

AGRICULTURAL TRANSFER TAX IN MARYLAND

by: Maryland State Department of Agricultural Assessments & Taxation

Background

The preservation of agricultural land is extremely important to all citizens of Maryland. Years ago, the Maryland General Assembly declared that it is in the general public interest of the State to foster and encourage farming activities to maintain a readily available source of food and dairy products, to encourage the preservation of open space as an amenity necessary for human welfare and happiness, and to prevent the forced conversion of open space land to more intensive uses. In fact, Maryland was the

first State in the nation to formally adopt a policy providing for lower assessments (and property taxes) on land that is actively devoted to farm or woodland uses. The "agricultural use assessment" is granted to farm land or woodland that meets the criteria outlined in State Law. This special assessment means that the land is appraised according to its current use and not according to its actual market value which, in many instances, could be significantly higher. The result is that the owner of land receiving the lower "agricultural use assessment" pays less property taxes and there is less pressure to convert the land to more intensive uses. Another method used to preserve agricultural land is the State's Agricultural Land Preservation Program. This

program, administered by the Maryland Department of Agriculture, purchases development rights on existing farms thereby ensuring that they will remain as active farms. A key funding source for this program is the Agricultural Transfer Tax - a tax imposed on the sale of land receiving the agricultural use assessment. The agricultural use assessment, the agricultural transfer tax, and Maryland's Agricultural Land Preservation Program work together to preserve farmland and woodland in Maryland.

The use assessment serves to remove some of the developmental pressure on the land by holding down the property tax burden. The agricultural transfer tax serves a dual role-first as a deterrent to conversion of the land and second as a penalty when the land is sold for development. Finally, the Agricultural Land Preservation Program

receives its funding from the agricultural transfer tax and these funds are used to purchase easements on existing farms thus guaranteeing the land will not be developed.

When the Agricultural Transfer Tax Applies

The Agricultural Transfer Tax applies at the point of sale of land that receives the agricultural use assessment. Technically, the tax is imposed on the written instrument (deed) conveying title to the property and it must be paid before the document can be recorded in the land records of the county. The amount of tax is calculated by the assessment office and it is collected by the county finance office. State Law (Sections 13-301 through 13-308 of the Tax-Property Article) provides the statutory framework for the Agricultural Transfer Tax. Generally, the law specifies that the tax is due on all transfers of agricultural land unless the purchaser is willing to promise to keep the land in agricultural use for 5 full taxable years after the transfer. Then, the tax is waived by the filing of a Declaration of Intent with the assessment office.

Frequently, property owners ask, who is responsible for paying the tax? Is it the obligation of the buyer or seller? Because the tax is imposed on the written instrument conveying title and not on either the buyer or seller, payment of the tax becomes a negotiated item between the two parties. Here, the law requires that the seller notify the buyer of the possibility of the tax being due at the time of transfer. The notification must be in writing and a part of the sales contract. When that is done, the buyer becomes responsible for payment of the tax.

The Rate and Basis for the Tax

The Agricultural Transfer Tax is imposed on the value of the land receiving the agricultural use assessment. The rate of the tax is 5% when the land involved in the transaction is 20 acres or more; the rate is 4% when the land is less than 20 acres in size; and the rate is 3% in those cases when the size of the tract is less than 20 acres and it is a building lot with site improvements such as well and septic. After the Agricultural Transfer Tax is calculated an additional 25% surcharge is added. In case of a transfer of agricultural and, the applicable rate is applied to the consideration paid for the land (explained below). If a Declaration of Intent is filed by the purchaser thereby waiving the tax at the time of transfer, the tax is imposed on a violation of that Declaration at the applicable rate times the fair market value of the land as determined by the Department.

Method of Calculation of the Tax

The Assessment Office is charged with the responsibility of determining when the tax is due and the amount to be paid. The law provides specific guidelines that must be followed in making the necessary calculations. As mentioned above, the rate of the tax is dependent upon the size of the tract of land and the existence of site improvements.

The basis for the tax is the value of the land receiving the use assessment. However, at this point the method of determining that value becomes somewhat more complicated. The value used as the basis for the tax is determined as follows:

- When the entire tract of land received the agricultural use assessment and no buildings are present, the tax is imposed on the actual consideration paid.
- If farm buildings are present, the value of those buildings (as reflected on the assessment records and adjusted to a current amount) is subtracted from the total consideration and the tax is imposed on resulting net consideration.
- A similar approach is used to determine net consideration when the entire tract of land did not receive the agricultural use assessment as is the

case when the purchase includes a dwelling and homesite -- here the value of the nonagricultural land and the adjusted value for the dwelling is subtracted from the total consideration.

Waiver of the Tax

The intent of the Agricultural Transfer Tax law is to impose the tax only when the land will not continue as farmland or woodland. Thus, the purchaser may elect to waive the tax by filing with the Assessment Office a Declaration of Intent specifying that the land will remain in agricultural use for at least 5 full consecutive taxable years. This document means that the purchaser agrees to do whatever is necessary to retain the agricultural use assessment - keeping the land actively devoted to agricultural use or maintaining a forestland management plan. The purchaser has the option of waiving a portion of the tax and paying the Agricultural Transfer Tax on just that part of the land to be developed. In such cases, the law requires that the purchaser provide to the Supervisor of Assessments a survey clearly showing that portion of the land subject to the Declaration of Intent and that portion to be developed. For example, a 50 acre parcel is purchased from a large farm. The buyer intends to build a home on one acre and continue to farm the remaining 49 acres. A Declaration of Intent may be filed on the 49 acres that are to remain in farmland and the tax will be paid on the one acre homesite. In this case, the law requires the Supervisor of Assessments to appraise the homesite at its fair market value as of the most recent July 1st. To make such an appraisal, the Supervisor must first identify the location of the one acre homesite.

Hence, the need for the survey. The tax is imposed on that value at the rate of 4%. If it is an inland building site and the value of the homesite is determined to be \$20,000, the tax due would be \$800. However, if it is a waterfront homesite the value could be as high as \$200,000 and the tax due would be \$8,000. The Supervisor will provide the purchaser with a notice of the appraisal which may be appealed under the same procedure as regular reassessment notices.

Violation of a Declaration of Intent

The law provides stiff penalties for property owners who waive the tax by filing a Declaration of Intent and later fail to comply with the agreement. Here, it is important to note that the Declaration of Intent represents a promise to maintain the land as farm or woodland for 5 full consecutive taxable years. This document includes a statement that the purchaser agrees to meet the criteria necessary to receive the agricultural use assessment as it applies to farmland or woodland. Loss of the use assessment during the 5 year period will result in the tax, plus penalty, being imposed.

The Assessment Office is responsible for determining when land qualifies for the agricultural use assessment. Likewise, the office is responsible for identifying those instances when there is a violation of a Declaration of Intent and the need to impose the tax and penalty. The imposition of tax and penalty for a violation works as follows:

- The assessment office determines that there has been a violation of a Declaration of Intent for all or a part of the land subject to that agreement;
- The Supervisor of Assessments prepares fair market value appraisal of the land subject to the violation using standard appraisal practices and taking into account the current character of the land;
- The tax is imposed on the fair market value of the land under violation at the appropriate rate depending upon the size of the land in question;
- An additional 25% surcharge is added;
- An additional penalty of 10% is added and the total is due at the earlier of the next property tax bill or the transfer of the property; and
- The property owner receives a notice showing the appraised fair market value of the land as the most recent July 1st and that notice carries the same appeal rights as a regular notice of reassessment.

To illustrate the above procedure, assume that a 50 acre parcel is purchased from an existing farm for \$100,000, the purchaser files a Declaration of Intent covering the entire 50 acres; and no agricultural

transfer tax is paid at the time of transfer. Four years later, the new owner decides to build a house on the 50 acre parcel. This act represents a violation of the Declaration of Intent and an Agricultural Transfer Tax will be due. In the above example, the Supervisor will prepare a fair market value appraisal for the one acre homesite which is worth \$30,000. The rate of the tax is 4% and the tax is \$1,200 (4% x \$30,000). An additional surcharge of 25% is added. A 10% penalty is added and the total tax surcharge and penalty is \$1,650.

Exemptions from the Tax

There are a number of situations when the transfer of agricultural land is exempt from the Agricultural Transfer Tax. In these cases, there is no need for the purchaser to file a Declaration of Intent even though the land may continue to be farmed. Section 13-207 of the Tax-Property Article of the Annotated Code of Maryland lists those situations when the exemption applies. Some of those include transfers to a family member for their residential use, transfers to government or a public agency, and certain transfers between spouses. However, it is important to note here that the transfer is not necessarily exempt solely because the purchaser may qualify for a property tax exemption. The exemptions to the agricultural transfer tax are different from other property tax exemptions, and the purchaser should not assume the transaction will be exempt. Questions on exemptions may be directed to the local Assessment Office.

Other Important Provisions

There are a few miscellaneous provisions that should be noted. For example, the agricultural transfer tax may be due even though the land does not currently enjoy the agricultural use assessment. The law requires that the tax be imposed on land that receives or did receive the agricultural use assessment. Once the agricultural use assessment is removed and the land is assessed based on its fair market value, real property taxes will be paid based on the higher assessment. For each year that property taxes are paid on the market value assessment, the total amount of the tax due

on a subsequent transfer is reduced by 25%. Thus, after four years, no tax would be due on a transfer and no Declaration of Intent would be required.

Another important provision is the requirement that the Assessment Office be notified in advance of the recording of the deed so that the agricultural transfer tax can be calculated. If new improvements such as a house have been added to the property, the law requires that the Assessment Office be notified of the pending transfer at least 7 days prior to recording the deed. From a practical point, the office should be informed 7 days prior to settlement. There is a similar requirement when a Declaration of Intent is to be filed on only a portion of the land being transferred. Here, the Assessment Office must prepare an appraisal of the land subject to the tax and the office must be notified at least 7 days in advance.

In all cases where an agricultural transfer tax may be due, the property owner (current or prospective) is encouraged to contact the Assessment Office in the county where the property is located to discuss the transaction. The tax can represent a considerable sum of money and it is extremely important that all pertinent aspects of the transaction are reviewed prior to settlement.

DISCLAIMER

John P. Hale is a licensed real estate agent in Maryland and Pennsylvania. He is affiliated with Coldwell Banker Residential Brokerage in Westminster, Maryland. John has been licensed since 2000 and also practiced in Tucson, Arizona for many years. Mr. Hale holds the following designations and certifications awarded by the National Association of REALTORS® (NAR) and other authorized institutions: ABR-Accredited Buyers Representative, AHWD-At Home With Diversity, CNE-Certified Negotiation Expert, CRMS-Certified Risk Management Specialist, CRS-Certified Residential Specialist, CTA-Certified Tourism Ambassador, e-PRO-Online Real Estate Practice, GRI-Graduate of Realtor Institute, MRE-Master of Real Estate, MREP-Mortgage Real Estate Professional, and MRP-Military Relocation Professional.

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