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States' Differential Tax Assessment of Agricultural Land Statutes *Delaware*



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States' Differential Tax Assessment of Agricultural Land Statutes State of Delaware

Current through 81 Laws 2018, chs. 200-453. Revisions to 2018 Acts by the Delaware Code Revisors were unavailable at the time of publication.

§ 8328. Purpose

It is declared that it is in the public interest to:

- (1) Encourage the preservation of farmland in order to maintain a readily available source of food and farm products close to the metropolitan areas of the State, to conserve the State's natural resources and to provide for the welfare and happiness of the inhabitants of the State;
- (2) Prevent the forced conversion of farmland and forest land to more intensive uses as a result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farm land and forest land; and
- (3) That the necessity of the enactment of the provisions of this section is a matter of legislative determination.

§ 8329. Valuation of agricultural, horticultural and forest land use

For general property tax purposes including school tax purposes, the value of land which is actively devoted to agricultural, horticultural or forest use and which has been so devoted for at least the 2 successive years immediately preceding the tax year in issue, shall, on application of the owner, and approval thereof as provided in this section, be that value which such lands have for agricultural, horticultural or forest use; provided, that in the case of school taxes where such land is located in a public school district situated in 2 counties, the value of such land shall be that value arrived at by multiplying the value determined hereunder by the lower of the 2 general percentage rates of assessment in force in such counties for the tax year in issue.

§ 8330. Agricultural use land

Land shall be deemed to be in agricultural use when devoted to the production for sale of plants and animals useful to man, including but not limited to: forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; or when



devoted to and 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.

§ 8331. Horticultural use land

Land shall be deemed to be in horticultural use when devoted to the production for sale of fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or when devoted to and 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.

§ 8332. Forest use land

Land shall be deemed to be in forest use when devoted to tree growth in such quantity and so spaced and maintained as to constitute in the opinion of the State Forester a forest area.

§ 8333. Criteria for land use

Land shall be deemed to be actively devoted to agricultural, horticultural or forestry use when:

(1) Not less than 10 acres are in such use, and the gross sales of agricultural, horticultural or forestry products produced thereon together with any agricultural program payments and sales of commodities received under government entitlement programs have averaged at least \$1,000 per year within a 2-year period of time immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to at least \$1,000 per year, within a 2-year period of time; or

(2) Less than 10 acres are in such use and the gross sales of agricultural, horticultural or forestry products produced thereon together with any agricultural program payments and sales of commodities received under government entitlement programs shall have averaged at least \$10,000 per year within a 2-year period of time immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to at least \$10,000 per year within a 2-year period of time. In computing such anticipated yearly gross sales for land under 10 acres in such use, the maximum amount computed from future sales of forestry products shall be not more than \$2,000 annually.

In applying these criteria, and in determining whether the minimum acreage requirements are met, all contiguous parcels of land held by identical owners in identical proportions of ownership and in identical legal form of title, shall be considered as a single unit.



§ 8334. Eligibility for valuation under §§ 8330-8337

Land which is actively devoted to agricultural, horticultural or forest use shall be eligible for valuation, assessment and taxation as provided in this section when it meets the following qualifications:

(1) It has been so devoted for at least the 2 successive years immediately preceding the tax year for which valuation under this section is requested;

(2) The area of such land:

(a) Is not less than 10 acres in such use, and the gross sales of agricultural, horticultural or forestry products produced thereon together with any agricultural program payments and sales of commodities received under government entitlement programs have averaged at least \$1,000 per year within a 2-year period of time immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to at least \$1,000 per year, within a 2-year period of time; or

(b) Is less than 10 acres in such use and the gross sales of agricultural, horticultural or forestry products produced thereon together with any agricultural program payments and sales of commodities received under government entitlement programs shall have averaged at least \$10,000 per year within a 2-year period of time immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to at least \$10,000 per year within a 2-year period of time. In computing such anticipated yearly gross sales for land under 10 acres in such use, the maximum amount computed from future sales of forestry products shall not be more than \$2,000 annually.

In applying these criteria, and in determining whether the minimum acreage requirements are met, all contiguous parcels of land held by identical owners in identical proportions of ownership and in identical legal form of title, shall be considered as a single unit.

(3) Application by the owner of such land for valuation under this section is submitted on or before February 1 of the year immediately preceding the tax year to the assessor of the taxing district in which such land is situated on the form prescribed by the State Farmland Evaluation Advisory Committee together with evidence in writing of the required sales, payments and anticipated sales and payments.

§ 8335. Assessment procedures

(a) The assessor in valuing land which qualifies as land actively devoted to agricultural, horticultural or forestry use under the tests prescribed by this section, and as to which the owner thereof has made timely application for valuation, assessment and taxation under this section for the tax year in issue, shall



consider only those indicia of value of such land as established by the State Farmland Evaluation Advisory Committee.

(b) In determining the total area of land actively devoted to agricultural, horticultural or forest use there shall be included the area of all land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities, but land under, and such additional land as may be actually used in connection with the farmhouse, shall be excluded in determining such total area.

(c) All structures which are located on land in agricultural, horticultural or forest use and the farmhouse and the land on which the farmhouse is located, together with the additional land used in connection therewith, shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable structures and other land in the taxing district.

(d) When land in agricultural use and being valued, assessed and taxed under the provisions of this chapter, is applied to a use other than agriculture, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the land been valued, assessed and taxed as other land in the taxing district, in the current tax year immediately preceding, in which the land was valued, assessed and taxed hereunder.

(1) If in the tax year in which a change in use of land occurs the land was not valued, assessed and taxed under this chapter, then such land shall be subject to roll-back taxes in the following manner. If the change of the use of land occurs prior to January 1, 1996, then such land shall be subject to roll-back taxes for the 5 tax years immediately preceding in which the land was valued, assessed and taxed hereunder. If the change in use of land occurs between January 1, 1996, and December 31, 1996, then such land shall be subject to roll-back taxes for the 6 tax years immediately preceding in which the land was valued, assessed and taxed hereunder. If the change in use of land occurs between January 1, 1997, and December 31, 1997, then such land shall be subject to roll-back taxes for the 7 tax years immediately preceding in which the land was valued, assessed and taxed hereunder. If the change in use of land occurs between January 1, 1998, and December 31, 1998, then such land will be subject to roll-back taxes for the 8 tax years immediately preceding in which the land was valued, assessed and taxed hereunder. If the change in use of land occurs between January 1, 1999, and December 31, 1999, then such land shall be subject to roll-back taxes for the 9 tax years immediately preceding in which the land was valued, assessed and taxed hereunder. If the change in use of land occurs on January 1, 2000, or thereafter, then such land shall be subject to roll-back taxes for the 10 tax years immediately preceding in which the land was valued, assessed and taxed hereunder.

(2) In determining the amounts of the roll-back taxes chargeable on land which has undergone a change in use, the assessor shall for each of the roll-back tax years involved, ascertain:



- a. The full and fair value of such land under the valuation standard applicable to other land in the taxing district;
- b. The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined by the assessing authority; and
- c. The amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under paragraph (d)(2)b. of this section by the general property tax rate of the taxing district applicable for that tax year.

(3) Roll-back taxes as provided herein shall become payable when the land is applied to a use other than agricultural, horticultural or forestry. The terms “applied to a use other than agriculture” and “change in use” for purposes of this subsection shall include any of the following:

- a. The actual use of the land for an activity other than agricultural, horticultural or forestry;
- b. The rezoning of the land to a nonagricultural category;
- c. The approval of a site plan or issuance of a certificate of occupancy which allows for a nonagricultural usage; and
- d. The loss of eligibility for valuation under §§ 8330-8337 of this title.

(4) Notwithstanding anything in this chapter to the contrary, whenever land in agricultural use is applied to a use other than agriculture, and such land is but a portion of a larger tract of land, the remainder of which continues in agricultural use, roll-back taxes as provided herein shall become payable only with respect to the portion of the land which is applied to a use other than agricultural, and the remainder of the land which continues in agricultural use shall remain eligible for valuation under §§ 8330-8337 of this title, provided the criteria for land use set forth under § 8333 of this title continue to be satisfied. The owner of the land which continues in agricultural use shall not be required to apply for eligibility for valuation, and the burden for establishing ineligibility shall rest with the assessing authority.

(5) Roll-back taxes hereunder shall be paid within 90 days of their due date, and payment thereafter shall include a penalty of 6 percent of the amount due for the first month thereafter, and 1 percent of the amount due for each consecutive month until payment is made. The amount due for roll-back tax shall become a lien on the land which was subject to a change in use or applied to a use other than agriculture as of the due date. The school tax component of the roll-back tax shall be paid to the respective school districts which established the tax rates applicable to the lands through a payment first to the appropriate county receiver of taxes, treasurer or director of finance, who collects school taxes. The balance of the roll-back tax shall, when



collected by the appropriate county receiver of taxes, treasurer or director of finance, be paid to the Delaware Agricultural Lands Preservation Foundation; provided, however, that 7 ½ percent of such balance shall be withheld and paid to the county as a charge for administration. For purposes of this paragraph, the due date shall be the earlier of the date following conversion under paragraph (d)(3) of this section which is established by the respective counties for annual taxes or the date indicated by the county in any special billing for roll-back taxes.

(6) When land in agricultural use and being valued, assessed and taxed under the provisions of this chapter, is acquired for public use by State agencies, whether by condemnation, gift or purchase, and is then applied to a use other than agriculture, that portion of the land which is applied to such other use shall be subject to a payment by the agency in lieu of roll-back taxes, to be paid to the Delaware Agricultural Lands Preservation Foundation. The amount of this payment in lieu shall be determined as if it were the roll-back tax chargeable under this section for the tax year in which the land was acquired by the agency, or the tax year in which the land is applied to such other use, whichever is greater, after first deducting the school tax component of the roll-back tax chargeable for that year. This payment shall be made directly by the agency to the Foundation, after obtaining the assessment information from the appropriate county receiver of taxes, treasurer or director of finance, and shall not be subject to any charge for administration by the county. In all other respects, the land so acquired for such public use shall not be assessed or charged for rollback or other property taxes by any county, school district or other political subdivision.

§ 8336. Annual review

- (a) Eligibility of land for valuation, assessment and taxation under this section shall be determined for each tax year separately. Application shall be submitted by the owner to the assessor of the taxing district in which such land is situated on or before February 1 of the year immediately preceding the tax year for which such valuation, assessment and taxation are sought; provided however, that unless the eligibility of land under this section changes, those applications which have met the provisions to qualify under this chapter shall be automatically renewed without the owner having to apply annually. With respect to new applications, eligibility of the land for valuation, assessment and taxation under this section shall be conditioned upon advance execution by the landowner of a certification, in recordable form, as provided by the Delaware Agricultural Lands Preservation Foundation, which certification indicates that a roll-back tax is due and payable to the school districts and the Foundation under the provisions of § 8335(d) of this title at such time that the land is subjected to a change in use or applied to a use other than agricultural, horticultural or forestry, as such terms are defined, and that a failure to pay the rollback tax when due results in the imposition of a lien on the land for nonpayment.
- (b) (1) If the eligibility of land under this section changes the owner shall on or before February 1, of the following year in which the eligibility of the land changes, notify the assessing authority in the taxing district, in writing, of the change in land use.



(2) Any owner who fails to properly notify the assessing authority in the tax district of the change in land use shall be assessed a penalty for such failure in an amount of 20% of the rollback taxes recoverable against the property, which penalty shall be collected by the taxing district.

§ 8337. State Farmland Evaluation Advisory Committee

(a) There is created a State Farmland Evaluation Advisory Committee, consisting of 3 members. One member shall be the Dean of the College of Agricultural Sciences of the University of Delaware; 1 member shall be appointed by the Governor from a list of 3 eligible citizens, which list shall be supplied the Governor by the Executive Committee of the Delaware State Grange; and 1 member shall be appointed by the Governor from a list of 3 eligible citizens, which list shall be supplied the Governor by the Executive Committee of the Delaware Farm Bureau. No more than 2 members of the Committee shall be of the same political party. Each member shall be a citizen of this State and shall be appointed for a term of 3 years beginning on the 1st day of July in the year of appointment. Vacancies for any cause other than the expiration of term shall be filled by the Governor for the unexpired term.

(b) The Committee shall meet from time to time on the call of the Dean of the College of Agricultural Sciences and annually determine and publish a range of values for each of the several classifications of land in agricultural, horticultural or forest use in the various areas of the State. The primary objective of the Committee shall be the determination of the ranges in fair value of such land based upon its productive capabilities when devoted to agricultural, horticultural or forest uses. In making these annual determinations of value, the Committee shall consider available evidence of agricultural, horticultural or forest capability derived from the soil survey and such other evidence of value of land devoted exclusively to agricultural, horticultural or forest uses as it may in its judgment deem pertinent. On or before February 1 of each year, the Committee shall make these ranges of fair value available to the assessing authority in each of the taxing districts in which land in agricultural, horticultural and forest use is located. The Committee shall review at least every 2 years the formula, method or system being utilized to determine the ranges of fair values for agricultural, horticultural and forestry land and make such changes and revisions as are required to insure that the objectives of this section are met. The formula used by the Committee shall be based on not less than the preceding 20 years of land values.

