



North Carolina Department of Revenue

Michael F. Easley
Governor

E. Norris Tolson
Secretary

February 9, 2005

MEMORANDUM

TO: County Assessors

FROM: David B. Baker, Director *DBB*
PROPERTY TAX DIVISION

RE: Present Use Value Issue

We have received several questions as to the proper way to handle situations where taxpayers choose to put only part of their property in the present use value program, especially in light of the recent legislative changes enacted by SB 1161 effective for tax year 2003.

SB 1161 added the following language to the definition of agricultural land in G.S. 105-277.2(1): "...If the agricultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management plan..." Similar language was also added to the definition of horticultural land in G.S. 105-277.2(3). We will use agricultural land for discussion purposes.

It is our position that a taxpayer can choose to apply for certain non-woodland acreage to receive present use value while allowing other non-woodland acreage to remain at market value. For example, on an agricultural tract, a farmer might have 40 acres of corn that he wishes to put in present use value and another 25 acres of open land that he maintains as open but unfarmed land that he wishes to leave at market value.

It is also our position that, in the above example, if the farmer had requested present use value on the 25 acres of open but unfarmed land, that portion of the tract should be denied present use value since it is not being used for the commercial production of agricultural products.

So, it is evident that there will certainly be situations where either the assessor or the taxpayer may find it necessary to qualify only a portion of the non-woodland acreage for a particular tract. However, those acres should be uniquely identifiable and sufficient documentation should be required and maintained in the present use value file for the property.

The associated question is how to handle the woodland portion with regard to sound management and the requirement for forestry management plans. As above, our position is that

a taxpayer with a qualifying agricultural tract can choose to put only a portion of his woodland in present use value. If present use value is requested on 20 acres or greater, then a forestry management plan is required on all of the woodland for which present use value is requested, not just the acreage over 20 acres. This is equitable and consistent with the requirement that forestry tracts must have a forest management plan for all of the woodland.

However, if there is 20 acres or more of woodland on a qualifying agricultural tract and the taxpayer **requests** that less than 20 acres of woodland receive present use value, it is our position that a forestry management plan is not required in this situation.

Agricultural land is defined as land that is part of a farm unit that is actively engaged in the commercial production or growing of agricultural products. Agricultural land includes woodland and wasteland that is part of the farm unit. When a taxpayer requests that only certain portions of a tract be granted present use value, he is effectively specifying which acres are in the farm unit and therefore which acres are subject to the provisions of the present use value statutes. If, on an agricultural tract, a request is made for only 19.99 acres of woodland to be granted present use value, then only 19.99 acres are in the farm unit. Therefore, the agricultural land, by definition, would include less than 20 acres of woodland and no forestry management plan is required.

We would advise that it would be necessary for the taxpayer to specify if they want less than all of the woodland to be considered part of the agricultural land. We do not recommend automatically giving present use value to the first 19.99 acres if the tract has 20 acres or more and no forestry management plan. However, the taxpayer should be given the option to define the farm unit as only including 19.99 acres of woodland if they are not willing to get a forestry management plan for the woodland. This must be a choice by the taxpayer and the taxpayer has the responsibility of providing sufficient documentation as to the location of the acreage that will remain at market value and the acreage that will be considered part of the farm unit.

The taxpayer should also understand what the consequences are for taking this option if the agricultural land should fail to qualify at some point in time. Since the farm unit only contains 19.99 acres of woodland by choice, all of the agricultural land and woodland would be subject to a rollback and deferred taxes when the agricultural land becomes disqualified. If, however, the taxpayer had chosen to put all of his woodland on this agricultural tract under a sound forestry management plan, the woodland could continue to qualify as forestland even if the agricultural acres became disqualified for some reason.

All of this discussion has focused on agricultural land in production and woodland. It should be noted that there are also categories for wasteland and for woodland used for certain buffer and protection uses. There are no specific size limitations for these categories as long as the assessor is satisfied that the land should properly be so classified.

As an additional issue, it is also our position that woodland only parcels that the taxpayer wishes to be considered as part of the agricultural land must be contiguous to the land in actual production or be contiguous to another tract in the farm unit that is contiguous to the land in actual production. For example, a 5 acre woodland tract may qualify (assuming sound management as discussed above) as part of the agricultural land if it contiguous to another 8 acre

woodland tract which itself is contiguous to the tract which contains the land in actual production. A woodland tract that does not meet these conditions would have to qualify on its own merits as a forestry tract.

I hope this information has been helpful. Please contact our office at 919-733-771 if you have any questions or comments.