

MINNESOTA • REVENUE

BULLETIN

To: All County Assessors
From: Property Tax Division
Date: August 13, 2008
Re: Classification of Productive and Non-Productive Land for the 2009 Assessment

Introduction

This bulletin is intended to aid assessors in the **first steps** of implementing the 2008 law changes regarding classification of agricultural property. These changes in the classification of property will be the foundation for implementing the changes in the Minnesota Agricultural Property Tax Law (Green Acres). The guidelines, developed by the Department of Revenue, in conjunction with the Minnesota Association of Assessing Officers and legislative staff, are intended not only to bring about statewide uniformity in assessor classification and Green Acres decisions, but also to allow some degree of local discretion and judgment in making these decisions. These guidelines will not address every possible situation. Assessors must use common sense and professional judgment to implement the changes to the best of their abilities while maintaining uniformity.

While these changes affect all agricultural properties, they will affect those enrolled in Green Acres most dramatically. It is vital that assessors be able to understand the issues and be able to clearly explain them to taxpayers. There are still some significant issues surrounding payback procedures, notification of taxpayers, etc. We are working closely with legislative staff to find solutions to the issues and we will be releasing them as soon as they are finalized.

Background and Legislative Intent

The primary intent of the legislature is to give preferential property tax treatment to only those lands that are used for *productive* agricultural purposes. Correspondingly, the intent of the legislature is that lands that are not used for productive agricultural purposes may continue to be considered to be part of an agricultural homestead if they are contiguous to productive land under the same ownership. It is also the intent of the legislature that those non-productive acres should not be eligible for Green Acres.

However, the legislature also recognizes that there are differences throughout the state with respect to topography, agricultural uses, and operations. The legislature expects assessors to use good judgment and common sense in classifying these properties to the best of their ability while making every effort to maintain as much uniformity as possible.

It must be noted that Green Acres may not apply to all land in a county. If a county's agricultural land is selling at prices that indicate that the estimated market value is less than the indicated agricultural value based on sales from the five base counties that land does not need the deferral provided by Green Acres.

However, if the indicated agricultural value is less than the estimated market values in your county, you must review your market to determine whether Green Acres may be applicable in isolated areas or countywide. It may only apply to some land that is being affected by non-agricultural factors such as development around cities, property located on water or property located along a highway corridor.

Classification of Class 2a Productive Agricultural Land

Minnesota Statute 273.13, subdivision 23 now defines class 2a property as *productive agricultural land* used for the production for sale of agricultural products. This means that the land must be tilled, pastured,

or mowed for hay in order to qualify as *productive* agricultural land. Class 2a may also contain property that would otherwise be classified as 2b non-productive land if it is “impractical for the assessor to value such property from the rest of the property.” Exactly what is “impractical to value separately” will be discussed thoroughly later in this bulletin. Class 2a productive agricultural property may be homestead or non-homestead.

“Fallow” ground, or land that is occasionally kept out of production, or land that is rotationally grazed, is considered to be part of the normal farming operation. This type of activity should not cause the property’s classification to go from 2a productive to 2b non-productive from year to year. A good guideline for fallow ground would be if the land is used for productive purposes for three of five years, the property should continue to be classified as class 2a productive land. However, if a property is clearly not used for production for several years, the assessor should review the use of the property and investigate further to see if it still meets the requirements for class 2a productive land.

Ordinarily, there is no question as to production on the legitimate farms. Usually, it is those properties with very little or marginal agricultural production that are causing most of the questions on proper classification. Any land where production is questionable should be classed as 2b non-productive land and the assessor should research the issue further. If production is in doubt, the assessor has every right to classify the land as class 2b non-productive land and ask for additional information and documentation of production from the taxpayer. It should be noted that plots of land that are planted and left for wildlife are not considered class 2a productive land because they are not producing an agricultural product for sale. Those tracts should be class 2b rural vacant land.

Traditionally, the Department of Revenue and counties have been hesitant to place a specific number of animal units or other factors as a “bright line” test to gauge production. Rather, there are several suggestions of additional information to request from taxpayers where the actual amount of production is in question. These include:

- Asking that the taxpayer provide receipts of sale, a Schedule F, or other information from tax returns to verify agricultural income. Assessors should look for a significant income on a per acre basis. For example, a tree farmer that receives an annual income of \$80,000 by producing 8 acres of Christmas trees would likely be considered to have an intensive production of an agricultural product on that property since it is producing approximately \$10,000 of income per acre. This may help distinguish between a hobby or pastime and legitimate agricultural production for sale of an agricultural product.
- Some counties have sent out questionnaires to taxpayers with marginal production asking open-ended questions about how much production is taking place on a property. The Department of Revenue, in conjunction with the working groups, has developed a standardized form that assessors may send to taxpayers so they can verify production, non-productive land and land enrolled in conservation easements. These forms should be available shortly.
- Take photos to document production/lack of production on inspection dates.

CRP, RIM or other land subject to conservation easements may be considered to be land used for agricultural purposes in certain situations. It may be considered to be class 2a productive land if it meets the following conditions:

- The land was classified as agricultural property for the 2002 assessment; OR
- The land was classified as agricultural property in the year before it was enrolled in the conservation program.

Property enrolled in a conservation program and meeting the above conditions will still be considered to be part of the agricultural homestead (reduced class rate and homestead credit) if it meets all other requirements for homestead. However, this will be class 2a agricultural land that **will not** be eligible for Green Acres. This will require assessors to have two separate sub-records for class 2a property – one that IS ELIGIBLE for Green Acres and one that IS NOT ELIGIBLE for

Green Acres. If the land enrolled in the conservation program does not meet either of the conditions listed above, it should be classified as class 2b rural vacant land.

Classification of Class 2b Rural Vacant Land

Minnesota Statute 273.13, subdivision 23 now classifies class 2b property as rural vacant land consisting of parcels or portions of parcels of property that are unplatted, rural in character and are not used for productive agricultural purposes. This classification may also be used for land that is used for timber production.

Class 2b non-productive land MAY be considered part of an *agricultural homestead* if contiguous to class 2a agricultural productive land that is homesteaded and is under the same ownership.

Property that does not meet the production requirements for class 2a productive land should be classed as 2b non-productive land. This land may include pasture that is not used for production, meadow, woods, waste, etc. Simply having a fenced pasture is not enough to be considered class 2a productive land. Again, to be classed as 2a, there must be evidence of production of an agricultural product for sale.

For abstract purposes, class 2b lands may be considered “undefined” for now. However, over the next few years we will be expecting assessors to separate these “undefined” class 2b land into woods, waste, etc. More instructions will be available when the 2009 Spring Mini-Abstract instructions are published.

Property may also have a *minor, ancillary non-residential structure* and still be classified as class 2b. “Minor, ancillary structures” are defined 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.*

If any structure or group of structures totals 300 or more square feet, or if any structure is used residentially on more than an occasional basis, or if there is an improved building site that provides water, sewer or electrical hook ups for residential purposes, the property must be split classed according to the appropriate use or uses of the property.

Some indications that the structure is not a minor, ancillary structure would be the fact that it is designed for residential occupancy and includes kitchen facilities, separate bedroom areas, or gas service.

If this type of property is 20 acres or more in size and is improved with a structure that is not a minor, ancillary structure, the property should be split-classed with the structure and ten acres classified according to its use (residential, seasonal residential, recreational, etc.) and the remaining land classified as 2b rural vacant land.

Properties Less Than 10 Acres in Size

Beginning with the 2009 assessment, a property that is less than ten acres in size may be classified as 2a productive agricultural property if it is used exclusively OR intensively. (Previously, the law required BOTH exclusive and intensive use.)

If a parcel is less than 10 acres in size and it is used solely for ag production, it may be considered to be class 2a productive land because it is EXCLUSIVE.

Examples of EXCLUSIVE use:

- 9 acres planted border-to-border in corn is exclusive.
- 4 acres planted border-to-border in soybeans is exclusive.
- 3 acres planted border-to-border in strawberries is exclusive.
- 8 acres planted border-to-border in hybrid poplar trees is exclusive.

If a property has a residential structure (HGA), the property must be used INTENSIVELY for one of the following in order to be considered as class 2a productive land:

1. drying or storage of grain or storage of machinery or equipment used to support ag activities on other parcels of property operated by the same farming entity (this provision does not require that the farmer OWN the other property, only that they operate it);
2. growing nursery stock;
3. livestock or poultry confinement; provided that land that is used only for pasturing and grazing does not qualify, or
4. market farming (cultivation of one or more fruits or veggies or production of animal or other ag products for sale to local markets by the farmer or an organization with which the farmer is affiliated).

Examples of INTENSIVE use:

- o HGA with 8 acres used for poultry production.
- o 5 acre parcel with 1 acre used intensively for strawberry production where berries are sold at the local farmer's market. One acre may be considered intensive and be classified as 2a productive land if daily labor and income received from production are shown by the taxpayer to be intensive.

If the production taking place on the property with a residence is not intensive enough to warrant class 2a productive acres, the property should be classified as a residential property.

“Impractical” to Value Separately

“Impractical to value separately” does not mean that an assessor does not have time to separate their existing agricultural land between class 2a productive land and 2b non-productive land. This classification change must be accomplished for the 2009 assessment. The actual language in law reads “*class 2a property may contain property that would otherwise be classified as 2b, including but not limited to sloughs, wooded wind shelters, acreage abutting ditches, and other similar land impractical for the assessor to value [emphasis added] separately from the rest of the property.*”

This issue has been discussed at length between legislative staff, assessors and the Department of Revenue. In the end, it was determined that many counties currently have their land broken into categories that will easily lend themselves to separating land into productive and non-productive classifications. For those counties, it will be much easier to separate everything into class 2a and 2b categories as is, rather than viewing each parcel individually to determine if the non-productive portion should be included in the productive portion. In addition, it is believed that this method will be more equitable and cause fewer issues of uniformity.

Therefore, those counties that currently have their land broken out may “flood” those categories (productive land plus any non-productive land with zero value) into the class 2a and the remaining non-productive land that has a value into 2b. Non-productive items that may be identified separately but have zero value, or items such as tree lines, windbreaks, ditches, roads, irrigation well sites, non-irrigated pivot corners, etc. may be included as class 2a productive land. See the example 1 below.

Example 1

Current Land Breakdown

40 Total Acres

15 acres “A” tillable used for production
10 acres “B” tillable used for production
10 acres woods
3 acres ditch (zero value)
2 acres road (zero value)

2009 Land Breakdown

40 Total Acres

30 acres “productive” class 2a
(includes tilled and ditch/road
that have zero value)
10 acres “non-productive”
class 2b rural vacant land

However, if any items are identified and valued separately such as woods, slough, waste, etc. they should be classified separately. See example 2 below.

Example 2

Current Land Breakdown

40 Total Acres

39 acres "A" tilled for production
1 acre waste

2009 Land Breakdown

40 Total Acres

39 acres "productive" class 2a
1 acre "non-productive" class 2b

Class 2a productive land must be broken down into the following *preliminary* categories for abstract purposes. Final abstract instructions are still pending and may differ slightly from these categories.

- 2a House and Garage
- 2a 1st Acre
- 2a House, Garage and 1st Acre

- 2a Buildings (excluding house and garage)
- 2a Site (excluding 1st acre)
- 2a Productive tillable land
- 2a Productive pasture/meadow/other land
- 2a Land in conservation program (CRP, RIM, CREP, etc.)
- 2a Total 2a Agricultural Property

All class 2b rural vacant land may all be classified as "undefined" for the 2009 assessment. However, over the next few years we will be requiring additional categorization using the following categories. Again, final abstract instructions are still pending and may differ slightly from these categories.

- 2b Undefined land
- 2b Woods/Timber
- 2b Non-Productive other land
- 2b Waste land
- 2b Total 2b Rural Vacant Land

For those counties that do not have their land broken out into categories that will allow an easy, computerized transfer of data (i.e. upland/lowland), it is expected that you begin converting the classifications of your land to 2a productive and 2b non-productive rural vacant land immediately. For the 2009 assessment, counties must make a good faith effort to classify their land into those categories and fine tune the classification as needed after the 2009 assessment as part of your quintile review. If you have questions or need assistance, please contact your regional rep.

If, in the course of your data conversion, you find you have non-productive land that is part of the natural farm landscape but provides little if any market value (i.e. tree lines, windbreaks, ditches, roads, rock piles, drainage areas, irrigation well sites, non-irrigated pivot corners, etc.) and would not be valued or sold separately, those items may be included as part of the productive land. This discretion should be used carefully. If you find that there are significant non-productive areas that are easily separated and are valued in excess of productive land, such as a wooded building site or large wetland, you should classify such areas as 2b rural vacant land.

"Linking" Parcels

For agricultural homestead purposes, our instructions on "linking" parcels that were issued as part of the special ag homestead bulletin and our memo on non-contiguous lands still apply.

Generally, agricultural homesteads are class 2a productive lands that meet the qualifications for homestead (may be owner-occupied, relative, or special ag homestead). The homestead may also contain class 2b non-productive land if it is contiguous to 2a productive land under the same ownership. In order to be linked for homestead purposes, each non-contiguous land mass that is located within four townships/cities must meet the requirements for class 2a productive property first before the 2b non-productive land is included in the homestead. For example:

Parcel 1 – Base Parcel A – Qualifies for Owner-Occupied Homestead

HGA	60 Acres Class 2a Productive	25 Acres Class 2b Non-Productive
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Parcel B (Non-Contiguous)

40 Acres Class 2b Rural Vacant Land
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In the case above, the base parcel A would be split-classified as Class 2a HGA, Class 2a productive land (60 acres) and Class 2b non-productive land (25 acres). The entire parcel would receive the reduced class rate on the first tier of TMV and the agricultural homestead market value credit. Parcel B ***cannot*** be linked to the agricultural homestead of Parcel A because it is neither contiguous to Parcel A, nor any other class 2a productive land owned/farmed by the owners of Parcel A. As such, Parcel B is at the class rate for Class 2b non-homestead which is currently 1%. If Parcel B were to have, for example, 15 acres of 2a productive land and 25 acres of 2b non-productive land, it may be linked for agricultural homestead purposes.

The “under the same ownership” requirement means EXACTLY the same ownership. Properties CANNOT be linked unless they are under the same ownership. This is not a change from current law. Assessors cannot link individually-owned property to entity-owned property, even if the individuals who own one property are members of the entity that owns the others. Exceptions as listed in the Special Agricultural Homestead Bulletin are:

1. individually-owned property to trust-held property where the individuals that own one property are the grantors of the trust;
2. individually-owned property to other property the owner owns with other individuals (e.g. Ole & Lena can link their base parcel to other ag land they own with Ole’s brother Sven and his wife Uma); OR
3. in the case of married couples, if a property is titled solely in the name of one spouse, it may be linked to other parcels that are held solely by the other spouse and parcels held in both spouses names.

Conclusion

In conclusion, it is imperative that assessors begin converting the classification of their agricultural properties immediately into the 2a productive and 2b non-productive classifications. This step will be extremely important in the next stage of the process which will be implementing the Green Acres changes and payback calculations. Again, we are continuing to work on these pieces of the puzzle with legislative staff and we will be issuing additional information very soon.