowed to golf on Tuesdays, Wednesdays, or Thursdays from 10:00 am to 2:00 pm, since the course is restricted to “men only” at those times. The wife may golf at any other times. The husband may golf at anytime because there are no “women only” days. This golf club would not qualify for the preferential valuation and tax treatment of Open Space because the restricted times for men only to play go beyond the permitted restrictions. If the men only restriction was limited to two days per week, the club would meet the requirements.

Example 4 – A husband has a full membership which allows him to golf at anytime. The wife has a separate limited membership that she requested in writing which allows her to golf on Tuesdays and Thursdays only. The wife must be allowed access to the golf course which is equal to her husband's access or she must not have any access to the golf course under her membership (e.g. social membership). She may have a separate membership, but the golf course access rights under the membership must be equal to her husband's access rights, subject to the permitted restrictions, or she must not golf at all.

Example 5 – A husband and wife each have individual memberships which allow each to golf only on Mondays and Tuesdays. Although they are restricted in their golfing privileges, they have equal access, so these restricted memberships would be allowed.

5. A private golf club may offer a membership that allows use of the golf course at restricted times for a reduced fee. A request for this restricted membership must be made in writing. A restricted membership of this type cannot be used by one spouse if the other spouse had unrestricted golfing privileges.

For example, a club could offer a membership that allows golfing only on weekday mornings at a rate equal to one-fourth of the normal membership fees. However, a married couple could only take advantage of this reduced rate membership if both spouses requested the special membership in writing or if one spouse did not golf at the course at all.

Several amendments to this provision since 1986 relative to use of golf courses that seek or have obtained Open Space tax deferral seem to clearly indicate the need to eliminate discrimination against women in access to, and use of, private golf courses in Minnesota. The legislation authorizes assessors to review rules, bylaws, and practices of private golf clubs that restrict golf course use, and authorize assessors to deny the reduced valuation and corresponding tax benefits when such rules, bylaws, or practices do not comply with the statute as interpreted by these guidelines.

Special Valuation and Tax Programs

Application

Applications for Open Space deferral are prescribed by the Commissioner of Revenue. New application forms were issued to all counties in 2008. The form is also provided in the Supplemental Information Module of this manual.

Application must be made to the assessor at least 60 days prior to January 2 of each year (November 3). The assessor may require proof by affidavit or other written documentation that the property meets the eligibility requirements.

Valuation and Taxation

As described previously, assessors must provide two values for qualifying properties – the estimated market value considering the highest and best use of the property, and the reduced value based on the property's current use. Taxes are calculated on both amounts and the difference between the tax calculated on the estimated market value and the tax calculated on the taxable market value is deferred until the property is sold or is no longer eligible for Open Space deferral.

When a property ceases to qualify for Open Space deferral, the additional taxes imposed are a lien upon the property assessed to the same extent and duration as other taxes imposed upon property in the state. The taxes are to be annually extended by the county auditor and collected and distributed in the same manner as other property taxes.

This does not apply to real property that ceases to qualify because it is acquired by the State of Minnesota or a political subdivision, agency or instrumentality of the state provided that the property continues to be used for a qualifying purpose for at least five years from the date the property was acquired.

When property no longer qualifies for the deferment because of a failure to comply with prohibitions against discrimination on the basis of sex, payment of additional taxes imposed by this section is not required.

Continuation upon Transfer

When property that is valued and assessed under the Open Space provision is transferred, no additional taxes are to be extended against the property if the property continues to qualify and the buyer files an application for the continuation of Open Space with the assessor within 30 days.

Primary Statutory Reference: 273.112

Contamination Tax

Introduction

In May 2008, the Department of Revenue issued a new bulletin and forms for assessors to use in administering the Contamination Tax program. That information is repeated here. County assessors, auditors and treasurers each have specific functions in administering the contamination tax. Proper administration of the tax requires a coordinated effort of many stakeholders: property owners, county officials, boards of appeal and equalization, the Minnesota Department of Revenue and the Minnesota Pollution Control Agency, among others.

History of the Contamination Tax

The statutory authority for the contamination tax is found in Minnesota Statutes, sections 270.91 through 270.98. The tax is annually imposed on the contaminated value of taxable real property. It was enacted in 1994 in response to property owner appeals for reduced valuation due to contamination.

It is also a direct result of a specific court decision, *Westling v. County of Mille Lacs* (512 N.W.2d 863, Minn. 1994). Through a series of petitions and appeals in this case, the valuation of the contaminated property was affirmed by the Minnesota Supreme Court to be \$0 because of the stigma attached to the property and the enormous clean-up costs. At the same time the appeal was taking place, the Legislature established the contamination tax to tax the “contamination value” of a parcel of real property. The constitutionality of the tax was challenged in court but the Minnesota Supreme Court ultimately found it to be constitutional.

Unlike other ad valorem taxes, the contamination tax is a combination of regulation and taxation in an attempt to achieve an environmental policy. It is also an attempt to acknowledge how the most basic principles of ad valorem taxation can unintentionally reward property owners of contaminated property and act as a disincentive to clean up contamination. The property's value would correctly be reduced to reflect its marketability (and would likely result in lower property taxes) because of the contamination. The longer the property remained contaminated, the greater the property tax savings. The contamination tax, based on that lost value due to contamination, provides a mechanism for collecting tax on this contaminated value.

The contamination tax is designed to act as an incentive for property owners to clean up contaminated properties. It is expected to first change property owners' behaviors. Given that the tax is based on the “lost value” due to the presence of contamination, it is also seen as a way to capture the taxes due on this lost value and to use that revenue to fund pollution clean-up grants. Some of the collected tax is statutorily directed to a contaminated site clean-up and development account in the state's general fund.

Since its enactment in 1994, the contamination tax has seen limited statewide application. There have never been more than nine counties distributing contamination tax to the state in any year.

Special Valuation and Tax Programs

This level of collection does not reflect current and historical data on the prevalence of contaminated property throughout the state. The following chart provides more information regarding county payment of contamination taxes to the state.

State of Minnesota Contamination Tax Collection History				
Payable Year	Number of Counties Making Payment to the State	Number of Parcels Paying the Contamination Tax	Total Net Tax Capacity for Contamination Value	Amount of Payment to the State
1995	5	80	\$ 1,591,086	\$ 246,900
1996	6	110	\$ 1,452,374	\$ 298,500
1997	6	114	\$ 1,350,606	\$ 298,900
1998	6	127	\$ 1,024,647	\$ 247,400
1999	6	110	\$ 830,387	\$ 162,700
2000	7	101	\$ 808,189	\$ 181,900
2001	8	84	\$ 803,702	\$ 155,600
2002	8	79	\$ 399,335	\$ 38,700
2003	9	105	\$ 595,539	\$ 203,000
2004	8	83	\$ 547,415	\$ 171,900
2005	9	90	\$ 554,233	\$ 116,600
2006	8	N/A	\$ 623,461	\$ 128,500

Current Analysis of the Contamination Tax

As evidenced above, the historical collections information for the contamination tax shows a large discrepancy in the amount collected when compared to the number and the prevalence of contaminated parcels as reported by the Minnesota Pollution Control Agency (PCA). The number of parcels, as reported by counties that are paying contamination tax, has hovered around 80 to 130 throughout each of the 12 years of the program. However, there are currently just over 100 federal or state Superfund sites alone that are listed as active in Minnesota. Superfund sites are properties where there is significant known or suspected contamination. There are thousands of other contaminated properties that are listed as active in the PCA's online database.

Another concern for the Department of Revenue is the limited number of counties that have participated in collecting the contamination tax throughout its history. Other data from the PCA shows that about 66 counties have at least one contaminated site as of July 2007, but only eight counties collected any contamination tax for 2006. Some, if not most, of these sites may not meet the minimum threshold to initiate the tax, but better documentation seems necessary to ensure all counties are actively administering the program.

It is highly doubtful that Minnesota counties are purposefully not collecting the contamination tax. Rather, there is probably a lack of education and resources available to successfully administer the program. The Department of Revenue's goal is to make sure every taxpayer pays the right amount – no more, no less. Assessors throughout the state have consistently shared in this goal and have worked for uniform treatment of all taxpayers across the state. The Contamination Tax program is a good example of how the department and county officials can work on together to improve the property tax system in Minnesota.

To ensure equalization and consistency statewide, the department has determined that counties need to be provided more education on the contamination tax and be given sufficient tools to fully administer the tax. Counties appear to need more guidance in managing the process of assessing contaminated properties, as well as with calculating, collecting, and distributing the tax. The department will need to actively work to provide more information to ensure all counties can confidently manage the Contamination Tax program.

Contamination Tax Administration

The Department of Revenue dedicated significant time to the contamination tax to improve reporting. To aid assessors in consistent application of the program, several components and processes of the tax have been updated or changed. However, the statutory provisions for establishing contaminated values, collecting the tax, and distributing the taxes have not changed. These processes provide the foundation for the administration of the contamination tax.

The following is a very rudimentary listing of the process:

1. Assessor establishes any applicable contamination value as appropriate for each assessment.
2. Assessor provides notice to taxpayer, determines contamination tax rate and notifies auditor.
3. Auditor records information and provides contamination tax information for treasurer.
4. Treasurer collects contamination tax with regular tax collection.
5. Treasurer distributes collected taxes (including contamination taxes) as required by statute.
6. Treasurer and assessor complete Contamination Tax Return form and schedule twice each year.
7. The form and schedule are submitted to the state as directed in the instructions.

These steps will be discussed in significant detail on the following pages to provide county officials with the necessary tools and information to uniformly and consistently administer the contamination tax.

The contamination tax amounts due to the state, as provided for in statute and listed on the return form, will still be paid to the Special Taxes Division of the department. The payments will be made through each county's Electronic Funds Transfer (EFT) account by the deadlines established in statute for distribution of taxes. For first-half taxes, payment is due on or before the 60th day after the final May settlement date (approximately the third week in July). The deadline for second-half taxes is late January of each year. The Contamination Tax Return is updated each year to reflect the current tax payment dates. If there are any questions, contact the Special taxes Division or consult the website.

The Contamination Tax Return form has been redesigned and is more current and user-friendly. Each county must complete and return the form even if there were no contamination taxes in the county for that payable year. The forms can be completed electronically or printed out and mailed to the department. There are three sections to the form and a separate schedule for a total of two pages. The form is described in more detail in a following section.

Special Valuation and Tax Programs

Since it is considered a “property-related tax” rather than a “property tax,” the contamination tax is not eligible for the property tax refund. The tax amount is not listed on Truth-in-Taxation notices, but the Truth-in-Taxation notice for a property with a contamination tax amount must contain a statement that the proposed and final taxes do not include the contamination taxes imposed on the property.

The contamination tax amount is listed on tax statements in the special assessment section. Tax due as a result of contamination is collected in the same manner (and is subject to the same penalty, interest, lien, forfeiture and other collection provisions) as other property taxes.

County Assessor Functions

The assessor is assigned the task of locating contaminated property and determining the contaminated value for any property within the county. There are many possible avenues for gathering this information and establishing the contaminated values. County assessors are advised to review the materials from their PACE courses for more direction. This section will also provide additional information in locating contaminated parcels and establishing contamination values.

The assessor has the responsibility of locating any contaminated property within the county. The Minnesota Pollution Control Agency (PCA) is an initial resource for trying to identify potential Contamination Tax-eligible parcels. The PCA website, www.pca.state.mn.us, has a database that allows users to search by geographical area (city/township, address, zip code, etc.). Other resources would include the Minnesota Department of Agriculture or other professionals in the county (County Environmental Services Departments or other government officials).

A contamination value can be established in a variety of ways. A court, board of review, or a petition by the property owner can result in a reduced market value due to the presence of contamination and the addition of a contamination value. The contaminated value, as ordered by the court or board of review, will be used to calculate the contamination tax.

The assessor can apply a reduction in market value if it is based on the presence of contaminants and is determined by an appraisal method that is intended to account for the impact of the contaminants on the property’s market valuation. The Tax Court has determined in previous opinions that a modified traditional approach to value (cost, income, market) that accounts for and supports deductions for stigma and the cost to cure contaminated parcels is acceptable.

The reduction in value may be for the actual contamination on the parcel and for the loss of value due to the stigma associated with the contamination. The reduction must be at least \$10,000 per contamination tax rate (100%, 25%, 50%, or 12.5%) or the contamination value for that contamination will be zero. This means a property could be generating several contamination tax amounts, based on contaminant and responsibility. A contamination value can never exceed the cost of implementing a reasonable response action plan (meaning the cost to cure).

Special Valuation and Tax Programs

There does not appear to be any termination of the contamination tax if a parcel has no approved response action plan and is not cleaned up. However, once the plan is completed, as determined by the PCA or Department of Agriculture, the contamination value is removed for the next assessment. At this time, the assessor will also need to review the parcel's market value and revalue the parcel accordingly. The parcel cannot be subject to the contamination tax once the action plan is completed even if there is still a reduced market value due to stigma. In this case, the property will still receive a reduced market value if it is supported by the assessor's data.

The assessor should be aware of different provisions of the contamination tax if the contaminant is asbestos. In certain circumstances, different tax rates may apply. Similarly, a property is exempt from contamination tax if the property owner is implementing a proactive in-place asbestos management program consistent with the rules, requirements, and formal policies of the United States Environmental Protection Agency. In this case, the property could still receive a reduced market value if it is supported by the assessor's market data.

After identifying the contaminated parcels and establishing the values, the assessor must then notify the taxpayer of his/her findings. Minnesota statutes require notice of the contamination value to the property owner by the later of June 1 of the assessment year or 30 days after the reduction in the market value is finally granted by a court, by a board of review, or by the assessor. In most cases, the assessor will have contact with the property owner throughout the identification and valuation phases, but this will serve as formal notice and will provide the taxpayer with the opportunity to share relevant information.

At this point, the assessor determines the appropriate contamination tax rate(s). The rate is based on responsibility for the contamination and the progress toward clean-up. The default rate is 100% and applies when there is no clean-up or approved clean-up plan and the taxpayer is responsible for the contamination. If the property owner does not supply the required documents to the assessor to qualify for a lower rate, the assessor shall use the 100% rate. It is the property owner's responsibility to provide this information. Any information provided must either be approved by other governmental agencies or be from acceptable pollution remediation experts/consultants.

Clean-Up Status	Tax Rate Applied to Contaminated Value <i>Contaminated Value must be at least \$10,000</i>	
	Responsible Party	Non-Responsible Party
No clean-up; No clean-up plan	100%	25%
Clean-up plan approved; Contaminants are asbestos and the owner has an abatement plan in place	50%	12.5%
Clean-up done	No Contamination Tax	No Contamination Tax

Special Valuation and Tax Programs

The determination of the contamination tax rate can get more complicated. For example, if more than one form of contamination is involved, and the property owner is a responsible party for one form of contamination but not others, there could be multiple rates. If there is a response action or clean-up plan for only one of the contaminants, there could also be more than one rate.

The assessor would need to determine if separate market value reductions are necessary in these situations – meaning each contaminant requires an individual value reduction. If so, each must meet the \$10,000 minimum value reduction and would then be assigned a tax rate. If not, the entire market value reduction, no matter how many contaminants, would receive the highest contamination tax rate that can be determined. The following examples all assume that separate value reductions for each contaminant are not necessary:

- If the owner is responsible for at least one of the contaminants and there is not an approved clean-up plan for all of the contaminants, the rate is 100%.
- If the owner is responsible for at least one of the contaminants and there is an approved clean-up plan for all of the contaminants, the rate is 50%.
- If the owner is not responsible for any of the contaminants and there is not an approved clean-up plan for all of the contaminants, the rate is 25%.
- If the owner is not responsible for any of the contaminants and there is an approved clean-up plan for all of the contaminants, the rate is 12.5%.

Finally, the assessor is required to notify the county auditor of the following information by each separate contamination tax rate for each parcel: contamination value, property class, and class rate percentage. This information is in addition to the traditional information reported for ad valorem taxes. The contamination market value and contamination net tax capacity data are reported on the Abstract of Assessment of Real and Personal Property as well.

While the Contamination Tax Return forms are being completed, the assessor will also be expected to review the accompanying schedule to ensure all parcels with a contamination value are listed. The forms will be completed in conjunction with the county treasurer. The county assessor will need to sign the printed version of the form to acknowledge his/her involvement. The signed version will be mailed or faxed to the Department of Revenue and an electronic version (not signed) will be emailed, according to the form's instructions.

County Auditor Functions

The auditor will calculate the contamination tax based on the information provided by the assessor. The tax is calculated by multiplying the appropriate contamination tax rate by the difference between the net tax capacity (NTC) (in most cases, the taxable market value times the classification rate) for the property as if it was not contaminated and the NTC (in most cases, the taxable market value times the classification rate) for the property for regular ad valorem property tax purposes. Stated another way, the contamination tax amount is equal to the product of multiplying the contamination tax rate by the difference between the NTC of the property as if it were not contaminated and the NTC of the property after the value has been reduced due to the contamination.

Special Valuation and Tax Programs

The following is the formula:

$\text{Contamination Tax Amount} = \text{Contamination Tax Rate} \times \left(\begin{array}{c} \text{NTC} \\ \text{(as if not} \\ \text{contaminated)} \end{array} - \begin{array}{c} \text{NTC} \\ \text{(after reduced for} \\ \text{contamination)} \end{array} \right)$

The NTCs are based on taxable market values and are after all other applicable reductions (Green Acres deferment, Open Space deferment, Limited Market Value reduction, This Old House exclusion, Plat Law exclusion, etc).

This calculation will be completed for each parcel with a market value reduction large enough to result in a contamination value. It will also need to be completed for each contamination value if different contamination tax rates (due to different responsible parties or different levels of clean up, for example) exist. The total contamination tax amount would be the sum of these individual calculations. The amount distributed to the state or to the local jurisdictions will be totaled based on statutory requirements, and the Contamination Tax Return forms will assist in this computation.

The parcel's regular ad valorem property taxes will continue to be calculated and collected as usual. In theory, the above formula of utilizing NTCs ensures that one of the main purposes of the contamination tax, collecting tax on the lost value, is fulfilled. The lost NTC for the contaminated parcel is captured by determining the difference between the two NTCs (one reflecting no contamination and the other reflecting the reduction) and multiplying that by the appropriate contamination tax rate.

Some counties have indicated that a simplified computation of multiplying a parcel's classification rate times the contamination tax rate times the contamination value is a more direct method. While in many, if not all, exercises this will result in the correct contamination tax amount, the department is of the opinion that the methodology described above (utilizing NTC differences) is more aligned with the statutes and acknowledges all possible scenarios. It ensures all reductions are accounted for and that all class rate tiers are correctly applied. It also allows for statewide uniformity.

In addition to calculating the contamination tax, the auditor will need to prepare the parcel-specific notices for the affected properties including any specific language as required by statute. For example, the Truth-in-Taxation notices for these parcels must acknowledge that there is a contamination tax, but the contamination tax amount is not included on the notice.

The auditor will also become involved when contamination taxes are not paid on time. Similar to other property tax, the contamination tax is subject to the same penalty, interest, lien, forfeiture, and other collection provisions. If a property is tax-forfeited due to the nonpayment of delinquent contamination taxes, the state receives 95% of the proceeds of the sale if the property had an approved response action plan in place. Minnesota Statutes 282.08, which provides for the apportioning of money from forfeited sales, does not apply to contamination taxes when there is an approved response action plan.

Special Valuation and Tax Programs

Finally, the auditor is required to report net tax capacity data, contamination tax data, and number of contaminated parcels by the four different contamination tax rates on the Abstract of Tax Lists. This information is in addition to the traditional information reported on the abstract.

The Department of Revenue produces the “Auditor/Treasurer Manual for Property Tax Administration.” This document has significant information regarding the contamination tax and should be consulted for additional clarification. The department’s website also has information under the Property Tax Administrators link for Auditors/Treasurers. A following section in this bulletin will illustrate the calculation process with specific examples.

County Treasurer Functions

The county treasurer prepares the property tax statements for the affected property owners, including the listing for the contamination tax and the amount of the tax. After the contamination tax amounts have been paid, they must be distributed according to statute.

- Contamination tax collected at the 100% or 25% rates (properties with no clean-up or no clean-up plan) is distributed to the local taxing districts in the same manner and at the same time as other property taxes are distributed.
- Contamination tax collected at the 50% or 12.5% rates (properties with an approved cleanup plan) is paid to the Commissioner of Revenue. Of this tax amount, 5% is retained by the county to offset Contamination Tax program administration expenses; the remaining 95% is transmitted to the state at the same time as provided for property tax distributions under Minnesota Statutes, sections 276.11 and 276.111.

County treasurers will also complete the Contamination Tax Return form and corresponding schedule twice each year to report the collection of first- and second-half tax payments. The deadlines for completion are as provided by statute. For first-half taxes, payment is due on or before the 60th day after the final May settlement date (approximately the third week in July). The deadline for second-half taxes is late January of each year.

The form is designed to be primarily completed by the treasurer and verified by the assessor. The treasurer will need to ensure the correct amount of contamination tax is listed for each parcel on the schedule and then complete the return form. This form should be considered the summary for all contamination tax collections for the county. Both the county treasurer and county assessor will need to sign the form prior to submittal to the state. The signed version will be mailed or faxed to the Department of Revenue and an electronic version (not signed) will be emailed, according to the form’s instructions.

The Department of Revenue produces the “Auditor/Treasurer Manual for Property Tax Administration.” This document has significant information regarding the contamination tax and should be consulted for additional clarification. The department’s website also has information under the Property Tax Administrators link for Auditors/Treasurers. A following section in this bulletin will describe the Contamination Tax Reporting and Payment Form and corresponding schedules in more detail.

Contaminated Parcel Tax Calculation

To ensure complete and accurate calculation of the contamination tax amount, the department advises determining and utilizing net tax capacity values as demonstrated below and in “Appendix A”. This methodology takes into account the preferential class rates, split classification, fractional ownerships, limited market values, This Old House, and all other special provisions that impact the determination of the net tax capacities and would therefore impact the calculation of the contamination tax amounts. The following demonstrates the entire process, from valuation to resulting contamination tax amount. Note that this process assumes just one contamination amount – it would be repeated as required to calculate the contamination tax for different responsibility levels or contaminations, provided they each reach the \$10,000 minimum value loss threshold.

Market Valuation

1. **Estimate market value irrespective of any pollution or contamination.** Assume the property is not contaminated or polluted, and value it using traditionally-accepted appraisal methodology.
2. **Estimate the loss of value due to the pollution or contamination.** Each loss must be at least \$10,000 to generate a contamination tax amount. If this minimum is not reached, the property's market value will still be reduced, but it will not generate the contamination tax.
3. **Subtract the loss of value from the uncontaminated estimated market value.** This difference is the estimated market value for regular property tax purposes.
4. **Determine/calculate any deferments, exclusions, or reductions to estimated market value.** This includes (but not limited to) the following, if applicable:
 - a. Green Acres or Open Space Deferment
 - b. Limited Market Value reduction
 - c. Platted vacant land exclusion
 - d. “This Old House” or “This Old Business”
5. **Subtract these from the estimated market value for property tax purposes;** the result is the taxable market value for regular property tax purposes.

Net Tax Capacities

6. **Calculate a net tax capacity to be used for regular property tax purposes** by multiplying the property class rate by the taxable market value for regular property tax purposes.
7. **Add the loss of value due to the pollution or contamination to the taxable market value for regular property tax purposes.** This value is the contaminated taxable market value. Remember, if the loss is less than \$10,000, there is no contamination tax to calculate.
8. **Calculate a contaminated net tax capacity.** This amount is the contaminated taxable market value multiplied by the property class rate. The contaminated net tax capacity should be greater than the regular property tax net tax capacity.

Special Valuation and Tax Programs

9. **Subtract the regular property tax net tax capacity from the contaminated net tax capacity.** This difference is the net tax capacity to be used for calculating the contamination tax amount.

Contamination Tax

10. **Multiply the resulting difference in net tax capacities by the appropriate contamination tax rate** (100%, 25%, 50%, or 12.5%). This amount is the contamination tax for the parcel. If there are several contamination tax calculations (due to multiple responsibility or contaminants), the individual contamination tax amounts would be summed to be reported as the contamination tax for the parcel.

Three worksheet examples are included in Appendix A to illustrate specific examples of the calculation of the contamination tax. They have been updated since their inclusion in the recently completed PACE courses for assessors to better illustrate the calculation process.

Contamination Tax Return

The Contamination Tax Return form will be distributed to all counties by early summer of each year. They are to be used to report any contamination tax collected from taxes payable in that year (which are the result of contamination values established in the previous year). Each county is expected to complete and return the form and schedule as instructed on the form. The county treasurer will submit the forms twice each year to correspond with tax collection and distribution, even if there are no parcels generating a contamination tax.

These forms were designed to be completed by the county treasurer and verified by the county assessor. The first page provides summary information for the entire county. The second page (the schedule) provides for listing each parcel, its contamination tax rate and its corresponding contamination tax. This page may have no parcels listed on it if there are no parcels with a contamination tax. All pages must still be completed and submitted.

The Contamination Tax Return form and schedule were designed to be as user-friendly as possible. It may be completed electronically as it is a “fill-in PDF.” The user can click on each field to enter information. The PDF versions of the form and schedule may be printed out and then completed. If completed electronically, the form and schedules must be printed before being signed and submitted to the state via mail or fax. They would also be submitted via email (without signatures).

There are three sections to the Contamination Tax Return form and a separate schedule for a total of two pages. If more space is needed to list all contaminated parcels, the schedule can be expanded. All pages must be completed and submitted. The following is an introduction to the form and schedule. The final version of these documents should very closely match what is presented here.

Special Valuation and Tax Programs

Section One: Contact and General Information

MINNESOTA • REVENUE CN1

Contamination Tax Return

Assessment for Taxes Payable _____
(year) (year)

County Treasurer: Use Form CN1 to report all contamination tax collected by the county and to determine and pay the state's share. Report parcels paying the contamination tax on Schedule A.

Print or type	County _____	Minnesota tax ID number _____	
	Address _____	Contact person _____	Phone number _____
	City _____	State MN	Zip code _____
	Contact email _____		

Reporting period (check one): First half taxes Second half taxes

This section includes general contact information and is self-explanatory. There are fields to list both the assessment year the contamination values were estimated and the resulting payable year for those taxes. The Minnesota ID field is for the county's seven-digit identification number used when submitting electronic payments to the state. Note the checkboxes for either first or second half taxes. Since the contamination tax will be collected twice each year, this form and schedule will be submitted twice – but the second filing should be rather simple and just an update of the first filing.

Section Two: Tax Collections and Disbursements Summary

		Column A Number of parcels	Column B Total tax collected <small>(round to nearest dollar)</small>
Reporting parcels and tax	For each of the following tax rates, enter the number of parcels in column A and the tax collected in column B		
	1 100 percent rate	1	_____
	2 25 percent rate	2	_____
	3 50 percent rate	3	_____
	4 12.5 percent rate	4	_____
Determining tax	Determining the state's share of the tax collected on lines 3 and 4		
	5 Total tax collected at 50 percent and 12.5 percent rates <small>(add line 3, column B, and line 4, column B)</small>	5	_____
	6 Counties are allowed to retain 5 percent of the tax collected for administering the tax	6	.95
	7 Total contamination tax due to the state <small>(multiply line 5 by line 6)</small>	7	_____

All payments must be paid electronically (see instructions)

This section summarizes all collection and disbursement activities for the contamination tax for the county during the filing period (first or second half taxes).

- The first two rows (100% and 25%) reflect contamination taxes collected and distributed to local taxing jurisdictions, as provided in statute.
- The next set of two rows (50% and 12.5%) reflects contamination taxes collected and due to the state. Note, these two rows are totaled and then reduced by 5% (the amount the county is allowed to retain to reduce the costs for local administration of the contamination tax).
- The number of parcels and total tax amounts for each contamination tax rate should match the schedule as submitted with the form.

Special Valuation and Tax Programs

Section Three: Record and Signatures

Sign here	County Treasurer's signature	Printed name	Date
	County Assessor's signature	Printed name	Date
<p>Email, fax or mail a signed copy of Form CN1 and Schedules A to:</p> <p>Email: michael.stalberger@state.mn.us Fax: 651-556-3128 Mail: Property Tax Division — Contamination Tax, Mail Station 3340, St. Paul, MN 55146-3340</p> <p>Phone: 651-556-6071. TTY: Call 711 for Minnesota Relay.</p>			

Signatures are required by the county treasurer (or designee) and county assessor (or designee) to verify each office's participation in the contamination tax collection and distribution process.

The relevant contact information is provided on the bottom of this form, including the email address for submitting an electronically-completed form and schedule, a phone number for any additional questions, and the mailing address or fax number for submitting signed copies of the form and schedule.

Schedule: Table for reporting parcels paying the Contamination Tax

DRAFT - 4/10/08		CNC1 page 2		
Schedule A		Page _____ of _____		
Report Parcels Paying Contamination Tax in 2008				
<p>County Assessors and Treasurers: Use this schedule to report parcels paying the contamination tax. If no tax was collected, enter "none." Complete separate sheets, if needed. Attach all schedules to Form CN1.</p>				
County	Minnesota tax ID number	Reporting period:		
		<input type="checkbox"/> First half taxes <input type="checkbox"/> Second half taxes		
Parcel identification number (Ex: R32.2232.223)	Contamination tax collected at the:			
	100% rate	25% rate	50% rate	12.5% rate

The schedule can be either manually input or completed by directly typing into the PDF file. The additional pages to the schedules may be completed to accommodate the number of parcels.

Please provide a total amount of tax collected on the last row for the schedule(s). This amount will correspond with what is listed on the return form. If there are no parcels for the contamination tax being reported on the schedule, please type "NONE" in the table as the schedule must still be submitted.

After completing the schedule and ensuring it corresponds with the Contamination Tax Return form, all pages must be printed and signed. The signed copy must be submitted to the state via fax or mail as provided on the form. In addition to faxing or mailing, if the form and schedules are completed electronically, they should also be emailed (without signatures) to the email address as listed.

The entire Contamination Tax Return form and schedule in its draft version have been included in Appendix B. It is not expected that the final version of these documents will change significantly, and any changes will be acknowledged. They are included here so you may become more comfortable with them or address any questions in advance.

Future Considerations

This process has added some additional reporting and administrative requirements for counties, but the department feels these tasks should take minimal time and may actually assist each county in administering the program. These benefits may include:

- The Contamination Tax Return form provides a county-level summary of the contamination tax and clearly reports tax payment amounts for each contamination tax rate.
- The required schedule, since reviewed by the assessor and treasurer, will ensure no parcels are mistakenly avoiding the contamination tax. They will also provide a historical record for counties to use to review the parcels for the following assessments.

The data will also allow the state to conduct more analyses and provide the legislature and other interested parties with reliable information for use in making changes and improvements to the contamination tax.

Summary

The elements contained here should serve as a resource tool for county tax professionals in regard to the Contamination Tax program. It provides useful and detailed information for county assessors, auditors, and treasurers with the anticipation of more uniform administration of the program. It lists new administration guidelines, policies and procedures for the contamination tax.

It provides county assessors, county auditors, and county treasurers – as tax administrators – with function-specific instructions to complete their respective tasks for the contamination tax. It provides specific direction for each county office that will be directly involved in the determination, collection, and reporting of the contamination taxes. Beyond individual tasks, the administration of the Contamination Tax program does require the coordinated effort of many stakeholders. The bulletin also provides specific instructions for the calculation of the contamination tax and for the completion of the newly-created Contamination Tax Return form.

All counties have been expected to adhere to these directives starting with reporting contamination tax amounts payable in 2008 (based on the 2007 assessment) even though there may have been limited or no contamination tax collections throughout the state.

If you need additional information regarding the Contamination Tax program after reading this bulletin, please contact the Department of Revenue's Contamination Tax program representative, Michael Stalberger, via email at michael.stalberger@state.mn.us or via phone (651) 556-6071.

Special Valuation and Tax Programs

Related Internet Resources:

Contamination Tax Statutes	www.revisor.leg.state.mn.us/statutes/?id=270.91
Minnesota Pollution Control Agency	www.pca.state.mn.us
Minnesota Department of Agriculture	www.mda.state.mn.us

Assessor Administration Contamination Tax Website:

http://taxes.state.mn.us/taxes/property_tax_administrators/other_supporting_content/contamination_tax_main.shtml

Auditor/Treasurer Administration Manual

http://taxes.state.mn.us/taxes/property_tax_administrators/other_supporting_content/atmanual.shtml

Auditor/Treasurer Administration Contamination Tax Website

http://taxes.state.mn.us/taxes/property_tax_administrators/other_supporting_content/contamination_tax_main.shtml

Special Valuation and Tax Programs

Appendix A:
Example 1- Parcel of Class 3a Commercial Property with Single Value Reduction for Contamination for Taxes Payable in 2007

The value of the parcel of property has been estimated by the assessor to be \$900,000. The loss in value due to the presence of contaminants is estimated by the Tax Court to be \$750,000. The owner of the property is the party responsible for the contamination and has an approved cleanup plan. Your task: Calculate the Contamination Tax.

Market Valuation	
1. Estimate the Market Value (EMV without contaminants)	\$900,000
2. MINUS the Estimated Loss of Value due to Contamination	\$750,000
3. EQUALS the EMV for Regular Property Tax Purposes (line 1 – line 2)	\$150,000
4. MINUS any Plat Law Deferment	\$0
MINUS any Green Acres Deferment	\$0
MINUS any Open Space Deferment	\$0
MINUS and Limited Market Value Reduction	\$0
MINUS any This Old House / This Old Business Exclusion	\$0
MINUS any Disabled Veterans Exclusion	\$0
5. EQUALS the Taxable Market Value (TMV) for Regular Property Tax Purposes	\$150,000
Net Tax Capacity Calculations	
6. CALCULATE the Net Tax Capacity (NTC)* for Regular Property Tax Purposes First \$150,000 @ 1.5% (\$150,000 x .015)	\$2,250
7. ADD the Loss of Value (line 2) to the TMV (line 5) to determine the Contaminated TMV	\$900,000
8. CALCULATE the Contaminated Net Tax Capacity (NTC)** First \$150,000 @ 1.5% (\$150,000 x .015) Over \$150,000 @ 2% (\$750,000 x .02)	\$17,250
9. SUBTRACT Contaminated NTC (line 8) from Regular NTC (line 6)	\$15,000
Contamination Tax	
Determine Contamination Tax Rate (approved cleanup plan/responsible party)	50%
10. CALCULATE the Contamination Tax (line 9 x Contamination Tax Rate)	\$7,500

*1st \$150,000 TMV (line 6) @ 1.5%, remainder @ 2.0% based on classification rates.

**1st \$150,000 market value (line 8) @ 1.5%, remainder @ 2.0% based on classification rates.

Special Valuation and Tax Programs

*1st \$150,000 TMV (line 6) @ 1.5%, remainder @ 2.0% based on classification rates

**1st \$150,000 market value (line 8) @ 1.5%, remainder @ 2.0% based on classification rates

***The 80% factor is the portion of the total contamination value loss that will pay at the "not responsible" rate of 25%

****The 20% factor is the portion of the total contamination value loss that will pay at the responsible" rate of 100%

Special Valuation and Tax Programs

Appendix A:

Example 3- Parcel of Class 3a Commercial Property with Separate Value Reductions for Contamination (one is less than \$10,000) for Taxes Payable in 2007

The value of the parcel of property has been estimated by the assessor to be \$900,000. The total loss in value due to the presence of contaminants is estimated by the Tax Court to be \$750,000. The owner is not responsible for \$741,000 of the contamination and so far has no cleanup plan in place. The owner is responsible for \$9,000 in contamination and has no cleanup plan in place. Your task: Calculate the Contamination Tax.

Market Valuation

1.	Estimate the Market Value (EMV without contaminants)	\$900,000
2.	MINUS the Estimated Loss of Value due to Contamination	
	(a) "Not Responsible" portion (98.8%) of Contamination	\$741,000
	(b) "Responsible" portion (1.2%) of Contamination	
	No contamination tax since the amount is under \$10,000	\$9,000
	(c) Total (a + b)	\$750,000
3.	EQUALS the EMV for Regular Property Tax Purposes (line 1 – line 2(c))	\$150,000
4.	MINUS any Plat Law Deferment	\$0
	MINUS any Green Acres Deferment	\$0
	MINUS any Open Space Deferment	\$0
	MINUS any Limited Market Value Reduction	\$0
	MINUS any This Old House / This Old Business Exclusion	\$0
	MINUS any Disabled Veterans Exclusion	\$0
5.	EQUALS the Taxable Market Value (TMV) for Regular Property Tax Purposes	\$150,000

Net Tax Capacity Calculations

6.	CALCULATE the Net Tax Capacity (NTC)* for Regular Property Tax Purposes	
	First \$150,000 @ 1.5% (\$150,000 x .015)	\$2,250
7.	ADD the Loss of Value (line 2(a) only**) to the TMV (line 5) to determine the Contaminated TMV	\$891,000
8.	CALCULATE the Contaminated Net Tax Capacity (NTC)***	
	First \$150,000 @ 1.5% (\$150,000 x .015)	\$2,250
	Over \$150,000 @ 2% (\$741,000 x .02)	\$14,820
		\$17,070
9.	SUBTRACT Contaminated NTC (line 8) from Regular NTC (line 6)	\$14,820

Contamination Tax

Determine Contamination Tax Rates

No clean up/non-responsible party 25%

10.	CALCULATE the Contamination Tax (line 9 x Contamination Tax Rate)	\$3,705
-----	-------------------------------------------------------------------	---------

*1st \$150,000 TMV (line 6) @ 1.5%, remainder @ 2.0% based on classification rates

Special Valuation and Tax Programs

**Under the \$10,000 minimum value reduction provision, the \$9,000 contamination value loss that the owner is responsible for is excluded from the contaminated taxable market value total.

*** First \$150,000 of MV (line 8) @ 1.5%, remainder @ 2.0% based on classification rates

Special Valuation and Tax Programs

Appendix B:
Contamination Tax Return Form

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DRAFT - 4/10/08

CN1

Contamination Tax Return

Assessment for Taxes Payable _____
(year) (year)

County Treasurer: Use Form CN1 to report all contamination tax collected by the county and to determine and pay the state's share. Report parcels paying the contamination tax on Schedule A.

Print or type	County	Minnesota tax ID number		
	Address	Contact person	Phone number	
	City	State MN	Zip code	Contact email

Reporting period (check one): First half taxes Second half taxes

For each of the following tax rates, enter the number of parcels in column A and the tax collected in column B

	Column A Number of parcels	Column B Total tax collected (round to nearest dollar)
1 100 percent rate	1	
2 25 percent rate	2	
3 50 percent rate	3	
4 12.5 percent rate	4	

Determining the state's share of the tax collected on lines 3 and 4

5 Total tax collected at 50 percent and 12.5 percent rates (add line 3, column B, and line 4, column B)	5	
6 Counties are allowed to retain 5 percent of the tax collected for administering the tax	6	.95
7 Total contamination tax due to the state (multiply line 5 by line 6)	7	

Sign here	County Treasurer's signature	Printed name	Date
	County Assessor's signature	Printed name	Date

Email, fax or mail a signed copy of Form CN1 and Schedules A to:

Email: michael.stalberger@state.mn.us

Fax: 651-556-3128

Mail: Property Tax Division — Contamination Tax, Mail Station 3340, St. Paul, MN 55146-3340

Phone: 651-556-6071. TTY: Call 711 for Minnesota Relay.

Disabled Veterans Homestead Market Value Exclusion

Introduction

In 2008, the Minnesota Legislature enacted a market value exclusion for honorably discharged veterans with service-connected disabilities. This is not a property tax exemption and it is not a tax forgiveness program. Rather, it lowers property tax liability by subtracting the amount of the exclusion from the assessor's estimated market value to arrive at a lower taxable market value. This calculation will be shown later in this section.

This program provides two different levels of market value exclusions:

- for veterans with 70 percent to 100 percent service-connected disability, the market value exclusion is up to \$150,000 on homestead property; or
- for veterans with total (100 percent) and permanent service-connected disability or with permanent individual unemployability, the market value exclusion is up to \$300,000 on homestead property.

The Department of Revenue has developed and distributed applications for both levels of exclusion and distributed them to all counties. They have also been included in the Supplemental Information module (Module 9) of this manual.

Qualifications

To qualify, a veteran must have been honorably discharged from the United States armed forces and must be certified by the United States Veterans Administration as having a service-connected disability of 70 percent or more. Veterans may supply a United States Government Form DD214 or use other documentation to verify discharge status and service-connected disability. In addition the Veterans Administration has also made available to qualifying veterans letters confirming both honorable discharge and disability status. These forms or letters must be supplied with the completed application to county assessors.

Veterans with 70 percent or More Disability

Veterans with 70 percent or more service-connected disability must reapply annually to the assessor for the \$150,000 market value exclusion. Applications are due July 1 of each assessment year to be eligible for taxes payable the following year. For example, if a qualifying veteran applies by July 1, 2010 and is approved for the exclusion, it would affect taxes payable in 2011. Please note that "70 percent or more" includes veterans with 100 percent disability that is **not considered permanent**. Please see additional information below concerning veterans with less than 100 percent disability that are permanently disabled.

Veterans with Total (100 percent) and Permanent Disability

Veterans with 100 percent permanent service-connected disability need only apply once to the assessor for the \$300,000 market value exclusion. Applications are due July 1 of a given assessment year to be eligible for taxes payable the following year. For example, if a qualifying veteran applies by July 1, 2010 and is approved for the exclusion, it would affect

taxes payable in 2011 and thereafter. The property will continue to qualify for the market value exclusion until there is a change in ownership or use of the property. For veterans with total (100 percent) and permanent disability only, a surviving spouse may continue to receive this exclusion if the spouse holds the legal or beneficial title to the homestead and permanently resides there, for one additional assessment year after the veteran's death or until the spouse sells, transfers or otherwise disposes of the property, whichever comes first.

Basic Provisions of the Program

- Assessors will continue to annually estimate the market value of qualifying properties just like other similar properties. This valuation exclusion will be deducted from the estimated market value after other exclusions for Plat Law, This Old House, Mold Damage, Lead Hazard, etc. to arrive at the taxable market value.
- Application for this valuation exclusion is not a substitute for the homestead application. The property must qualify for homestead before being granted valuation exclusion under this program.
- For agricultural property, only the house, garage, and immediately surrounding one acre of land qualify for the valuation exclusion. Excess land and buildings are not eligible for the valuation exclusion.
- Neither residential nor agricultural (HGA) homestead properties are eligible to receive the homestead market value credit provided under Minnesota Statutes, section 273.1384, subdivision 1. Excess agricultural land and buildings will continue to receive the agricultural homestead credit provided in section 273.1384, subdivision 2.
- Property qualifying for this valuation exclusion is not eligible to be classified as a blind/disabled homestead under section 273.13, subdivision 22, paragraph (b).
- Relative homesteads do not qualify for this program. A property must be both owned and occupied by a qualifying disabled veteran before being eligible for the market value exclusion.
- Fractional homesteads will receive a fractional benefit. Please see the examples later in this section.
- Neither the Department of Revenue nor county assessors are responsible for determining the disability status of veterans. Applicants requiring information concerning their discharge or disability status must work with their County Veterans Service Office or the Veterans Administration to receive this information from the V.A. The veteran may supply the U.S. Government Form DD 214 or other official military discharge papers, as well as documentation verifying disability status. The V.A. will be able to supply uniform letters to qualifying veterans certifying both discharge and disability status.

Special Valuation and Tax Programs

- Veterans qualifying for the \$150,000 exclusion must complete Form CR-DVHE70 (*Market Value Exclusion on Homestead Property of Disabled Veterans with 70 Percent or More Disability*) and provide it to their county assessor. This application is due by July 1 of each year to be eligible for the exclusion for that assessment year.
- Veterans qualifying for the \$300,000 exclusion need to complete form CR-DVHE100 (*Market Value Exclusion on Homestead of Disabled Veterans with Total and Permanent Disability*) and provide it to their county assessor by July 1 to be eligible for that assessment year. Veterans qualifying for the \$300,000 exclusion do not need to reapply annually.

Individual Unemployability

The Veterans Administration does certify some veterans with “individual unemployability.” These veterans are considered totally (100 percent) disabled by the Veterans Administration. If a veteran supplies documentation from the V.A. that they are certified with individual unemployability, that veteran is to be treated as 100 percent disabled. **This 100 percent disability may or may not be permanent.**

- *Individual unemployability, not considered permanent:* Veterans with individual unemployability that are not considered permanently disabled will be eligible for the \$150,000 market value exclusion (100 percent disabled, not permanent).
- *Individual unemployability, permanent:* Veterans with individual unemployability status who are considered to be permanently disabled will be eligible for the \$300,000 market value exclusion (100 percent permanently disabled).

No Futures

Many veterans with less than 100 percent disability might still be considered permanently disabled. For example, a veteran with 70 percent disability with “no future exams” is considered permanently disabled. Such veterans are not eligible for the \$300,000 market value exclusion but do need to reapply annually for the \$150,000 exclusion. However, if upon initial application a veteran supplies a letter from the V.S. verifying disability status with “no futures,” or that their disability is considered permanent, that veteran does not need to supply a new letter annually. We recommend that the county assessor retain a copy of the original “no futures” letter for future reference. A veteran who is 70 percent or more disabled with no futures need only supply the application (form CR-DVHE70) annually, and the assessor shall use the original letter for verification of service-connected disability status.

Timelines

Occasionally, qualifying veterans will move after a property has been granted an exclusion from property tax. In the majority of cases, the exclusion would be removed from the current home that is being sold immediately and the exclusion would “move” with the qualifying veteran to the new property assuming the new property will be homesteaded. The following is a hypothetical timeline of the assessment year which may be of assistance in such cases.

July 1 – application deadline for the exclusion. Qualifying veterans who own and occupy a property as a homestead will receive the exclusion if they apply by this date retroactive to the January 2 assessment date.

July 2 - December 1 – If a veteran has already qualified for this assessment year but moves to a new property, the exclusion may also “move” with the veteran for the same assessment year, provided he/she qualifies for a mid-year homestead by owning and occupying the new property by December 1 and makes application by December 15. If the mid-year homestead is granted, the exclusion may be applied to the property for the same assessment year for taxes payable the following year.

December 2 – December 31 – If a qualifying veteran moves from or sells his/her property, the exclusion is removed from the property for the current assessment year for taxes payable in the following year. The veteran may apply for the exclusion at his or her new property by July 1 of the next assessment year.

It is important to note that once taxes have been extended against a property, the exclusion cannot be removed. For example, if a veteran qualified throughout the 2009 assessment but sells the home in February 2010 and the taxes payable in 2010 have already been calculated, the taxes payable for 2010 would still reflect the 2009 assessment with the exclusion, regardless of the fact that the qualifying veteran no longer owns the property. The veteran would be eligible to apply on the new property for the 2010 assessment (for taxes payable in 2011) by July 1; but the taxes on the new property for pay 2010 would not receive the exclusion.

Special Valuation and Tax Programs

Market Value Hierarchy

The following chart demonstrates the market value hierarchy for a veteran with a 70% disability rating. A similar process would be followed for a veteran with a 100% and permanent disability rating – except the exclusion amount on line 15 would be \$300,000. The chart shows how the taxable market value is arrived at for qualifying properties.

	(a)	(b)
	<u>AY 2009</u>	<u>AY 2010</u>
1. Market Value Irrespective of Contaminants	\$200,000	\$250,000
2. Contamination Value	NA	NA
3. Estimated Market Value (EMV) [1b – 2b]	\$200,000	\$250,000
4. Green Acres Deferment	NA	NA
5. Open Space Deferment	NA	NA
6. Aggregate Resource Preservation Deferment	NA	NA
7. Platted Vacant Land Exclusion	NA	NA
8. “This Old House” Exclusion	NA	NA
9. “This Old Business” Exclusion	NA	NA
10. Mold Damage Exclusion	NA	NA
11. Lead Hazard Exclusion	NA	NA
12. Disabled Veteran Exclusion (70% disability rated)	NA	\$150,000
13. Taxable Market Value (TMV) [3b-4b-5b-6b-7b-8b-9b-10b-11b-12b]	\$200,000	\$100,000

Special Valuation and Tax Programs

Examples

As previously noted, property owned by a married couple will receive the full exclusion for which the veteran is eligible. In cases where the property is owned by the veteran and others, the exclusion is fractionalized. In order to calculate the benefit for fractional homesteads, you must take into account the estimated market value (EMV) and the number of homesteading owners.

1. Determine the percentage of ownership for each homesteading person.
2. Multiply the EMV by the percentage of ownership to determine each owner's share of estimated market value.
3. Determine each qualifying veteran's exclusion eligibility (either \$150,000 or \$300,000 exclusion levels).
4. Multiply the veteran's exclusion level by their percentage of ownership.
5. Determine the exclusion amount. This will be the lesser of their eligibility limit or their share of EMV. In other words, if a qualifying veteran is eligible for \$150,000 exclusion, but step 4 results in a value of \$200,000, the exclusion would not exceed \$150,000.
6. Calculate the remaining taxable market value (TMV). This is done by subtracting the exclusions of all eligible persons from the EMV.

The following examples illustrate this proration.

Example 1 - Two unrelated qualifying veterans at the same exclusion level. Two unrelated disabled veterans, Edward and Emmett, own a home with an EMV of \$400,000. Edward has a 70% service-connected disability rating, Emmett is at 80%. As such, both Edward and Emmett qualify for the \$150,000 exclusion level. Each owner's benefits are applied to each owner's share of the homestead (50% for each), where the maximum exclusion is apportioned by each owner's ownership percentage instead of allowing additional benefits per homestead.

Determine ownership % (100% / # of owners)

Edward	100% / 2=	50%
Emmett	100% / 2=	50%

Determine share of EMV (Total EMV x owner % from part 1)

Edward	\$400,000 x 50%=	\$200,000
Emmett	\$400,000 x 50%=	\$200,000

Determine eligible exclusion (based on disability rating)

Edward	70% disability=	\$150,000
Emmett	80% disability=	\$150,000

Determine exclusion limit (eligible exclusion from part 3 x owner % from part 1)

Edward	\$150,000 x 50%=	\$75,000
Emmett	\$150,000 x 50%=	\$75,000

Special Valuation and Tax Programs

Determine exclusion amount (lesser of EMV or exclusion limit per owner)

Edward	$\$75,000 < \$200,000 =$	$\$75,000$
Emmett	$\$75,000 < \$200,000 =$	$\$75,000$

Calculate TMV (EMV - exclusion amount from part 5)

Edward	$\$200,000 - \$75,000 =$	$\$125,000$
Emmett	$\$200,000 - \$75,000 =$	$\$125,000$

Total Taxable Market Value Remaining \$250,000

Example 2 - Four unrelated persons, two veterans at different exclusion levels. Harry, Ron, Hermione, and Ginny all jointly own and occupy a residential property. The estimated market value of this property is \$160,000. Harry is a qualifying veteran with 90% service-connected disability. Hermione has individual unemployability, which is permanent.

Determine ownership % (100% / # of owners)

Harry	$100\% / 4 =$	25%
Ron	$100\% / 4 =$	25%
Hermione	$100\% / 4 =$	25%
Ginny	$100\% / 4 =$	25%

Determine share of EMV (total EMV x owner % from part 1)

Harry	$\$160,000 \times 25\% =$	$\$40,000$
Ron	$\$160,000 \times 25\% =$	$\$40,000$
Hermione	$\$160,000 \times 25\% =$	$\$40,000$
Ginny	$\$160,000 \times 25\% =$	$\$40,000$

Determine eligible exclusion (based on disability rating)

Harry	$90\% \text{ disability} =$	$\$150,000$
Ron	n/a	$\$0$
Hermione	I.U. permanent =	$\$300,000$
Ginny	n/a	$\$0$

Determine exclusion limit (eligible exclusion from part 3 x owner % from part 1)

Harry	$\$150,000 \times 25\% =$	$\$37,500$
Ron	n/a	$\$0$
Hermione	$\$300,000 \times 25\% =$	$\$75,000$
Ginny	n/a	$\$0$

Special Valuation and Tax Programs

Determine exclusion amount (lesser of EMV or exclusion limit per owner)

Harry	$\$37,500 < \$40,000 =$	\$37,500
Ron	n/a	\$0
Hermione	$\$75,000 > \$40,000 =$	\$40,000
Ginny	n/a	\$0

Calculate TMV (EMV - exclusion amount from part 5)

Harry	$\$40,000 - \$37,500 =$	\$2,500
Ron	$\$40,000 - \$0 =$	\$40,000
Hermione	$\$40,000 - \$40,000 =$	\$0
Ginny	$\$40,000 - \$0 =$	\$40,000

Total Taxable Market Value Remaining \$82,500

*Please note that Minnesota Statutes, section 273.13, subdivision 34, states that “*a property qualifying for exclusion under this subdivision is not eligible for credit under section 273.1384, subdivision 1* [emphasis added].” This means a property receiving the valuation exclusion is not eligible for the homestead credit. In the cases of fractional ownership, despite only one of the owners being eligible for exclusion, the entire property is ineligible for homestead market value credit.

The Role of the Assessor

- **Receive and process applications from qualifying disabled veterans.** The applications may include a letter from the U.S. Veterans Administration attesting to service-connected disability and discharge, or both a DD214 (or other official military discharge papers) and an up-to-date service-connected disability rate sheet. Applications for veterans qualifying for up to \$150,000 exclusion are due by July 1 annually to be eligible for that same assessment year. Veterans qualifying for the \$300,000 exclusion limit need to apply by July 1 of a given year to be eligible for that assessment year, and they do not need to reapply after approval.
- **Continue to estimate market value for the properties in question.** This valuation exclusion will be deducted after calculating limited market value (if applicable) to arrive at the taxable market value.
- **Exercise caution when questioning disability ratings.** Although as an assessor you may only be aware of a small disability such as a knee injury, you would not be able to ascertain other circumstances such as post-traumatic stress disorder, Agent Orange contamination, head trauma, back trauma, etc. Moreover, it is not important for you to be able to ascertain these extenuating circumstances. Disability ratings are very personal and private. Discussing these disabilities or questioning them with third parties opens the door for lawsuits and administrative repercussions.

Primary Statutory References: 273.13, subdivision 34

Special Valuation and Tax Programs

Economic Development Tax Abatements

Introduction

A political subdivision may abate all or a portion of its current or future property tax on one or more parcels of real or personal property, including machinery, for economic development purposes, subject to a duration limit and a limit on the amount of the amount of abatements. The abatement may be:

- a rebate of property taxes to the property owner;
- a reallocation of taxes to pay bondholders;
- a reallocation of taxes to pay for public infrastructure costs; or
- a deferment of property taxes.

The abatement for a parcel may be any one of the above but it cannot be two or more of these types of abatements. However the type of abatement for a parcel may be changed by a modification to the abatement resolution for the parcel. In addition, a political subdivision may choose one form of abatement for one parcel and another form of abatement for another parcel. The abatement may be current or prospective. One or more political subdivisions (e.g. county and city) may grant abatements to the same parcel at the same time.

This section will include a summary of the Economic Development Abatement process. For additional information, please visit the Department of Revenue website at www.taxes.state.mn.us.

Definitions

A ***political subdivision*** is a county, city, town, or school district. These are the local units of government that may grant economic development tax abatements. Special taxing districts such as housing and redevelopment authorities (HRAs), port authorities, economic development authorities (EDAs), regional development commissions, the Metropolitan Council and watershed districts are not authorized to grant economic development tax abatements.

A ***governing body*** refers to a county board, city council, town board of supervisors, or a school board.

Property Types That May Qualify for an Abatement

The law does not specifically preclude any particular class of property from qualifying for an economic development tax abatement. A property may be commercial, industrial, residential or any other classification. However, any real property must meet the conditions for receiving an abatement. In addition, real or personal property that is assessed subject to Minnesota Rules, chapter 8100 (utilities), may qualify for an abatement but only to the extent that the property is specified or described in an abatement contract or agreement.

Conditions for Granting an Abatement

Economic development tax abatements may be granted if:

1. The governing body expects the benefits of the proposed abatement to at least equal the cost of the abatement to the political subdivision, or intends the abatement to phase-in a property tax increase as provided in 2a below; and
2. The governing body finds that the abatement will be in the public interest because it will accomplish at least one of the following purposes:
 - a. Increase or preserve the tax base;
 - b. Provide employment opportunities within the political subdivision;
 - c. Provide or help to acquire or construct public facilities;
 - d. Help redevelop or renew blighted areas;
 - e. Help to provide access for services for residents of the political subdivision;
 - f. Finance or provide public infrastructure;
 - g. Phase-in a property tax increase for a parcel resulting from a one-year increase of 50 percent or more in estimated market value of the parcel, other than the increase in estimated market value attributable to improvements made on the parcel; or
 - h. Stabilize the tax base through equalization of property tax revenues for a specified period of time with respect to a taxpayer whose real and personal property is valued under Minnesota Rules, chapter 8100 (utilities).

Note: Economic development tax abatements **cannot** be granted to a property located in a tax increment financing (TIF) district. However, the governing body of a political subdivision may enter into an abatement agreement for a parcel of property after it is no longer in a TIF district. In addition, the governing body of a political subdivision may enter into an abatement agreement for a parcel of property presently located within a TIF district provided that no abatement will occur until **after** the parcel of property is no longer within the TIF district.

Property Tax Subject to Abatement

The property tax potentially subject to abatement is the political subdivision's net tax capacity-based property tax on the parcel of real property, including the tax on both land and structures, and the political subdivision's portion of the parcels area-wide tax imposed under Minnesota Statutes, section 276A (Iron Range Fiscal Disparity) or section 473F (Metropolitan Area Fiscal Disparity), if applicable. Market value-based taxes are not subject to abatement under this law. Tax increment taxes are not included since the property receiving the abatement may not be located in a TIF district. In addition, special assessments are not subject to the abatement.

Maximum Abatement Provisions

The maximum abatement that may be granted by a political subdivision to a parcel in any one year may not exceed the product of the political subdivision's net tax capacity-based local tax rate for the taxes payable year multiplied by the total net tax capacity of the parcel of the real property for the taxes payable year.

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Total net tax capacity means the total net tax capacity of the parcel before fiscal disparity adjustments, if any. In the case of a fiscal disparity property, the multiplication of the total net tax capacity by the political subdivision's local tax rate takes into consideration the political subdivision's fiscal disparity area-wide tax as well as its local net tax capacity tax. Powerline values do not come into play since the abatement does not apply to personal property. Tax increment values do not come into play since abatements may not be granted to property located within TIF districts.

The total abatements granted by a political subdivision in any one year may not exceed the greater of:

- 10 percent of the total property tax levy for the current levy year; or
- \$200,000.

This limit does not apply to an uncollected abatement from a prior year that is added to the abatement levy; or to a taxpayer whose real and personal property is subject to the valuation of utility property under Minnesota Rules, chapter 8100.

Total property tax levy means the final total certified levy adopted by the governing body of the political subdivision for the current year. This levy includes both net tax capacity-based taxes and market value-based taxes. It is the total levy before fiscal disparity adjustments, if applicable, but after Homestead and Agricultural Credit Aid (HACA) reduction in the case of counties. Total property tax levy does not include special assessments. It should be noted that the maximum abatement for a parcel of property excludes market value-based taxes whereas the maximum abatement for all parcels combined under the five percent option includes market value-based taxes.

It is the responsibility of the governing body of the political subdivision to ensure that the abatements granted do not exceed these limits. It is not the county auditor's responsibility to check up on the cities, towns, or school districts that have granted abatements to make sure that they have not exceeded the limit.

Other Limits on Abatements

The political subdivision may negotiate to limit the abatement of its taxes to:

1. a specific amount per year;
2. a specific total amount covering all years included in the abatement agreement;
3. the increase in property taxes resulting from improvement of the property (may be the total increase or the amount of the increase for the political subdivision only);
4. the increase in property taxes resulting from increases in the market value or net tax capacity of the property (may be the total increase or the amount of the increase for the political subdivision only);
5. the penalty and interest that would be otherwise due on property taxes that are deferred; or
6. or in any other manner the governing body of the political subdivision determined is appropriate.

Deferred Taxes Repayment Schedule

If the political subdivision defers the payment of its property tax on a parcel and abates the penalty and interest that would otherwise accrue on unpaid property taxes, it must set a schedule for repayment of property taxes. The deferred property taxes or installments due and payable in a year must be included with the current taxes payable for that year, and must be levied accordingly. This will require a city, town or school district to give a copy of its repayment schedule to the county auditor.

The deferred property taxes are not “delinquent property taxes” for the purpose of the property tax delinquency process unless they are not paid in the year in which they are due according to the repayment schedule. Deferred property taxes will be subject to penalty if not paid when they are due according to the repayment schedule, and will be subject to interest if they remain unpaid the first business day of January of the year following the year in which they were due according to the repayment schedule.

Under this deferred tax option, the political subdivision will not be short tax dollars during the deferred tax years. The deferred taxes are defined as an “abatement” under the economic development tax abatement law, and the political subdivision is required to add the deferred taxes to its total levy for the current year.

Duration Limit

In its abatement resolution, the governing body of a political subdivision may grant an abatement for a period of up to 15 years. If the abatement resolution does not specify a time period, the abatement is for eight years. The abatement period begins in the first year in which the abatement granted is either paid or retained.

If an abatement has been granted to a parcel of property and the period of the abatement has expired, the political subdivision that granted the abatement may not grant another abatement on the same parcel for eight years after the expiration of the first abatement. For example, if the last year of the abatement is for the taxes payable in year 2010, the same parcel may not be granted another abatement until taxes payable in the year 2019. This prohibition does not apply to abatements relating to improvements made to the property after the expiration of the first abatement. Abatements granted to utility property are not subject to this prohibition and may be granted successively. Property that was previously in a TIF district may qualify for a tax abatement after the TIF district expires and may continue to qualify for an abatement for up to 15 years.

Beginning in 2001 and for subsequent years, the general duration limit explained above may be extended as follows. A political subdivision proposing to grant an abatement may request, in writing, that the other political subdivisions in which the parcel is located also grant abatements. If one of the other political subdivisions declines, in writing, to grant an abatement, or if no written response is received from one of the other political subdivisions within 90 days of the receipt of the request, the duration limit for an abatement for the parcel is increased to 20 years. If the political subdivision that declined to grant an abatement later grants an abatement to the parcel, the 20-year extended duration

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limit is reduced by one year for each year that the previously declining political subdivision grants an abatement to the parcel during the period of the abatement granted by the requesting political subdivision. In no case may the extended duration limit be reduced below the general duration limit.

Note: An extended duration limit applies not only to the political subdivision that made the request, but also to any other participating political subdivision. For example, if a city proposing to grant an abatement to a parcel of property makes a request in writing to the county and to the school district that they likewise grant abatements to the parcel, and the county agrees but the school district declines, then the county's abatement would have the 20-year extended duration limit.

A special extended duration limit of 20 year may be granted by a political subdivision to a taxpayer whose real and personal property is subject to the valuation of utility property under Minnesota Rules, chapter 8100. This provision was effective July 1, 2006.

Abatement Resolution

The governing body of a political subdivision may grant an abatement only by adopting an abatement resolution. The abatement resolution must specify the terms of the abatement, including the form of the abatement, the amount of the abatement or the method of annual determination of the abatement, and the duration limit. As stated earlier, if the abatement resolution does not specify the period of time for the abatement, the abatement is for eight years. The resolution should also specify when the abatement is to become effective (first tax payable year for the abatement).

The resolution should state only one form of abatement. For example, a rebate of property taxes to the property owner **or** a reallocation of taxes to pay for public infrastructure costs, but **not both**. The resolution must also state the nature and extent of the public benefits which the governing body expects to result from the abatement agreement.

The resolution may provide that the abatement may not be modified or changed during its term. Or, the governing body may review and modify the abatement every second year after the year of approval. Modification may include, but is not limited to, changing the form of the abatement, changing the amount of the abatement or providing for an earlier termination of the abatement than originally provided. If bonds were issued up front for the amount of the abatement, neither the form of the abatement nor the amount of the abatement is subject to periodic review, as long as there are bonds to be paid off.

The resolution may provide that the political subdivision will either retain the abatement or transfer the abatement to another political subdivision to pay for all or part of the cost of acquisition or improvement of public infrastructure, whether or not located on or adjacent to the parcel that is receiving the abatement. The use of the abatement money in this case may include payment of special assessments on property owned by the political subdivision that is benefited by public improvements.

The governing body of a political subdivision may abate the property taxes on a parcel of property without the consent of the property owner. An example of when a political subdivision may want to

grant an abatement without the property's consent is when the abatement money will be retained by the political subdivision or transferred to another political subdivision to pay for all or part of the cost of acquisition or improvement of public infrastructure. The governing body of a political subdivision must get the consent of the property owner to abate taxes related to a utility property. An abatement resolution may be approved by the governing body only after holding a public hearing on the proposed abatement.

Notice and Public Hearing

Notice of the public hearing on the proposed abatement must be published in a newspaper of general circulation within the political subdivision at least once in the time frame of more than 10 days but not more than 30 days prior to the hearing. The newspaper must be one that is published at least once a week, be a newspaper of general interest and readership within the community, and not one of limited subject matter. This requirement rules out the "shopper" newspapers and even the political subdivision's own newspaper, if it has one. Basically, the newspaper selection criteria are the same as the criteria used by counties, school districts, and cities with populations of over 2,500 for publishing their notices of Truth-in-Taxation hearings.

The published notice must indicate that the governing body is considering granting property tax abatements, identify the property or properties being considered for an abatement, and the total estimated amount of the proposed abatement(s). It is not required that the identification of the property in the public notice include the legal description. However, the name of the property owner, the street address of the property and the name of the property, if it has one, would be appropriate.

The public hearing should be conducted according to standard hearing procedures. The abatement resolution may be adopted at the public hearing, immediately following the public hearing or on a day subsequent to the public hearing.

Bonding for Abatements

A political subdivision may issue bonds or other obligations to "up-front" the amount of abatements for a parcel of property. The principal amount of the bonds issued may not exceed the estimated sum of the abatements for the property for the years authorized. The bonds may be revenue bonds or they may be general obligation (GA) bonds if the governing body elects to pledge the full faith and credit of the political subdivision. Minnesota Statutes, Chapter 475 applies to any of these bond issues, except that they are exempt from the net debt limit of the political subdivision.

If two or more political subdivisions decide to grant abatements to the same parcel of property, and if they agree, the city or town in which the property is located may issue bonds equal to the sum of the estimated total abatements granted by each of the political subdivisions that are party to the agreement. The governing body of each of the other political subdivision that is party to the agreement must guarantee and pledge to pay annually to the city or town the amount of their abatement. This guarantee and pledge is a binding obligation of the political subdivision, and must be included in the abatement resolution. For example, if a county, city and school district all decided to grant abatements on the same parcel of real property, but only the county and city agreed on the bonding, the county would pay its abatement to the city but the school district would not.

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The bond proceeds may be used for any of the following purposes:

- to pay for public improvements that benefit the property;
- to acquire and convey land or other property relating to the parcel of real property receiving the tax abatement;
- to reimburse the property owner for the cost of improvements made to the property; or
- to pay the costs of issuance of the bonds.

Required Levy for Abatements

A political subdivision must add to its total levy for the current levy year, the estimated sum of all current levy year abatements granted. This includes taxes for the current levy year that have been deferred. The proposed levy certified to the county auditor for Truth-in-Taxation purposes must include those current levy year abatement amounts. The final levy adopted and certified to the county auditor must also include these current levy year abatement amounts. The political subdivision does not lose money due to these abatements. Rather, that portion of the levy is shifted onto other taxpayers. In essence, all of the property owners within the political subdivision, including the owner of the property receiving an abatement, are paying for the abatement. The levy for economic development tax abatements is a special levy outside of a county's or city's overall levy limitation pursuant to Minnesota Statutes, section 275.70, subdivision 5.

Proposed and Final Tax Statements, Tax Payments, and Abatement Payments

Unless the abatement is a property tax deferment, the notice of proposed property taxes that a property owner receives each November is to show the property tax before any abatement that has been granted. Likewise, unless the abatement is a property tax deferment, the property tax statement that a property owner receives each spring is to show the property tax before any abatement that has been granted.

The taxes on a parcel of property receiving a tax abatement must be paid by the property owner/taxpayer when due, in the same manner as other property taxes are paid as if there was no abatement. **After the property taxes have been paid**, the political subdivision must, in accordance with the abatement resolution do one of the following:

- pay the amount of the abatement to the property owner, if the abatement resolution provides that the property owner is to be paid;
- pay the bondholders, if the abatement resolution provides for bonding;
- retain the abatement to pay public infrastructure costs, if the abatement resolution provides for direct payment of public infrastructure costs; or
- if the abatement resolution provides for a deferment of property taxes and the abatement of penalty and interest, keep a record of the deferments and eventually collect them according to the repayment schedule.

Annual Reports

Property owners benefiting from an economic development tax abatement are subject to annual reports under the business subsidy reporting law until established goals are met. These reports are to be filed to the grantor of the business subsidy, no later than March 1 of each year for the subsidy-related activity the previous year. The definitions of business subsidies are contained within section 116J.993, subdivision 3. Business subsidies of less than \$25,000 are not considered to be a business subsidy.

Grantors with a population of greater than 2,500 and state government agencies, regardless of whether or not they have awarded any business subsidies, must file a report by April 1 of each year with the Commissioner of the Department of Employment and Economic Development (DEED). Local government agencies with a population of 2,500 or fewer are exempt from filing this report if they have not awarded a business subsidy in the past five years.

Primary Statutory References: 469.1812 through 469.1815, 116J.993 through 116J.994

Special Economic Development Tax Abatement

Minnesota Statutes, section 375.194, allows that a county whose county government average tax rate is at least 45 points higher than an adjacent neighboring county's tax rate may grant an economic development abatement under certain conditions. This type of economic development abatement is extremely rare because it only applies under very limited circumstances. For additional information, please consult the applicable section.

Primary Statutory References: 375.194

Special Valuation and Tax Programs

Disaster Relief

Background

Legislation enacted in 2007 established comprehensive new tax relief for disaster-affected and destroyed property under Minnesota Statutes, section 273.1231 to 273.1235. These provisions replaced the old disaster credit and local option reductions that were previously provided under Minnesota Statutes, section 273.123; they also formalize the distinction between tax credits and tax abatements, and provide more generous relief for properties located in a disaster or emergency area.

The 2007 disaster relief provisions provide tax relief through homestead disaster credits and local-option relief available for large-scale disaster situations or more isolated cases of destruction. However, disaster-related relief is now more generous in qualifying large-scale disaster or emergency situations. Some of the specific changes include:

- Homestead disaster credits, local option abatements, and local option disaster credits granted in a disaster or emergency area are no longer prorated by the number of months the structure was unusable. Destroyed properties located in a disaster or emergency area now receive an abatement or credit for a full year of tax.
- Local-option abatements and credits are still prorated for damaged or destroyed properties that are not located in a “disaster or emergency area.”
- Local-option abatements and credits granted by the county board for damage that occurs in a “disaster or emergency area” will be reimbursed by the state. (There is still no state reimbursement when damage is not located in a “disaster or emergency area.”)
- Local-option tax relief is provided in the form of an abatement in the year damage occurred, and as a credit in the following year.
- Local-option abatements for state-assessed property are to be determined and granted through the Commissioner of Revenue rather than the county board.
- Local-option abatements and credits are also allowed in cases of arson or vandalism providing the arson or vandalism was not committed by the owner of the property.
- The definition of “disaster or emergency area” now incorporates the application requirements necessary for approval by the Executive Council. One of the requirements was broadened to focus on “building market value” rather than the previous “homestead market value.”

Definitions

The following terms and definitions are important to remember when administering property tax relief.

“Disaster or emergency” means:

1. a major disaster as determined by the President of the United States;
2. a natural disaster as determined by the United States Secretary of Agriculture;
3. a disaster as determined by the administrator of the United States Small Business Administration; or
4. a tornado, storm, flood, earthquake, landslide, explosion, fire, or similar catastrophe, as a result of which a local emergency is declared pursuant to Minnesota Statutes, section 12.29.

“Disaster or emergency area” means a geographic area for which:

1. the President of the United States, the US Secretary of Agriculture, or the administrator of the Small Business Administration has determined that a disaster exists pursuant to federal law; or a local emergency has been declared pursuant to section 12.29; and
2. an application has been made by the local unit of government to the State of Minnesota requesting property tax relief and the application has been approved by the Executive Council.

The Executive Council must not approve an application to declare a disaster or emergency area unless a completed disaster survey is included with the application. In addition, within the boundaries of the applicant:

- a. the average damage for the buildings that are damaged is at least \$5,000; and
- b. at least 25 taxable buildings were damaged or the total dollar amount of damage to all taxable buildings equals or exceeds 1 percent of the total taxable market value of buildings for the applicant as reported to the Commissioner of Revenue on the abstract of assessment for the year prior to the year of the damage.

Applications to the State of Minnesota for consideration by the Executive Council are coordinated by Division of Homeland Security and Emergency Management. They will be discussed in greater detail later in this bulletin.

Homestead property means a homestead dwelling that is classified as class 1a residential homestead, 1b blind/disabled homestead, or class 2a agricultural homestead (house, garage and first acre).

Non-homestead property means any class of taxable real or personal property except homestead property and property that is required by law to be appraised for property tax purposes by the Commissioner of Revenue (state-assessed property).

Net tax means the market value and net tax capacity taxes imposed on real and personal property under Minnesota Statutes, section 272.01, including the levy under section 275.025 (state general tax), and after the various credits and subtractions listed in section 273.1393, clauses (2) through (9). Net tax excludes all special assessments.

Reassessed market value means the taxable market value of the property established for the January 2 assessment in the year that the disaster or destruction occurs, as adjusted by the county assessor or the commissioner of revenue to reflect the loss in market value caused by the damage.

Utility property means property appraised and classified for property tax purposes by the Commissioner of Revenue under sections 273.33 to 273.3711 (pipelines, gas, electric, water).

Special Valuation and Tax Programs

Credits and Abatements

For the purposes of administering the new disaster credits and abatements, the county assessor must reassess all damaged property in a disaster or emergency area.

The Commissioner of Revenue shall reassess all damaged or destroyed property that is state-assessed. The reassessed value must be reported as soon as practical to the county auditor.

The following types of property tax relief for owners of damaged or destroyed property are now available:

- (1) **Local-option disaster abatements** (273.1233) for taxes payable in the year of the disaster or destruction;
- (2) **Homestead disaster credit** (273.1234) for taxes payable the year following the disaster (relating to the assessment year in which the disaster occurred); and
- (3) **Local-option disaster credit** (273.1235) for taxes payable the year following the disaster or destruction (relating to the assessment year in which the disaster or destruction occurred).

Note: Property tax relief is not necessary for the assessment year following the year of the disaster (for taxes payable in the second following year), or any years thereafter, because the normal course of assessment and taxation will reflect the value as damaged or rebuilt.

Reassessment Required

Reassessment of property is required for all of the methods of property tax relief under sections 273.1231 to 273.1235. This applies to properties located in a disaster or emergency area, and to other properties that may not qualify as being in a disaster or emergency area, but which apply for local option relief. Assessors must adjust the market values of affected properties to account for damage to adjust for the loss in value caused by the disaster. To do this, the assessor estimates the market value of each damaged home – in its damaged condition.

The *reassessment* is defined as “the taxable market value of the property established for the January 2 assessment in the year that the disaster occurs, as adjusted by the county assessor” (or the commissioner of revenue for state-assessed property) “to reflect the loss in market value caused by the damage.” In other words, it is a reflection of the market value of the property in its damaged condition. For property that is **located in a disaster or emergency area**, the reassessed value itself is used in determining both the abatement and the credit.

However, for property **not located in a disaster or emergency area**, the abatement or credit will be pro-rated for the number of full months that the structure was unusable. The auditor will be responsible for the appropriate calculations after the assessor has established the reassessed market value.

The “reassessed market value” (value as damaged), is only used for computing either an abatement, a credit, or both. It does not actually replace the January 2 (pre-disaster) value. The January 2 (pre-disaster) value is used for calculating tax rates for taxes payable in the year following the disaster or destruction, and the property tax relief is applied as a credit. Any property tax relief for the current tax-payable year (which were based on the value for the assessment year preceding the disaster or destruction) is an abatement that is computed using the January 2 and reassessed values for the current assessment year in which the disaster or destruction occurred despite the fact that the value for the preceding assessment year was never affected.

After a property has been repaired, any increase in estimated market value above the original pre-disaster value should be treated as new construction in the next assessment.

Estimating the Damage

Every county should have a disaster plan in place *before* the next disaster occurs. When a large-scale disaster such as a flood or tornado occurs, the reassessment process can be a huge task. First and foremost you should work with the local emergency management coordinators and law enforcement agencies to determine when it is safe to enter the affected area and begin the reassessment process. We recommend that you begin performing reassessments as soon as possible after a disaster that may qualify as an official “disaster or emergency area” or as soon as possible after being notified by taxpayers who may apply for the local option relief for the isolated cases of destroyed property. This initial reassessment may be used in making application for the official disaster declaration. It will also enable homeowners to begin the process of clean up and reconstruction.

In the case of large-scale disasters such as the 2007 flooding in southeastern Minnesota or the 1997 flooding in the Red River valley, the county assessor may determine that additional assistance is necessary to complete the reassessment. The Department of Revenue can assist you in organizing a team of volunteer assessors to help you with the data collection.

Assessors should begin the reassessment process by viewing the affected properties, collecting data, and identifying the damage that has occurred. Document as much information about the damage as possible and supplement with dated photos. This will help you later when you re-inspect the property following reconstruction.

How you will determine the amount of market value that has been lost due to the damage will be a more difficult task. We recommend that assessors consult a cost handbook such as Marshall & Swift for assistance in this endeavor. Utilizing a segregated cost schedule, working backwards on a percent completion schedule, or using a percent breakdown of base cost chart should allow you to arrive at a reasonably accurate measurement of the loss in value. Remember that it is highly unlikely that the value of the land will change after a disaster.

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We cannot overstate the importance of first collecting the data concerning the damage before you begin the process of determining loss in value. We anticipate that property owners will be anxious to restore their homes to their original condition. Consequently, your first order of business will be to identify the damage, which will allow the property owners to begin the reconstruction process. Try to avoid giving property owners an estimate of the damage onsite. Limit the discussion to general terms. Once the damage has been identified, the process of applying a market value to the damage can begin.

Disaster or Emergency Areas

Again, a “*disaster or emergency area*” means a geographic area for which:

1. The President of the United States, the US Secretary of Agriculture, or the administrator of the Small Business Administration has determined that a disaster exists pursuant to federal law; or a local emergency has been declared pursuant to section 12.29; and
2. An application has been made by the local unit of government to the State of Minnesota requesting property tax relief and the application has been approved by the Executive Council.

The Executive Council must not approve an application to declare a disaster or emergency area unless a completed disaster survey is included with the application. In addition, within the boundaries of the applicant:

1. the average damage for the buildings that are damaged is at least \$5,000, and
2. at least 25 taxable buildings were damaged or the total dollar amount of damage to all taxable buildings equals or exceeds one percent of the total taxable market value of buildings for the applicant as reported to the Commissioner of Revenue on the abstract of assessment for the year prior to the year of the damage.

The types of federal aid available differ depending on which of the above makes the official disaster declaration. To qualify for state reimbursement for either homestead disaster credits, local option credits or local option abatements, the local jurisdiction must apply to the Executive Council, which consists of the Governor (who serves as the chair), Lieutenant Governor, Secretary of State, State Auditor, and Attorney General.

The applications to the Executive Council are generally made through the governor’s office and are coordinated by the Division of Homeland Security and Emergency Management (www.hsem.state.mn.us). They generally require:

- a resolution requesting reassessment of damaged property for the purpose of the relief provided under M.S. 273.1231 to 273.1235;
- a damage assessment report and summary (this is the survey mentioned in statute); and
- a copy of the formal disaster declaration.

Applications should be sent to:

Office of the Governor
130 State Capitol
75 Rev. Dr. Martin Luther
King Jr. Blvd.
St. Paul, MN 55155
www.governor.state.mn.us

AND

Division of Homeland Security and
Emergency Management
444 Cedar Street, Suite 223
St. Paul, MN 55101-6223
www.hsem.state.mn.us

Reporting Requirements

Following the declaration of disaster or emergency area, the local government must develop a damage assessment report. The county's Emergency Management Director is responsible for coordinating the effort to obtain the information needed for this report. Assessors may be asked to assist. The report must include the:

- property identification (property identification number or name and address);
- pre-disaster value of the property; and
- estimated dollar value of the damage to the property.

In addition, the following summary information must be included:

- total number of homes damaged but not destroyed;
- total number of homes destroyed; and
- total dollar value of damage.

Frequently Asked Questions

The law requires an average dollar amount of \$5,000 or more for damages. What value is being referred to—market value or insurance value?

It refers to loss in market value. The emergency management director will need to estimate damages for the purpose of applying for the state credit. Insurance value typically reflects the cost of replacing an item or component of a structure. As such, insurance value can vary widely from the loss in market value.

What is meant by geographic boundary? Is it the boundary of the taxing jurisdiction, or a boundary developed to reflect the area of the disaster, or something else?

The geographic boundary refers to the boundaries of the jurisdiction making application for state aid. This could be a township, city, etc.

The statute mentions a homestead dwelling. Should only the house be evaluated for damage? What about the garage?

For the purpose of administering this particular emergency relief, we are considering a dwelling to include the house and garage, whether attached or not.

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Homestead Disaster Credit (273.1234)

The underlying assumption of this credit is that a property tax bill is normally based on the home having the same market value all year long. If, at some point in the year, the structure loses some of its value due to damage by disaster, the homestead structure's market value should be reduced to reflect the fact that, during part of the year, the property's market value was less than that assessed on January 2 of the assessment year.

The Homestead Disaster Credit is granted in the year following the year of the disaster. For example, for destruction occurring during 2009, this credit will be listed on the property tax statement for property taxes payable in 2010. These credits will also be reported on the Abstract of Tax List in 2010. The amount of the credit is the difference between what the property tax on the home would have been if it had not been damaged and the property tax on the new adjusted market value.

To determine the dollar amount of the disaster credit the county auditor should:

1. Determine the net tax due on the homesteaded structure using the January 2 assessment as if it had not been damaged;
2. Determine the net tax due using the reassessed value of the structure;
3. Subtract the result in step 2 from the result in step 1. This is the dollar amount of the disaster credit.

The county auditor includes the dollar amount of the disaster credit on the property tax statement. The county auditor will then certify the credits granted under this section to the Department of Revenue on the Abstract of Tax List. The department will reimburse the local jurisdictions for the amount lost as reported on the abstract.

Taxpayers **do not** need to apply for the Homestead Disaster Credit and there is no maximum credit amount **but the credit does not apply to any land value** or to any ancillary structures on the property. The land remains taxed at full value.

Examples

The following examples for an agricultural homestead and a residential homestead are provided for additional clarity. The basic formula for calculating the total tax is below. This calculation must be performed on both the January 2 value and the reassessed value to determine the applicable credit.

$$\begin{array}{l} \text{TMV} \\ \times \text{Class Rate} \\ \hline = \text{Net Tax Capacity (NTC)} \end{array}$$

$$\begin{array}{l} \text{NTC} \\ \times \text{Local Tax Rate} \\ \hline = \text{Base Tax (before credits)} \end{array}$$

$$\begin{array}{l} \text{Base Tax (before credits)} \\ - \text{Homestead Credits} \\ + \text{State General Tax (if applicable)} \\ + \text{Referendum Amounts} \\ \hline = \text{Total Tax Amount} \end{array}$$

Special Valuation and Tax Programs

**Example 1: Payable 2010 Homestead Disaster Credit Example
Agricultural Homestead**

Property is a 120 acre farm which has a 2009 taxable market value value as indicated below. These calculations assume there is no bonding referendum and that the local tax rate for pay 2010 is 125%. Disaster occurred in March 2009. Appropriate documentation has been submitted to and approved by the Executive Council. Land value remains unchanged following the disaster. Disaster Credit amount will show on the 2010 Tax Statement.

	<u>1/2/2009 Value</u>	<u>Value as reassessed following 2009 disaster</u>
1 acre site (<i>land unchanged after disaster</i>)	\$5,000	\$5,000
House and garage	<u>\$60,000</u>	<u>\$25,000</u>
Total HGA	\$65,000	\$30,000
Farm Buildings	\$30,000	\$30,000
Farm Land - 119 acres	<u>\$178,500</u>	<u>\$178,500</u>
Total farm land and buildings	\$208,500	\$208,500
HGA CALCULATION:		
TMV	\$65,000	\$30,000
x Class Rate (payable 2010)	<u>1%</u>	<u>1%</u>
= Tax Capacity	\$650	\$300
REMAINDER OF FARM CALCULATION		
TMV	\$208,500	\$208,500
x Class Rate (payable 2010)	<u>0.50%</u>	<u>0.50%</u>
= Tax Capacity	\$1,043	\$1,043
Total Tax Capacity	\$1,693	\$1,343
x Local Tax Rate (payable 2010)	<u>125%</u>	<u>125%</u>
= Base Tax (before credits and referendums)	\$2,116	\$1,678
RESIDENTIAL HOMESTEAD MV CREDIT		
1st 76,000 x .4%	\$260	\$120
Remainder x (-.09%)	<u>\$0</u>	<u>\$0</u>
Total Residential HS MV Credit	\$260	\$120
AGRICULTURAL HOMESTEAD MV CREDIT		
1st \$115,000 x .3%	\$345	\$345
Remainder x (-.05%) (max reduction of \$115)	<u>-\$47</u>	<u>-\$47</u>
Total Ag HS MV Credit	\$298	\$298
REFERENDUM MARKET VALUE TAX		
HGA Only	\$65,000	\$30,000
RMV Tax Rate	<u>0.12345%</u>	<u>0.12345%</u>
RMV Tax	\$80	\$37
NET TAX PAYABLE		
Base tax - credit(s) + RMV tax = Total Tax	\$1,638	\$1,297
DISASTER CREDIT AMOUNT	\$1,638 - \$1,297 = <u>\$341</u>	

Special Valuation and Tax Programs

Example 2: Payable 2010 Homestead Disaster Credit Example
Residential Homestead

Property is a residential property which has a 2009 taxable market value value as indicated below. These calculations assume there is no bonding referendum and that the local tax rate for pay 2010 is 125%. Disaster occurred in March 2009. Appropriate documentation has been submitted to and approved by the Executive Council. Land value remains unchanged following the disaster. Disaster Credit amount will show on the 2010 Tax Statement.

	<u>1/2/2009 Value</u>	<u>Value as reassessed following 2009 disaster</u>
Land (<i>value unchanged following disaster</i>)	\$25,000	\$25,000
Building (House and Garage)	\$160,000	\$105,000
Total TMV	\$185,000	\$130,000

TAX CAPACITY CALCULATION

2009 TMV	\$185,000	\$130,000
x Class Rate (payable 2010)	1%	1%
= Tax Capacity	\$1,850	\$1,300
x Local Tax Rate (payable 2010)	125%	125%
= Base Tax (before credits and MV referendum levies)	\$2,313	\$1,625

RESIDENTIAL HOMESTEAD MV CREDIT

1st 76,000 x .4%	\$304	\$304
Remainder x (-.09%)	-\$98	-\$49
Total Residential HS MV Credit	\$206	\$255

REFERENDUM/MARKET VALUE TAX

2009 TMV	\$185,000	\$130,000
RMV Tax Rate (pay 2010)	0.12345%	0.12345%
RMV Tax	\$228	\$160

NET TAX PAYABLE

Base tax - credit(s) + RMV tax = Total Tax	\$2,335	\$1,530
--------------------------------------------	---------	---------

DISASTER CREDIT AMOUNT

\$2,335 - \$1,530 = \$805

Local Option Disaster Abatement (273.1233)

Eligibility

The county board may grant an abatement of net tax for homestead and non-homestead property (except state-assessed property) for taxes payable in the year in which the destruction occurs if:

- the property owner submits an application to the county assessor as soon as practical after the damage has occurred;
- the property owner submits an application to the county board as soon as practical after the damage has occurred; and
- the county assessor determines 50% or more of a homestead dwelling or other building has been (1) unintentionally or accidentally destroyed, or (2) destroyed by arson or vandalism by someone other than the owner.

Local Option Abatements granted by the county board are not subject to approval by the Commissioner of Revenue.

The Commissioner of Revenue may grant an abatement of net tax for state-assessed property for taxes payable in the year in which the destruction occurs if:

- the property owner submits an application to the commissioner as soon as practical after the damage has occurred;
- the property owner provides a copy of the application to the county board as soon as practical after the damage has occurred; and
- the commissioner determines 50% or more of the property has been (1) unintentionally or accidentally destroyed, or (2) destroyed by arson or vandalism by someone other than the owner.

Local Option Abatements granted by the Commissioner of Revenue are not subject to approval by the county board.

Computation

For property *located in a disaster or emergency area*, the abatement is based on the difference between (1) the net tax on the property computed using the market value of the property established for the January 2 assessment in the year in which the damage occurred, and (2) the net tax computed using the reassessed market value.

$\left(\begin{array}{l} \text{Net Tax} \\ \text{(as computed using the market value established} \\ \text{January 2 of the year of the destruction)} \end{array} \right) - \left(\begin{array}{l} \text{Net Tax} \\ \text{(as computed using the reassessed market} \\ \text{value established after the destruction)} \end{array} \right) = \text{Disaster Abatement Amount}$

Special Valuation and Tax Programs

For property *not located in a disaster or emergency area*, the abatement is pro-rated and is limited to the number of full months the property was unusable. If the structure was usable for a fraction of a month, that month is not included in the numerator.

$$\left(\text{Disaster Abatement Amount} \times \frac{\text{\# of full months the property was not usable}}{12} \right) = \text{Local Option Abatement Amount}$$

If application is made after payment of all or a portion of the taxes being abated, the portion already paid must be refunded by the county treasurer as soon as practical. Local option abatements for properties that are not located in a disaster or emergency area are not reimbursed by the State.

Payment

For Local Option Abatements granted for property located in a disaster or emergency area, the county auditor shall certify the abatements granted to the commissioner of revenue for reimbursement. The state pays the reimbursement of the abatements directly to the local taxing districts. The Department of Revenue pays each taxing district other than school districts, which are reimbursed by the Department of Education.

For abatements granted which are not eligible to be reimbursed by the state (abated tax for destruction occurring from something other than a disaster or emergency or destruction occurring outside a disaster or emergency area), local taxing authorities may levy in the following year the amount of unreimbursed tax dollars lost due to abatements granted under this program. The levy for this purpose would be outside any existing levy or tax rate limit.

Reporting

For reporting purposes it will be very important to distinguish between reimbursable abatements (those located in a disaster or emergency area) and those that are not reimbursable. Abatements should also be tracked separately from the following year credits provided under the following sections.

Examples

See the examples 3 and 4 for calculations of local option disaster abatements provided under section 273.1233.

Special Valuation and Tax Programs

**Example 3: Payable 2009 Local Option Disaster Abatement Example
Agricultural Homestead**

Property is an agricultural property which has a 2009 taxable market value value as indicated below. These calculations assume there is no bonding referendum and that the local tax rate for pay 2009 is 114%. Disaster occurred in May 2009. The property owners were unable to use the property for a period of 3 full months. Appropriate documentation has been submitted to and approved by the Executive Council. The structure sustained in excess of 50% damage. Land value remains unchanged following the disaster. The abatement application was approved by the County Board in September 2009. Since the first half of taxes have been paid, the second half may be adjusted to reflect the lower amount. Since the property is in a disaster area, the state will reimburse the county for the amount of taxes lost.

	<u>1/2/2009 Value</u>	<u>Value as reassessed following 2009 disaster</u>
1 acre site (<i>land unchanged after disaster</i>)	\$5,000	\$5,000
House and garage	<u>\$60,000</u>	<u>\$25,000</u>
Total HGA	\$65,000	\$30,000
Farm Buildings	\$30,000	\$30,000
Farm Land - 119 acres	<u>\$178,500</u>	<u>\$178,500</u>
Total farm land and buildings	\$208,500	\$208,500
HGA CALCULATION:		
TMV	\$65,000	\$30,000
x Class Rate (payable 2009)	1%	1%
= Tax Capacity	\$650	\$300
REMAINDER OF FARM CALCULATION		
TMV	\$208,500	\$208,500
x Class Rate (payable 2009)	<u>0.50%</u>	<u>0.50%</u>
= Tax Capacity	\$1,043	\$1,043
Total Tax Capacity	\$1,693	\$1,343
x Local Tax Rate (payable 2009)	114%	114%
= Base Tax (before credits and referendums)	\$1,929	\$1,530
RESIDENTIAL HOMESTEAD MV CREDIT		
1st 76,000 x .4%	\$260	\$120
Remainder x (-.09%)	<u>\$0</u>	<u>\$0</u>
Total Residential HS MV Credit	\$260	\$120
AGRICULTURAL HOMESTEAD MV CREDIT		
1st \$115,000 x .3%	\$345	\$345
Remainder x (-.05%) (max reduction of \$115)	<u>-\$47</u>	<u>-\$47</u>
Total Ag HS MV Credit	\$298	\$298
REFERENDUM MARKET VALUE TAX		
HGA Only	\$65,000	\$30,000
RMV Tax Rate	<u>0.12345%</u>	<u>0.12345%</u>
RMV Tax	\$80	\$37
NET TAX PAYABLE		
Base tax - credit(s) + RMV tax = Total Tax	\$1,451	\$1,149
TOTAL DISASTER ABATEMENT AMOUNT =	\$1,451 - \$1,149 = \$302	
NUMBER OF MONTHS PROPERTY UNUSABLE =	3/12 OR 25.00%	
LOCAL OPTION ABATEMENT AMOUNT AVAILABLE =	<u>\$75.55</u>	

Special Valuation and Tax Programs

**Example 4: Payable 2009 Local Option Disaster Abatement Example
Residential Homestead**

Property is a residential property which has a 2009 taxable market value value as indicated below. These calculations assume there is no bonding referendum and that the local tax rate for pay 2009 is 114%. Disaster occurred in May 2009. The property owners were unable to use the property for a period of 3 full months. Appropriate documentation has been submitted to and approved by the Executive Council. The structure sustained in excess of 50% damage. Land value remains unchanged following the disaster. The abatement application was approved by the County Board in September 2009. Since the first half of taxes have been paid, the second half may be adjusted to reflect the lower amount. Since the property is in a disaster area, the state will reimburse the county for the amount of taxes lost.

	<u>1/2/2009 Value</u>	<u>Value as reassessed following 2009 disaster</u>
Land <i>(value unchanged following disaster)</i>	\$25,000	\$25,000
Building (House and Garage)	<u>\$160,000</u>	<u>\$75,000</u>
Total TMV	\$185,000	\$100,000

TAX CAPACITY CALCULATION

2009 TMV	\$185,000	\$100,000
x Class Rate (payable 2009)	<u>1%</u>	<u>1%</u>
= Tax Capacity	\$1,850	\$1,000
x Local Tax Rate (payable 2009)	<u>114%</u>	<u>114%</u>
= Base Tax (before credits and MV referendum levies)	\$2,109	\$1,140

RESIDENTIAL HOMESTEAD MV CREDIT

1st 76,000 x .4%	\$304	\$304
Remainder x (-.09%)	<u>-\$98</u>	<u>-\$22</u>
Total Residential HS MV Credit	\$206	\$282

REFERENDUM MARKET VALUE TAX

2009 TMV	\$185,000	\$100,000
RMV Tax Rate (pay 2009)	<u>0.12345%</u>	<u>0.12345%</u>
RMV Tax	\$228	\$123

NET TAX PAYABLE

Base tax - credit(s) + RMV tax = Total Tax	\$2,131	\$981
--------------------------------------------	---------	-------

TOTAL DISASTER ABATEMENT AMOUNT = $\$2,131 - \$981 = \$1,150$

NUMBER OF MONTHS PROPERTY UNUSABLE = $3/12$ OR 25.00%

LOCAL OPTION ABATEMENT AMOUNT AVAILABLE = \$287.61

Local Option Disaster Credits (273.1235)

Eligibility

The county board may grant a credit for taxes payable in the year following the year in which the damage or destruction occurred for:

- homestead property that meets all the requirements under section 273.1233, subdivision 1, paragraph (a) (local option disaster abatement) but that does not qualify for a credit under section 273.1234 (homestead disaster credit), except that an application need only be submitted by the end of the year in which the damage occurred;
- nonhomestead and utility property that meets all the requirements under section 273.1233, subdivision 1, paragraph (b) (local option disaster abatement), except that an application need only be submitted by the end of the year in which the damage occurred; and
- the county assessor determines 50% or more of a homestead dwelling or other building has been (1) unintentionally or accidentally destroyed, or (2) destroyed by arson or vandalism by someone other than the owner.

Any properties receiving local option relief must meet the 50% damage threshold required in section 273.1233.

Computation

For property **located in a disaster or emergency area**, the credit is limited to the difference between (1) the net tax on the property computed using the market value of the property established for the January 2 assessment in the year in which the damage occurred, and (2) the net tax computed using the reassessed market value.

$\left(\begin{array}{l} \text{Net Tax} \\ \text{(as computed using the market value established} \\ \text{January 2 of the year of the destruction)} \end{array} - \begin{array}{l} \text{Net Tax} \\ \text{(as computed using the reassessed market} \\ \text{value established after the destruction)} \end{array} \right) = \text{Disaster Credit Amount}$

For property **not located in a disaster or emergency area**, the credit is limited to the result determined by multiplying (i) the difference in net tax on the property computed using the market value of the property established for the January 2 assessment in the year in which the damage occurred, and the net tax computed using the reassessed value, by (ii) a fraction representing the time its value was reduced (the number of full months in the assessment year that the structure was unusable divided by 12). If the structure was usable for a fraction of a month, that month is not included in the numerator.

$\left(\begin{array}{l} \text{Net Tax} \\ \text{(as computed using the market value established} \\ \text{January 2 of the year of the destruction)} \end{array} \times \begin{array}{l} \text{\# of full months the} \\ \text{property was not usable} \\ \text{12} \end{array} \right) = \text{Local Option Credit for} \\ \text{property not located in} \\ \text{disaster area}$

Special Valuation and Tax Programs

Payment

If the destruction occurs in a disaster or emergency area, the county auditor shall certify the credits granted to the commissioner of revenue for reimbursement. The state pays the reimbursement of the abatements directly to the local taxing districts. The Department of Revenue pays each taxing district other than school districts, which are reimbursed by the Department of Education. No reimbursement is made to the state treasury. No reimbursement is made for credits granted to property located outside a disaster or emergency area.

Examples

The following examples can be found at the end of this section:

- Example 5 - Residential Homestead Outside a Disaster or Emergency Area
- Example 6 - Commercial/Industrial Property Inside a Disaster or Emergency Area
- Example 7 - Commercial/Industrial Property Outside a Disaster or Emergency Area

Special Valuation and Tax Programs

**Example 5: Payable 2010 Local Option Disaster Credit Example
Residential Homestead**

Property is a residential property which has a 2009 taxable market value value as indicated below. These calculations assume there is no bonding referendum and that the local tax rate for pay 2010 is 125%. Isolated disaster occurred in March 2009. The property owners were displaced for three full months. The property is NOT part of a disaster or emergency area. Land value remains unchanged following the disaster. Credit amount will show on the 2010 Tax Statement and WILL NOT be reimbursed by the state.

	<u>1/2/2009 Value</u>	<u>Value as reassessed following 2009 disaster</u>
Land <i>(value unchanged following disaster)</i>	\$25,000	\$25,000
Building (House and Garage)	<u>\$160,000</u>	<u>\$105,000</u>
Total TMV	\$185,000	\$130,000

TAX CAPACITY CALCULATION

2009 TMV	\$185,000	\$130,000
x Class Rate (payable 2010)	<u>1%</u>	<u>1%</u>
= Tax Capacity	\$1,850	\$1,300
x Local Tax Rate (payable 2010)	<u>125%</u>	<u>125%</u>
= Base Tax (before credits and MV referendum levies)	\$2,313	\$1,625

RESIDENTIAL HOMESTEAD MV CREDIT

1st 76,000 x .4%	\$304	\$304
Remainder x (-.09%)	<u>-\$98</u>	<u>-\$49</u>
Total Residential HS MV Credit	\$206	\$255

REFERENDUM MARKET VALUE TAX

2009 TMV	\$185,000	\$130,000
RMV Tax Rate (pay 2010)	<u>0.12345%</u>	<u>0.12345%</u>
RMV Tax	\$228	\$160

NET TAX PAYABLE

Base tax - credit(s) + RMV tax = Total Tax	\$2,335	\$1,530
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TOTAL DISASTER CREDIT AMOUNT **\$2,335 - \$1,530 = \$805**

NUMBER OF MONTHS PROPERTY UNUSABLE = **3/12 OR 25.00%**

LOCAL OPTION CREDIT AMOUNT AVAILABLE = **\$201.22**

Special Valuation and Tax Programs

Example 6: Payable 2010 Local Option Disaster Credit Example
Commercial/industrial property INSIDE a disaster or emergency area

Property is a commercial/industrial property which has a 2009 taxable market value value as indicated below. These calculations assume there is no bonding referendum and that the local tax rate for pay 2010 is 125%. State General Tax rate for C/I property is 48.032%. Large scale disaster occurred in March 2009 resulting in structural damage in excess of 50% of value. The property is part of a disaster or emergency area. Land value remains unchanged following the disaster. Credit amount will show on the 2010 Tax Statement.

	<u>1/2/2009 Value</u>	<u>Value as reassessed following 2009 disaster</u>
Land <i>(value unchanged following disaster)</i>	\$50,000	\$50,000
Building	<u>\$400,000</u>	<u>\$180,000</u>
Total TMV	\$450,000	\$230,000

TAX CAPACITY CALCULATION

2009 TMV		\$450,000	\$230,000
x Class Rate (payable 2010)	1.50%	\$2,250	\$2,250
	2.00%	<u>\$6,000</u>	<u>\$1,600</u>
= Tax Capacity		\$8,250	\$3,850
x Local Tax Rate (payable 2010)		<u>125%</u>	<u>125%</u>
= Base Tax (before State General Tax & MV referendum levies)		\$10,313	\$4,813

STATE GENERAL TAX

Tax Capacity		\$8,250	\$3,850
x State General Tax Rate = 48.032%		<u>48.032%</u>	<u>48.032%</u>
= State General Tax		\$3,963	\$1,849

REFERENDUM MARKET VALUE TAX

2009 TMV		\$450,000	\$230,000
RMV Tax Rate (pay 2010)		<u>0.12345%</u>	<u>0.12345%</u>
RMV Tax		\$556	\$284

NET TAX PAYABLE

Base tax + state general tax + RMV tax = Total Tax		\$14,831	\$6,946
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**TOTAL DISASTER CREDIT AMOUNT FOR
TAXES PAYABLE IN 2010 =**

\$14,831 - \$6,946 = \$7,885

Special Valuation and Tax Programs

Example 7: Payable 2010 Local Option Disaster Credit Example
Commercial/industrial property NOT located in a disaster or emergency area

Property is a commercial/industrial property which has a 2009 taxable market value value as indicated below. These calculations assume there is no bonding referendum and that the local tax rate for pay 2010 is 125% and the State General Tax rate for C/I property is 48.032%. Isolated disaster occurred in March 2009 resulting in structural damage in excess of 50% of value. The owner of the property is unable to use the building for three full months and has filed an application with the county board. Land value remains unchanged following the disaster. Credit amount will show on the 2010 Tax Statement.

	<u>1/2/2009 Value</u>	<u>Value as reassessed following 2009 disaster</u>
Land <i>(value unchanged following disaster)</i>	\$50,000	\$50,000
Building	<u>\$400,000</u>	<u>\$180,000</u>
Total TMV	\$450,000	\$230,000

TAX CAPACITY CALCULATION

2009 TMV		\$450,000	\$230,000
x Class Rate (payable 2010)	1.50%	\$2,250	\$2,250
	2.00%	<u>\$6,000</u>	<u>\$1,600</u>
= Tax Capacity		\$8,250	\$3,850
x Local Tax Rate (payable 2010)		<u>125%</u>	<u>125%</u>
= Base Tax (before State General Tax & MV referendum levies)		\$10,313	\$4,813

STATE GENERAL TAX

Tax Capacity		\$8,250	\$3,850
x State General Tax Rate = 48.032%		<u>48.032%</u>	<u>48.032%</u>
= State General Tax		\$3,963	\$1,849

REFERENDUM MARKET VALUE TAX

2009 TMV		\$450,000	\$230,000
RMV Tax Rate (pay 2010)		<u>0.12345%</u>	<u>0.12345%</u>
RMV Tax		\$556	\$284

NET TAX PAYABLE

Base tax + state general tax + RMV tax = Total Tax		\$14,831	\$6,946
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TOTAL DISASTER CREDIT AMOUNT **\$14,831 - \$6,946 = \$7,885**

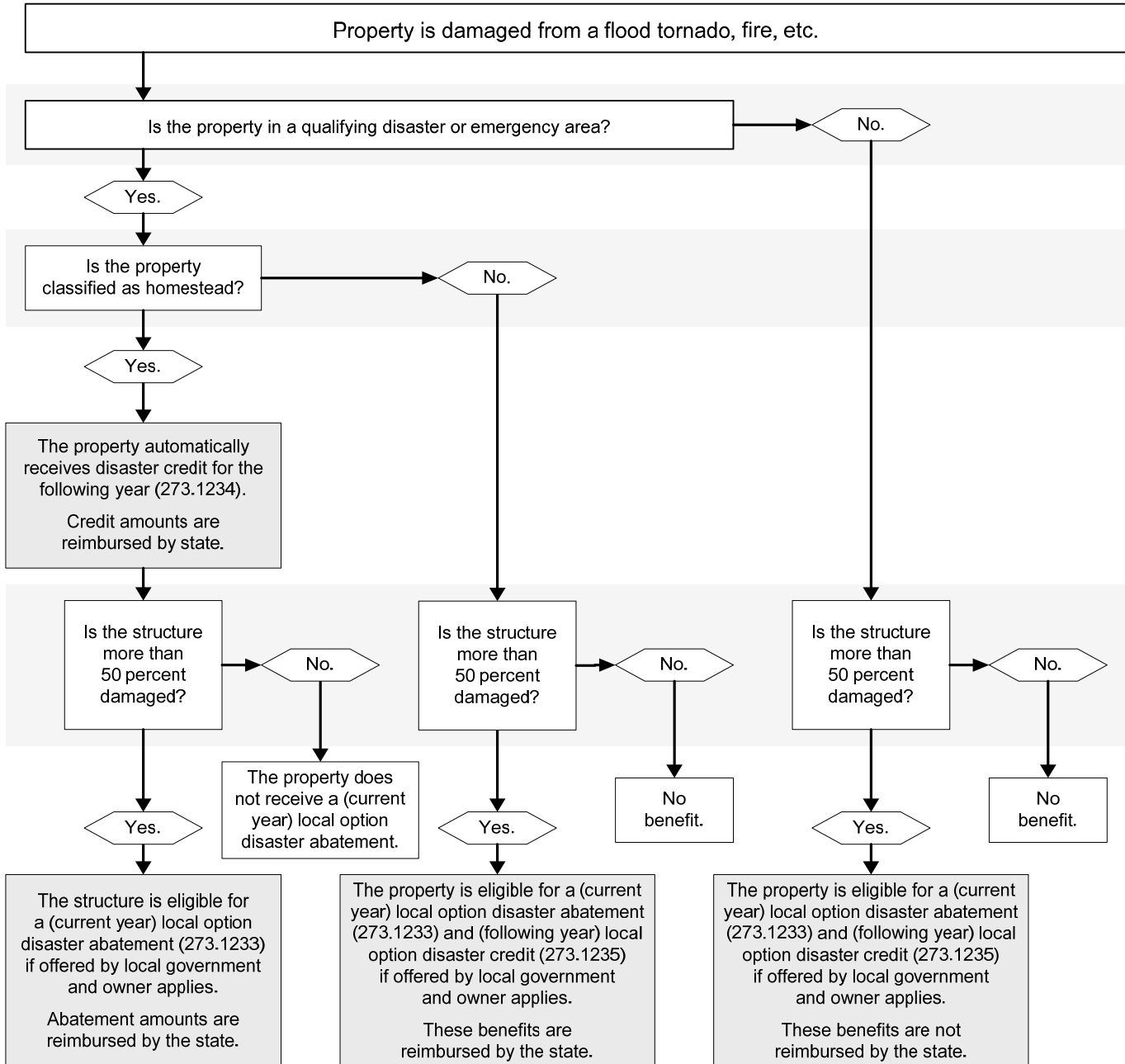
NUMBER OF MONTHS PROPERTY UNUSABLE = **3/12 OR 25.00%**

LOCAL OPTION CREDIT AMOUNT AVAILABLE = **\$1,971.25**

Special Valuation and Tax Programs

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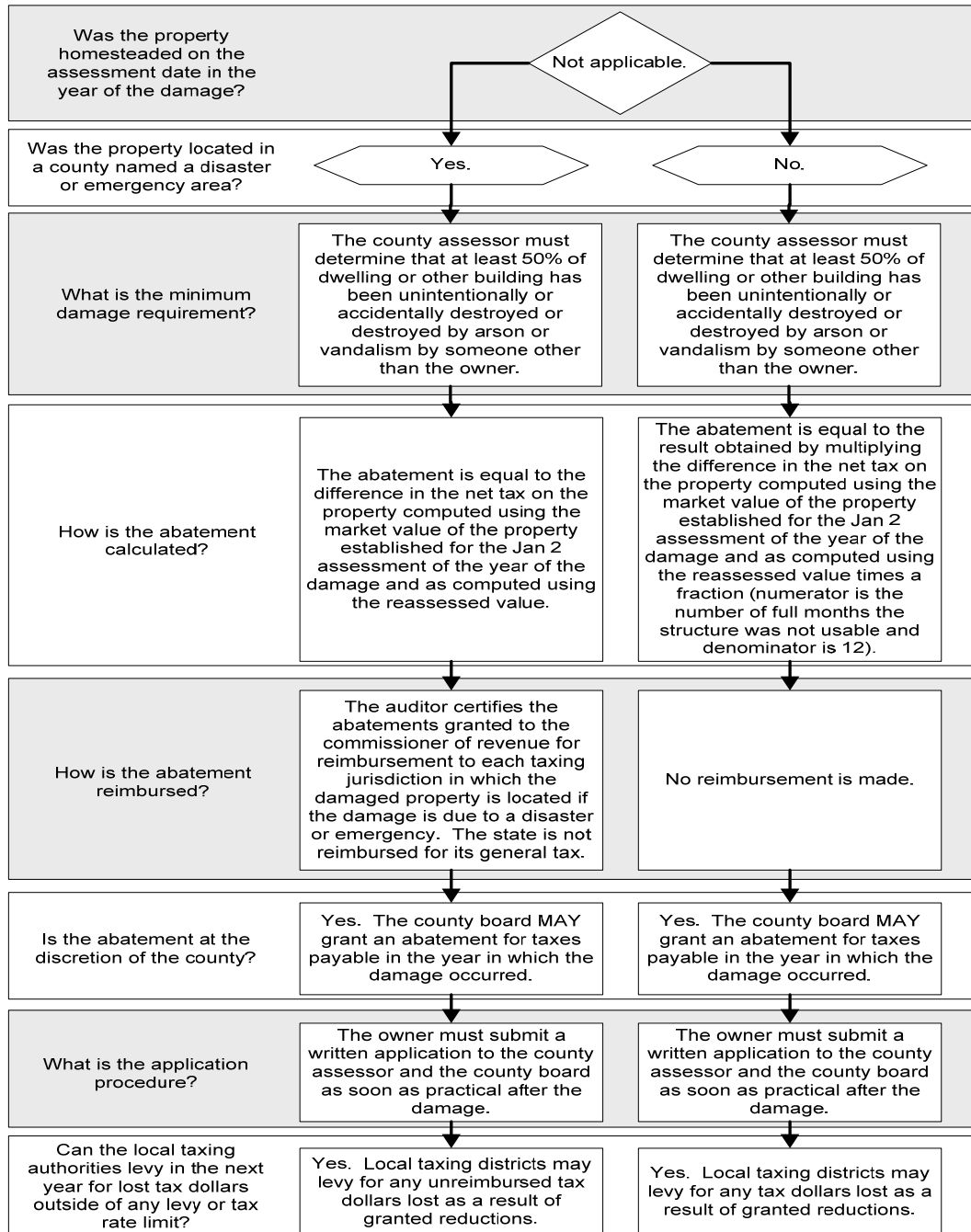
Disaster Relief Flow Chart (2007 Special Session)



Revised 7/2008

Special Valuation and Tax Programs

Local Option Disaster Abatement
(for taxes payable the year in which the destruction occurs)



Statutory Reference

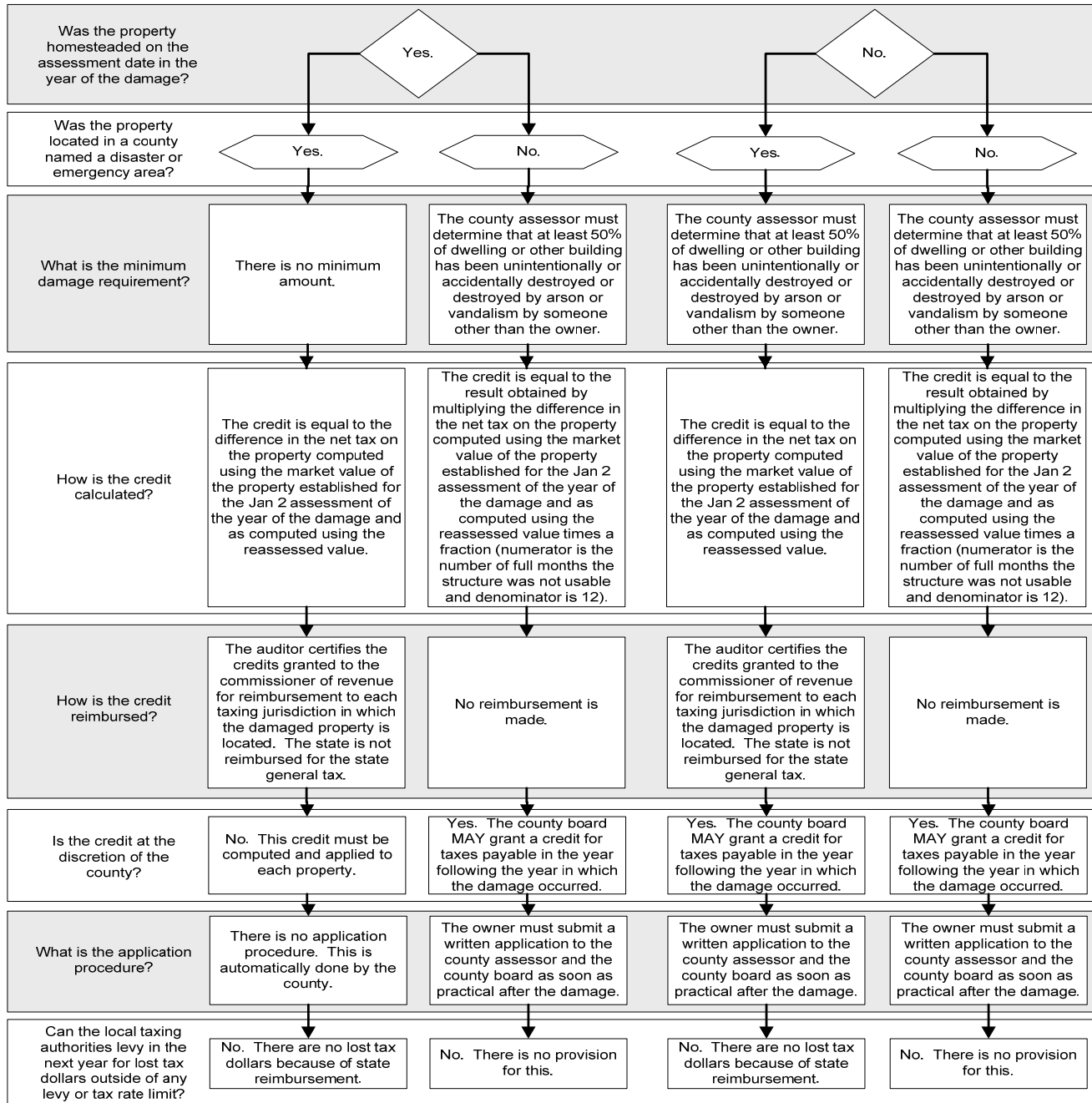
M.S. 273.1233

M.S. 273.1233

Revised 09/2007

Special Valuation and Tax Programs

**Homestead Disaster Credit and
Local Option Disaster Credit**
(for taxes payable the year following the damage)



Statutory Reference

M.S. 273.1234

M.S. 273.1235

M.S. 273.1235

M.S. 273.1235

Revised 09/2007

Rural Preserve Property Tax Program

Background

The Rural Preserve Property Tax Program was enacted by the Minnesota Legislature in 2009. The program was a response to concerns raised by property owners and farmers regarding changes that had been made to the Green Acres program in 2008. Many farm properties in Minnesota include land that is not actually farmed. In some instances, the choice to not farm a portion of the land is based on a property owner's decision to use it for other purposes (e.g. hunting or future residential development). However, other farmers choose not to farm portions of their property to maintain natural wildlife or to preserve "green" lands for future generations. These farmers appealed to the Legislature. They told legislators that, due to changes made in 2008 to Green Acres law, they would have to plow down trees or fill in wetlands in order to be able to afford property taxes (if there was no longer a deferral under the Green Acres program).

The Rural Preserve program was enacted to provide tax deferral benefits similar to the Green Acres program for property owners who were sincerely interested in land preservation. Persons choosing to enroll must be willing to commit their land to a conservation management plan and covenant for a minimum of 10 years in order to receive the tax benefits of Rural Preserve.

A legislative auditor's report on the Green Acres program prior to 2008 law changes found that 38% of enrolled acres statewide were not tilled land.* Inconsistencies in the implementation of the Green Acres program and the resulting tax shift caused by extending Green Acres to non-agricultural lands led the Legislature to make significant changes to Green Acres in 2008 and 2009. As noted above, these changes included creation of the Rural Preserve program. We cannot overstate how important it is that your administration of Rural Preserve is consistent with both the statutory language and the intent of the law in order to ensure statewide uniformity and consistency.

This section of the manual is drawn from a Department of Revenue bulletin on the Rural Preserve program that was released in April 2010. It addresses the benefits of the program, eligibility requirements, and other information that will be important for assessors' offices to know in advance of the first applications in 2011. We have also included examples of the documents that will be used for this program, such as the conservation management plan and covenant.

* "Green Acres" and Agricultural Land Preservation Programs, Office of the Legislative Auditor, State of Minnesota, 2008

Special Valuation and Tax Programs

Program Eligibility

Minnesota Statutes, section 273.114, subdivision 2, provides that:

“Class 2a or 2b property that had been assessed under Minnesota Statutes 2006, section 273.111, or that is part of an agricultural homestead under Minnesota Statutes, section 273.13, subdivision 23, paragraph (a), is entitled to valuation and tax deferment under this section if:

- (1) the land consists of at least ten acres;*
- (2) a conservation management plan for the land must be prepared by an approved plan writer and implemented during the period in which the land is subject to valuation and deferment under this section;*
- (3) the land must be enrolled for a minimum of ten years; and*
- (4) there are no delinquent property taxes on the land.”*

We will focus more on the land requirements later in this section. However, the property owner requirements fall into two groups:

- property owners who had been properly enrolled in Green Acres under 2006 statutory requirements; or
- owners of agricultural homestead property.

Class 2b acres which are part of an agricultural homestead are eligible for enrollment in Rural Preserve going forward, whether they were in Green Acres or not (provided that all other program requirements are met).

Property owners with non-homesteaded land that had been properly enrolled in Green Acres will have a one-time option to enroll their class 2b acres in Rural Preserve. Please note that if a property had not been properly enrolled in Green Acres due to an error or oversight (e.g. the property only had 7 acres of agricultural land), the property would be ineligible for Rural Preserve. This enrollment clause was created because Legislature wanted a viable option for properties which had been in Green Acres, but had some acres which were no longer eligible for the deferral after the 2008 law changes.

For 2b acres currently in Green Acres, this is a “one time landing area” for those acres. Going forward, all new applicants and all new owners of enrolled land would need to meet the agricultural homestead requirement. If a property that meets the qualifications for this program because of previous enrollment in Green Acres (under 2006 statute) comes under new ownership due to sale/transfer/etc., then the new owner must meet the agricultural homestead requirement to qualify for continued valuation/deferment. Since the property would not have been assessed under the 2006 Green Acres statute for that (new) owner, the “landing area” provision would no longer apply.

As stated above, there must be no delinquent taxes on the land at the time of application.

Land Requirements

Class 2a (agricultural) or 2b (rural vacant land) property: Class 2a or 2b property that had been enrolled in Green Acres under 2006 statutory requirements or that is part of an agricultural homestead may qualify. For property enrolled in Green Acres, this means property that had been properly enrolled in Green Acres in either or all of assessment years 2006, 2007, or 2008. Class 2a agricultural acres are eligible for enrollment; however it is likely that due to the requirements of the conservation management plans, these 2a acres will be reclassified as class 2b rural vacant land once enrolled.

The land consists of at least 10 acres: The eligible land must be at least 10 acres in size. For a typical agricultural homestead, the entire property would need to be at least 21 acres (HGA, 10 acres of tilled land to sustain agricultural homestead, and 10 acres of 2b which could be enrolled in the Rural Preserve program). Once the 10 (contiguous) acres requirement is met, other smaller portions of the property may be enrolled provided they are under the same ownership, conservation management plan, and covenant. For example, if a property owner has 13 qualifying acres on the eastern edge of their farm property, and another 4 acres on the western edge, all 17 acres are eligible for enrollment in the program.

A conservation management plan and covenant must be in place: The land must be covered by a conservation management plan, and must be placed under a covenant for a minimum of 10 years. Although the covenant is discussed further in a later section, please note that it is not a "10-year covenant". It is a perpetual covenant for which a request to terminate may be made after five years, with final termination taking place five years after that. In other words, 10 years is the minimum time that a covenant will be in place for the property, but in no way does it "expire" or become inactive after 10 years.

Limitations

Acres may not be enrolled in this program while concurrently enrolled in:

- Green Acres
- Open Space
- Sustainable Forest Incentive Act

Because eligible acres are only class 2a and 2b, the property would also be ineligible for concurrent classification as 2c (Managed Forest Land). If a property owner enrolled in 2c with a qualifying Forest Management plan, she/he may be eligible for Rural Preserve if the land is reclassified as 2a or 2b and is either: *a*) part of an agricultural homestead or *b*) had been properly enrolled in Green Acres prior to enrollment in the Managed Forest Land class.

Special Valuation and Tax Programs

Transition for Properties Enrolled in Green Acres

For properties enrolled in Green Acres as of the 2008 assessment, the transition into Rural Preserve will likely happen in one of two ways.

We expect most property owners in Green Acres who choose to enroll their class 2b acres into Rural Preserve would keep those 2b acres enrolled in Green Acres until their management plans and covenants are completed. When they are eligible to apply for the Rural Preserve program beginning in 2011, they can immediately “transition” those acres from Green Acres to Rural Preserve without paying back deferred taxes on their 2b lands under the Green Acres statute. Farmers choosing this option must enroll their 2b acres prior to May 1, 2013, to avoid the payback of deferred taxes. In other words, a farmer with 2b acres in Green Acres would have to pay back deferred taxes if they have not transitioned by May 1, 2013. If they transition in 2014, they do not receive a “refund” of the deferred taxes.

There is a possibility for farmers to withdraw class 2b lands prior to August 16, 2010, to avoid a payback of deferred taxes as well. In this case, they may enroll in RP in future years (if the property is an agricultural homestead or had been properly enrolled in Green Acres for the 2008 assessment). Between the time of withdrawal from Green Acres and enrollment in Rural Preserve, however, the lands would be valued and taxed at full market value.

As an aside, if a farmer chooses to enroll class 2a acres from Green Acres, there will be a payback of deferred taxes on the 2a acres, since there is no “free” withdrawal for qualifying class 2a acres. Those acres will likely be reclassified based on the requirements of the conservation management plan.

Application Date

The program will be first available for the 2011 assessment year. The Department of Revenue will develop applications and educate assessors as to their responsibilities by that time. The first application due date will be May 1, 2011 (for taxes payable 2012). The application does not need to be filed annually after initial acceptance, but assessors may request additional information to verify that a property owner continues to meet program requirements.

Program Benefits

Similar to Green Acres, a tax amount is deferred for the duration of enrollment in the program. The assessor is to determine two values for the land: One without regard to non-agricultural influences which must not exceed the 2a tilled value for that county as determined by the Commissioner of Revenue, and another value based on the highest and best use of the property which takes into account any non-agricultural influences such as development pressure or seasonal or commercial use. The actual taxes will be based on the Rural Preserve value (without regard to non-agricultural influences) and the difference

between the taxes based on the Rural Preserve value and the taxes based on a highest and best use value are deferred for the duration of the program.

Special assessments may also be deferred as long as property is enrolled in the program. When a property no longer qualifies, all deferred special assessments plus interest must be paid.

As with Green Acres, the deferred taxes are a lien on the property, and when due are assessed to the same extent and for the same duration as other taxes imposed on the property in this state. The tax shall be annually extended by the county auditor and when payable shall be collected and distributed in the manner provided by law for the collection and distribution of other property taxes.

Rural Preserve Value

Minnesota Statutes, section 273.114, subdivision 3, provides that:

“Notwithstanding sections 272.03, subdivision 8, and 273.11 [both sections refer to market value], the value of any real estate that qualifies under subdivision 2 must, upon timely application by the owner in the manner provided in subdivision 5, not exceed the value prescribed by the commissioner of revenue for class 2a tillable property in that county. The house and garage, if any, and the immediately surrounding one acre of land and a minor, ancillary nonresidential structure, if any, shall be valued according to their appropriate value. In determining the value for ad valorem tax purposes, the assessor shall not consider the presence of commercial, industrial, residential, or seasonal recreational land use influences that may affect the value of real estate subject to this section.”

For purposes of valuation for the Rural Preserve program, the Department of Revenue strongly recommends using one of the following values:

1. 50% of the 2a tilled value as prescribed by the Commissioner of Revenue for your county for Green Acres purposes; or
2. 50% of the average estimated market value for tilled lands based on your local market if the value of tilled lands does not exceed the associated Green Acres value.

Valuation Examples

For example, if the county does have Green Acres on its tilled land, and has valued woods at \$2,500 per acre because of recreational value influences, and the indicated 50% value for Rural Preserve (from above) is \$2,200 (based on a Green Acres tilled value of \$4,400 for the county), the deferral is based on the \$300 difference.

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For enrolled class 2b property which is wild land (e.g. swampland, waste land, etc.), it may be acceptable to use 25% of the 2a tilled value as prescribed by the commissioner for your county (mentioned above), or to use 25% of the average estimated market value for tilled lands in your county if Green Acres is not applied to the tilled lands.

For example, the county does have Green Acres on its tilled land and has valued a swamp at \$1,800 per acre because of recreational value influences, and the indicated 25% value for Rural Preserve (from above) is \$1,100 (based on a Green Acres tilled value of \$4,400 for the county), the deferral is based on the \$700 difference in value.

If the estimated market value of the land the property owner wishes to enroll in Rural Preserve is less than the indicated value for the Rural Preserve program, there are no deferred taxes. Rural Preserve deferral is only applicable in cases where the EMV exceeds the indicated Rural Preserve value for any given property.

For example, a county does not have Green Acres on its tilled land, and has valued a swamp at \$900 per acre due to lack of recreational value influences or other market influences, and the indicated 50% value for Rural Preserve is \$2,000 (based on a 50% of the county's average EMV for tilled, which is \$4,000 per acre) and the 25% value is \$1,000, there is no deferral because the swamp EMV is lower than the Rural Preserve value.

Conservation Management Plan and Covenant

The Board of Soil and Water Resources will distribute guidelines for plan writers. The plans themselves must be approved by the Soil and Water Conservation District in each county. The assessor must be provided a copy of this management plan as part of the application process.

The assessor's duty is very minimal in terms of the conservation management plan. Your duty will be to determine that it has been signed by an "approved plan writer". The Soil and Water Conservation District (SWCD) for your county will keep a list of approved plan writers that you may request. Keep in mind that the persons on the list are likely to change regularly at first as new plan writers are added. Initially, the DNR expects most plan writers to be from SWCDs or to be Forest Stewardship plan writers. The actual plans contain very detailed soil type information, etc. that may be unnecessary for your purposes. As long as the plan is completed, is signed by an approved plan writer, has been approved by the SWCD, and you have a copy on file with the application, it is sufficient to continue with the approval process.

The conservation goals will commonly be to maintain or enhance existing land cover. In other words: land preservation. Most agricultural land will be excluded from qualifying

Forest Stewardship and Forest Management plans, and the agricultural use on conservation management plans will be very limited. However, there may be some “flash” grazing of cattle for example, but only to the extent that it does not damage existing grass cover or vegetation. In most cases, there will not be enough agricultural use on these lands to sustain the 2a classification. The amount of agricultural use (or any use of the land) is determined by the plan writer based on the guidance of the SWCD.

Other requirements for the management plan may include controlling noxious and invasive weeds, periodically inspecting for erosion, periodic burning, periodic mowing, or periodic tree thinning when necessary to maintain the health of the natural and existing plant and tree community. The covenant requires that the land not be modified in any way that adversely impacts the overall quality and type of the vegetative cover prescribed within the conservation management plan.

While the “actual” conservation management plan may be very long and detailed, for the purpose of this program, the plan that you are given may be as simple as a one-page document. The plan form will include the landowner’s name and address, as well as the property ID number, legal description, a map, and number of acres covered. These areas of the plan are highlighted in the example for your reference.

Remember, property owners do not need to enroll all eligible acres. If, for example, a property owner has 100 acres which are eligible for enrollment, the plan may only cover 70 of those acres. Only the 70 acres covered by the plan and the associated covenant will be enrolled. The remaining 30 acres would be valued and taxed at their highest and best use value. It is also possible that on the same parcel, only some of the 70 acres under the management plan be enrolled into Rural Preserve. For example, if the owner only puts 50 of the 70 acres under a covenant, only those 50 acres would meet all requirements for the valuation and deferral provided by the program. This is one reason that it is imperative for the assessors to review final documentation (including the plan and the covenant) as part of the application approval process.

Other information included on the plan will be specific to the property and is information used by BWSR and the SWCDs for this program: dominant soil type, crop productivity index (CPI), forest productivity index (FPI), dominant land use/cover type, management goal, prescriptions to meet proposed future conditions, and recommended date of completion. These criteria meet the statutory requirements for the conservation management plan under M.S. 273.114.

If a DNR-approved Forest Stewardship Plan or other conservation plan is in place on the property that meets the minimum requirements as set forth in M.S. 273.114, the plan may be signed by an approved plan writer and approved by the SWCD and be acceptable for the requirements of Rural Preserve. The landowner is responsible to maintain the original plan and produce it when necessary. The covenant will be based upon this pre-

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approved plan. Qualifying Forest Stewardship Plans will show an expiration date on the front page of the plan, and this page should be provided to the assessor with the conservation management plan as part of the application process. It is the taxpayer's duty to have this plan renewed while enrolled in the Rural Preserve program in order to continue to receive the benefits.

If property owners have questions regarding fees for conservation management plans, the SWCD and local foresters are their resources. The Board of Soil and Water Resources expects that fees will start around \$250 per plan, but may increase in cost depending on the size of the property or the complexity of the plan. Hopefully, most property owners will see tax savings in excess of the cost of the plan within the first years of enrollment in the program.

We recommend establishing a working relationship with your county's Soil and Water Conservation District (SWCD) to work together on implementation of this program.

The Covenant

The covenant is recorded with the County Recorder in the county where the property is located. The assessor is to be provided a copy of this recorded covenant as part of the application process.

The property owner is responsible for filling out and filing the covenant agreement. It has been the department's experience with covenants for the Sustainable Forest Incentive Act (SFIA) that the covenants are very easy for most property owners to fill out and sign. The property owner may seek assistance with filling out the agreement if necessary. For example, the owner may receive assistance from the conservation management plan writer in order to provide the appropriate exhibits that must accompany the covenant. Or, the owner may request legal advice through an attorney. County Recorders are not allowed to help fill out covenants.

Property owners should make at least two copies of the recorded covenant. A property owner keeps the original document, while one copy is to be provided to the County Recorder and another copy will go with the application to the County Assessor (the application process is outlined further in a later section). A covenant recording number will be assigned and must be noted by the property owner on the application to the assessor.

The covenant runs with the land, so it continues even if there is a change in ownership. This includes changes of ownership by transfer or sale.

The covenant binds the property to the terms of the aforementioned conservation management plan. The exhibits that must be included with the covenant include a legal

description for real property, and a map or survey of the affected property. The Board of Soil and Water Resources (BWSR) is responsible for determining the restrictions of the conservation management plans. Again, it is recommended that you develop working relationships with your county's SWCD in order to understand some of these plan restrictions, and that you direct property owners with program-related questions to the SWCD.

After five years, the property owner may request to cancel the covenant. The covenant will then terminate five years after the request to cancel. It does not automatically cancel after 10 years. The property owners must notify the assessor five years before they desire the covenant to be terminated. There are five full assessment years in between the year of request to terminate and the actual assessment year (January 2) when it is terminated. For example, if someone requests termination on February 6, 2020, the covenant is terminated on January 2, 2026 (after January 2 of 2021, 2022, 2023, 2024, 2025 have passed; five full assessment years).

When the covenant is terminated, the property owner will have to pay back any deferred taxes. The deferred taxes will be levied with respect to the year of termination of the covenant plus two prior years. The additional taxes are a lien against the property. After a covenant has been terminated, the land may not be re-enrolled in the Rural Preserve property tax program for a period of three years.

Covenant violation information is covered later in this section. An example of a blank covenant agreement can be found in the Supplemental Information Module (Module 9).

Application Process

The process for applying for the Rural Preserve Property Tax program is a four-step process. It begins and ends with the assessor's office. The "four steps" include:

1. The Assessor's Office
2. The Soil and Water Conservation District
3. The County Recorder's Office
4. The Assessor's Office

The Assessor's Office: Property owners seeking to enroll lands into the Rural Preserve program should first contact their assessor's office for an explanation of the program. You have been provided with fact sheets which may be of help in this part of the process. Assessors should work with property owners to determine program eligibility (Green Acres or agricultural homestead requirements are met, no delinquent taxes, at least 10 contiguous acres, etc.). If parcels contain 10 or more contiguous eligible acres, the assessor should provide a list of parcel numbers, provide aerial photos of the parcels, and provide the application to the property owner. If your office is unable to produce maps or aerial photos, we recommend working with the SWCD in your county, or request that the property owner get maps from the Farm Service Agency.

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Minnesota Statutes, section 13.03, allows assessors to charge a minimal fee for some of these aerial photos and copies. However, assessors may not charge for delineating eligible acres on a map, as this is a part of the assessor's duty.

The Soil and Water Conservation District (SWCD): Property owners should contact the SWCD to review requirements of the conservation management plans. Property owners should provide parcel numbers and aerial photos to the SWCD for purposes of creating the plan. A plan will be prepared for any applicable acres (it does not need to be all eligible acres, so long as at least ten are enrolled). Only the acres covered by the plan are eligible for enrollment in Rural Preserve, which may mean that upon the assessor's second review, the total acreage to be considered may decrease. Assessors should therefore review the plan when it is returned to the office to ensure that only appropriate acreage receives the benefit. The SWCD will approve the plan. In some cases, the property owners may already have a plan which meets the SWCD's requirements, such as a forest management plan. In this case, the SWCD approver will acknowledge that the prepared plan meets the requirements of this program. Again, the assessor does not need to read and understand the minutiae of the plan, but needs to know that it has been signed by an approved plan writer.

The County Recorder's Office: The property owner will fill out and sign the covenant form. The covenant will bind the property to the terms of the conservation management plan. This covenant must include the required exhibits (legal description and a map or survey of the affected area). Property owners will file the covenant at the County Recorder's office. The property owner will make a copy of the recorded covenant to submit with the final and complete application to the assessor's office.

The County Assessor's Office: At this part of the application process, the assessor will review the required items. Applications for deferral under Rural Preserve are due by May 1 of the year prior to the year in which taxes are payable. A completed and signed application must be returned to the assessor along with a copy of the conservation management plan signed by an approved plan writer and a copy of the recorded covenant agreement. As the assessor has already determined qualifications for the program at the initial meeting, the assessor needs only to review the additional documentation for approval or denial of deferral, and to review the exact acreage affected (by reviewing the conservation management plan, the covenant, and the map). The assessor should contact the property owner of the approval or denial.

As with similar special programs, if the assessor denies the application, the property owner may appeal to Minnesota Tax Court. Local and county boards of appeal and equalization are not able to grant special programs to property owners.

Program Compliance

The requirements for Rural Preserve valuation and deferral are listed in Minnesota Statutes, section 273.114, subdivision 2:

“Class 2a or 2b property that had been assessed under Minnesota Statutes 2006, section 273.111, or that is part of an agricultural homestead under Minnesota Statutes, section 273.13, subdivision 23, paragraph (a), is entitled to valuation and tax deferral under this section if:

- (1) the land consists of at least ten acres;*
- (2) a conservation management plan for the land must be prepared by an approved plan writer and implemented during the period in which the land is subject to valuation and deferral under this section;*
- (3) the land must be enrolled for a minimum of ten years; and*
- (4) there are no delinquent property taxes on the land.*

Real estate may not be enrolled for valuation and deferral under this section and section 273.111, 273.112, or 273.117, or chapter 290C, concurrently.”

Also, a property is subject to a covenant, which is described in subdivision 5, paragraph (b):

“The owner of the property must sign a covenant agreement that is filed with the county recorder and recorded in the county where the property is located. The covenant agreement must include all of the following:

- (1) legal description of the area to which the covenant applies;*
- (2) name and address of the owner;*
- (3) a statement that the land described in the covenant must be kept as rural preserve land, which meets the requirements of subdivision 2, for the duration of the covenant;*
- (4) a statement that the landowner may terminate the covenant agreement by notifying the county assessor in writing five years in advance of the date of proposed termination, provided that the notice of intent to terminate may not be given at any time before the land has been subject to the covenant for a period of five years;*
- (5) a statement that the covenant is binding on the owner or the owner's successor or assigns and runs with the land; and*
- (6) a witnessed signature of the owner, agreeing by covenant, to maintain the land as described in subdivision 2.”*

To understand potential effects of changes to properties enrolled in Rural Preserve, one must keep these two issues separate:

1. *The covenant:* The covenant is binding on all successors. The new owners are bound by the terms of the covenant, whether or not the property continues to qualify for value deferral. The covenant is not automatically terminated. Violation of the covenant does not terminate the covenant. Deferred taxes are due when the covenant is terminated.

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2. *The benefits:* An owner and any future “new” owners would need to meet the requirements under subdivision 2 to qualify for the valuation and deferral benefits. If a new owner does not meet the requirements of subdivision 2, then the new owner does not get the valuation and deferral benefits; however, it is possible that after the covenant is terminated the owner would not have deferred taxes due, because of the possibility that taxes would not be deferred for the final years (due to loss of program benefits).

Deferred taxes are due only upon termination of the covenant; however special assessments are due as soon as the property no longer qualifies under the requirements of subdivision 2.

If property enrolled in Rural Preserve is sold or transferred, the new owner would need to meet the requirements of 273.114, subdivision 2 to qualify for valuation and deferral under this program. If the new owner does not qualify, there is no valuation deferral/benefit, but the new owner is still subject to the restrictions of the covenant, because the covenant is “binding on the owner or the owner’s successor or assigns and runs with the land...”

If the property has been enrolled in Rural Preserve for at least an additional five years, the new owner would need to request termination of the covenant, which takes five years. Likely, there would be no deferred taxes to pay, but there may be no deferral during those final five years. Special assessments would need to be paid as soon as the property no longer qualifies under the requirements of subdivision 2.

If a new owner is able to establish (anytime after purchasing or acquiring the property) that he/she meets the requirements of subdivision 2, the benefits may be reinstated provided that the covenant is still in place.

If a property which was homesteaded becomes non-homestead under the same ownership, that property would not be eligible for the valuation and deferral because the requirements of subdivision 2 would no longer be met. However, the covenant is still binding. The property owner would need to pay back special assessments, but there would likely be no payback of deferred taxes after the five-year termination process (no taxes would be deferred for those years).

If property becomes homestead again, the benefits may be reinstated. The assessor may request proof that the property meets the qualifications for the valuation and deferral benefits of the program.

Covenant violation

If a covenant is violated, appropriate action must be taken to return the property to the state in which the covenant requires it to be. The covenant is a legally binding document. If the covenant restricts adding improvements to the property for example, but a property owner built on the land, those improvements would need to be torn down. If the improvements

are torn down and the property becomes compliant with program requirements again, it may be eligible for reinstatement of the program benefits.

In other words, if the covenant is violated, the property would not be eligible for the valuation/deferral benefits. If the property is returned to a state that is compliant with the covenant and conservation management plan, then benefits may be reinstated.

Special assessments are due upon violation of the program requirements.

A Note about Forest Management Plan Expiration

Forest Management Plans (FMP) expire after 10 years. If a farmer enrolls in 2011 with a three-year-old FMP, which expires in seven years (but the property owners is ineligible or has not started the process for terminating the covenant), the property owners would have to provide a new plan to continue the benefits of the program (as per subdivision 2). If the property did not have a valid FMP, it would not meet the requirements for valuation/deferral. Special assessments would be due. The covenant would still be binding, and after termination of the covenant, three years' deferred taxes would be due, if there had been any.

Because the assessor has a copy of the cover page of the FMP, they will know the expiration date.

Scenarios:

Assume for each of the following scenarios that the farmer qualified under the requirements of subdivision 2 upon original application.

Scenario A: Farmer A moves away from his property and no longer qualifies for homestead.

The covenant does not terminate. Farmer A must request that the covenant be terminated after five years of enrollment, and this process takes five assessment years. Farmer A does not receive any valuation/deferral for those five years, because he no longer meets the requirements of the program. Farmer A will have to pay back special assessments, because the property no longer qualifies under subdivision 2.

Scenario B: Farmer B violates the terms of the conservation management plan.

The covenant has been violated because the conservation management plan has been violated, but the covenant is not terminated. The land must be returned to the status that the covenant required it to be in. For example, if Farmer B built an improvement in violation of covenant restrictions, the improvement would need to be torn down. Farmer B, having violated the conservation management plan, would no longer qualify for

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valuation/deferral. The covenant is still binding. Farmer B will have to pay back special assessments, because the property no longer qualifies under subdivision 2. If the property is brought back into a state which is compliant with the conservation management plan, then the property may re-qualify for benefits. The assessor may request proof, by affidavit or otherwise, that the property meets the requirements for program benefits. This may require the property owner to consult with the local Soil and Water Conservation District.

Scenario C: Farmer C is retired, so she decides to give her property which is currently enrolled in Rural Preserve to her two kids.

The covenant is still binding. If neither child homesteads the property, or if any of the other requirements of subdivision 2 are not met, there is no valuation/deferral. If this is the case, special assessments will have to be paid back, because the property no longer meets statutory requirements.

If either or both child meets the requirements of subdivision 2, there is valuation/deferral eligibility under that new ownership. If Farmer C (mother) receives an agricultural relative homestead, the property may also qualify for continued benefits.

In summary, violators or persons who no longer qualify for the program benefits would not receive any deferral of taxes as soon as the requirements under subdivision 2 are no longer met. Because they do not receive deferral, there are no deferred taxes to pay back. The property is still subject to the covenant agreement. If these property owners return to compliance with all program requirements for the program benefits, the valuation/deferral may be reinstated.

All enrolled property owners must pay back special assessments if and when the requirements of subdivision 2 are no longer met.

For all new owners, etc., *“The assessor may require proof by affidavit or otherwise that the property qualifies under subdivision 2”* (M.S. 273.114, subd. 5).

The statutes governing deferred taxes and special assessments read as follows under M.S. 273.114:

“Subd. 6. Additional taxes. Upon termination of a covenant agreement in subdivision 5, paragraph (b), the land to which the covenant applied shall be subject to additional taxes in the amount equal to the difference between the taxes determined in accordance with subdivision 3 and the amount determined under subdivision 4, provided that the amount determined under subdivision 4 shall not be greater than it would have been had the actual bona fide sale price of the real property at an arm's-length transaction been used in lieu of the market value determined under subdivision 4. The additional taxes shall be

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extended against the property on the tax list for the current year, provided that no interest or penalties shall be levied on the additional taxes if timely paid and that the additional taxes shall only be levied with respect to the current year plus two prior years that the property has been valued and assessed under this section.”

“Subd. 8. Special local assessments. The payment of special local assessments levied after June 1, 2011, for improvements made to any real property described in subdivision 1 together with the interest thereon shall, on timely application as provided in subdivision 6, be deferred as long as the property meets the conditions contained in this section. If special assessments against the property have been deferred pursuant to this subdivision, the governmental unit shall file with the county recorder in the county in which the property is located a certificate containing the legal description of the affected property and of the amount deferred. When the property no longer qualifies under subdivision 1, all deferred special assessments plus interest shall be payable in equal installments spread over the time remaining until the last maturity date of the bonds issued to finance the improvement for which the assessments were levied. If the bonds have matured, the deferred special assessments plus interest shall be payable within 90 days. The provisions of section 429.061, subdivision 2, apply to the collection of these installments. A penalty shall not be levied on these special assessments if timely paid. This subdivision does not apply to special assessments levied at any time by a county or district court under chapter 116A or by a watershed district under chapter 103D.”

Remember, if a property owner met the qualifications for this program because of previous enrollment in Green Acres under 2006 statute, for any sale/transfer/etc. that puts the property into new ownership, the new owner would need to meet the agricultural homestead requirement to qualify for continued valuation/deferral. The property would not have been assessed under Green Acres 2006 statute to that owner, so that provision would not apply. For 2b acres currently in Green Acres, this is a “one time landing area” for those acres. Going forward, all new applicants and all new owners of enrolled land would need to meet the agricultural homestead requirement.

Looking Forward

The department expects to issue information regarding the covenant termination process and an example of a covenant release form. However, property owners should be made aware that the earliest year they are eligible to request that the covenant be released is 2016 (if enrollment was originally in 2011), and the earliest assessment year of withdrawal from the program is 2022 (five full assessment years after original request for termination of covenant, assuming property was first enrolled in 2011).

Primary Statutory Reference: 273.114

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Aggregate Resource Preservation Program

Introduction

Minnesota Laws 2008, Chapter 366, created a new classification of property, Commercial Aggregate Deposit (class 2e) and a new property tax program, the Aggregate Resource Preservation Property Tax Program. Property classified as 1a, 1b, 2a, 2b, or 2e may be eligible for valuation deferment under the Aggregate Resource Preservation Property Tax Law. This section will outline this new property classification, along with the tax implications of such classification and the Aggregate Resource Preservation Property Tax Law.

County Opt-Out Provisions

Every county has the option to opt-out of the Aggregate Resource Preservation Program, and in so doing will also have chosen to opt out of the 2e classification provision (more information is detailed on the following pages). At any time before June 1, 2010, a county board may terminate the Aggregate Resource Preservation Property Tax Law within the county by resolution following notice and public hearing. The county has 60 days from receipt of the first application for enrollment under this section to notify the applicant and any subsequent applicants of the county's intent to begin the process of termination of this program in the county.

The county must act on the termination within six months. Upon termination by a vote of the county board, all applications received prior to and during notification of intent to terminate shall be deemed void. If the county board does not act on the termination within six months of notification, all applications for deferment shall be deemed eligible for consideration.

Following the initial 60-day grace period, a termination applies prospectively and does not affect property already enrolled in the program prior to the termination date. A county may reauthorize application of the program by resolution of the county board revoking the termination.

For counties which have opted-out of the Aggregate Resource Preservation Property Tax Program, those counties have also opted out of the 2e classification.

2e Classification

Minnesota Statutes, section 273.13, subdivision 23, paragraph (1), outlines the requirements for class 2e commercial aggregate deposit property. The land must not be actively mined and not otherwise classified as class 2a or 2b. The property must be at least 10 contiguous acres in size at the time of application. In addition, the property owner must record an affidavit with the county recorder containing the following information:

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1. A legal description of the property;
2. A disclosure that the property contains a commercial aggregate deposit that is not actively being mined but is present on the entire parcel enrolled;
3. Documentation that the conditional use under county or local zoning ordinance for this property is for mining; and
4. Documentation that a permit has been issued by the local unit of government or the mining activity is allowed under local ordinance. The disclosure must include a statement from a registered professional geologist, engineer, or soil scientist delineating the deposit and certifying that it is a commercial aggregate deposit.

The term “commercial aggregate deposit” means a deposit that will yield crushed stone, sand, and/or gravel that is suitable for use as a construction aggregate. The deposit must not be actively mined for 2e classification.

The term “actively mined” means the removal of top soil and overburden in preparation for excavation or excavation of a commercial deposit.

Classification Rate

Ordinarily, property that is being actively mined for commercial aggregate would be classified as class 3a commercial property, with a classification rate of 1.50% on the first \$150,000 of value, and 2.00% on any additional value. However, the class rate of 2e property is 1.00%.

Property Being Actively Mined

When any portion of property classified as class 2e begins to be mined, the owner of the property must file a supplemental affidavit within 60 days from the day any aggregate is removed indicating the number of acres of the property that are being mined. The acres being mined must be valued and classified as class 3a commercial property for the following assessment year and must be removed from the Aggregate Resource Preservation Property Tax Program if it is enrolled in that program.

Copies of the original affidavit and all supplemental affidavits must be filed with the county assessor, the local zoning administrator, and the DNR's Division of Land and Minerals. A supplemental affidavit must be filed each time a subsequent portion of the property is actively mined provided that the minimum acreage change is five acres, even if the actual mining activity is taking place on less than five acres.

Benefits of Aggregate Resource Preservation Property Tax Program

The Aggregate Resource Preservation Property Tax Program provides a valuation deferment for qualifying property owners whose land contains a commercial aggregate deposit but that deposit is not being actively mined. This program is available in the counties whose county boards have not opted out of the program. Any county may

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choose to opt out of the program by following the provisions outlined earlier in this section.

Minnesota Statutes, section 273.1115, outlines the program benefits for aggregate resource preservation. The land is to be valued as if it were agricultural property, using a per-acre valuation equal to the current assessment year's average per-acre valuation of agricultural land within the county. The assessor cannot consider any additional value resulting from potential alternative and future uses of the property. The buildings located on the land are to be valued in the normal manner.

Requirements

To qualify for the program, the property must:

- be classified as 1a, 1b, 2a, 2b, or 2e;
- be at least 10 contiguous acres at the time of application;
- not have delinquent taxes; and
- be subject to a restrictive covenant.

Application

A property owner wishing to apply for the Aggregate Resource Preservation program must file an application with the county assessor where the property is located. The application is due by May 1 of the assessment year in which the property owner seeks qualification to be applied to the next taxes payable year. For the 2009 assessment year only, the application date is extended to September 1, 2009 (for taxes payable 2010). Reapplication is not necessary, provided the property owner continues to meet the requirements outlined above. The application must contain:

1. The legal description of the area;
2. The name and address of the owner;
3. A copy of the affidavit (described above) which is required for 2e classification; and
4. A statement of proof from the property owner that the land contains a restrictive covenant* limiting its use for the property's surface to that which exists on the date of the application and limiting its future use to the preparation and removal of the commercial aggregate deposit under its surface.

** The restrictive covenant must be binding on the owner or the owner's successor or assignee, and run with the land. The Department of Revenue has developed an application for the Aggregate Resource Preservation Program, which is located in Module 9 (Supplemental Information).*

Cancellation of Covenant

The restrictive covenant outlined above may be cancelled in one of the following two ways:

1. The covenant may be cancelled by the owner beginning with the next subsequent assessment year provided that the additional taxes are paid by the owner at the time of cancellation. If the covenant is cancelled by the owner, additional taxes must be paid at the time of cancellation.
2. The city or town in which the property is located may cancel the covenant beginning with the next assessment year if the city council or town board:
 - a. Changes the conditional use of the property;
 - b. Revokes the mining permit; or
 - c. Changes the zoning to disallow mining.

If the city or town cancels the covenant, additional taxes are not imposed on the property.

Actively Mined

If any portion of the property becomes actively mined, the property owner must file an additional affidavit within 60 days. The 60-day time limit begins on the day any aggregate is removed. The affidavit must state the number of acres of the property that is being actively mined. A supplemental affidavit must be filed each time a subsequent portion of the property is actively mined, provided that the minimum acreage change is five acres, even if actual mining activity constitutes less than five acres.

The acres that are being actively mined must be valued and classified as class 3a commercial for the next subsequent assessment year. The acres must also be removed from the aggregate resources preservation program. Additional taxes are not due if the land has been properly withdrawn by affidavit as described above. However, if land is not properly withdrawn before being actively mined, additional taxes are due as outlined below.

Upon removal, copies of the original affidavit and all supplemental affidavits must be filed with the county assessor, the local zoning administrator, and the Department of Natural Resources, Division of Land and Minerals.

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Additional Taxes Due upon Withdrawal from Program

Calculating deferred taxes due is similar to the calculation used in Green Acres. When property which has been valued under the Aggregate Resource Preservation Property Tax Program no longer qualifies, the portion of the land in the program is subject to additional taxes. The additional tax amount is determined by:

1. computing the difference between the current year's taxes as determined by valuation as agricultural land and an amount determined by the assessor based on the property's current year's estimated market value of like real estate at its highest and best use; and
2. multiplying the difference determined above by the number of years the land was enrolled in the aggregate resource preservation program.

Formula:

Tax calculated on estimated market value
(less) Tax calculated on agricultural land value
Equals: Difference in tax

Difference in tax
X Number of years enrolled
Equals: Amount of deferred tax due

The current year's estimated market value as determined by the assessor cannot exceed the market value that would result if the property was sold in an arms-length transaction, and must not be greater than it would have been had the actual bona fide sale price of the property been used in lieu of that market value.

The deferred taxes due must be extended against the property on the tax list for the current year, except that interest or penalties must not be levied on these additional taxes if timely paid. The additional taxes must not be imposed on that portion of the property which has been actively mined or has been properly removed from the program based on the supplemental affidavits filed by the property owner (described above).

The additional taxes imposed are considered a lien upon the property assessed to the same extent and for the same duration as other taxes imposed on the property. When collected, they must be distributed in the manner provided by law for collection and distribution of other property taxes.

Continuation upon Sale

If the property sells, additional taxes must not be extended if the property continues to qualify for the program and the new owner files application with the county assessor for continued deferment within 30 days after the sale.

If you have any questions about the 2e classification or the Aggregate Resource Preservation Property Tax Law, please contact the department at proptax.questions@state.mn.us.

Special Valuation and Tax Programs

Green Acres

Background and History

In 1967 the Minnesota legislature created a new property tax program named the Minnesota Agricultural Property Tax Law that we now call the Minnesota Green Acres Law. Legislators were attempting to find a method for valuing agricultural property for its agricultural use only, while protecting its value from other non-agricultural influences. At the time, development appeared to be swallowing up agricultural property in the seven-county metropolitan area, driving up the market values, which are used to calculate property taxes. Qualifying agricultural property would be enrolled in the GA program and valued using sales data for agricultural property outside the metropolitan area to eliminate the development influences.

Minnesota Statutes, section 273.111, subdivision 2 contains a statement of public policy that reads:

“The present general system of ad valorem property taxation in the state of Minnesota does not provide an equitable basis for the taxation of certain agricultural real property and has resulted in inadequate taxes on some lands and excessive taxes on others. Therefore, it is hereby declared to be the public policy of this state that the public interest would best be served by equalizing tax burdens upon agricultural property within this state through appropriate taxing measures.”

It is generally agreed that the Green Acres law was enacted by the legislature in response to non-agricultural pressures on the values of agricultural properties in the seven-county metropolitan area. The prices for land easily developable into housing or commercial activities were increasing, causing values for property tax purposes to increase as well. Remembering back forty years, “urban sprawl” was a major point of discussion. In the metropolitan area, residential and commercial developments were pushing further and further out from the core downtown areas and stressing the ability of existing infrastructure such as sewer and water systems to deal with new residents and business activities. In the same year the legislature adopted the Green Acres law, they established the Metropolitan Council “in order to coordinate the planning and development of the metropolitan area comprising the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington” (Minnesota Laws 1967, chapter 896, section 1).

Regardless of the original intent of the Green Acres law, during the last forty years, development pressures have spread much further than just the metropolitan area and are not the only non-agricultural influence on agricultural prices. Changes in the economic markets have made real estate, wherever located, a great investment choice. Buyers are seeking the recreational potential of agricultural land. The economic structure of farming itself has been altered in ways that are not subject to easy measurement. As a result, legislation in 2008 required that all counties implement Green Acres when and where applicable.

For assessors, the most significant barrier to implementing Green Acres is determining the actual agricultural value of farmland in their counties. By law, assessors must determine the highest and best use of property and then estimate the value of property based on the results of that

determination. If the highest and best use of tillable agricultural property is residential or commercial development, recreational purposes, or lakeshore development, the assessor must value the property as if it were to be converted to the highest and best use. In cases where the highest and best use of the property is for something other than agriculture, the assessor places a value on that property that exceeds the agricultural value resulting in higher property taxes.

The Green Acres law requires assessors to look at qualifying agricultural property in two ways. First, the assessor must value the property according to its highest and best use. Then the assessor must determine the agricultural value of the property based upon Department of Revenue guidance. If the agricultural value, as determined by the Department of Revenue, is below the highest and best use value, the assessor must use the agricultural value for tax purposes. Because many assessors believe most of the sales of agricultural property have non-agricultural influences, they have very few or no “true” agricultural sales to determine the agricultural value. The Department of Revenue is charged with establishing agricultural land values throughout the state. A discussion of the valuation methodology is contained within this manual.

This section covers the guidelines for determining Green Acres qualifications (including classifying the land, determining ownership, etc.), valuing the land, calculating the deferred tax amount, and withdrawal from the Green Acres program.

Step 1

All land should be classified according to use. Land that is ten acres or more in size and used for agricultural purposes (by statutory definition) is class 2a agricultural land. Land that is not used for agricultural purposes, not improved, etc. is class 2b rural vacant land. Some lands may not be used for agricultural purposes but are “impractical to separate.” This requires assessor subjective decision-making and common sense to determine if it should be classified as 2a. The class rates for 2a and 2b lands are the same on an agricultural homestead parcel. However, for Green Acres purposes, only 2a acres may qualify for tax deferral so determining which acres are eligible will be of paramount importance to assessors and taxpayers alike.

Historically, qualifications for Green Acres has been interpreted to mean land used agriculturally. The original language enacted in 1967 stated:

“Real estate shall be entitled to valuation and tax deferral under this act only if (1) it is actively and exclusively devoted to agricultural use as defined in sections 5 and 6, (2) it is the homestead or contiguous to the homestead or thereafter becomes the homestead of a surviving spouse of the said owner.”

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Section 6 of the law contained income requirements, but section 5 outlined the agricultural use eligibility as follows:

“Real property shall be considered to be in agricultural use if devoted to the production for sale of livestock, dairy animals, dairy products, poultry and poultry products, fur bearing animals, fruit of all kinds, vegetables, forage, grains, bees and apiary products by the owner, but not when devoted to processing of such things or meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.”

Since the 1967 enactment of the Green Acres property tax law, the agricultural classification required:

*“Agricultural land as used herein... shall mean **contiguous acreage of ten acres or more**, primarily used during the preceding year for agricultural purposes... [emphasis added].”*

Over the course of time, land that was not “actively and exclusively devoted” to agricultural use was granted Green Acres benefits. This land must have been contiguous to qualifying agricultural land under the same ownership. However, the legislature revisited the Green Acres law beginning in 2005. The tax shift created by deferring taxes under this program caused the legislature to enact language that is now very specific in terms of qualifying lands. Beginning with the 2009 assessment, applications for Green Acres tax deferral are only applicable to class 2a agricultural land on parcels or contiguous land masses that are primarily devoted to agricultural use. Contiguous land not used for agricultural purposes is not eligible for tax deferral under the program.

Implications of Classification on Green Acres

While the decision on the classification of a property will greatly impact Green Acres eligibility, the classification of a property must be made first and without regard to Green Acres implications. The agricultural classification, for example, has specific requirements while the Green Acres program has other specific and separate eligibility requirements. A property can correctly be classified as agricultural without being eligible for Green Acres. The classification (or split-classification) of the property should not be used as a default mechanism for denying Green Acres.

Previously, the agricultural classification itself contained a “primary use” test. The “primarily devoted to agricultural use” criterion for agricultural *classification* purposes was removed from statute during the 1997 legislative session. However, it is applicable for determining Green Acres eligibility and is still in Minnesota Statutes, section 273.111. This “primarily devoted to” criterion is outlined later in this document.

Classification Basics

The classification of agricultural and rural vacant land should be based on a **visual inspection** of the property and the number of acres used for agricultural purposes as defined by statute. A number of factors should be considered by the assessor when visually inspecting the property to determine eligibility for agricultural classification; they are outlined in more detail later in this document. In cases where the decisions are based on heavily subjective criteria, the assessor should document the rationale for the classification in case it becomes necessary to defend the decision.

Minnesota Statute 273.13, subdivision 23 provides a number of requirements that must be met in order for a property to be classified as class 2a agricultural land:

1. At least 10 contiguous acres must be used to produce agricultural products in the preceding year (or be qualifying land enrolled in an eligible conservation program);
2. the agricultural products are defined by statute; and
3. the agricultural product must be produced for sale.

Making Common Sense Classification Decisions

Assessors may be required to make some judgment calls to determine if the statutory requirements are met before classifying a property as class 2a agricultural land, but the decision should be based on a list of objective factors that are always considered before the decision is finalized. The following is a list of factors that an assessor may consider.

It should also be noted that these factors are based on the preceding year's use of the land. Additionally, the land must be classified as class 2a if all or a portion of the agricultural use of that property is the leasing to, or use by, another person for agricultural purposes.

1. At least 10 contiguous acres being used to produce agricultural products for sale - Statute clearly requires that there be at least 10 contiguous acres being used to produce an agricultural product for sale in order to be class 2a agricultural land. "Contiguous" is defined by the dictionary provided by law.com as "connected or 'next to', usually meaning adjoining pieces of real estate." This does not mean a property should be classified as agricultural when there is a total of 10 acres if the acres are broken up in small plots.

In some rare circumstances, reasonable justification may warrant classifying smaller land masses as class 2a agricultural land if the agricultural land on the parcel totals at least 10 acres. To justify the classification in these cases, the assessor must use common sense and professional judgment in considering the following list of criteria:

- Overall size (number of acres)
- Number of acres used agriculturally in relation to overall acres
- Crop being raised and sold on the agricultural acres
- Composition of agriculturally used acres (contiguous or noncontiguous)
 - Sizes of the noncontiguous portions used agriculturally or non-agriculturally
 - The locations of the agriculturally used acreage (distance, accessibility, etc.)

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- Whether the configuration of the agriculturally used acreage lend themselves to agricultural production
- The use of the land separating the noncontiguous agriculturally-used acreage

Parcel lines or separate legal descriptions do not break up the contiguity of land masses used for agricultural purposes as long as the parcels are in the same ownership.

Lands that will be deemed “impractical to separate” (i.e. ditches, waterways, etc.) also do not break up the contiguity of the land mass.

2. Property is producing an agricultural product as defined by statute - The following are the agricultural products as defined in Minnesota Statutes 273.13, subdivision 23, paragraph (i):
 - livestock, dairy animals, dairy products, poultry and poultry products, fur-bearing animals, horticultural and nursery stock, fruit of all kinds, vegetables, forage, grains, bees, and apiary products by the owner **or** the commercial boarding of horses if the boarding is done in conjunction with raising or cultivating agricultural products as listed in statute;
 - fish bred for sale and consumption if the fish breeding occurs on land zoned for agricultural use;
 - property which is owned and operated by nonprofit organizations used for equestrian activities, excluding racing;
 - game birds and waterfowl bred and raised for use on a shooting preserve;
 - insects primarily bred to be used as food for animals;
 - trees, grown for sale as a crop, including short rotation woody crops, and not sold for timber, lumber, wood, or wood products; and
 - maple syrup taken from trees grown by a person licensed by the Minnesota Department of Agriculture as a food processor.

The land must be being used to produce one of these products in order to potentially qualify as class 2a agricultural land.

3. Agricultural product is produced for the purpose of sale - The agricultural product produced on the land must be produced for the purpose of sale. Although income should not be the sole determining factor, the assessor may want to consider the following criteria:
 - Income (Schedule F) of agricultural products (crops, livestock, etc.)
 - How the agricultural products were sold (food plots for wildlife do not qualify)
 - Income earned in the past year from sale of animals
 - The income from the productive acres divided by the total acres
 - Rental income from agricultural lease

If there is a land mass of at least 10 contiguous acres being used in the preceding year to produce an agricultural product for sale, it is classified as 2a land. This determination will be made based on the above criteria and factors. Once this determination is made, any land deemed “impractical to separate” and any other smaller land masses of class 2a land on the same parcel may be classified as 2a land as well. Additionally, once this determination is made, the property becomes eligible for an agricultural homestead (if homestead requirements are met).

CRP, CREP, RIM, and other similar federal or state conservation programs may also qualify for the agricultural classification, but to be eligible for Green Acres the land must have been in agricultural use before enrollment in the conservation program, and perpetual RIM does not qualify.

Split-Classifying Agricultural Property

The first step in classifying property is to identify the acreage that is used for agricultural purposes as defined in statute and therefore classified as 2a land. Then assessors should identify the acreage that is used for a different and separate use. If there is no separate use, then the property is classified as class 2a for the agriculturally productive lands and class 2b for the rural vacant lands, and there is a potential for an agricultural homestead.

If there is an identifiable separate use, then the property is split-classified. In our opinion, there are five split-classification options, each dependent on the number of acres in agricultural production (therefore class 2a land). The options each have homestead eligibility implications.

1. If there are at least 10 contiguous acres used for agricultural purposes, those acres are classified as 2a land. The remainder of the land is classified according to its identifiable separate use(s) – potentially class 2b rural vacant lands, class 3a commercial, etc. The class 2a and 2b portions of the property may be eligible for homestead.

The following options (2 through 5) apply if there are less than 10 contiguous acres used for agricultural purposes (this does not apply to the intensive or exclusive provisions in statute). If there are less than 10 contiguous acres in agricultural production, no acres will be classified as 2a land and the property is not eligible for agricultural homestead or Green Acres.

2. If the parcel is less than 20 acres in size, unplatted, rural in character, and is not improved with a structure (unless the structure is minor and ancillary¹), the entire property is classified as 2b rural vacant land. The property on its own is not eligible for any type of homestead. (It

¹ The department has defined “minor, ancillary structures” as sheds or other primitive structures, the aggregate size of which are less than 300 square feet that add minimal value and are not used residentially; provided that the occasional overnight use for hunting or other outdoor activities shall not preclude a structure from being considered a minor, ancillary structure.

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could be linked to an agricultural homestead if the parcel is contiguous to class 2a land under the same ownership.)

3. If the parcel is less than 20 acres in size, and is improved with a structure (other than a minor or ancillary structure), the property is classified according to the use of the structure. If the structure is a residence, the property may be eligible for a residential homestead.
4. If the parcel is 20 or more acres in size, and is unplatted, rural in character, and not improved with a structure (unless the structure is minor and ancillary), the entire property is classified as 2b rural vacant land. The property on its own is not eligible for any type of homestead. (It could be linked to an agricultural homestead if the parcel is contiguous to class 2a land under the same ownership.)
5. If the parcel is 20 or more acres in size, and is improved with a structure (other than a minor or ancillary structure), the structure and the immediately surrounding 10 acres are classified according to the use of the structure. If the structure is a residence, that portion of the property may be eligible for a residential homestead. The remainder of the property is classified as 2b rural vacant land and on its own is not eligible for any type of homestead.

If, in (2) through (5) above, classification as 2b is not applicable because of enrollment in class 2c Managed Forest Land or some other program, or because another classification is appropriate based on the use of the land, that classification should be used in place of class 2b. There may also be instances where three or more different uses of the parcel are identified (for example, a house, 2b land, and commercial use). In these cases, the parcel may have multiple classifications. What this illustrates is that when there are less than 10 contiguous acres used for agricultural purposes, none of the land is classified as 2a.

The rationale for saying that no land can be classified as class 2a unless there is first at least 10 contiguous acres in production (note: does not apply to the intensive or exclusive provisions in statute) is because Minnesota Statutes, section 273.13, subdivision 23 is very clear that class 2a agricultural land is “*contiguous acreage of ten acres or more used during the preceding year for agricultural purposes...*” These are very specific size requirements for classification as class 2a. In addition, there are very specific performance requirements (the production of an agricultural product for sale) that are tied to the 2a class. These became significantly more important when the legislature created the 2b class for rural vacant lands, ultimately split-classifying every parcel not solely used for agricultural production, or that had lands that were not impractical to separate.

We understand that this will likely result in instances where you will have a parcel with less than 10 tilled acres that are not eligible for 2a classification. We have recommended these parcels be classified according to a statutorily-allowable classification – which will likely be class 2b. The statute for class 2b does prohibit land being used for agricultural purposes, but it is our opinion that since there are not at least 10 acres in production, these lands are not used for agricultural purposes. Since the lands are not being used as statutorily-defined for agricultural purposes, class 2a is not

appropriate. Class 2b may be appropriate if there are no structures. If there is a structure, then the classification would be based on the use of the structure. For example, a parcel with 8 acres and a house would likely all be classified as residential.

Appeal Options

Taxpayers may appeal their classification to local and county boards of appeal and equalization, and/or to Minnesota Tax Court.

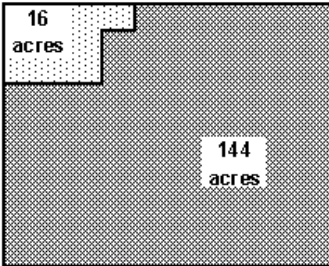
Classification Determination Examples:

The following page has some illustrative examples of potential split-classifications when the rural vacant land (class 2b) classification is applicable.

Note: these are simplified examples for illustrative purposes only. They assume the only uses are class 2b rural vacant land or residential when there is a structure on the property. They also assume these parcels are not contiguous to any other parcels under the same ownership. Changing any of these parameters will likely change the results (as described in this document).

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Example 1



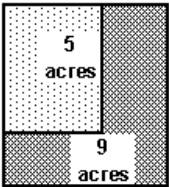
A 160 acre unimproved parcel with 16 acres being tilled, and 144 acres of woods.

This property would be classified as follows:

Since the parcel has at least 10 contiguous acres used for agricultural purposes, you must classify the land according to its use. The 16 acres would be classified as 2a productive land and the 144 acres of woods would be classified as 2b rural vacant land.

The parcel, on its own, would not be eligible for any homestead.

Example 2

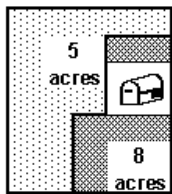


A 14 acre unimproved parcel with 5 acres being tilled, and 9 acres of slough. This property would be classified as follows:

Since the parcel is less than 20 acres, is not improved with any non-minor structures, and does not have at least 10 contiguous acres used for agricultural purposes, you must classify the entire property as 2b rural vacant land.

The parcel, on its own, would not be eligible for any homestead.

Example 3

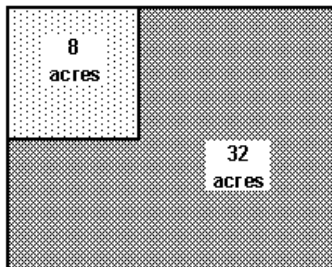


A 14 acre parcel with a residence, 5 acres being tilled, and 8 acres of marsh. This property would be classified as follows:

Since the parcel is less than 20 acres, is improved with a non-minor structure, and does not have at least 10 acres used for agricultural purposes, you must classify the entire property according to the use of the structure.

The parcel would be eligible for a homestead.

Example 4

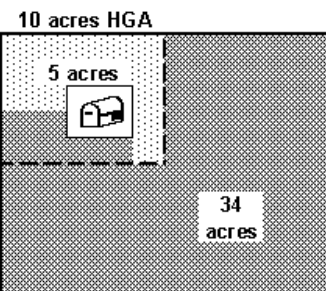


A 40 acre unimproved parcel with 8 acres being tilled, and 32 acres of woods. This property would be classified as follows:

Since the parcel is over 20 acres, is not improved with any non-minor structures, and does not have at least 10 contiguous acres in used for agricultural purposes, you must classify the entire property as 2b rural vacant land.

The parcel, on its own, would not be eligible for any homestead.

Example 5



A 40 acre parcel with a residence, 5 acres being tilled, and 34 acres of marsh. This property would be classified as follows:

Since the parcel is over 20 acres, contains a non-minor structure, and does not have at least 10 contiguous acres used for agricultural production, you must classify the immediately surrounding 10 acres according to the use of the structure. The remaining acres are classified as 2b rural vacant land.

The 10 acres would be eligible for a residential homestead.

Question: Is Green Acres allowed on property that is split-classed as class 2a agricultural productive land and class 2c managed forest land?

There is nothing in law that precludes a property from receiving Green Acres on class 2a agricultural productive land if that contiguous land mass under same ownership also has acres classified as class 2c managed forest land.

The presence of class 2c managed forest land acres does not preclude a property from receiving Green Acres on the class 2a agricultural acres. However, class 2c acres cannot receive Green Acres benefits and the primary use of the property as a whole must be agricultural and meet all other Green Acres requirements.

Consider a homestead property that was split-classified 2a agricultural, 2b rural vacant land, 2c managed forest land, and 3a commercial. The presence of four separate uses of the property would not preclude the 2a acres from Green Acres eligibility, but they would make it less likely that the property is primarily devoted to agricultural uses, and the assessor should ask for additional information to verify whether the property qualified for Green Acres.

Question: If a rural, unimproved, non-agricultural parcel were to be platted due to county requirements (or other government-mandated plats), could the parcel still be considered 2b rural vacant land?

There is a distinction between lands that are platted because of administrative requirements and lands that are platted by the property owner for personal reasons (e.g. estate planning, planning for future development or sales, etc.). If a property owner plats a property into a subdivision, the property could no longer qualify as class 2b. However, administrative plats, which may be required by anything from local ordinance to the Homestead Act of the 1800s, do not preclude an otherwise rural, vacant, unimproved, non-agricultural property from the 2b classification.

Simply being required by a government unit to plat a property would not automatically preclude a property from being class 2b so long as the remaining lot is 20 acres or more in size. The assessor will still need to look at other factors (e.g. rural in character, use of surrounding land, etc.) to determine the best classification of the property. If the remaining lot is less than 20 acres in size, the property should be classified according to its most probable highest and best use.

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Step 2 – Determining if qualifications are met

Qualification #1: Size and Use Requirements

To qualify for Green Acres tax deferral under Minnesota Statutes, section 273.111, a property must consist of ten acres or more of class 2a property, or be a nursery or greenhouse. The property must also meet ownership requirements and be primarily devoted to agricultural purposes (ownership and primary use qualifications are outlined below).

Definitions:

Nursery means a place where nursery stock is grown, propagated, collected, or distributed, including, but not limited to, private property or property owned, leased, or managed by any agency of the United States, Minnesota or its political subdivisions, or any other state or its political subdivisions where nursery stock is fumigated, treated, packed, or stored.

(Minnesota Statutes, section 18H.02, subdivision 17.)

Nursery stock means a plant intended for planting or propagation, including, but not limited to, trees, shrubs, vines, perennials, biennials, grafts, cuttings, and buds that may be sold for propagation, whether cultivated or wild, and all viable parts of these plants. Nursery stock does not include:

- (1) field and forage crops;
- (2) the seeds of grasses, cereal grains, vegetable crops, and flowers;
- (3) vegetable plants, bulbs, or tubers;
- (4) cut flowers, unless stems or other portions are intended for propagation;
- (5) annuals; or
- (6) Christmas trees. *(Minnesota Statutes, section 18H.02, subdivision 20.)*

Qualification #2: Ownership Requirements

Minnesota Statutes, section 273.111, subdivision 3 outlines the following ownership requirements for Green Acres eligibility. To be eligible, the property must have at least ten contiguous acres of 2a property, must be primarily devoted to agricultural use, and:

- (1) is the homestead of the owner, or of a surviving spouse, child, or sibling of the owner or is real estate which is farmed with the real estate which contains the homestead property; or*
- (2) has been in possession of the applicant, the applicant's spouse, parent, or sibling, or any combination thereof, for a period of at least seven years prior to application for benefits under the provisions of this section, or is real estate which is farmed with the real estate which qualifies under this clause and is within four townships or cities or combination thereof from the qualifying real estate; or*
- (3) is the homestead of an individual who is part of an entity described in paragraph (b), clause (1), (2), or (3); or*
- (4) is in the possession of a nursery or greenhouse or an entity owned by a proprietor, partnership, or corporation which also owns the nursery or*

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greenhouse operations on the parcel or parcels, provided that only the acres used to produce nursery stock qualify for treatment under this section.

(b) Valuation of real estate under this section is limited to parcels owned by individuals except for:

(1) a family farm entity or authorized farm entity regulated under section 500.24;

(2) an entity, not regulated under section 500.24, in which the majority of the members, partners, or shareholders are related and at least one of the members, partners, or shareholders either resides on the land or actively operates the land; and

(3) corporations that derive 80 percent or more of their gross receipts from the wholesale or retail sale of horticultural or nursery stock.

The terms in this paragraph have the meanings given in section 500.24, where applicable.

Under previous law, ownership entities had to be authorized under Minnesota Statutes, section 500.24 in order to qualify for Green Acres. Beginning with the 2009 assessment, clause (2) of paragraph (b) above now allows entities that are not subject to regulation under section 500.24 to qualify for Green Acres if the majority of the members, partners, or shareholders are related, and at least one of the members, partners, or shareholders lives on the land or actively operates the land, and the property meets all other qualifications for the program.

In the case of fractional interests in a property that otherwise qualifies for Green Acres, if any one of the owners qualifies, the whole property qualifies but all owners must acknowledge, in writing, the rights and responsibilities of Green Acres property owners by signing the application.

Question: A property owner has agricultural property in County 1. He also owns property in County 2 which he has owned for three years. The property in County 2 is non-homestead and is more than four cities or townships away from his agricultural property in County 1. The property owner maintains that he farms the property in County 2 in conjunction with his homestead property in County 1. The property owner does not question the classification of his property as non-homestead in County 2, but questions his Green Acres eligibility.

Minnesota Statutes, Section 273.111, Subdivision 3, states in part:

“...if it is primarily devoted to agricultural use, and meets the qualifications in subdivision 6, and either (emphasis added):

(1) is the homestead of the owner, or of a surviving spouse, child, or sibling of the owner or is real estate which is farmed with the real estate which contains the homestead property; or

(2) has been in possession of the applicant, the applicant's spouse, parent, or sibling, or any combination thereof, for a period of at least seven years (emphasis added)

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prior to application for benefits under the provisions of this section, or is real estate which is farmed with the real estate which qualifies under this clause and is within four townships or cities or combination thereof from the qualifying real estate..."

We have always said that if the property does not qualify for homestead, the owners must first fulfill the seven-year ownership requirement prior to applying for Green Acres. Since the property in County 2 is non-homestead (and, cannot receive the homestead classification because it is farther than four townships or cities from the agricultural property in County 1), and the current owner has only owned the property for three years, this property could not qualify for Green Acres.

Question: The owners of a 26-acre parcel just purchased a 14-acre adjacent parcel. The title on the 14-acre parcel is in the name of a limited liability company (LLC). Can the contiguous land mass be viewed as one piece of property if the ownership is in different names?

The answer is no. The parcels have different ownership entities. One is in the name of two individual people while the other is in the name of an LLC. It is our opinion that these parcels cannot be linked for homestead or any other purposes, including Green Acres.

Question: Owners have applied for Green Acres on parcels that are held in their trust in County 1 because they are being farmed in conjunction with their parcels in County 2. The owners have applied for special ag homestead on all of the properties located in County 1, and all of the applications have been denied because the parcels are unoccupied and no one connected with the grantors of the trust farms the properties. Four different people are renting and farming the land in County 1. How should Green Acres applications be handled in this situation?

Applications for Green Acres should be denied for the properties that are held in trust by the owners in County 1. Homestead has been denied based on the fact that the active farmers on the parcels are not the grantor, spouse of the grantor, child or grandchild of the grantor, sibling of the grantor, nor the grantor's spouse.

Based on the fact that none of the parcels qualify for a special ag homestead, these parcels must be owned for a period of seven years prior to qualifying for Green Acres deferment under Minnesota Statutes, section 273.111.

Question: A property owner has an 80-acre, non-homestead agricultural parcel which he has owned for more than 20 years and which is enrolled in the Green Acres program. The owner recently acquired another 400-acre parcel of agricultural property within four townships of the original parcel. The owner does not live on the parcel. The owner has applied for Green Acres benefits on the second parcel. Does the second parcel qualify for Green Acres even though the owner has not owned the parcel for seven years?

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Assuming the owner meets the requirements, the second parcel does qualify for Green Acres benefits. Minnesota Statutes, section 273.111, subdivision 3, includes the requirements for Green Acres and provides in part that real estate of more than ten acres which is class 2a agricultural, is primarily devoted to agricultural use, and “has been in possession of the applicant...for a period of seven years...or is farmed with real estate which qualifies under this clause and is within four townships or cities or combination thereof from the qualifying real estate” will be entitled to valuation and deferment as Green Acres. The second parcel meets these criteria and should be considered for the Green Acres program.

At first glance, one might assume that each and every parcel must have its own seven year waiting period; but the language added to subdivision 3 in 1989 clearly provides a second method for qualifying non-homestead agricultural parcels. Once an owner has the “base” parcel qualified as Green Acres, other parcels that the owner farms within four cities or townships can be added to the program without the waiting period.

Question: Two brothers have purchased a property. The property is not occupied and not homesteaded. One of the brothers farms this land along with his parents’ land which is located within four townships of the brothers’ property. The parents own and occupy their farm. Does the property that was recently purchased by the brothers qualify for Green Acres immediately since it is being farmed in conjunction with the property that is owned and occupied by the parents?

No, the property cannot qualify for Green Acres. Minnesota Statutes section 273.111, subdivision 3, paragraph (a), states in part that:

“Real estate consisting of ten acres or more or a nursery or greenhouse, and qualifying for classification as class 2a under section 273.13, shall be entitled to valuation and tax deferment under this section if it is primarily devoted to agricultural use, and either:

(1) is the homestead of the owner, or of a surviving spouse, child, or sibling of the owner or is real estate which is farmed with the real estate which contains the homestead property; or

(2) has been in possession of the applicant, the applicant's spouse, parent, or sibling, or any combination thereof, for a period of at least seven years prior to application for benefits under the provisions of this section, or is real estate which is farmed with the real estate which qualifies under this clause [emphasis added] and is within four townships or cities or combination thereof from the qualifying real estate;...”

Based on the information, the property in question has not been in possession of the applicant, applicant’s spouse, parent, or sibling, or any combination thereof for at least seven years. The property was recently purchased from elsewhere. In addition, while one of the brothers may farm the land owned by the brothers in conjunction with land that is owned by the parents, it is our opinion that this falls short of meeting the requirements to qualify for Green Acres because the

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applicant, applicant's spouse, applicant's parent, or applicant's sibling has not owned the property for seven years. This provision only allows existing owners of non-homestead property who have already met the seven-year ownership requirement and qualify for Green Acres, to purchase additional acres and have those acres qualify for Green Acres immediately rather than meeting the seven-year ownership requirement, because the owner is farming them in conjunction with the original land that is enrolled in Green Acres.

Question: A parcel of land is classed as agricultural. Your county has granted Green Acres benefits to the parcel. The property was owned by a woman who ten years ago deeded the property to her daughter and son-in-law, retaining a life estate. The daughter and son-in-law have now divorced and you have a copy of a contract for deed transferring the property to the now former son-in-law and removing the life estate. The former son-in-law is now applying for Green Acres indicating that he has owned the property more than seven years. Does the applicant qualify for Green Acres under this fact situation?

In our opinion, the former son-in-law does not qualify for Green Acres under the seven year provision. Minnesota Statutes, section 273.111, subdivision 3, provides that agricultural property may qualify for Green Acres if the property "has been in possession of the applicant, the applicant's spouse, parent, or sibling, or any combination thereof, for a period of at least seven years." For the last ten years, the former son-in-law had a remainder interest in the property but had no right to sell or otherwise use the property without the consent of his mother-in-law. Under these circumstances, we believe his remainder interest for those years does not qualify as having been in possession. Further, we believe that the divorce breaks the connection to his former mother-in-law so the property does not qualify as having been in possession of the applicant's spouse or parent for the requisite years. There is, however, a possibility that the property could qualify as the applicant's homestead as a special agricultural homestead. If the property does, in fact, qualify as a special agricultural homestead, the applicant may qualify for a continuation of the Green Acres benefits.

Question: Two parcels in your county were owned by a husband and wife. The property was not their homestead but did qualify for Green Acres and was receiving Green Acres benefits. A few years ago, the husband and wife sold the parcels to an entity on contracts for deed. The new purchaser did not qualify for Green Acres benefits. The contracts for deed vendee defaulted on the contracts and the vendors cancelled the contracts, having the title to the parcels revert to the husband and wife. The husband and wife have asked you if they can reinstate the Green Acres benefits on these parcels.

Minnesota Statutes, section 273.111, subdivision 3, provides that agricultural property may qualify for Green Acres benefits if the property is the homestead of the applicant or if the property has been in possession of the applicant for a period of at least seven years prior to the application date. In this case, neither requirement is met. The property is not the homestead of the husband and wife and, because of the transfer to a third person; the property has not been in their possession for the seven years preceding the application date. In our opinion, the break in the chain of title requires a new seven year waiting period.

Question: A parcel of land is classified as agricultural property. The owner recently sold the property to his nephew. The nephew has an agricultural homestead that is located within four cities/townships from the property. He occupies the primary homestead parcel but does not farm it himself. All of the fields on the properties (both the primary parcel and the recently purchased property) are rented to another farmer. Can the newly-purchased parcel be granted homestead since it is non-contiguous to the primary parcel, and if it can, does it qualify for Green Acres since it is not farmed by the owner?

The nephew can extend his owner-occupied agricultural homestead from the base parcel that he occupies to the non-contiguous, newly-purchased land, even though he will not farm it himself. Due to the fact that the property will continue to be homesteaded and farmed (though not by the owner) continuation of Green Acres treatment may be granted. So long as the lessee devotes the property to agricultural pursuits, the owner is not required to actively farm land to qualify for tax assessment under Green Acres.

Qualification #3: Property must be “primarily devoted to” agricultural purposes.

The “primarily devoted to” criteria was once applicable for determining agricultural classification. In a Minnesota Tax Court case (Barron v. Hennepin), the court defined the criteria:

“The ‘primary use’ test... implies an examination of the specific nature of the property and the use or multiple uses to which that property has been put, together with a subjective balancing of those relative uses....” (Barron v. Hennepin; 488 N.W.2d 293, Minn. 1992.)

This criterion for agricultural classification was removed from statute in 1997. However, it is still applicable for determining Green Acres eligibility. It is no longer found in the classification statute (273.13), rather it is now located in the Green Acres statute (273.111). To be eligible for Green Acres, the assessor needs to clearly inform the property owner that in addition to the minimum requirement of 10 acres of 2a lands, the law also requires the assessor to make a subjective decision: *Is the property primarily devoted to agricultural use?*

Using “Primarily Devoted to Agricultural Use” to Determine Green Acres Eligibility

After determining the classification of the property, verifying that the homestead or ownership requirements are met, and applying the minimum requirement of 10 acres of class 2a land for Green Acres, if the property has not yet been disqualified, assessors must make a decision if it is “primarily devoted to agricultural use.” This decision should be based on a list of objective factors that are always considered before the decision is finalized. Here is a list of factors that an assessor may consider, along with other criteria that may be appropriate in the assessor’s county.

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In making this determination, assessors should put the most weight on physical criteria. In determining if a property is “primarily devoted to” agricultural use, the potential exists that in some instances, a reasonable justification may warrant not satisfying one or more of these criteria. A preponderance of the factors and criteria below is necessary to determine if a property is primarily devoted to agricultural use.

1. Physical

- The number of acres used agriculturally compared to total acres
- Number of acres used for residential purposes compared to those used agriculturally
- Visible indication of participation in actual farming activity
- Presence of physical structures for livestock, equipment, storage, etc. used to support agricultural activity
- Surrounding uses (i.e. farming versus development), zoning restrictions, etc.
- Historical use, current use
- Local market is highly susceptible to real estate speculation
- Current market trends for property
- The number and type of animals raised as agricultural products in comparison to the overall use of the property
- Length of time animals raised as agricultural products are physically located on the property each year
- Use of the property by the lessee, if rented

2. Valuation

Although consideration of value is not appropriate for determining class, it still may be considered in determining “primarily devoted to” for Green Acres eligibility. Criteria to consider could be:

- Value as a residential site compared to the agricultural value
- Ag value compared to overall value of property
- Residential value compared to overall value of the property
- Ag value compared to other use value (e.g. commercial)

3. Income

Although income is no longer a required factor for determining Green Acres eligibility, assessors may want to include income in the list of criteria that could be considered when trying to address the “primarily devoted to” test. Suggested income criteria would be:

- The income from the class 2a acres divided by the total acres
- Income (Schedule F) of agricultural products (crops, livestock, etc.)
- The income from rented acres
 - Number of acres rented agriculturally
 - Number of acres rented for other use
 - Actual rent compared to market rents in the area
 - Rental income from agricultural use
 - Rental income from other use (i.e. commercial storage, house rental, etc.)

- Owner's knowledge of farm markets
- Owner's agricultural income compared to owner's total income and/or other income-producing uses of the land
- Significant agricultural income compared to value of homestead

4. *Occupation or "farming" intent of owner*

While occupation of the owner should not be a primary factor, it **may** be useful as secondary or supplemental information that could be used by assessors in considering the "primarily devoted to" test.

- Owner's stated occupation as a farmer (on tax returns, etc.)
- Owner's knowledge of farming activity – number of acres, rotation cycles, etc.
- Other occupation(s) supported on the property
- Provide benefit to *owners* who are actually farming or participating in an agricultural activity (as defined in statute)
- Demonstrate some degree of long-term commitment (for example, the 2b lands enrolled are in Rural Preserve program)

Informing Property Owner of Determination

After reviewing the property owner's Green Acres application, inspecting the parcel, and applying the suggested criteria, the assessor must make a determination whether to approve or deny the application. If denied, the assessor must clearly and concisely inform the property owner of the reason for denial.

If the denial is based on the "primarily devoted to" determination, the assessor should provide the property owner with a "Primary Use Determination" form which would identify the use of the property and the criteria used by the assessor to support his/her decision. For example, the form would include:

- A statement that "For the purposes of determining Green Acres eligibility, the assessor has determined the property's primary use to be [i.e. residential, residential / agricultural split classification, commercial, etc.]."
- The form should indicate the number of acres attributed to each use (i.e. X acres of residential use, Y acres of 2a agricultural use, Z acres of commercial use, etc.)
- Along with this statement, the form should provide the evidence and criteria the assessor used in making the determination.
- The form should also list appeal options if the property owner disagrees with the determination.

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Appealing the “Primary Use” Determination

If the property owner disagrees with the assessor’s classification or split-classification, the owner can appeal to the local and/or county boards and to Minnesota Tax Court for a final determination.

If the property owner disagrees with the assessor’s “primary use” determination, and resulting Green Acres eligibility decision, the owner may appeal to Minnesota Tax Court.

Other Discussion

This statutory provision related to “primarily devoted to agricultural use” is based on situational circumstances, as are the guidelines presented above. It allows for flexibility – to some degree, counties can tailor a “primarily devoted to agricultural use” policy that aligns with their markets and land uses.

Similarly, the provision also requires assessor judgment. As a result, counties will need to establish a guide, based on the above uniform set of criteria developed by the department, which can be used by assessors to make consistent decisions and justify their application of this provision to landowners. The criteria and rationalization used should also be consistent with adjoining counties or with counties having similar markets and land uses. **This uniformity should be coordinated through the department and Regional Reps.**

Qualification #4: The property owner must submit an application.

Minnesota Statutes 273.111, subdivision 8 requires:

“Application for deferment of taxes and assessment under this section shall be filed by May 1 of the year prior to the year in which the taxes are payable. Any application filed hereunder and granted shall continue in effect for subsequent years until the property no longer qualifies. The application must be filed with the assessor of the taxing district in which the real property is located on the form prescribed by the commissioner of revenue. The assessor may require proof by affidavit or otherwise that the property qualifies under subdivision 3 and may require the applicant to provide a copy of the appropriate schedule or form showing farm income that is attested to by the applicant as having been included in the most recently filed federal income tax return of the applicant.”

In other words, an application for Green Acres must be made to the assessor by May 1 of a given assessment year to be eligible for deferred taxes the following payable year. The application must be signed by all owners of the property and must include any “proof by affidavit or otherwise that the property qualifies” for Green Acres that the assessor deems is necessary (e.g. the agricultural use verification form, Schedules F, etc.). The Department of Revenue has created two forms for use: one form for one owner (even if there are multiple owners) to sign, and one for “all owners” to sign

in the case of ownership by more than one person. Counties must use at least the single-signature form, but the multiple-signature form can be used at the county's discretion.

If the assessor receives an application for a property which the assessor is not sure meets the criteria for agricultural classification and/or primary use, the assessor may request additional information, including the Agricultural Use Verification Form, Schedule F, etc.

Question: Do Local Boards of Appeals and Equalization (LBAE) or County Boards of Appeals and Equalization (CBAE) have the authority to grant Green Acres benefits, or is this solely the authority of the county assessor?

Only county assessors can grant Green Acres benefits. The Green Acres program is a powerful tool that reduces the tax burden for certain agricultural properties. However, the criteria for qualification are specific and must be documented by the owner as part of the application process. The timelines for the application are also specific. If the land qualifies and if the application was complete and timely, the county assessor should grant the Green Acres benefits. If the land does not qualify, or if the application was not complete or timely, neither the LBAE nor the CBAE can overrule the assessor.

The LBAE and the CBAE may review the classification and valuation of a property. Green Acres is not a classification; rather it is a special benefit to certain properties classified as agricultural properties.

A property owner may appeal denial of Green Acres tax deferral to Minnesota Tax Court if the application is denied by the assessor.

Step 3 – Determining the valuation and deferred taxes

Minnesota Statutes, section 273.111, subdivision 4 reads:

“The value of any real estate described in subdivision 3 [qualification requirements] shall upon timely application by the owner, in the manner provided in subdivision 8, be determined solely with reference to its appropriate agricultural classification and value notwithstanding sections 272.03, subdivision 8, and 273.11 [“highest and best use” value]. Furthermore, the assessor shall not consider any added values resulting from nonagricultural factors. In order to account for the presence of nonagricultural influences that may affect the value of agricultural land, the commissioner of revenue shall develop a fair and uniform method of determining agricultural values for each county in the state that are consistent with this subdivision. The commissioner shall annually assign the resulting values to each county, and these values shall be used as the basis for determining the agricultural value for all properties in the county qualifying for tax deferral under this section.”

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(b) In the case of property qualifying for tax deferral only under subdivision 3a, the assessor shall not consider the presence of commercial, industrial, residential, or seasonal recreational land use influences in determining the value for ad valorem tax purposes provided that in no case shall the value exceed the value prescribed by the commissioner of revenue for class 2a tillable property in that county.”

The “base” counties for what are considered “true” agricultural sales are the southwest Minnesota counties of Lyon, Murray, Nobles, Pipestone, and Rock. In 2007, when this base area was established, the Green Acres Committee formed for the purpose of determining Green Acres agricultural values located the most recent period in time (1990 – 1996) when the non-agricultural influences on farm land sales were either minimal or non-existent throughout the state, with the exception of the seven-county metropolitan area. The median sales prices of farmland sales for each county during that time frame were compared to the median sales price per acre for the “base counties” to establish a ratio or “factor.” This factor could then be applied to the current median sales price per acre in the “base counties” to establish a current indicator of agricultural value for each county.

This process has proved very promising for tilled lands and, with a little rounding or “blending” of the factors, provides a fair, uniform and, most importantly, equalized method of arriving at the value of tilled agricultural land throughout the state. Based on the best data available to the Department of Revenue and to Minnesota assessors, the method for establishing agricultural values for tilled agricultural properties in Minnesota that was developed by the Green Acres Committee and used by the Department of Revenue produced values that reflected true agricultural values in the state. The method produces values for both tilled and non-tilled agricultural land that adequately reflects the true agricultural value of these lands in the state. Assessors must use the values as the basis for setting agricultural values for qualifying Green Acres properties in their counties.

In an effort to differentiate between the agricultural tilled (e.g. cropland actively tilled) and agricultural non-tilled lands (e.g. pastureland), the committee decided to use 50% of tilled value for the agricultural non-tilled land. CRP, RIM, CREP and other lands enrolled in similar conservation programs, which had to have been tilled prior to enrollment in Green Acres, are valued at the 100% tilled value due to the fact that they must have been tilled prior to enrollment in Green Acres.

While not perfect by any means, these methods of establishing agricultural values provide a uniform basis for valuation while retaining ties to deriving agricultural values from the market. The end result is a projection of what the current agricultural value of land would be in the absence of the current non-agricultural market influences. Also, while the Green Acres factor for a county is determined by Department of Revenue it may be “feathered” to account for different land types throughout a county. While adjustments can be made for higher and lower quality lands, the overall county average value should not go below DOR’s guidelines.

If the county's average EMV for tilled class 2a acres exceeds the department's indicated value for the county:

- If a county's average estimated market value for tilled class 2a acres (based on local sales) exceeds the average tilled agricultural value provided by the department, the county should be implementing Green Acres and using the department's average value in establishing their values on tilled land.
- For the average Green Acres value for non-tilled class 2a land (e.g. pasture), the county should be utilizing a value that is 50% of the tilled agricultural value provided by the department OR the actual market value of the non-tilled 2a land, whichever is less.

If the county's average EMV for tilled class 2a acres is less than the department's indicated value for the county:

- If the county is using EMVs for 2a tilled lands based on the local market (meaning there is no Green Acres deferral for 2a tilled lands), the county should be valuing, for Green Acres purposes, its non-tilled class 2a lands at 50% of the county's average EMV for tilled class 2a land.
- If this value exceeds the EMV for the non-tilled class 2a land (based on the local market), the county should use the actual EMV and there is no Green Acres deferral for non-tilled class 2a land.

In other words, it is possible that a county may only have non-tilled lands in Green Acres if the 2a tilled value does not exceed the 100% tilled value. If either the tilled value or the non-tilled value exceeds the DOR-determined value, then Green Acres is implemented. Conversely, it is possible to have only tilled lands in the program, but not the non-tilled lands if their value does not exceed 50% of the DOR-indicated value.

Land that is deemed to be 2a under the "impractical to value separately" provision should be valued using the tilled or non-tilled (50%) value depending on the character of the land it is interspersed with.

For grandfathered class 2b lands, the value cannot exceed the average tilled class 2a value prescribed by the commissioner of revenue. We recommend using the 50% non-tilled value on the grandfathered 2b lands, except on unusable wild lands (e.g. swampland), where we recommend using a value equal to 25% of the tilled value.

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Determining the Average Per Acre Green Acres (Ag) Values				
“Base Counties” Median Sales Price Per Acre Value (provided by DOR)	X	GA Factor for County (from map)	=	Tilled (100%) Ag Value
Tilled (100%) Ag Value (from above calculation)	X	.50	=	Non-Tilled (50%) Ag Value
Remember, these provide the average values for each county to use; they may be feathered or blended to account for differences in land quality. The average value, however, must not differ from the ones indicated in this calculation.				

Remember, as outlined above, CRP, RIM, CREP, or other lands enrolled in a conservation program are valued for Green Acres purpose at the 100% tilled value.

Question: When a property that is granted Green Acres is platted, what value should the three or seven year plat valuation phase-in be based on?

Plat law deferral should be based on the high value of the Green Acres property. The plat valuation phase-in is supposed to phase-in the difference in value between the pre-plat value and the post-plat value. In other words, plat law phases in the value added to the property as the result of the plat. The Green Acres value does not reflect the value of the property; it is reflective of the value of the property as farmland, which is not the market value.

The Green Acres valuation deferral is designed to allow farmers owning or occupying qualifying land that has increased in value because of some non-agricultural influences to pay tax based upon the agricultural value of the property.

The fact that the property is receiving Green Acres means that a value higher than the value as farmland has been recognized. This is the actual market value of the property. The Green Acres Value is a lesser value that recognizes the use of the property as farmland. It is not reflective of the market value of the land.

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The added value resulting from the plat should be added to the property's market value, or the "high" value. The difference between these two values is the amount that should be phased-in pursuant to the plat law. For example:

Value as farmland, Green Acres value:	\$150,000
Market/"high" value of the property as unplatted:	\$500,000
Post-plat value of the property:	\$600,000

The plat phase-in would be based upon the difference between \$500,000 and \$600,000. The \$100,000 difference would be phased in either seven years for out-state counties or over three years for the seven metro counties.

Question: Is there a separate value for "low" non-tilled class 2a lands?

No. Assume, for example, your average tilled land value is at \$1600 per acre, your productive non-tilled is \$800 an acre (50% of \$1600). For class 2a lands, there are only the "full" 100% tilled and the 50% non-tilled class 2a values only.

While the Green Acres value is developed using Department of Revenue methodology so as to promote uniformity, some counties have found it necessary to "feather" the Green Acres values from east to west or north to south to achieve an equalized assessment with bordering counties. In addition, the statewide number is simply an average value per tilled acre. Some counties have adjusted the average value for different grades of land with some higher quality land valued higher than the average value, and lower quality land valued lower. As long as the average DOR indicated value does not change, this practice is acceptable.

Question: Is the "low" Green Acres value appealable to a Local or County Board of Appeal and Equalization ("BAE")?

In general, BAEs may make changes to the assessor's valuation, classification, or both.

"The board shall determine whether the taxable property in the town or city has been properly placed on the list and properly valued by the assessor. If real or personal property has been omitted, the board shall place it on the list with its market value, and correct the assessment so that each tract or lot of real property, and each article, parcel, or class of personal property, is entered on the assessment list at its market value. No assessment of the property of any person may be raised unless the person has been duly notified of the intent of the board to do so. On application of any person feeling aggrieved, the board shall review the assessment or classification, or both, and correct it as appears just [M.S. 274.01]."

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While the Green Acres “low” value is developed using Department of Revenue methodology so as to promote uniformity, there is nothing in statute that would prevent that value from being adjusted by a local or county board of appeal and equalization. As you are aware, some counties have found it necessary to “feather” the Green Acres values from east to west or north to south to achieve an equalized assessment with bordering counties. In addition, the statewide number is simply an average value per tillable acre. Some counties have adjusted the average value for different grades of land with some higher quality land valued higher than the average value, and lower quality land valued lower. If a board believes an adjustment is warranted to account for differences in land quality or to achieve equalization, they may make adjustments to the Green Acres value, so long as any adjusted value does not decrease the county’s overall indicated value per acre.

If there is concern that BAEs may be changing these values for unjustified reasons, assessors retain the right to appeal these decisions to a higher board (local board decisions may be appealed to the county board, county board decisions may be appealed to the state board). As you are aware, the property owner has the same avenues of appeal if they disagree with the assessor’s determination, the board’s decision, or both.

Transfers of Property Enrolled in Green Acres

Class 2a property

Transfers of class 2a property (by sale or any other transfer of ownership) require the new property owner to apply for Green Acres deferral within 30 days of the transfer of ownership. This is outlined in Minnesota Statutes, section 273.111, subdivision 11a:

“(a)When real property qualifying under subdivision 3 is sold or transferred, no additional taxes or deferred special assessments plus interest shall be extended against the property provided the property continues to qualify pursuant to subdivision 3, and provided the new owner files an application for continued deferment within 30 days after the sale or transfer.”

However, the following types of “transfers” are not considered a change in ownership under the same subdivision:

“(b) The following transfers do not constitute a change of ownership of property qualifying under subdivision 3:

- (1) death of a property owner when a surviving owner retains ownership of the property thereafter;*
- (2) divorce of a married couple when one of the spouses retains ownership of the property thereafter;*
- (3) marriage of a single property owner when that owner retains ownership of the property in whole or in part thereafter;*

(4) organization into or reorganization of a farm entity ownership under section 500.24, if all owners maintain the same beneficial interest both before and after the organizational changes; and
(5) placement of the property in trust provided that the individual owners of the property are the grantors of the trust and they maintain the same beneficial interest both before and after placement of the property in trust.”

In other words, in any of the above, ownership has not changed for Green Acres purposes. Any class 2b lands which were grandfathered may continue to be grandfathered until as late as the 2013 assessment, and no re-application is required for the class 2a lands.

Class 2b property

Class 2b property currently enrolled in Green Acres is to be immediately withdrawn from the program upon sale or transfer.

However, transfers of grandfathered 2b land to children of the current owner(s) are allowable until 2013. As of the 2013 assessment, those 2b acres will be withdrawn from the Green Acres program, but may be enrolled in the Rural Preserve program.

As stated, the transfer types outlined in Minnesota Statutes, section 273.111, subdivision 11a, paragraph (b) (shown above) would not cause the 2b acres to be withdrawn from the program. They may be grandfathered until no later than the 2013 assessment.

Question: When does the 30-day reapplication requirement go into effect for sales?

Minnesota Statute 273.111, subdivision 11a provides for continuation of tax treatment upon sale when a property is sold provided the new property owner files an application for continued deferment of taxes “within 30 days after the sale” and meets all other requirements for Green Acres. In our opinion, this means that a new owner must file an application within 30 days of when the actual transfer of the property occurs, which is typically the date on the deed. Since there is no specific requirement in law that deeds must always be recorded, it is our opinion that the date of recording of the deed is of no relevance in this situation.

Question: How are foreclosure sales to be treated for Green Acres purposes? Would a payback or reapplication be required?

Foreclosures are to be treated as any other sale or transfer of ownership. The new owner may apply within 30 days to continue Green Acres on the class 2a acres. However, any class 2b acres are to be withdrawn if still enrolled in the program, and deferred taxes on those acres are due with respect to the last three years' deferral.

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Withdrawal from the Program & Calculation of Tax Payback

The following would cause Green Acres deferral to be removed from the property:

- Sale or transfer of the land where the new owner chooses not to reapply for Green Acres within 30 days
- Sale or transfer of the land where the new owner does not meet the qualifications for Green Acres upon reapplication
- Property owner requests withdrawal from the program
- Property owner no longer meets the program requirements (e.g. does not use at least ten acres of the property for agricultural purposes, or the primary use of the property changes)

For any class 2a property withdrawn from Green Acres, the payback is described in Minnesota Statutes, section 273.111, subdivision 9:

... when real property which is being, or has been valued and assessed under this section no longer qualifies under subdivision 3, the portion no longer qualifying shall be subject to additional taxes, in the amount equal to the difference between the taxes determined in accordance with subdivision 4, and the amount determined under subdivision 5. Provided, however, that the amount determined under subdivision 5 shall not be greater than it would have been had the actual bona fide sale price of the real property at an arm's-length transaction been used in lieu of the market value determined under subdivision 5. Such additional taxes shall be extended against the property on the tax list for the current year, provided, however, that no interest or penalties shall be levied on such additional taxes if timely paid, and provided further, that such additional taxes shall only be levied with respect to the last three years that the said property has been valued and assessed under this section."

For any class 2b property withdrawn from Green Acres, the payback amount will depend upon the specific circumstances.

- 2b lands withdrawn from Green Acres prior to May 1, 2010 will not have any deferred taxes due
- 2b lands withdrawn after May 1, 2010 will be assessed deferred taxes with respect to the last three years' enrollment
- 2b lands withdrawn after May 1, 2010 but immediately transitioned into the Rural Preserves property tax program will not have deferred taxes due
- Any 2b lands that are in Green Acres on January 1, 2013 will be automatically withdrawn and three years' deferred taxes will be assessed.

Portions of properties may be withdrawn (class 2a, class 2b, or a combination) without the entire parcel or property being withdrawn from the program.

Special Valuation and Tax Programs

Special Assessments

Generally speaking, special local assessments levied on properties enrolled in Green Acres are deferred as long as the property continues to be in the program. The deferral of special assessments remains in effect until the entire property is withdrawn from (or no longer qualifies for) Green Acres. If special assessments are being deferred, the governmental unit is to file a certificate containing the property's legal description and the amount deferred with the county recorder of the county in which the property is located. Interest on special assessments continues to accrue while the property is enrolled in Green Acres and the assessment is being deferred.

When the property no longer qualifies for deferment, all deferred special assessments, plus interest, are to be paid in equal installments spread over the time remaining until the last maturity date of the bonds issued for the improvements. If the bonds have matured, the deferred special assessments plus interest are to be paid within 90 days. Penalties are not to be levied on the special assessments if timely paid.

A property enrolled in Green Acres that is transferred to an Agricultural Preserve may continue to have its special local assessments deferred.

There are two exceptions for special local assessments that are levied under certain authorities. Special local assessments levied by a county or district court at any time under chapter 116A cannot be deferred. Chapter 116A refers to public water and sewer systems. Special local assessments levied by a watershed district under chapter 103D may or may not be deferred depending on when the assessment was levied. Chapter 103D refers to management and administration of watershed districts and is known as the "Watershed Law." If the special local assessment was levied prior to June 1, 2008, it will still be deferred if the property was enrolled in Green Acres as of the 2008 assessment. If the special local assessment was levied after May 31, 2008, it will not be deferred.

Deferral of Special Assessments			
Type of Special Assessment	Date of Special Assessment Levy	Date of Enrollment in Green Acres	Can the Special Assessment be Deferred?
Levied under chapter 116A (for most public water and sewer systems)	N/A	N/A	No, not deferrable
Levied under chapter 103D ("Watershed Law")	Prior to June 1, 2008	As of 2008 Assessment (May 1, 2008)	Yes
Levied under chapter 103D ("Watershed Law")	After May 31, 2008	N/A	No, not deferrable
Levied under other authority	N/A	N/A	Yes

****See the Department of Revenue's Auditor/Treasurer Manual for complete information regarding calculation of deferred taxes and special assessments due.****

Special Valuation and Tax Programs

Question: A taxpayer has owned a property for many years and has had the same city special assessments for years. The taxpayer has always paid the special assessments. The property was recently enrolled into Green Acres. May those special assessments now be deferred, since the property is on Green Acres, or are they not eligible to be deferred because they were in existence prior to the property's enrollment in Green Acres?

Special local assessments levied after June 1, 1967, as well as the corresponding interest may be deferred as part of the Green Acres program until the property is sold or no longer meets the qualifications of the program. This applies even if the special assessments began prior to the property's enrollment into the program. However, we recommend that you ask the taxpayer if they would like to defer the special assessments or continue to pay them as part of their property taxes. If they are deferred, they will accrue interest during the period they are deferred.

Question: Is the collection of the deferred taxes a current-year tax?

Yes. The deferred taxes should be billed on a separate tax statement at the time the payback is calculated.

Question: The Auditor/Treasurer manual states that *'No interest or penalties are to be levied on the additional taxes if they are paid in a timely manner'*. What is a timely manner and what if it's never paid? When does it become delinquent? When is penalty/interest charged?

It is considered to be paid in a "timely manner" if payment occurs by December 31 of the year the payback is calculated or within 30 days, whichever is later. On the later of the first business day in January or 30 days from the payback statement, the 2% penalty under M.S. 279.02 would accrue on any amount that remains unpaid (this would be the only penalty that applies). From this stage it would follow the normal delinquency provisions as provided in statute (i.e. "publication", "judgment", "redemption", etc.), including being subject to interest under M.S. 279.03.

Question: A taxpayer in your county receives Green Acres on six parcels of property that are linked together for homestead purposes. The taxpayer has sold several of the parcels to a new owner that will not qualify for Green Acres. What is the appropriate way to calculate the amount of the payback?

Special Valuation and Tax Programs

Minnesota Statutes, section 273.111, subdivision 9 states in part that:

“...when real property which is being, or has been valued and assessed under this section no longer qualifies under subdivision 3 [ownership requirements], the portion no longer qualifying shall be subject to additional taxes, in the amount equal to the difference between the taxes determined in accordance with subdivision 4 [the low Green Acres value], and the amount determined under subdivision 5 [the highest and best use estimated market value]”.

Subdivision 5 of this same statute states in part that:

“The assessor shall, however, make a separate determination of the market value of such real estate. The tax based upon the appropriate local tax rate applicable to such property in the taxing district shall be recorded on the property assessment records.”

This means that, for each parcel of property that is enrolled in Green Acres, two tax amounts are calculated – one based on the lower agricultural or Green Acres value and one calculated on the highest and best use or market value of the property. If the parcel is part of a chain of parcels that are linked together, two separate tax amounts are still calculated. When several of the parcels in a chain no longer qualify for Green Acres, the difference in the tax amounts should be collected on those parcels for the current year plus the two preceding years.

In the following simplified example of such a tax payback, there are six parcels in the chain. The taxes are calculated using both the ag/GA values and the estimated market values. All taxes are based on a first tier amount of \$1,010,000 which is the breakpoint for the 2009 assessment for taxes payable in 2010. Using the ag/GA values, the entire amount falls within the first tier limit of \$1,010,000. Therefore, the value is all multiplied by the .50 percent classification rate. On the estimated market value calculation, the first tier of \$1,010,000 is reached on parcel 4. The remainder of the value of parcel 4 as well as the entire amount of the value of parcels 5 and 6 is calculated using a class rate of 1.00 percent. Since only parcels 1, 4, and 6 will be sold and the new owner will not qualify for Green Acres, the *difference* in taxes for those three parcels only for the current year (pay 2010) and two prior years (pay 2009 and pay 2008) will be collected under the Green Acres payback provision. In the example provided, the difference in taxes is as follows:

Parcel	Difference in Taxes
1	\$ 550.00
4	\$1,045.00
6	<u>\$1,450.00</u>
Total:	<u>\$3,045.00</u>

Special Valuation and Tax Programs

Please note that the calculations are for net tax capacity only using the classification rates for taxes payable in 2010. There are no limited market values, homestead credits, referendums or local tax rates in the calculations.

Question: Is the 30-day application period meant to be from the date of recording or from the date on the Deed?

Minnesota Statutes, section 273.111, subdivision 11a provides for continuation of tax treatment upon sale when a property is sold provided the new property owner files an application for continued deferment of taxes “within 30 days after the sale” and meets all other requirements for Green Acres. In our opinion, this means that a new owner must file an application within 30 days of when the actual transfer of the property occurs, which is typically the date on the deed. Since there is no specific requirement in law that deeds must always be recorded, it is our opinion that the date of recording of the deed is of no relevance.

Question: How should a property that had been on Green Acres but sold on January 15 of an assessment year be treated for that assessment year? Should the deferral be left on the assessment year or removed?

As a general rule, the January 2nd assessment date is for the most part the date that determines how a property will be valued and classed for the entire assessment year. There are a few exceptions to this rule and this would seem to be one of them. It would seem that when a property sells to a non-qualifying owner, it would only make sense to value the property based upon its actual value with no consideration given to the Green Acres value. At the time the property is sold to a non-qualifying owner, deferred taxes have to be paid. The values for the same assessment year should be modified at that same time to reflect the loss of the Green Acres deferral. Clearly, this is only in the case of a transfer to non-qualifying owner, or an owner who did not make application within 30 days of the sale.

Question: How would one handle a Green Acres withdrawal process when only some of the parcels of a property enrolled in Green Acres are sold and no longer qualify, while the remaining parcels of property continue to qualify for Green Acres?

The statute governing the Green Acres program is Minnesota Statute 273.111. Subdivision 9 states in part that:

“When real property which is being, or has been valued and assessed under this section no longer qualifies ... the portion no longer qualifying shall be subject to additional taxes, in the amount equal to the difference between the taxes determined in accordance with subdivision 4 [the agricultural/low value], and the amount determined under subdivision 5 [the estimated market value/high value].”

Subdivision 5 states in part:

“The assessors shall, however, make a separate determination of the market value of such real estate. The tax based upon the appropriate local tax rate applicable to such property in the taxing district shall be recorded on the property assessment records.”

This means that for each parcel of property that is enrolled in Green Acres, two tax amounts are calculated – one based on the lower agricultural value and one based on the value of the property based on its highest and best use (estimated market value). If the parcel is part of a chain of parcels that are linked together, two separate tax amounts are still calculated. When several of the parcels in a chain no longer qualify for Green Acres, the difference in the tax amounts should be collected on those parcels for the current year plus the two preceding years.

The tax on the parcels remaining in Green Acres should be not recalculated after the parcels that no longer qualify for Green Acres are removed from the chain. Just because parcels are removed from the chain does not mean that you recalculate new tax amounts on the parcels that remain in the chain. No provision exists in the law that would allow the recalculation.

Class 2b lands that were “Grandfathered” into Green Acres until 2013

Any class 2b lands that are currently enrolled in Green Acres may be “grandfathered” into the program until January 2, 2013 (at which time they will be valued at full estimated market value and no taxes will be deferred, as well as three years’ deferred taxes will be due on the class 2b acres).

However, until May 1, 2010 any 2b lands can be withdrawn without payment of deferred taxes. Property owners may voluntarily withdraw their class 2b lands until May 1, 2010 without repayment of deferred taxes.

Between May 1, 2010 and December 31, 2012, any sale or transfer of 2b lands requires repayment of deferred taxes with respect to the last three years’ enrollment. Exceptions to this rule are:

1. Transfers of 2b lands to children, provided the entire property continues to qualify for Green Acres (i.e. at least 10 acres of class 2a lands and primarily devoted to agricultural use) if the transfers occur prior to January 2, 2013; or
2. Transition of 2b lands from Green Acres immediately into the Rural Preserve property tax program. This transition or “rollover” must be done within the same assessment year to avoid repayment of deferred taxes.

Please refer to the types of “transfers” above and in Minnesota Statutes, section 273.111, subdivision 11a which are not considered changes in ownership for Green Acres purposes and do not require withdrawal of 2b acres or consequent repayment of deferred taxes.

On January 2, 2013 all 2b lands are to be withdrawn from Green Acres. Payback of deferred taxes with respect to the last 3 years is due on any 2b acres.

Special Valuation and Tax Programs

Any class 2b lands which are withdrawn from Green Acres may not be “re-enrolled”. In other words, if a property owner chooses to withdraw her 2b acres from Green Acres prior to May 1, 2010 to avoid payback of deferred taxes, but later wishes to re-enroll until she may transition them into Rural Preserves, this is not possible. Once a taxpayer has withdrawn 2b acres from the program, they may not be put back in under any circumstance. In this case, the property owner may still enroll her acres in the Rural Preserve program (as the acres were properly enrolled in Green Acres as of the 2008 assessment year), but they may not be re-enrolled into Green Acres.

If a taxpayer withdraws his/her class 2b acres from Green Acres after May 1, 2010, a payback of deferred taxes is due. That taxpayer may enroll in Rural Preserve at a later time if qualifications are met, but the payback made after withdrawing from Green Acres is not refunded. To avoid a payback of deferred taxes, property owners must immediately transition their 2b acres from Green Acres to the Rural Preserve program prior to the 2013 assessment.

Cross-Compliance with Agricultural and Chemical Water Laws

In 2009, Legislature added subdivision 9a to M.S. 273.111. Subdivision 9a reads:

“(a) A parcel of property enrolled under this section whose owner is subject to two or more final enforcement actions for violations of chapter 18B, 18C, 18D, 103E, 103F, 103G, or 103H, or any rule adopted under those chapters, including but not limited to the agricultural shoreland use standards in Minnesota Rules, chapter 6120, occurring on the parcel, shall be subject to a property tax penalty as defined in this subdivision.

(b) For the purposes of this subdivision, ‘final enforcement action’ means any administrative, civil, or criminal penalty other than a verbal or written warning. An enforcement action is not final until any time period for corrective action has expired, and until the completion or expiration of any applicable review or appeal procedure or period provided by law.

(c) The first time a final enforcement action is taken based on a violation occurring on a parcel enrolled under this section, the owner must be notified that if a second final enforcement action is issued, the property is subject to a property tax penalty, as defined in this subdivision.

(d) When a second final enforcement action is taken based on a violation occurring on a parcel enrolled under this section within three years from the first violation, the law enforcement officer or other person enforcing the law or rule must notify the county auditor. The auditor must then determine the property tax penalty, equal to the deferred taxes on the parcel for the current year and the two previous years, but not to exceed the current owner's time of ownership, and extend the penalty against the property on the tax list for the current year, provided that no interest or penalties shall be levied on the penalty if timely paid.

The penalty levied under this subdivision is in addition to any additional taxes levied under subdivision 9 at the time a property is withdrawn from the program.”

The assessor does not have a role in this process in terms of administration of the Green Acres program. However, property owners may ask about the consequences of failure to comply with agricultural and chemical water laws.

If a property owner receives a second final enforcement action based on a violation of agricultural and chemical water laws, the law enforcement officer (or other enforcing agent) will notify the auditor that this second final enforcement action has taken place. The county auditor will determine a penalty, equal to deferred taxes on the property for the current and two previous years (not to exceed the time of ownership or the length of time actually receiving the Green Acres deferral).

If a property owner receives this second final enforcement action and subsequent penalty, the property owner is not automatically withdrawn from Green Acres. The property is still enrolled in the program and eligible for deferral, but the penalty will be assessed to the property.

Green Acres forms and fact sheets are available in Supplemental Information Module (Module #9).

Valuation Hierarchy

Valuation Hierarchy

Earlier in this module, different types of value were discussed including estimate market value and taxable market value. In addition, the different special valuation and tax programs have also been outlined in this module. When a property is enrolled in or subject to one or more of the special valuation or tax programs, there may be a difference between the estimated market value of a property and the taxable market value of a property. The hierarchy of market value components shown below indicates how and where each factor comes into the calculation. Additional, more detailed information may be found in the Auditor/Treasurer Manual.

1. Market Value Irrespective of Contaminants	\$ X
2. Contamination Value	\$ X
3. Estimated Market Value (EMV)	[1 – 2]
4. Green Acres Deferment	\$ X
5. Open Space Deferment	\$ X
6. Aggregate Resource Preservation Deferment	\$ X
7. Plat Law Exclusion	\$ X
8. “This Old House” Exclusion	\$ X
9. “This Old Business” Exclusion	\$ X
10. Disabled Veterans Homestead Exclusion	\$ X
11. Mold Damage Reduction	\$ X
12. Lead Hazard Reduction	<u>\$ X</u>
13. Taxable Market Value (TMV) [3 – 4 – 5 – 6 – 7 – 8 – 9 – 10 – 11 – 12]	