

# The Agricultural Use Assessment

by: Maryland State Department of Agricultural Assessments & Taxation

## What is the Intent of the Agricultural Use Assessment Law?

Maryland law provides that lands which are actively devoted to farm or agricultural use shall be assessed according to that use. In 1960 Maryland became the first state to adopt an agricultural use assessment law which has proved to be a key factor in helping to preserve the State's agricultural land.

The agricultural use assessment law and its corresponding programs are administered by the Department of Assessments and Taxation. This State agency is responsible for assessing all real property throughout the State and has offices located in the county seat of each of the 23 counties and in Baltimore City. Procedures governing the agricultural use assessment have been established to achieve uniformity among the 23 counties in which agricultural property is located. The Department recognizes the importance of this program to the individual land owner and to the farming community in the State.

The Tax-Property Article of the Annotated Code of Maryland, Section 8-209, provides:

The General Assembly declares 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 close to the metropolitan areas of the State;

encourage the preservation of open space as an amenity necessary for human welfare and happiness; and

prevent the forced conversion of open space land to more intensive uses because of the economic pressures caused by the assessment of the land at rates or levels incompatible with its practical use for farming.

It is the intention of the General Assembly that the assessment of farmland:

be maintained at levels compatible with the continued use of the land for farming; and

not be affected adversely by neighboring land uses of a more intensive nature.

While these provisions establish the overall philosophy for the agricultural use assessment program, the law also includes:

Specific provisions relating to the criteria to be used in determining whether or not lands qualify for the agricultural use assessment.

Tests to be considered by the assessors.

Situations where the use assessment cannot apply

Application of the agricultural use assessment to woodland.

### **What the Agricultural Use Assessment Means to the Property Owner?**

Although its importance is widely recognized, the actual benefits of the agricultural use assessment are often misunderstood. Because certain risks in the form of potential tax penalties can result from receiving the agricultural use assessment, the property owner should carefully evaluate the actual tax savings against those risks. The following is an outline of one method to determine the actual tax savings that might be realized from the agricultural assessment.

First, it is necessary to understand that a property tax bill is the product of the assessment on the real property multiplied by the property tax rate. This is true for all property tax situations, regardless of whether or not the land receives the agricultural use assessment. Property tax rates are expressed as a certain number of dollars and cents per \$100 of assessment. While some cities and towns in Maryland impose a separate property tax rate for property in that jurisdiction, most agricultural land is not

found within those boundaries. Thus, for illustration purposes, only the county and state property tax rates will be considered here. Our example will use a typical county rate of \$1.00 per \$100 of assessment and a state rate of \$.132 per \$100 of assessment resulting in a combined rate of \$1.132.

To determine what tax savings can be realized by receiving the agricultural use assessment, an examination of the level of assessment with and without the use assessment must be made. The actual value assigned to an acre of farmland averages about \$300. Land that does not receive the agricultural use assessment will be assessed based on its market value.

Assume that a 100 acre parcel of land has a market value of \$3,000 per acre. The total value of the parcel would be \$300,000 (100 x \$3,000). The same 100 acre parcel receiving the agricultural use assessment based on a value of \$300 per acre would be \$30,000 (100 x \$300). The taxes using a combined tax rate of \$1.132 per \$100 of assessment would be \$339  $[(\$30,000 \div 100) \times \$1.132]$  under the agricultural use assessment and \$3,396  $[(\$300,000 \div 100) \times \$1.132]$  under the market value assessment – a difference of \$3,057 or \$30.57 per acre.

This illustration demonstrates the importance of the agricultural use assessment in terms of its tax savings. However, it must be emphasized that the savings decrease significantly as the market value of the land decreases. If, for example, the land were only worth \$1,000 per acre rather than \$3,000, the total taxes for the 100 acres would be \$1,132  $[(100,000 \div 100) \times \$1.132]$  and the tax savings would be \$793 or \$7.93 per acre. The closer the market value comes to \$300, the less the tax savings.

### **What Criteria Are Used to Qualify Land to Receive the Use Assessment?**

It must be emphasized that the assessment applies to the land, not to the property owner. The law directs the Department to determine whether or not the land is "actively used" for farm or agricultural purposes and defines

"actively used" as "land that is actually and primarily used for a continuing farm or agricultural use." The Department does not concern itself with who owns the land or the income of the property owner (with one minor exception mentioned later). The Department's sole focus is on the nature and the extent of the use of the land.

The primary test used by the Department is directly related to the phrase "actively used." While the Department has published formal regulations and procedures which are available to the public, they can be summarized as follows:

What is the nature of the agricultural activity? Is the land tilled or is it in pasture or woodland (see Woodland Eligibility section), or a combination?

Is the agricultural activity truly a bonafide agricultural activity that is generally recognized as such by the agricultural community?

Is the agricultural activity the primary use of the land or does it appear that the primary use is non-agricultural?

Is the agricultural use a continuing operation or only temporary in nature?

In most cases, there is little doubt as to whether or not the land meets the necessary criteria. However, the General Assembly recognized that in some instances the determination may be difficult and another test was added to the law - the \$2,500 gross income test. The \$2,500 gross income test is when there is some doubt about the extent of the activity. In this case, the property owner may be required to certify that the agricultural activity results in an average annual gross income of \$2,500 or more. Once this certification is made and verified by the Department, the agricultural use assessment will be granted.

Those property owners interested in receiving or retaining the agricultural use assessment on their land should pay particular attention to the

definition of "actively used." This is the key guideline used by the Department in making its determination.

### **More About the \$2,500 Gross Income Test**

Should the Department elect to apply the \$2,500 gross income test, it is important that the property owner understand what is required. First, the term "gross income" means gross revenues derived from the agricultural activity only. It excludes other sources of income to the property owner. Hence, the figure to be reported is the total gross revenues received from the agricultural product before subtracting expenses.

A second important point to remember is that it is "average annual" gross income. The law provides that "...'average gross income' means the average of the 2 highest years of gross income during a 3 year period." This provision was added to recognize special situations such as a drought.

Finally, the law provides that the Department may require the property owner to supply evidence of the gross income in the form of copies of sales receipts, invoices, lease agreements, or other documents. If, the property owner leases the land to a farmer, the rent paid for the land is not considered under the gross income test. Instead, the Department examines the nature of the agricultural activity and determines whether or not that activity would generate an average gross income of \$2,500 if the revenues from the sale of the product were received by the owner of the land. A similar approach is taken when the land owner actually does the farming, but does not sell the products.

### **What Are Some Restrictions on Receiving the Use Assessment?**

The law is specific regarding those instances when the agricultural use assessment cannot be granted. For example, regardless of the agricultural activity, the land used for a homesite on the farm is not eligible. This principle applies to tenant homesites as well as the primary homesite.

Unless obviously larger in size, the homesite is deemed to be one acre. Whatever the size, the homesite is valued and assessed at its market value as is all other non-agricultural land.

Another important restriction is land zoned to a more intensive use at the request of the owner or a person who had previously had an ownership interest in the land. If a rezoning occurs at the initiative of the county, the land may retain the agricultural use assessment. If the owner requests the rezoning, the use assessment must be removed.

The law also prevents granting the use assessment to relatively small parcels of land. For example, in the case of farmland, no parcel under three acres in size is eligible unless one of the following conditions are met:

- the land is owned by an owner of adjoining land that is receiving the farm or agricultural use assessment and the land is actively used (limited to only two parcels of less than 3 acres); or

- the owner receives at least 51% of the owner's gross income from the active use of the small parcel; or

- the parcel of less than 3 acres is a part of a "family farm unit." This term means that the owner of a larger farm may separate out of that larger parcel not more than 1 smaller parcel for each immediate family member. These smaller parcels must remain in active agricultural use, they must be contiguous to the larger parcel, and they must be owned by the immediate family member.

If the small parcel is woodland, it must be at least 5 acres in size in order to qualify.

The final restriction relates to subdivided parcels. That is, parcels of land included in a subdivision plat. Here, the property owner is allowed a maximum of 5 parcels that are less than 10 acres each. These parcels must meet the definition of "actively used." Any number of parcels in the subdivision plat over the maximum of 5 which are under 10 acres in size will be assessed based on the market value.

## **What Woodland is Eligible to Receive Agricultural Use Assessment?**

The application of the agricultural use assessment to woodland is an important tool in helping to preserve Maryland's forestland. In general terms, there are two categories of woodland for assessment purposes: (1) woodland associated with a farm; (2) separate tracts of woodland. Different criteria apply to each category. When the woodland is a part of a larger parcel that is determined to be actively used for agricultural purposes, the woodland portion will normally receive the special use assessment. In this case, it is generally expected that the primary use of the parcel is for an agricultural activity. If the Department finds that only a small portion of the parcel is actually used for the agricultural activity, the use assessment may be denied unless the property owner meets the conditions outlined below.

The agricultural use assessment is available for separate tracts of woodland if the property owner obtains a management plan for the woodland. The management plan must be prepared by a professional registered forester and the property owner will be required from time to time to demonstrate compliance with the terms of the plan. The management plan may be one provided by the State Department of Natural Resources pursuant to the Forest Conservation Management Agreement or to a forest stewardship plan recognized by the Department of Natural Resources, or to a plan from a private registered forester.

### **CAUTION!**

Owners should be mindful that lands being assessed in the Agricultural Use Category could be subject to an Agricultural Transfer Tax at some later date in the event of a transfer, sale, or other action leading to or causing a violation of the agreement as contained in any Letter of Intent that may have been filed in order to receive the Agricultural Use Assessment.

## **DISCLAIMER**

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