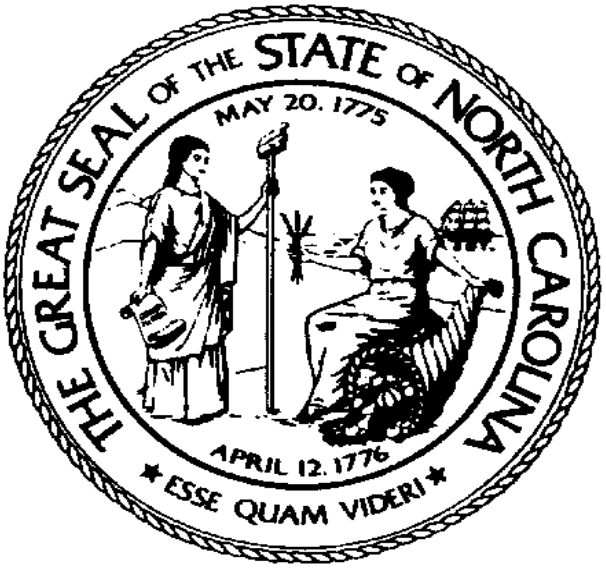
PRESENT-USE VALUE

PROGRAM GUIDE



NORTH CAROLINA
DEPARTMENT OF REVENUE

LOCAL GOVERNMENT DIVISION
PROPERTY TAX SECTION
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The Present-Use Value Program

Foreword

[This Second Edition of the *Present-Use Value Program Guide* is updated with changes through the 2011 Session of the North Carolina General Assembly. The major changes in this edition include significant revisions to *Chapter 2: Ownership* and to *Chapter 10: Annexation of Present-Use Value Land* to reflect recent legislative changes. Other conforming, technical, and clarifying changes have been made throughout the Guide.]

Effective January 1, 1974, the General Assembly enacted a voluntary program that allows certain agricultural land, horticultural land, and forestland to be assessed at its **present-use value**.

This Guide seeks to provide a thorough, but not exhaustive, explanation of the present-use value program as it exists at the time of publication. Generally, the history of the program will not be discussed because the law has undergone many revisions since the inception of the program.

Due to the numerous legislative revisions, some areas of the statutes are not as precise or as clearly worded as desired, and, in those areas, the North Carolina Department of Revenue (NCDOR) may express its recommendation as to the best interpretation and application of the statutes, based on its experience and knowledge of the program. In situations where it is unclear what the correct recommendation should be, it may only be noted that the issue is open for some interpretation.

The citations and legal references in this Guide were current as of the publication date of this edition.

In an effort to enhance the overall readability of this Guide, references to the North Carolina General Statutes governing the present-use value program have largely been omitted from the main text of this publication. The primary statutes discussed in each chapter are referenced at the beginning of each chapter, and *Form AV-4: Present-Use Value Statutes* is included at the end of the main body

for your reference. Not all statutes that are referenced in this Guide are included in *Form AV-4: Present-Use Value Statutes*. Occasionally, reference will be made to a statute that does not directly address the present-use value program but still has some bearing on the subject. In those instances, it will be necessary to consult the North Carolina General Statutes (located online at www.ncleg.net).

A copy of *Form AV-5: Application for Agriculture, Horticulture, and Forestry Present-Use Value Assessment* follows *Form AV-4: Present-Use Value Statutes*.

The Use-Value Advisory Board also prepares an annual present-use value manual which NCDOR publishes as the *Use-Value Manual for Agricultural, Horticultural, and Forestland*.

All of the above-mentioned documents, including this Guide, can be downloaded from the NCDOR website at: www.dornc.com/taxes/property/index.html.

The major points of the present-use value program are presented in separate chapters. Most chapters are followed by a number of real-life examples. It is hoped that these practical examples will help to clarify the somewhat difficult language of the statutes. Some of the examples may even cover situations that are not specifically included in the explanatory text in the preceding chapter. Please consider the examples as an integral part of the overall explanation of the present-use value program.

Note on Examples: For brevity and clarity, the examples may deal with one or more requirements of the program at a time. When the other requirements are not mentioned, it should be assumed that all other requirements have been met or otherwise have no bearing on the specific example.

We hope this information will be helpful in the general understanding of the present-use value program. Please feel free to contact our office with any comments or suggestions.

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Chapter 1

Introduction to Present-Use Value

[Primary Statutes: G.S. 105-277.2 through G.S. 105-277.7]

Generally, all property in North Carolina is valued at its **market value**, which is the estimated price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the property.

Present-use value (PUV) is the value of land in its current use as agricultural land, horticultural land, or forestland based solely on its ability to produce income and assuming an average level of management.

Property that qualifies for present-use value classification is assessed at its present-use value rather than its market value. Present-use value is usually much less than market value and qualifying tracts are assessed at this lower value. The tax office also establishes a market value for the land, and the difference between the market value and the present-use value is maintained in the tax assessment records as **deferred taxes**. When land becomes disqualified from the present-use value program, the deferred taxes for the current year and the three previous years with accrued interest will usually become due and payable.

Beginning with the 2010 tax year, a new program for the taxation of wildlife conservation land went into effect. There are provisions that allow for switching between the present-use value program and the wildlife conservation program. When the wildlife conservation program is discussed in *Chapter 16: Wildlife Conservation Program* and in other locations in this guide, it must be emphasized that the present-use value program for agricultural, horticultural, and forest land is a separate program from the wildlife conservation program. When the term "present-use value program" is used in this guide, it is specifically referring to the present-use value program for agricultural, horticultural, and forest land, and not to the wildlife conservation program.

Following is a brief overview of the major points of the present-use value program. Subsequent chapters will discuss each of these areas in greater detail.

I. Three Classifications

There are three separate categories of land that may qualify for present-use value classification: agricultural land, horticultural land, and forestland.

- **Agricultural Land**

  Agricultural land is land that is actively engaged in the commercial production or growing of crops, plants, or animals. Examples of agricultural products include soybeans, grains, tobacco, cotton, peanuts, corn, and cattle. This classification also includes aquaculture.

- **Horticultural Land**

  Horticultural land is land that is actively engaged in the commercial production or growing of fruits, vegetables, nursery products, or floral products. Examples of horticultural products include apples, peaches, strawberries, sod, shrubs, greenhouse plants, and evergreens intended for use as Christmas trees.

- **Forestland**

  Forestland is land that is actively engaged in the commercial growing of trees.

II. Four Tests

There are four tests that agricultural and horticultural land must meet in order to qualify for present-use valuation. Forestland only has to meet three tests since the income test is not applied to forestland.

1. **Ownership**—All three classifications must meet the ownership requirements. Not all types of ownership qualify. The General Assembly has determined the types of ownership that may qualify, and are generally limited to ownership by individuals, certain trusts, and certain farming-related business entities.

2. **Size**—All three classifications must meet the size requirements. Generally speaking, each qualifying farm unit must have at least one

tract that meets the minimum size requirement for the classification being requested by the owner. Agricultural land requires at least one 10-acre tract in actual production. Horticultural land requires at least one 5-acre tract in actual production. Forestland requires at least one 20-acre tract in actual production. Smaller tracts may also be included with the qualifying tract under certain conditions.

3. **Income**—Only agricultural and horticultural classifications must meet the income requirement. Each agricultural and horticultural farm unit must have at least one tract that meets the minimum size requirements and that produced at least $1,000 average gross income over the three preceding years from the minimum acreage amount. The income generally must be from the sale of agricultural and horticultural products produced from the land.

   Forestland generally produces income only when timber is harvested, and many years may pass between required harvests. Therefore, it is not feasible to have a yearly income requirement for forestland.

4. **Sound Management**—All three classifications must meet the sound management requirements. Forestland must comply with a written sound management plan for the commercial production of timber. Agricultural and horticultural classifications can meet the sound management requirement by fulfilling one of several possible options.

III. Exceptions and Miscellaneous Provisions

The General Assembly has provided for several exceptions or additional provisions to the above requirements. Special provisions or exceptions may apply to:

- Evergreens intended for use as Christmas trees.
- Certain land enrolled in the Conservation Reserve Program.
- Certain conservation easements donated on qualifying PUV land.
- Exceptions for turkey disease.
- Annexation of present-use value land.
- Wildlife conservation land. (This is a separate program. See *Chapter 16.*)

IV. Application for Present-Use Value

Initial Applications—If a property is not currently in the present-use value program, an initial application must be timely filed during the regular listing period. The regular listing period is typically January 1 through January 31 of each year. The local board may approve certain untimely applications if good cause is shown for failure to file a timely application.

An initial application may also be filed within 30 days of a notice of change in value.

Applications for Continued Qualification After Transfer—If a property is currently in present-use value and meets the requirements for continued qualification of transferred property without removal from present-use value, the new owner must file a new application within 60 days of the date of transfer. The local board may approve certain untimely applications if good cause is shown for failure to file a timely application.

V. Billing of Deferred Taxes Due to Removal from Present-Use Value (Rollback)

When a property is removed from the present-use value program, either voluntarily or involuntarily, the deferred taxes for the year of disqualification (usually the current year) and the three previous years with accrued interest become immediately due and payable. Interest accrues on each year's taxes as if they had been payable on the dates on which they had originally became due, and both the principal and interest are due and payable when the property is removed from the program.

There are a few limited exceptions where the deferred taxes are not due when a property is disqualified.

The term **rollback** is not used in the present-use value statutes, but it has become the commonly used term to describe the billing of deferred taxes due to removal from the present-use value program.

VI. Determining Present-Use Value

Agricultural and horticultural present-use values are based on cash rents for agricultural and horticultural land respectively. A capitalization rate ranging from 6% to 7% is applied to the cash rents to determine the present-use value. The specific rate is established by the Use-Value Advisory Board (UVAB) and is currently set at 6.5%. The UVAB also annually establishes recommended present-use value land rates for all three classifications.

Forestland present-use values are determined by applying a capitalization rate of 9% to the expected net income of forestland.

VII. Compliance Reviews

Each county assessor is required by law to periodically review all properties that are receiving the benefit of the present-use value classification to verify that these properties continue to qualify for the classification. The General Assembly recognized that the long-term success of the program depends on the integrity of the program and the assurance that only those people who qualify for the present-use value program receive the intended benefit.

Chapter 2

Ownership Requirements

[Primary Statutes: G.S. 105-277.2, G.S. 105-277.3, G.S. 105-302, G.S. 105-381]

Overview

Ownership requirements can be divided into two main areas.

I. Owners must meet one of the **Qualifying Forms of Ownership**.

II. These qualifying owners must also meet the **Additional Requirements for Qualifying Owners**.

Multiple tracts must be owned in the same ownership. (See discussion of the farm unit concept in *Chapter 3: Size Requirements, Subchapter III: Additional Tracts and the Farm Unit Concept*.)

I. Qualifying Forms of Ownership

All property qualifying for present-use value must be "individually owned." Originally, this meant that only individuals could qualify, but the term has been periodically expanded by the General Assembly to include other forms of ownership, such as business entities and trusts. Because of these changes, many people may incorrectly interpret the requirement that a property be individually owned as a requirement that the property must be owned by an individual. To help minimize this issue, this Guide will often use the more generic terms "qualifying owners" or "qualifying forms of ownership" as substitutes for the somewhat misleading statutory term "individually owned."

There are four categories of qualifying owners:

A. Individuals

B. Certain Business Entities

C. Certain Trusts and Testamentary Trusts

D. Certain Tenants in Common

A. Individuals

These are properties owned in a person's actual name.

Properties owned by husband and wife as tenants by the entirety fall into this category. However, the courts have clearly ruled that property owned by husband and wife as tenants by the entirety is a different ownership than property owned by either the husband or wife separately. [*Duplin County v. Jones, 267 N.C. 68, 147 S.E.2d 603, (1966)*] Since G.S. 105-277.2(7) requires that multiple tracts of a specific farm unit must be under the same ownership, tracts owned in different combinations of husband and/or wife ownership must each qualify based on each different form of ownership.

Property on which a life estate has been retained is considered owned by the owner of the life estate. [See G.S. 105-302(c)(8).] Qualification for the present-use value program will be based on the qualifications of the owner of the life estate.

B. Business Entities

Business entities are:

- limited liability companies,
- general partnerships,
- limited partnerships, and
- corporations.

1. Business Entity Requirements

a. A business entity must have agriculture, horticulture, or forestry as its principal business. The principal business requirement applies only to the business entity that owns the land and does not apply to the members of the business entity.

b. All members of the business entity must be individuals, either directly or indirectly.

c. All individual members must be actively engaged in the principal business of the entity **or** be related to an individual member who is actively engaged in the principal business of the entity.

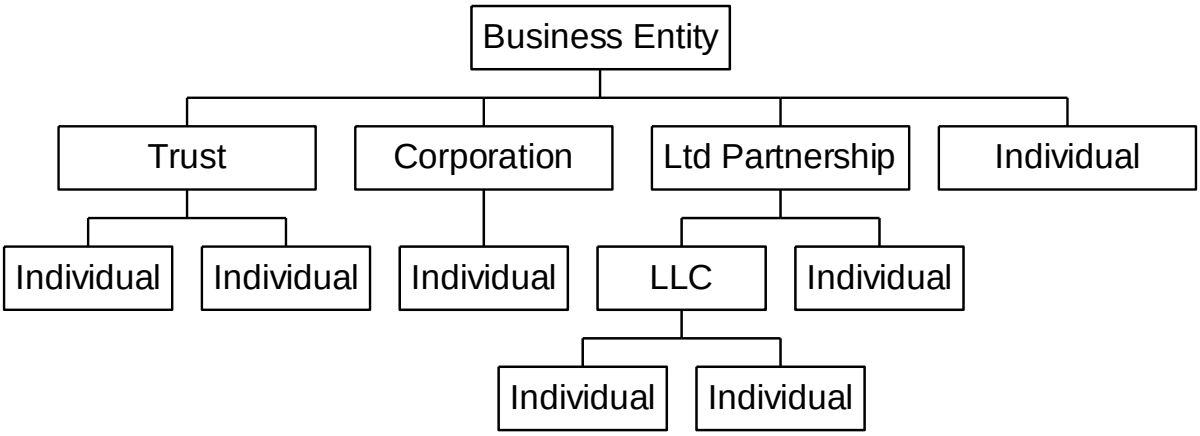
d. A business entity cannot be a corporation whose shares are publicly traded. Neither can any of its members be corporations whose shares are publicly traded.

In meeting requirement b. above, an individual is directly a member of the business entity that owns the land if the individual directly owns membership interest of the business entity that owns the land. An individual is indirectly a member of the business entity that owns the land if the individual is a member of a business entity or a beneficiary of a trust that is part of the ownership structure of the business entity that owns the land.

To state it more directly, all interest in a business entity is ultimately owned by individuals, if you look far enough down the ownership structure. Essentially, you are "looking through" all of the intermediate ownerships to identify the individual level of ownership. Once you have identified all of the individuals who own interest in the business entity, either directly or indirectly, you can now apply the actively engaged requirement to those individuals.

The principal business requirement is applied to the business entity that owns the land. The actively engaged requirement is applied to the individuals that own the business entity.

The following chart illustrates the concept of "looking through" the intermediate ownerships to determine the individual level of ownership. The boxes labeled "individual" in the chart represent all of the individuals to whom the actively engaged requirement must be applied.



2. Principal Business

Principal business is not defined in the statutes but the term implies that some non-farming activity is permissible. It seems reasonable that at least 50% of the business must be farming related, but the statutes do not explicitly make that statement. A determination of principal business should probably include an analysis of the sources and amounts of income, the amounts and reasons for expenditures, and the amount of personal time and effort expended by the members in the various activities of the business entity. The actual holdings (farming v. non-farming) of the business entity should probably carry significant weight.

While the business entity may state its primary or principal business on corporate documents such as Articles of Incorporation or Annual Reports, this statement is not sufficient to establish the principal business if an analysis of the overall business operation indicates a different actual principal business.

Based on this information, a determination of the principal business of the business entity will have to be made; however, there is not a clearly delineated formula for making this determination. Hopefully, the weight of the evidence will make the decision clear. If not, then it would be advisable to err on the side of taxation as recommended by the courts. The property owner can appeal the decision if desired.

3. Actively Engaged

Actively engaged is not defined in the statutes (except for the statutory provision in *Subsection 4: Exception for Certain Family Business Entities*) and there is no case law on this issue. The Property Tax Commission did express its opinion in *Blue Investment Company vs. Scotland County (1988)* that the term "actively engaged" certainly includes activities such as operating farming equipment, caring for animals, and cultivating crops, but it may also include other less physical activities such as business management of the operation, supervision of labor, and decisions as to crop investment and capital equipment purchases.

4. Exception for Certain Family Business Entities

If all individual members of the business entity are related to each other, the business entity may lease the land out for farming purposes, and the business entity can, by statutory definition, meet the principal business and actively engaged requirements. Otherwise, business entities cannot lease the land out for farming purposes and still qualify for the present-use value program.

It should be noted that the principal business of the business entity must still be agriculture, horticulture, or forestry. In this exception, the leasing of land can meet the principal business requirement, but it would not preclude disqualification if the family business entity had an actual disqualifying principal business (such as real estate development) despite the fact that it also leased out some of its land for farming purposes.

C. Trusts and Testamentary Trusts

1. Trusts

- Must be created by an individual who transferred the land to the trust.
- Each beneficiary must be an individual, either directly or indirectly, who is either the creator of the trust or a relative of the creator of the trust. An individual is indirectly a beneficiary of a trust that owns the land if the individual is a beneficiary of another trust or a member of a business entity

that has a beneficial interest in the trust that owns the land. This requires "looking through" all of the intermediate ownerships to identify the individual level of beneficial interest. Once you have identified all of the individuals who are beneficiaries, either directly or indirectly, you can now determine whether they meet the requirement that they must be either the creator of the trust or a relative of the creator. This is essentially the same principal discussed above in *Section B: Business Entities, Subsection 1: Business Entity Requirements*.

2. Testamentary Trusts

- Must be created by an individual who transferred the land to the trust.
- Land must have qualified for classification in the hands of the individual prior to transfer to the trust.
- At the time of the creator's death, the creator had no relatives.
- Trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes.

D. Tenancy in Common

Tenancy in common is a form of ownership where multiple owners can own undivided interests in real property.

A tenancy in common can qualify for present-use value only if each tenant would qualify as an owner if the tenant were the sole owner. Therefore, each tenant must be an individual, business entity, or trust that meets the respective requirements discussed in the preceding *Section A: Individuals*, *Section B: Business Entities,* and *Section C. Trusts and Testamentary Trusts*.

Each tenant must also meet the applicable additional ownership requirements imposed on individuals, business entities, and trusts that will be discussed in *Subchapter II: Requirements for Qualifying Owners*.

1. Similar But Not Identical Tenancies in Common

Each tenancy in common is a separate ownership. Since the listing owner is the tenancy in common, each tenancy in common must list as that specific tenancy in common.

For example, a tenancy in common with tenants A, B, and C must list their property as A, B, and C, Tenants in Common. A second tenancy in common with tenants A, B, C, and D must list their property as A, B, C, and D, Tenants in Common. Each tenancy in common is a separate ownership and one tenancy in common cannot list the property of the other tenancy in common.

Also, any change in an existing tenancy in common results in a new listing and therefore a new ownership. For example, a tenancy in common with tenants A, B, and C owns property that is listed as A, B, and C, Tenants in Common. C sells its interest to B. The tenancy in common now has only tenants A and B. The property will be listed as A and B, Tenants in Common. Thus, the property has a new ownership.

2. Provision for Splitting Interests of Tenants in Common

Tenants in common may request to have their individual shares treated as owned by them individually, per G.S. 105-302(c)(9). However, they may only do so if they request that the assessor allow them to list their interests separately and if the assessor grants the request.

The assessor is given complete statutory authority and discretion to choose to deny or allow these requests. However, there are some concerns that may arise if these requests are allowed. Since tenants in common own undivided interests in property, it would appear inappropriate to assign tax parcels to undivided interests in property, since doing so would create multiple tax parcels under different ownerships for the same exact property. As such, there might arise legal questions on the issue of tax collections, specifically regarding delinquent taxes and foreclosures. It is also unclear whether granting the request means that a separate lien exists for each separate listing or if there is still one overall lien on the property. (While G.S. 105-363 contains some provisions in this area, it seems to anticipate that the property is listed under one listing with one lien. It apparently does not address the situation where there are multiple listings for one property.)

Given these concerns, it is recommended that assessors deny requests by tenants in common to split their undivided interests into separate listings.

II. Requirements for Qualifying Owners

All tracts owned by qualifying owners must meet either the **Standard Ownership Requirements**

OR

meet one of the **Two Exceptions to the Standard Ownership Requirements**.

A. Standard Ownership Requirements

1. Individuals

If owned by an individual, the property must meet one of these requirements:

1. The property is the owner's place of residence as of January 1.

2. The property has been owned by the current owner or a relative of the current owner for the four full years preceding January 1 of the year for which application is made.

3. If transferring from a business entity or trust to the current owner (an individual), the property must have been qualified for and receiving present-use value at the time of transfer. Additionally, at the time of transfer, the current owner must have been a member of the business entity or a beneficiary of the trust.

2. Business Entities

a. Initial Qualification

If the current owner is a business entity, the property must have been owned by one or more of the following for the four years immediately preceding January 1 of the year for which application is made:

1. The business entity.

2. A member of the business entity.

3. Another business entity whose members include a member of the business entity that currently owns the land.

b. Continuation of Eligibility for Business Entity Conversions & Mergers

There are statutory provisions which permit business entities to change form without creating a new entity in the process. By statute, the new form is deemed to be a continuation of the same entity, but in a new form.

When the owner is a business entity, and either **converts** to another business entity form or **merges** with one or more other entities, and these processes are carried out according to statute, the result is not considered a transfer, so no new application, etc. is required.

These processes are covered under the following statutes:

- Corporations: G.S. Chapter 55, Articles 11 and 11A

- Partnerships: G.S. 59-73.1 through G.S. 59-73.33

- LLCs: G.S. 57C-9A-01 through G.S. 57C-9A-29

3. Trusts

If the current owner is a trust, the property must have been owned by the trust or by one or more of the creators of the trust for the four full years preceding January 1 of the year for which application is made.

4. Tenants in Common

a. Initial Qualification

A qualifying tenancy in common can consist of individuals, business entities, and trusts. However, a tenancy in common can qualify for present-use value only if each tenant would qualify as an owner if the tenant were the sole owner. Therefore, each tenant must be an individual, business entity, or trust that meets the respective requirements discussed in the preceding *Subchapter I: Qualifying Forms of Ownership, Section A: Individuals*, *Section B: Business Entities,* and *Section C: Trusts and Testamentary Trusts*.

Additionally, each tenant's undivided interest in the tenancy in common must meet the applicable ownership requirements imposed on qualifying individuals, business entities, and trusts discussed immediately above in *Subsection 1: Individuals*, *Subsection 2: Business Entities,* and *Subsection 3: Trusts*.

As an example, consider a tenancy in common consisting of two tenants: an individual and an LLC. At the time the tenancy in common applies for initial present-use value, the individual's undivided interest in the tenancy in common must have met the individual ownership requirements in *Subsection 1: Individuals* (place of residence or four-year ownership, etc.), and the LLC's undivided interest in the tenancy in common must have met the business entity ownership requirement in *Subsection 2: Business Entities* (LLC and/or member has owned the land for at least four years), in addition to meeting the actively engaged and principal business requirements.

b. Continuation of Eligibility for Transfers Involving Tenancies in Common

[This discussion assumes that the assessor has adopted a policy (as provided in G.S. 105-302(c)(9)) where tenants in common are not allowed to list their interests separately.]

As discussed in *Subchapter I: Qualifying Forms of Ownership, Section D: Tenancy in Common, Subsection 1: Similar But Not Identical Tenancies in Common*, each combination of tenants forms a different tenancy in common and therefore a different ownership. Once a tenancy in common is approved for initial present-use value qualification as described immediately above in *Sub-subsection a: Initial Qualification*, any transfer to another tenancy in common can only qualify for continued classification through the Exception for Continued Use

described in *Section B: Two Exceptions to the Standard Ownership Requirements for Qualifying Owners*.

For example, in order to meet the Standard Ownership Requirements, when property is transferred to a completely new tenancy in common with completely different tenants, each tenant's undivided interest in the tenancy in common must meet the applicable requirements in this *Section A: Standard Ownership Requirements* for individuals, business entities, and trusts which generally require that each tenant have owned its interest for four years. Clearly, this requirement cannot be met since the tenancy in common (and all of the new tenants) has just obtained ownership. Therefore, the only recourse for the tenancy in common is through the Exception for Continued Use described in *Section B: Two Exceptions to the Standard Ownership Requirements for Qualifying Owners*.

Likewise, any transfer of one tenant's full interest to an existing tenant or any transfer of one tenant's interest (partial or full) to a new tenant creates a new tenancy in common and a new listing ownership. This will create the same situation as in the above paragraph and therefore the only recourse for the altered and therefore, new tenancy in common is through the Exception for Continued Use described in *Section B: Two Exceptions to the Standard Ownership Requirements for Qualifying Owners*.

B. Two Exceptions to the Standard Requirements for Qualifying Owners

1. Exception for Continued Use

This exception allows a qualifying owner to immediately qualify without having to meet the standard ownership requirements in the previous *Section A: Standard Ownership Requirements* if all of the following conditions are met:

1. The land was appraised at its present-use value at the time title to the land passed to the new owner.

2. The new owner will continue to use the land for the purposes it was classified for appraisal at its present-use value under the previous ownership.

3. The land will continue to meet all the applicable size requirements. If the new owner does not own any other land in present-use value, the land must be able to meet the size requirements for an initial qualifying tract. If the new owner already has a qualifying tract of the same classification in present-use value, the transferred land can be less than the minimum initial required acreage if the land can properly be considered an additional tract of the existing farm unit.

4. The new owner must file an application for present-use value within 60 days of the date of transfer. Untimely applications may be filed and approved under certain conditions as discussed in *Chapter 11: Application for Present-Use Value*.

5. The new owner certifies that they accept the liability for any deferred taxes that exist on the property.

This exception does apply when the seller has voluntarily paid some, all, or none of the deferred taxes, but has NOT requested removal from the present-use value program. [See *Form AV-3: Voluntary Payment of Deferred Taxes Without Requesting Disqualification*.]

This exception does not apply when the seller has voluntarily removed the property from the present-use value program, regardless of whether or not any of the rollback taxes have been paid. [See *Form AV-6: Request for Voluntary Disqualification from Present-Use Value*.]

Voluntary removal from the present-use value program by the seller (*Form AV-6*) means that the land will not meet the requirement that the land be in present-use value at the time the title to the land passed to the new owner. Therefore, the new owner (buyer) will not be able to use this exception and will have to meet the *Section A: Standard Ownership Requirements* (above) or the *Subsection 2: Exception for Expansion of Existing Unit* (below).

It is required that the new owner accept the liability for any existing deferred taxes in order to reap the benefit of continued present-use value qualification. If no deferred liability exists at the time of transfer, the new owner will still be able to use this exception if the property has not been removed from the present-use value program.

NCDOR strongly recommends that the counties require the owner (seller) or the owner's (seller's) attorney to sign the appropriate form wherein they acknowledge whether they wish to pay some or all of the deferred taxes while remaining in the present-use value program (*Form AV-3*), whether they are requesting voluntary

removal from the present-use value program (*Form AV-6*), or whether they are only requesting an estimate of the deferred taxes (*Form AV-7*). This recommendation is for the protection of all parties involved.

If a property owner does request that the property be voluntarily removed from the present-use value program and that deferred taxes be billed, then the request is irreversible and the resulting bill must stand and should not be released or refunded. The only recourse to payment of the tax would be to assert a valid defense under G.S. 105-381. Those valid defenses are: (1) a clerical error, (2) an illegal tax, and (3) a tax levied for an illegal purpose. None of those are applicable to the situation where the owner requested the rollback, either on purpose or accidentally, and then later wishes to retract the request. This once again emphasizes the need to have the owner acknowledge by signature the consequences of voluntary removal from the program.

2. Exception for Expansion of Existing Unit

The exception for expansion of an existing farm unit is designed to allow those property owners who already have qualifying property under the present-use value program to expand their farm and immediately qualify the new land for present-use value classification without having to meet the *Section A: Standard Ownership Requirements*.

This exception only applies to property that was not appraised at present-use value at the time of transfer. If the property was not in the present-use value program or the previous owner requested removal from the program, the option for immediate qualification under the Exception for Continued Use will not be an option since the property must be in present-use value at the time of transfer under that exception.

However, under the provisions of the Exception for Expansion of Existing Unit, the new owner may still immediately qualify the land for the next year if all of the following conditions are met:

1. At the time of transfer, the new owner owned other land already in present-use value.

2. At the time of transfer, the land was not appraised at its present-use value.

3. At the time of transfer, the land being transferred was being used for the same purpose as the land owned by the new owner that is already in present-use value.

4. At the time of transfer, the land being transferred was eligible for present-use value with regard to production and sound management requirements. Since this exception applies to the expansion of an existing farm unit only, the initial size requirements would not need to be applied to the additional tract being transferred. Additionally, based on case law, the ownership qualification is based on the qualifications of the new owner and not the previous owner. [*In re Davis, 113 N.C. App. 743, 440 S.E.2d 307 (1994)*]

5. The new owner must timely file a new application during the next listing period, typically the month of January. Since land attempting to qualify under this exception is not in present-use value at the time of transfer, the land will need to qualify under an initial application. An initial application for present-use value should be filed during the regular listing period of the next tax year. If the owner fails to file for the next year, the owner may file in subsequent years as long as the property met the above requirements at the time of transfer.

Ownership Summary

Meeting the ownership requirement is a two-part process.

It must first be determined if the owner is a qualifying owner. Individuals, certain business entities, certain trusts, and certain tenancies in common can be qualifying owners if they meet the requirements described in *Subchapter I: Qualifying Forms of Ownership*.

Once it is determined that the owner is a qualifying owner, the ownership must meet the *Section A: Standard Ownership Requirements* unless the owner can meet one of the exceptions in *Section B: Two Exceptions to the Standard Ownership Requirements*. The two exceptions are for Continued Use and for Expansion of the Existing Unit.

Ownership Examples

2-1 An individual applies for PUV and has owned the property for five years.

The ownership requirement has been met since an individual is a qualifying form of ownership, and the owner has satisfied the standard ownership requirement that either the owner or the owner's relative must have owned the property for four full years preceding the January 1 of the year for which application is made.

2-2 Son applies for PUV. Son has owned the property for two years. Prior to transfer to son, the father had owned the property for 20 years.

The ownership requirement has been met since the son is an individual which is a qualifying form of ownership, and the owner has satisfied the standard ownership requirement that either the owner or the owner's relative must have owned the property for four full years preceding the January 1 of the year for which application is made.

2-3 An individual applies for PUV and has owned the property for three years but moved onto the property last summer as the owner's principal place of residence.

The ownership requirement has been met since an individual is a qualifying form of ownership, and the owner has satisfied the standard ownership requirement by establishing the property as the owner's principal place of residence as of January 1 of the year for which application is made.

2-4 An individual applies for PUV and has owned the property for three years but does not live on the property.

The ownership requirement has not been met. Although an individual is a qualifying form of ownership, the owner has not satisfied the standard ownership requirement by either owning the property for four full years preceding the January 1 of the year for which application is made, or by establishing the

property as the owner's principal place of residence as of January 1 of the year for which application is made.

2-5 Father owns a tract of land in PUV but transfers the property to his son. Father retains a life estate on the tract. Son is the remainderman.

The owner of the life estate is considered the owner of the real property. Therefore, the father remains the owner of the property and the property continues to qualify. The assessor might wish to request that the father file an updated application indicating his status as owner of the life estate, however, the statutes do not require it.

2-6 Business entity applies for PUV. All members are brothers and sisters but only one of the members is actively engaged in the farming operation.

Since all members are related, only one member has to be actively engaged.

2-7 Business entity applies for PUV. None of the five members are related but four members are actively engaged in the farming operation.

Since no members are related, all members have to be actively engaged. This ownership would not qualify.

2-8 Business entity applies for PUV. Four of the five members are related to each other. One of the four relatives is actively engaged and the non-relative is also actively engaged.

This ownership would qualify. Only one of the relatives must be actively engaged but the non-relative must also be actively engaged. All members must be actively engaged or related to a member who is actively engaged.

2-9 Business entity applies for PUV on a 40-acre agricultural tract. The business entity also owns four convenience stores and a restaurant.

It is unlikely that the business entity can prove that its principal business is agriculture, horticulture, or forestry.

2-10 Business entity applies for PUV on a 40-acre agricultural tract. The business entity owns no other properties. All members of the business entity are related and all of the farming operations are leased out to a tenant farmer.

The statutes allow an exception for business entities that lease out the land and whose members are all relatives. If all members are relatives, the terms "principal business" and "actively engaged" include the leasing of the land. Note that the terms **include** the leasing of land; however, the leasing of land is not the sole determinant of "principal business." If the business entity clearly has a non-qualifying principal business, then that principal business would take precedence and the business entity would not qualify.

In this example, the exception for the leasing of land would apply since the only business of the entity is the leasing of land for agricultural, horticultural, or forestry purposes, which is a qualifying principal business when all members are relatives.

2-11 Business entity applies for PUV on a 40-acre agricultural tract. The business entity also owns four convenience stores and a restaurant. All members of the business entity are related and all of the farming operations are leased out to a tenant farmer.

The statutes allow an exception for business entities that lease out the land and whose members are all relatives. If all members are relatives, the terms "principal business" and "actively engaged" include the leasing of the land. The terms **include** the leasing of land; however, the leasing of land is not the sole determinant of "principal business". If the business entity clearly has a non-qualifying principal business, then that principal business would take precedence and the business entity would not qualify.

In this example, the exception for the leasing of land would not apply since the principal business of the entity is clearly non-farming, and is not the leasing of land for agricultural, horticultural, or forestry purposes.

2-12 Business entity applies for PUV on a 40-acre agricultural tract. The business entity owns no other properties. The members of the business entity are not related and all of the farming operations are leased out to a tenant farmer.

Since the members of the business entity are not related, the exception for the leasing of land would not apply. The business entity would not qualify since its principal business was the leasing of land rather than agriculture, horticulture, or forestry.

2-13 Business entity, consisting of two unrelated individuals, applies for PUV. One member is responsible for most of the physical aspects of the farming operation (planting, fertilizing, harvesting, etc.). The other member handles the financial aspects of the operation. The two members jointly make decisions on the management of the farm.

Since they are not related, both members must be actively engaged. However, it is not necessary for both members to be physically involved in the actual farming. Actively engaged may also include other less physical activities such as business management of the operation, supervision of labor, and decisions as to crop investment and capital equipment purchases. In this example, the involvement of both members appears to meet the "actively engaged" requirement.

2-14 Business entity applies for PUV. Four members of the business entity are individuals and one member is an LLC. The LLC has two members who are individuals.

All members of a business entity must be individuals, directly or indirectly. Here there are four individuals who are directly members and two individuals who are indirectly members. An individual is indirectly a member of the business entity that owns the land if the individual is a member of a business entity or a beneficiary of a trust that is part of the ownership structure of the business entity that owns the land.

This business entity can qualify if the principal business and actively engaged requirements are met. The principal business test would be applied to the business entity but not to any members of the business entity. The actively engaged test would be applied to the six individuals.

2-15 Business entity applies for PUV. Four members of the business entity are natural persons and one member is a trust. There are two beneficiaries of the trust and both are individuals.

All members of a business entity must be individuals, directly or indirectly. Here there are four individuals who are directly members and two individuals who are indirectly members. An individual is indirectly a member of the business entity that owns the land if the individual is a member of a business entity or a beneficiary of a trust that is part of the ownership structure of the business entity that owns the land.

This business entity can qualify if the principal business and actively engaged requirements are met. The principal business test would be applied to the business entity but not to any members of the business entity. The actively engaged test would be applied to the six individuals.

2-16 An otherwise qualifying business entity applies for PUV. The business entity has owned the property for five consecutive years.

The ownership requirement has been met since the property has been owned by the business entity or by one or more of its members for the four years preceding the January 1 for which application is made.

2-17 An otherwise qualifying business entity applies for PUV. The business entity has owned the property for the last two years. The property owner for the three years prior to the transfer to the business entity was one of the current members of the business entity.

The ownership requirement has been met since the property has been owned by the business entity or by one or more of its members for the four years preceding the January 1 for which application is made.

2-18 An otherwise qualifying business entity applies for PUV. The business entity has owned the property for the last two years. The property owner for the three years prior was another business entity. Both entities are owned by more or less the same people.

The ownership requirement has been met since, for the four years preceding the January 1 for which application is made, the property has been owned by the business entity or by another business entity whose members include a member of the (current owner) business entity.

2-19 A business entity transfers ownership to one of its individual members. The business entity had owned the property for 6 years and the property was in PUV at the time of transfer. The individual applies for PUV within 60 days of the date of transfer.
If transferring from a business entity to an individual member, the property must have been receiving PUV at the time of transfer to the individual. Also, applications required due to transfer of property in PUV when continued eligibility is requested must be filed within 60 days of transfer.

The individual will qualify for continued classification in PUV because the business entity was receiving PUV on the property at the time of transfer and the individual timely filed an application for PUV.

2-20 An otherwise qualifying business entity transfers ownership to one of its individual members. The business entity had owned the property for 6 years but had never applied for PUV. The individual member applies for PUV next January.

If transferring from a business entity to an individual member, the property must have been receiving PUV at the time of transfer to the individual. When a individual member is applying for PUV, the time owned by the business entity does not count toward meeting ownership requirements unless the property was already in PUV at the time of transfer.

So, even though the business entity and/or individual member had owned the property for the four years preceding January 1 for which application is made, the property will not qualify in the hands of the individual since the property was not in PUV at the time the business entity transferred ownership to the member.

The member must qualify by meeting the Standard Ownership Requirements for individuals (place of residence or four years of ownership) or by possibly meeting the Exception for Expansion of Existing Unit, if applicable.

2-21 Tenancy in common applies for PUV. One of the tenants is an individual and one is a trust.

The tenancy in common may qualify. A tenancy in common can qualify for present-use value only if each tenant would qualify as an owner if the tenant were the sole owner. Each tenant must be a qualifying owner and each tenant's undivided interest in the tenancy in common must meet all the applicable ownership requirements.

2-22 Tenancy in common applies for PUV. One of the tenants is an individual and one is a business entity.

The tenancy in common may qualify. A tenancy in common can qualify for present-use value only if each tenant would qualify as an owner if the tenant were the sole owner. Each tenant must be a qualifying owner and each tenant's undivided interest in the tenancy in common must meet all the applicable ownership requirements.

2-23 Tenancy in common applies for PUV on two tracts. Upon investigation, tract one is owned by a tenancy in common with tenants A, B, and C. Tract two is owned by a tenancy in common with tenants B, C, and D.

A separate application will be needed for each ownership, and each tract will need to qualify on its own merits under each ownership.

All tracts in a farm unit must be under the same ownership. Multiple tracts owned as tenants in common must have exactly the same tenants in each tenancy in common. Otherwise the ownership is not the same.

2-24 Husband owns tract already in PUV. Husband and wife apply for PUV on tract owned by them as tenants by the entirety.

The tract owned as tenants by the entirety will have to qualify on its own merits and cannot be considered as part of the husband's farm unit.

All tracts in a farm unit must be under the same ownership. Ownership by husband and wife as tenants by the entirety is a different ownership than property owned by them either separately or as tenants in common.

2-25 Seller transfers 25 acres of agricultural land to an unrelated buyer. All land is in production and the property is in PUV at the time of transfer. Buyer does not own any other property in PUV.

The tract must be able to meet size requirements since the owner does not have any other qualifying tracts in an existing farm unit.

Buyer must file an application within 60 days of the date of transfer and must also assume any existing deferred liability. Buyer must be a qualifying owner.

2-26 Seller transfers 25 acres of agricultural land to an unrelated buyer. All land is in production and the property is in PUV at the time of transfer. Buyer does not own any other property in PUV. Buyer is a business entity whose principal business is land development.

Buyer does not qualify for the Exception for Continued Use because Buyer is not a qualifying owner. The principal business of the business entity is not agriculture, horticulture, or forestry. The property must be removed from PUV.

2-27 Seller transfers 5 acres of agricultural land to an unrelated buyer. All land is in production and the property is in PUV at the time of transfer. Buyer does not own any other property in PUV.

The tract must be able to meet the agricultural minimum size requirements since the owner does not have any other qualifying tracts in an existing farm unit. The tract does not have at least 10 acres in production and therefore the property will be disqualified and the deferred taxes will be due.

2-28 Seller transfers 5 acres of agricultural land to an unrelated buyer. All land is in production and the property is in PUV at the time of transfer. Buyer already

owns several other qualifying agricultural tracts in the county that are already receiving PUV.

The tract does not have to meet the agricultural minimum size requirements since the owner already has at least one tract in an existing agricultural farm unit that meets the size requirement.

Under the Exception for Continued Use, the buyer must file an application within 60 days of the date of transfer and must also assume any existing deferred liability.

If the seller had voluntarily removed the tract from PUV prior to transfer, the buyer would not be able to use the Exception for Continued Use as the property must be in PUV, but should be able to immediately qualify the next year under the Exception for Expansion of Existing Unit.

2-29 Owner owns several tracts already in horticultural PUV. Owner purchases a 6-acre tract of horticultural land that is not in PUV. The 6 acres have been in active horticultural production under sound management for at least the three previous years.

Since the property is not in PUV, the owner cannot qualify for the year of the transfer by using the Exception for Continued Use.

However, the owner may apply for PUV on the new tract during the next year's listing period under the Exception for Expansion of Existing Unit.

2-30 Owner owns several tracts already in horticultural PUV. Owner purchases a 6-acre tract of horticultural land that was receiving PUV. However, the seller voluntarily removed the property from PUV prior to transfer. The 6 acres have been in active horticultural production under sound management for at least the three previous years.

Since the property is not in PUV, the owner cannot qualify using the Exception for Continued Use.

However, the owner may apply for PUV on the new tract during the next year's listing period under the Exception for Expansion of Existing Unit.

2-31 Buyer owns several tracts already in horticultural PUV. Buyer is purchasing a 6-acre tract of horticultural land that was receiving PUV. Seller asks whether Buyer wishes to continue the present-use value and assume any deferred taxes, or whether the present-use value should be removed and the deferred taxes be billed. The 6 acres have been in active horticultural production under sound management for at least the three previous years.

An owner who has property in present-use value **may** be able to acquire additional land for the existing farm unit under either the Exception for Continued Use or the Exception for Expansion of Existing Unit depending on the unique circumstances of the particular transaction.

If the new owner decides not to accept the liability for any deferred taxes, or the previous owner requests voluntary removal from the program, the option for immediate qualification under the Exception for Continued Use will not be available since the property is not in present-use value at the time of transfer.

However, under the provisions for Exception for Expansion of Existing Unit, the new owner may still immediately qualify the land for the next year if all requirements are met.

2-32 Examples of transfers of interests in/out/between tenants in common. All properties are in PUV at the time of transfer.

--Smith transfers 50% to Jones, thus creating a tenancy in common.

--Smith and Jones own property as tenants in common. Jones transfers his interest to Smith, thus ending the tenancy in common.

--Smith and Jones own property as tenants in common. Jones transfers his interest to his son, thus creating a new tenancy in common and therefore a new listing owner.

--Smith and Jones own property as tenants in common. Jones transfers his interest to Williams, thus creating a new tenancy in common and therefore a new listing owner.

--Smith and Jones own property as tenants in common. Jones transfers his interest to a qualifying LLC of which he is a member, thus creating a new tenancy in common and therefore a new listing owner.

--Smith and Jones own property as tenants in common. Jones transfers his interest to a qualifying LLC of which he is not a member, thus creating a new tenancy in common and therefore a new listing owner.

--Smith and an LLC own property as tenants in common. The LLC transfers its interest to a member of the LLC, thus creating a new tenancy in common and therefore a new listing owner.

All of these situations create a new ownership that will need to file a new application.

In these examples, if the new ownership wishes for the property to remain in PUV, it must do so under the Exception for Continued Use. A new application will need to be filed within 60 days of the date of transfer and the new owner must accept any existing deferred liability. It is recommended that all tenants of the tenancy in common sign the new application and certify that they accept the deferred liability. Even though only one tenant's interest may have changed ownership, that change created a new tenancy in common and therefore a new listing owner. As such, the new tenancy in common is the owner that is seeking continued qualification by assuming the deferred liability, not just the one tenant's interest that has been transferred.

If the property is voluntarily removed from the program and the rollback taxes are paid, the new owner may be able to immediately qualify for the next year, if certain conditions are met. In that case, the new tenancy in common should file a new application during the next listing period.

Chapter 3

Size Requirements

[Primary Statutes: G.S 105-277.2, G.S. 105-277.3]

Overview

I. Initial qualifying tracts must meet a minimum size requirement. There are separate minimum size requirements for each classification.

II. Qualifying tracts may contain other categories of land which differ from the acreage required to be in production for that specific classification.

III. A farm unit may contain additional tracts other than the initial qualifying tract. These additional tracts are not subject to the minimum size requirements, although other important restrictions apply.

I. Initial Qualifying Tract

A. Minimum Acreage Requirements

At least one **tract** must meet the following minimum acreage requirements:

- **Agriculture**—10 acres in actual production (actively engaged in the commercial production or growing of crops, plants, or animals). However, see exception in *Section D: Special Provision for Aquatic Species*.

- **Horticulture**—5 acres in actual production (actively engaged in the commercial production or growing of fruits and vegetables or nursery and floral products).

- **Forestry**—20 acres in actual production (actively engaged in the commercial growing of trees).

For agriculture and horticulture, land under improvements used in the farming operation is considered to be land in production.

Homesites are not acreage in production and should be valued at market value. While most counties initially establish homesites as one acre in size, there is no statutory requirement that a homesite must be one acre. While it is a standard and acceptable practice to initially estimate and allow one acre for a homesite, it is completely warranted to allow less (or more) than one acre if it is shown that the homesite is actually less (or more) than initially estimated.

All land in production must be under sound management. (See *Chapter 5: Sound Management*)

B. Land Not in Production

Land that is not in production cannot be used to meet the minimum acreage-in-production requirements. There is no provision for land (non-wasteland) to be out of production for long periods of time and receive PUV classification (except for land enrolled in the Conservation Reserve Program (CRP) as discussed separately in *Chapter 7: Conservation Reserve Program*).

While payments from non-CRP soil conservation programs, land retirement programs, and the Tobacco Buyout can be used to meet the income requirement, the acres involved in these programs cannot be used to meet the size requirement for classification unless the acres are in actual production.

For instance, a 16-acre agricultural tract with 12 acres of tobacco and 4 acres enrolled in a non-CRP soil conservation program can qualify, but the 4 acres must be producing a commercial agriculture crop if planted in vegetation other than trees, unless the 4 acres are wasteland. Otherwise, the 4 acres must be assessed at market value. If the 4 acres were required to be planted in trees, the 4 acres could receive PUV as woodland. However, if the tract has more than 20 acres of non-CRP woodland, the woodland generally must be managed for the commercial production of timber.

C. Fallow Land

Although it is increasingly rare and unnecessary, it may be prudent to occasionally let land lie fallow and unfarmed for a year to allow the land to replenish its nutrients. This was typically more common before modern fertilization processes allowed the farmer to artificially restore the nutrients to the soil. It is also possible that the practice may start to become more common as farms are converted to organic farming.

However, the farm unit must still meet the minimum size and income requirements on a continuing basis. The owner may rotate the crops and allow a certain amount of acreage to lie fallow each year, but the farm unit must still meet the size and income requirements.

Additionally, the amount of acreage allowed to lie fallow and the length of time the land is allowed to lie fallow must be reasonable, based on sound management practices for the type of land and the crops being produced from the land. Excessive amounts of acreage allowed to lie fallow for more than a year should be carefully examined.

For example, a farm unit has 20 acres in agricultural PUV and all acres are in agricultural production. The owner may decide to leave 3 acres fallow and rotate the location of the fallow acres each year. The owner will still have at least 10 acres in production and will likely still meet the income requirement.

D. Special Provision for Aquatic Species

Agricultural land used as a farm for aquatic species may qualify for the present-use value program under certain circumstances. “Aquatic species” is defined as any species of finfish, mollusk, crustacean, or other aquatic invertebrate, amphibian, reptile, or aquatic plant, and including, but not limited to, “fishes" which is defined as all marine mammals, all shellfish, all crustaceans, and all other fishes.

To qualify, the tract must consist of at least 5 acres in actual production or produce at least 20,000 pounds of aquatic species for commercial sale annually, regardless of acreage. The tract must also meet the income requirements for agricultural land as described in *Chapter 4: Income Requirements*.

E. Special Provision for Certain Horticultural Land

Generally, agricultural present-use values are lower than horticultural present-use values. In some areas of the State, the distinction between agriculture and horticulture is somewhat blurred. Therefore, certain horticultural land can be considered as agricultural land in either of these two situations:

1. Horticultural crops and agricultural crops are grown on a rotating basis.

2. The horticultural crop is set out or planted and harvested within one growing season.

However, it must also be shown that there is no significant difference between the cash rental rates for agricultural and horticultural land.

Also, if the owner elects to treat the land as agricultural land, the size requirements for agricultural land (minimum 10 acres in production) must be met instead of the size requirements for horticultural land (minimum 5 acres in production).

F. Definition of a Tract

The present-use value statutes consistently use the term "tract" except for G.S. 105-296(j) which uses the term "parcel." Additionally, tax offices consistently refer to property as tax "parcels," although the term "tract" is sometimes used in a more general sense when discussing a property.

The question arises as to whether a tract is the same as a parcel. This has significance primarily in determining whether a particular property meets the minimum size requirement. If tract and parcel are synonymous, then there must be at least one tax parcel that meets the minimum size requirement. However, if tract is a more general term encompassing more than one tax parcel, then more than one contiguous tax parcel may be used in meeting the requirement.

In *Chester vs. Carteret (1990)*, the North Carolina Property Tax Commission concluded that contiguous tax parcels can be considered one tract and therefore the tract (singular) would qualify if the contiguous tax parcels had enough acreage in production to meet the size requirement (in this specific case, neither parcel had enough acreage in production to qualify on its own merits). Specifically, the Commission found that the two contiguous parcels were managed as a single tract.

In their view, a contiguous piece of land is one where the borders of which may be traced on a map without lifting the pen. This would best be considered as being able to trace the outline without crossing another property owner's border. It should not mean that the tracing could not cross roads since even single qualifying tax parcels often cross roads.

The Commission also found that where the tract is conveyed by more than one deed, the burden of proof is on the owner to clearly show the contiguous nature of the tract and to show unity of use and management.

The Property Tax Commission decision does not carry the weight of case law but seems to be a well-reasoned approach to the dilemma. It is acknowledged that there may be some added administrative headaches in trying to implement this approach but that should not be the determining factor.

It is therefore recommended that the Commission decision that tract and parcel are not synonymous serve as the guide for counties in determining size qualification for present-use value. Therefore, contiguous tax parcels could be used to meet the minimum acreage in production requirement for the initial qualifying tract.

[It should be noted that this recommendation reverses the NCDOR position on this issue as stated in the *1997 Assessor's Manual for the Administration of the Present-Use Value Program*.]

II. Other Acreage on the Initial Qualifying Tract

- **Agriculture**—Initial qualifying agricultural tract can contain woodland and wasteland under certain conditions.

- **Horticulture**—Initial qualifying horticultural tract can contain woodland and wasteland under certain conditions.

- **Forestland**—Initial qualifying forestland tract can contain wasteland, but **not** agriculture or horticulture land.

While forestland cannot bring in agricultural or horticultural land, the agricultural or horticultural land can still qualify for present-use value if a proper application is submitted that demonstrates that the land meets all the requirements for classification as either agricultural land or horticultural land.

A. Woodland

If an agricultural or horticultural farm unit contains less than 20 acres of woodland, the woodland is not required to be under a sound forestry management plan.

If an agricultural or horticultural farm unit contains more than 20 acres of woodland, the woodland is required to be under a sound forestry management plan. This includes all the woodland, not just the woodland over the 20-acre threshold. (See the only exception below in *Section B: Exception for Certain Woodland Acreage on Agricultural and Horticultural Tracts*. Also see *Subchapter III: Additional Tracts and the Farm Unit Concept, Section B: Specifying the Farm Unit* for discussion on the possible option for excluding land from the farm unit.)

Note that woodland is a generic term for wooded land and is not the same as forestland. Forestland is statutorily designated as a special class of property. Woodland is only forestland when it meets the statutory requirements for classification as forestland.

The definitions of agricultural and horticultural land require that woodland of at least 20 acres on agricultural and horticultural farm units be under a sound forestry management plan. While the statutory language does not specifically state that the management plan must be for the commercial growing of trees (as required for forestland), this statutory language was specifically enacted to equalize the requirements between forest-only units and "woodland" on agricultural and horticultural farm units. The clear and widely recognized intent was that the woodland on agricultural and horticultural farm units be subject to the **same requirements** as forestland on forest units, if the agricultural and horticultural farm units contain at least 20 acres of woodland (subject to the one exception below in *Section B: Exception for Certain Woodland Acreage on Agricultural and Horticultural Tracts*).

Therefore, the woodland (if 20 acres or more) on agricultural and horticultural farm units must be under a sound management program for the **commercial growing of trees,** which is the same requirement for exclusively woodland tracts that qualify as forestland. A sound management program for woodland on agricultural and horticultural farm units that does not have the commercial growing of trees as a primary objective will not be in compliance with the statutory requirements. Woodland on agricultural and horticultural farm units that meet all the requirements for forestland classification should be considered forestland.

It is also necessary to clarify the phrase "not included in a farm unit" as found in G.S. 105-277.3(a)(3) which defines forestland as "Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit." (emphasis added) The last phrase (in an earlier similar version) was added in 1979 and reflected the previous statutory position that woodland on agricultural and horticultural farm units was not required to be under a sound management plan for the commercial production of timber.

It is likely that the General Assembly anticipated that counties would determine a limit on how much woodland could be included in the agricultural or horticultural farm unit and would require all other woodland to qualify as forestland. However, without any statutory direction, counties historically often allowed large amounts of woodland on agricultural and horticultural farm units to qualify without a forestry management plan. This excessively permissive and inequitable historical pattern resulted in the legislative changes that are discussed in this section.

Therefore, the phrase "not included in a farm unit" as found in G.S. 105-277.3(a)(3) should not serve to excuse the woodland on agricultural and horticultural farm units from the same commercial production requirements as forestland, when such woodland is now statutorily required to be under sound management when the acreage equals or exceeds 20 acres.

B. Exception for Certain Woodland Acreage on Agricultural and Horticultural Tracts

Woodland on agricultural and horticultural tracts is not required to be under a sound management plan for forestry if it can be shown that:

- For agricultural tracts: The highest and best use of the woodland is to diminish wind erosion of adjacent agricultural land, protect water quality of adjacent agricultural land, or serve as buffers for adjacent livestock or poultry operations.

- For horticultural tracts: The highest and best use of the woodland is to diminish wind erosion of adjacent horticultural land or protect water quality of adjacent horticultural land.

While woodland may serve these purposes generally, it must be shown that these uses are the highest and best use. If the highest and best use is for the commercial

production of timber, but the woodland also serves additionally to protect the water and reduce wind erosion, then the woodland will have to be under a sound management plan for forestry (if the woodland is 20 acres or more).

For agricultural and horticultural classifications, woodland meeting this exception does not count toward the 20-acre threshold for woodland where a forestry management plan becomes required.

C. Wasteland

All three present-use value classifications can include wasteland as part of their qualifying tracts. However, the term wasteland is not defined in the present-use value statutes. This section offers some considerations in establishing a reasonable definition of wasteland.

The Use-Value Advisory Board had designated certain soils as unproductive (Class IV soils for agriculture and horticulture, and Class VI soils for forestland). If the land is in production, despite the classification as unproductive, the county should probably allow that land to count as land in production. However, if the land cannot feasibly be placed into production, the land should probably be considered wasteland and the land would not count as land in production.

Wasteland could also include land that is completely unproductive for reasons other than the type of soil. However, wasteland should be based on the land itself and not based on legal or regulatory restrictions.

The Use-Value Advisory Board recommended valuations for unproductive agricultural, horticultural, and forestland soils do not currently exceed $40 per acre. The Board does not provide recommended valuations for wasteland. However, it is unlikely that any present-use value that the county may adopt for wasteland should exceed the recommended valuation for unproductive soils.

Land that is considered wasteland or unproductive for present-use valuation purposes may or may not see a diminished market valuation.

Counties should consider establishing the parameters for designating land as wasteland and for the present-use and market valuation of the wasteland in their county. This information should be included in the Schedule of Values that is adopted in preparation for the countywide revaluation.

III. Additional Tracts and the Farm Unit Concept

A. Farm Unit Requirements

[Note: The term "farm unit" is used generically here and throughout this Guide to denote agricultural units, horticultural units, and forest units.]

The initial qualifying tract (as discussed in *Subchapter I: Initial Qualifying Tract*) is commonly called the "parent" tract and must meet all the size, income, sound management, and ownership requirements. Additional tracts can also qualify even if they do not meet the minimum size requirements. Together, all of the qualifying tracts constitute the **farm unit**.

However, the additional tracts must meet the following requirements:

1. Must be under the same ownership. The courts have clearly ruled that property owned by husband and wife as tenants by the entirety is a different ownership than property owned by either the husband or wife separately. [*Duplin County v. Jones, 267 N.C. 68, 147 S.E.2d 603, (1966)*] Since multiple tracts of a specific farm unit must be under the same ownership, tracts owned in different combinations of husband and/or wife ownership must each qualify based on each different form of ownership. However, if the only difference in the deeded ownership is the form of the name but is the same owner legally, then that those ownerships can be considered the same. For example, one tract may be deeded John A. Smith and another tract deeded John Allen Smith. Also, one tract may be deeded Mary C. Jones (unmarried name) and another tract may be deeded Mary Jones Williams (married name). In both examples, the same individual owns the property. This different from an example where one tract is owned by John A. Smith and another tract is owned by John A. Smith, LLC; in which case, one tract is owned by an individual and one tract is owned by an LLC, a different legal ownership.

2. Must be the same classification (i.e. agriculture, horticulture, or forestry).

3. Must be in the same county or within 50 miles of a qualifying tract if located in a different county than the qualifying tract.

4. Must be in active production and under sound management.

Since it has been recommended (*Subchapter I: Initial Qualifying Tract, Section F: Definition of a Tract*) that contiguous parcels should be considered part of the same tract, this provision is primarily for non-contiguous tracts.

For example, an agricultural farm unit can include a non-contiguous tract that is also being farmed for agricultural purposes. It could not bring in a wooded only non-contiguous tract since the tract would not share the same agricultural classification as the parent tract. However, since agricultural tracts can include woodland, it is possible to bring in a non-contiguous agricultural tract that also has some woodland on it. The woodland would be subject to the overall requirement that, if the farm unit has 20 or more acres of woodland, all of the woodland is required to be under a sound management program for forestry (subject to the exception discussed above in *Subchapter II: Other Acreage on the Initial Qualifying Tract, Section B: Exception for Certain Woodland Acreage on Agricultural and Horticultural Tracts*).

B. Specifying the Farm Unit

Given the benefits of the present-use value program, it is likely that owners will apply to have all portions of their qualifying tracts in the program.

However, there may be situations where the owner wishes to specify that certain parts of the tracts are to receive present-use value classification while other parts of the tracts are to remain at market value.

The statutes do not seem to prohibit such a request. Therefore, it does not appear that the assessor has the right to refuse the request on the basis that the owner does not have a legal right to make the request.

However, the owner will have to specifically identify by map or other means, to the assessor's satisfaction, the acreage that is to receive present-use value treatment. If the owner cannot meet the assessor's requirements for identification of the acreage, the assessor has a right to deny the request for that reason.

It is not sufficient to merely provide an acreage breakdown of the acres in the farm unit versus the acres not in the farm unit. Should there be any partial sale of the property or if there is a disqualifying change in use, it is vital that the assessor be able to determine whether that specific acreage is receiving present-use value so that a determination can be made as to whether any deferred taxes may be due.

If an owner has a tract that is in present-use value but then elects to specify that only a portion of the tract is to receive present-use value, deferred taxes would be due on the portion that was voluntarily removed from the program.

> **NOTE:** A property owner may elect to define the specific acreage that is in or out of the farm unit but may not specify multiple farm units for the same ownership and classification. Attempts to do so are usually in an effort to sidestep the requirement that agricultural or horticultural land with at least 20 acres of woodland must have the woodland under sound management for the commercial production of timber.
>
> The farm unit should contain all of the qualifying land in the same ownership and the same classification within the county or within 50 miles of a qualifying tract within the county.

Size Summary

The initial qualifying tract for agricultural classification must have 10 acres in actual production for the commercial production or growing of crops, plants, or animals.

The initial qualifying tract for horticultural classification must have 5 acres in actual production for the commercial production or growing of fruits, vegetables, nursery products, or floral products.

The initial qualifying tract for forestry classification must have 20 acres in actual production for the commercial growing of trees.

Qualifying agricultural and horticultural tracts can also include woodland and wasteland. Generally, if the woodland is 20 acres or more, the woodland is required to be under a sound management program for forestry.

Qualifying forestland tracts can also include wasteland.

A farm unit must include at least one tract that meets the minimum size requirement, but it can include other tracts that do not meet the minimum size requirement, if additional statutory requirements are met.

Size Examples

3-1 Owner applies for agricultural PUV on a 15-acre tract of which 8 acres are planted in corn. The remaining 7 acres are woodland.

Tract does not meet the size requirement because it does not have at least 10 acres in agricultural production.

3-2 Owner applies for horticultural PUV on a 9-acre tract of which 4.5 acres are planted in strawberries. The remaining 4.5 acres are woodland.

Tract does not meet the size requirement because it does not have at least 5 acres in horticultural production.

3-3 Owner applies for forestry PUV on a 19-acre tract of which all 19 acres are planted in trees.

Tract does not meet the size requirement because it does not have at least 20 acres in forestry production.

3-4 Owner applies for agricultural PUV on a 35-acre tract of which 25 acres are producing soybeans. The remaining 10 acres are woodland.

This tract meets the minimum size requirement for agricultural PUV because there is at least one tract with at least 10 acres in agricultural production. The remaining 10 acres also receives PUV classification with no additional requirements since the woodland acreage is less than 20 acres.

3-5 Owner applies for agricultural PUV on a 20-acre tract of which 15 acres are producing soybeans. The remaining 5 acres are woodland. However, the 5 acres of woodland bisects the tract, with 8 acres of soybeans on one side and 7 acres of soybeans on the other side.

This tract meets the minimum size requirement for agricultural PUV because there is at least one tract with at least 10 acres in agricultural production. It is not required that all 10 acres in production be contiguous, but it is required that they all be on the same tract. The location of the trees does not serve to create multiple tracts. There is only one tract in this example.

The remaining 5 acres also receives PUV classification with no additional requirements since the woodland acreage is less than 20 acres.

3-6 Owner applies for agricultural PUV on a 55-acre tract of which 25 acres are producing soybeans. The remaining 30 acres are woodland.

This tract meets the minimum size requirement for agricultural PUV because there is at least one tract with a minimum of 10 acres in agricultural production. The remaining 30 acres of woodland must be under a sound forestry management plan for the commercial production of timber to receive PUV classification since the woodland acreage is 20 acres or more.

3-7 Owner applies for agricultural PUV on a 55-acre tract of which 25 acres are producing soybeans. The remaining 30 acres are woodland, of which 12 acres have a highest and best use to diminish wind erosion for the adjacent agricultural land.

This tract meets the minimum size requirement for agricultural PUV because there is at least one tract with a minimum of 10 acres in agricultural production. The 12 acres of woodland that have a highest and best use to diminish wind erosion for the adjacent agricultural land receive PUV classification as woodland and are not subject to any commercial forestry sound management requirements. The remaining 18 acres of woodland also are not required to be under a sound forestry management plan for the commercial production of timber to receive PUV classification since the woodland acreage is less than 20 acres.

3-8 Owner applies for agricultural PUV on a 55-acre tract of which 25 acres are producing soybeans. The remaining 30 acres are woodland, of which 8 acres have a highest and best use to diminish wind erosion for the adjacent agricultural land.

This tract meets the minimum size requirement for agricultural PUV because there is at least one tract with a minimum of 10 acres in agricultural production. The 8 acres of woodland that have a highest and best use to diminish wind erosion for the adjacent agricultural land receive PUV classification as woodland and are not subject to any commercial forestry sound management requirements. The remaining 22 acres of woodland must be under a sound forestry management plan for the commercial production of timber to receive PUV classification since the woodland acreage is 20 acres or more.

3-9 Owner applies for forestry PUV on a 50-acre tract of which 44 acres are under a sound management plan for the commercial production of timber. The remaining 6 acres are planted in agricultural crops.

The 44 acres of woodland can receive PUV but the 6 acres of agricultural crops cannot. Forestry cannot bring agricultural or horticultural land into PUV, and any such land in production must qualify on its own merits as agricultural or horticultural land, including satisfying the size requirement for that classification.

3-10 Owner applies for forestry PUV on a 50-acre tract of which 34 acres are under a sound management plan for the commercial production of timber. The remaining 16 acres are planted in agricultural crops.

The 34 acres of woodland can receive PUV and the 16 acres of crops may receive PUV if the owner applies for agricultural PUV on these acres. Forestry cannot bring agricultural or horticultural land into PUV, and any such land in production must qualify on its own merits as agricultural or horticultural land, including satisfying the size and income requirements for that classification.

3-11 Owner applies for agricultural PUV on a 10.75 acre tract which is being fully farmed except for the homesite. The assessor typically allows 1.00 acre for a homesite. Analysis of the property indicates that 10.25 acres are in production and the remaining 0.50 acre is the homesite.

This tract may qualify when it can be shown that at least 10 acres are in production. While it is a standard and acceptable practice to initially estimate and allow one acre for a homesite, it is completely warranted to allow less than one acre if it is shown that the homesite is actually less than initially estimated. There

is no statutory requirement that a homesite should be one acre. If the county has adopted a Schedule of Values that indicates one-acre homesites, the law should take precedence over the Schedule of Values when the property owners can show that they have at least the minimum acreage in production even though it results in a homesite of less than one acre.

3-12 Owner applies for horticultural PUV on a 6-acre tract, of which 4.85 acres are planted in apple trees. There are several barns used exclusively in connection with the apple orchard. The land under the barns and immediately surrounding the barns encompasses approximately 0.20 acre. The rest of the tract is woodland.

Specifically, for agriculture and horticulture, land under improvements used in the farming operation is considered to be land in production. While, statutorily, only the land immediately under the barns is considered to be land in production, it seems logical that discretion be used in allowing a very limited amount of land immediately surrounding the barns since that land is necessary for the barns and is likely also used as part of the horticultural operation (storage, work area, etc.). However, the rule should be to allow only a very limited amount of surrounding acreage, if any.

The tract will qualify for horticultural PUV since the tract has 5.05 acres in horticultural production.

3-13 Owner applies for agricultural PUV on two contiguous tax parcels: one parcel having 6 acres in production, the other parcel having 7 acres in production.

In *Chester vs. Carteret (1990)*, the North Carolina Property Tax Commission concluded that contiguous tax parcels can be considered one tract and therefore the tract (singular) would qualify if the contiguous tax parcels had enough acreage in production to meet the size requirement.

In this example, two contiguous tax parcels constitute one tract of 13 acres, all of which are in production. Therefore, the tract does meet the size requirement since it does have at least 10 acres in agricultural production.

3-14 Owner applies for agricultural PUV on two tax parcels: one parcel having 6 acres in production, the other parcel having 7 acres in production. The two parcels are directly across the road from each other.

In *Chester vs. Carteret (1990)*, the North Carolina Property Tax Commission concluded that contiguous parcels constitute a tract where the borders of the tract may be traced on a map without lifting the pen. This would best be considered as being able to trace the outline of the tract without crossing another property owner's border. It should not mean that the tracing could not cross roads since even single qualifying tax parcels often cross roads.

In this example, the two tax parcels would be considered contiguous and would constitute one tract of 13 acres, all of which are in production. Therefore, the tract meets the size requirement since it has at least 10 acres in agricultural production.

3-15 Owner applies for agricultural PUV on a 35-acre tract of which 9 acres are pasture for beef cattle. The remaining 26 acres are woodland. However, 2 acres of the woodland adjoining the pasture have been included in the fencing around the pasture. The cattle freely roam over the entire 11 fenced acres.

Most agricultural land will be open land but it is not required by the statutes to be open land. However, the land must be actively engaged in the commercial production of agricultural products. It might be reasonable to allow some amount of wooded acreage to be classified as agricultural land if it can be shown that the land is a necessary part of the agricultural operation.

In this example, if the taxpayer has shown that the 2 acres of wooded acreage are necessary for the cattle operation, then the tract has 11 acres in agricultural production. This meets the minimum size requirement for agricultural classification because there is at least one tract with a minimum of 10 acres in production.

The remaining 24 acres of woodland must be under a sound forestry management plan for the commercial production of timber to receive PUV classification since the woodland acreage is greater than 20 acres.

3-16 Owner applies for agricultural PUV on two tracts: one tract meets all requirements but the other tract is a 5-acre wooded tract located 40 miles away in an adjacent county.

The 5-acre tract will not qualify for PUV classification. Although other tracts in the farm unit do not have to meet the size requirements (as long as at least one tract does), all tracts must be the same classification. Since the qualifying tract is agriculture, the smaller non-contiguous tract must also be agriculture. In this case, the 5-acre tract is all woodland and therefore cannot be considered agriculture.

3-17 Owner applies for agricultural PUV on two tracts: one tract meets all requirements but the other tract is a 5-acre agricultural tract located 40 miles away in an adjacent county.

The 5-acre tract will qualify for PUV classification. Although other tracts in the farm unit do not have to meet the size requirements (as long as at least one tract does), all tracts must be the same classification. Since the qualifying tract is agriculture, the smaller non-contiguous tract must also be agriculture. In this case, the 5-acre tract is agriculture and will therefore qualify.

3-18 Owner applies for agricultural PUV on two tracts: one tract meets all requirements but the other tract is a 10-acre tract located 40 miles away in an adjacent county. The 10-acre tract is comprised of 8 acres of cotton and 2 acres of woodland.

The 8 acres of agriculture (cotton) will qualify for PUV classification. Although other tracts in the farm unit do not have to meet the size requirements (as long as at least one tract does), all tracts must be the same classification. Since the qualifying tract is agriculture, the smaller non-contiguous tract must also be agriculture. In this case, the 8 acres are agriculture and will therefore qualify.

The 2 acres of woodland may qualify. Agricultural land may include woodland. However, all of the woodland in the farm unit must be under sound management for the commercial production of timber when the agricultural land includes 20 acres or more of woodland.

In this example, if the qualifying "parent" tract contains 18 acres or more of woodland, then all of the woodland on both tracts must have a sound forestry management plan to receive PUV classification since the 20-acre woodland threshold has been met for the farm unit.

3-19 Owner applies for agricultural PUV on two parcels: one parcel meets all requirements but the other parcel is a 5-acre wooded parcel contiguous to the qualifying parcel.

The 5-acre wooded parcel may qualify for PUV classification. Since the two parcels are contiguous, they are part of the same tract. Therefore, the condition that other tracts in the farm unit must share the same classification is not applicable since there is only one tract. Since agricultural land can include woodland, it is appropriate to consider the 5-acre wooded parcel. However, all of the woodland on the tract, including the 5-acre wooded parcel, is subject to the requirement that woodland on agricultural tracts must be under sound management for the commercial production of timber if the agricultural land includes 20 acres or more of woodland.

In this example, if the qualifying parcel contains 15 acres or more of woodland, then all of the woodland on both parcels must have a sound forestry management plan to receive PUV classification since the 20-acre woodland threshold has been met for the farm unit.

3-20 Owner applies for agricultural PUV on two tracts: one tract meets all requirements but the other tract is a 5-acre agricultural tract located 60 miles away in an adjacent county.

The 5-acre tract will not qualify since it must be in the same county as a qualifying tract or within 50 miles of a qualifying tract if located in a different county.

3-21 Owner applies for agricultural PUV on two tracts: one tract meets all requirements but the other tract is a 5-acre agricultural tract located 52 miles away in the same county.

The 5-acre tract will qualify since the 50-mile limitation does not apply if the tract is in the same county as a qualifying tract.

3-22 Owner applies for agricultural PUV on two tracts: one tract meets all requirements but the other tract is a 5-acre agricultural tract located in an adjacent

county. The 5-acre tract is 49 miles away from the qualifying tract "as the crow flies" but is 59 miles away based on actual road travel distance.

While the method of measurement of the 50-mile limitation is not specified in the statutes, it seems logical that the legislature intended for the distance to be measured in a straight line from the qualifying tract. Straight-line measurement provides the greatest allowable distance from the qualifying tract. Additionally, if a tract is within 50 miles using straight-line measurement, it cannot be denied that the tract is within 50 miles of the qualifying tract, even if a different measurement standard would yield a greater distance.

If straight-line measurement is used in this example, the 5-acre tract will qualify.

3-23 Owner applies for horticultural PUV on a 9-acre tract, of which 5 acres are consistently planted in horticultural crops. The remaining 4 acres are enrolled in a soil conservation program (not the Conservation Reserve Program) where the land is mowed each year but no crop is grown on the acreage.

The 5 acres that are planted in horticultural crops can receive PUV classification, however, the remaining 4 acres cannot.

Horticultural PUV is only for: (1) horticultural land actively engaged in the commercial production of horticultural crops, (2) woodland under certain limitations, and (3) wasteland.

There is no provision for land (non-wasteland) to be out of production for long periods of time and receive PUV classification (except for land enrolled in the Conservation Reserve Program (CRP). If the 4 acres were required to be planted in trees, the 4 acres could receive PUV as woodland. However, if the tract has more than 20 acres of non-CRP woodland, the woodland generally must be managed for the commercial production of timber.

3-24 Owner has 7 acres of sweet potatoes in horticultural PUV. In the county's Schedule of Values, horticultural land is valued somewhat higher than agricultural land. There does not appear to be a significant difference in the rental rates of sweet potato land and agricultural land. Since sweet potatoes are grown on an annual basis, the owner has the right to ask that his land be treated as agricultural land.

If the owner wishes to have his land treated as agricultural land, then he must meet the requirements for agricultural land. As such, his tract would not meet the 10-acres-in-production requirement for agricultural PUV. He should choose to keep his land in horticultural PUV. If the owner had 10 acres or more in sweet potatoes, he would be able to treat his land as agricultural land and still qualify for PUV.

3-25 Owner applies for agricultural PUV on a 45-acre tract, of which 20 acres are planted in corn. The remaining 25 acres are woodland. The owner does not wish to subject the 25 acres of woodland to a sound management plan for the commercial production of timber. The owner asks the assessor to assess 6 acres of woodland at market value, thereby leaving him with only 19 acres of woodland in the farm unit.

The assessor should only honor the request if the owner submits sufficient documentation of the exact location of the 6 woodland acres (or conversely, the 19 woodland acres). The assessor will be the one that determines the criteria for sufficient documentation (recorded or unrecorded surveys, new deed or not, etc.). It is vital that the assessor be able to determine the exact boundaries of the farm unit. If any portion of the property should subsequently be transferred, the assessor must be able to determine if that portion was in PUV or not. Compliance and sound management reviews will also be dependent on knowledge of the exact boundaries of the farm unit.

3-26 Owner applies for agricultural PUV on a 45-acre tract, of which 20 acres are planted in corn. The remaining 25 acres are woodland. The owner also applies for agricultural PUV on a 35-acre tract, of which 10 acres are planted in corn. The remaining 25 acres are woodland. The owner does not wish to subject the 25 acres of woodland on either tract to a sound management plan for the commercial production of timber. The owner asks the assessor to consider each tract as a separate farm unit and to assess 6 acres of woodland at market value on each tract, thereby leaving him with only 19 acres of woodland on each tract. The two tracts are in the same county and are owned in the same ownership.

The assessor should deny the owner's request to treat the two tracts as two separate farm units. The two tracts comprise one farm unit and the owner cannot specify multiple farm units for the same PUV classification in order to sidestep the sound management requirement for woodland of at least 20 acres. As in the previous example, the owner may specify boundaries for the farm unit if desired.

In this example, the farm unit will consist of both tracts and will contain 50 acres of woodland.

If desired, the owner can specify 31 acres of woodland to tax at market value in order to receive PUV on the remaining 19 acres of woodland, without subjecting the 19 acres to sound management for the commercial production of timber.

3-27 Owner applies for agricultural PUV and submits the following income from the three past years: $2,500 from sale of crops and $800 in soil conservation program payments. The tract is 13 acres with 9 acres planted in tobacco and 4 acres are enrolled in a soil conservation program (not CRP) that prohibits production on the land.

The property will meet the income requirements since the average gross income is $1,100. Soil conservation program payments can be used to meet the income requirement.

However, the 4 acres enrolled in the non-CRP soil conservation program are not considered to be in production. Therefore, the property only has 9 acres in production and will not meet the size requirement for PUV.

3-28 Owner applies for agricultural PUV on a 8-acre tract. All acres are used for trout farming.

Aquaculture land must consist of at least 5 acres in actual production or produce at least 20,000 pounds of aquatic species for commercial sale annually, regardless of acreage.

The trout farm meets the minimum size requirement of 5 acres in production and may qualify for the present-use value program.

3-29 Owner applies for agricultural PUV on a 4-acre tract. All acres are used for trout farming. The land produces 30,000 pounds of aquatic species annually.

Aquaculture land must consist of at least 5 acres in actual production or produce at least 20,000 pounds of aquatic species for commercial sale annually, regardless of acreage.

While the trout farm does not meet the minimum requirement of 5 acres in production, it does meet the alternative requirement that it produce at least 20,000 pounds of aquatic species for commercial sale annually. Therefore, the land in production may qualify for the present-use value program.

3-30 Owner applies for agricultural PUV on a 12-acre tract. The primary use of the tract is for a horse breeding operation.

Agricultural land is land used for the commercial production or growing of crops, plants, or animals. As such, horse breeding fits the "commercial production or growing of …animals" criteria.

The horse breeding operation must still meet the 10-acre minimum size requirement and all other agricultural requirements, including income.

Chapter 4

Income Requirements

[Primary Statutes: G.S. 105-277.3(a)(1) through (3)]

Overview

Agricultural and horticultural farm units are required to have at least one initial qualifying tract that meets the minimum size requirement and that has produced an average gross income of at least $1,000 for the three preceding years.

Gross income includes income from the sale of products produced from the land and any payments received under a government soil conservation or land retirement program or any payments received as part of the Tobacco Buyout Program.

There is no income requirement for forestland.

I. Initial Qualifying Tract

The income requirement for the initial qualifying tract is:

- **Agricultural Land**—The farm unit must consist of at least one tract that has at least 10 acres in production and has produced an average gross income of at least $1,000 per year for the three years preceding the January 1 for which present-use value is requested. Note: While agricultural land used for as a farm for aquatic species receives an exception to the 10-acre rule and has its own size requirements as discussed in *Chapter 3: Size Requirements, Subchapter I: Initial Qualifying Tract, Section D: Special Provision for Aquatic Species*, the initial qualifying tract must still meet the $1,000 income requirement as all other agricultural land.

- **Horticultural Land**—The farm unit must consist of at least one tract that has at least 5 acres in production and has produced an average gross income of at least $1,000 per year for the three years preceding the January 1 for which present-use value is requested. Note: Evergreens intended for use as Christmas trees have a separate income requirement and are discussed in *Chapter 6: Evergreens Intended for Use as Christmas Trees*.

- **Forestland**—There is no income requirement for forestland. Forestland generally produces income only when timber is harvested and many years may pass between required harvests. Therefore, it is not feasible to have a yearly income requirement for forestland.

The income requirement is a **separate requirement** from the sound management requirement (discussed in *Chapter 5: Sound Management*). Satisfying the sound management requirement does not satisfy the income requirement or vice versa.

A. Sources of Income

The income must be from one of the following sources:

1. The sale of products produced from the land,

2. Any payments received under a government soil conservation or land retirement program, and

3. For agricultural land only, the amount paid to the owner as a result of P.L. 108-357, Title VI, Fair and Equitable Tobacco Reform Act of 2004 (also known as the Tobacco Buyout). These payments are part of a 10-year program and may continue through the year 2014.

Note: While payments from soil conservation or land retirement programs and the Tobacco Buyout can be used to meet the income requirement, the acres involved in these programs cannot be used to meet the size requirement for classification unless the acres are in actual production (except see special provision for land enrolled in CRP as discussed in *Chapter 7: Conservation Reserve Program*).

See *Example 4-8* for a discussion of products grown and consumed, but not sold.

B. Invalid Sources of Income

Some examples of invalid sources of income include, but are not limited to, the following:

- Rental Income--Income from the leasing of land or equipment cannot be used to meet the income requirement. Although capitalizing land rental income is a valid method to determine the present-use value of the land, the income does not address whether the land is actually in production under sound management for the commercial production of agricultural or horticultural products.

- Stud fees, grazing fees, and boarding fees.

- Training or showing of animals for judging or show.

- Leasing of hunting rights.

- Sale of firewood, pine cones, pine straw, etc.

- Fees for services such as plowing, mowing, baling, hauling, drying, curing, or other similar operations.

C. Gross Income

The income requirement is a **gross** income requirement and should be understood as the income derived from the allowed activities and allowed sources before deduction of any expenses.

D. Average Income

The income is **averaged** over the three preceding years in an effort to account for variations in the income stream from the property. A property may produce gross income of $1,500, $500, and $1,000 over the past three years and still meet the income requirement since the average of the three years' gross income is $1,000.

Averaging will help to mitigate moderately adverse conditions but additional discretion may be needed in the case of severe adverse climate and weather forces over which the owner has no control (i.e. drought, flooding, damaging frost, hail, etc.). In the event of such extreme occurrences, it might be impossible to meet the income requirement, and the assessor may wish to exercise discretion to suspend the income requirement temporarily while the owner recovers from the event. However, the land needs be returned to an income-producing status as quickly as possible.

E. The Income Requirement and Compliance Reviews

As discussed in *Chapter 14: Compliance Reviews*, the county is required to conduct periodic reviews of properties in present-use value to verify that they continue to qualify for classification. G.S. 105-296(j) states that the period of the review process is based on the average of the preceding three year's data. Therefore, the county may ask for the income received for the three preceding years as part of the review process. The income requirement is not a requirement that must only be met at the time of initial application. The farm unit must continue to meet the income requirement on a continuing basis.

The income requirement is that the property has produced the required income for the three years preceding January 1 of the year for which the benefit of present-use value is claimed. The statutes do not state that the income should be for the three years preceding January 1 of the year for which the benefit of present-use value is **first** claimed. Until the property is disqualified or the owner voluntarily removes the property from the present-use value program, the owner is claiming the benefit of the program every year and must be able to meet the income requirement every year (subject to the reasonable discretion as discussed above in *Section D: Average Income*).

F. Security of Income Information

Income information is confidential information and should be kept under lock and key. The public should not be allowed to browse the present-use value files unless it can be assured that the income information has been made unavailable for public viewing. Requests to view or copy an application or associated document should be honored, but the income information should be marked through or otherwise protected, such as using a protective template to make copies for the public.

II. Tracts Other Than the Initial Qualifying Tract

The income requirement only specifically requires that a farm unit have at least one tract that meets the minimum average gross income requirement. Technically, if one tract meets the three-year $1,000 average gross income requirement, no other tract in the farm unit has to meet the requirement.

For example, a taxpayer has owned a 15-acre tract and a 9-acre tract for the last 10 years but has only farmed the 15-acre tract for those 10 years and has received present-use value only on that tract. If the taxpayer begins farming the 9-acre tract, the tract can immediately qualify the next tax year because (1) the owner owns an initial qualifying tract (the 15-acre tract) in the same county or within 50 miles, (2) the 9-acre tract meets the ownership requirement (i.e. owned at least four years) and (3) the 9-acre tract is actively engaged in the commercial production or growing of crops, plants, and animals. The 9-acre tract does not have to meet the three-year $1,000 average gross income requirement. *

On the other hand, it would be incorrect to assume that no other tracts other than the initial qualifying tract are required to produce income. Agricultural and horticultural land is land that is actively engaged in the commercial production of agricultural and horticultural products, unless the land is woodland or wasteland. Each tract is also required to be under sound management. Therefore, all non-woodland and all non-wasteland acres need to be actively engaged in commercial production under sound management. Commercial production clearly contemplates that the land has been put to an income-producing use.

It may be suggested that if the farm unit has one tract that meets the income requirement and that the farm unit overall meets the sound management requirement (such as showing a net income, for instance), then it does not matter whether all of the non-woodland and non-wasteland land is in production. However, this suggestion fails to consider the points of the previous paragraph that land must be actively engaged in commercial production under sound management. Failure to meet this requirement is sufficient ground to remove the present-use value status for the non-woodland and non-wasteland acres that are not in production.

For minor exception, see the discussion on fallow land in *Chapter 3: Size Requirements, Subchapter I: Initial Qualifying Tract, Section C: Fallow Land*.

* (In the example above, if the taxpayer instead purchased a 9-acre unfarmed tract not in PUV, the taxpayer would have to wait until the standard ownership

requirements (i.e. place of residence, owned at least four years, etc.) were met and the land would have to be in production at that time. If the taxpayer instead purchased a 9-acre farmed tract not in PUV, the land may be eligible for immediate qualification the next tax year under the Exception for Expansion of Existing Unit. If the taxpayer instead purchased a 9-acre farmed tract that is in PUV, the land may be eligible for uninterrupted qualification under the Exception for Continued Use.)

III. Conversion to a Different Classification

The present-use value statutes do not address the conversion from one classification to another (i.e. from agriculture to horticulture, etc.). Therefore this area is open to some interpretation but the following guidance seems to be as consistent with the statutes as possible, given the lack of statutory direction.

A. Conversion to Forestry from Agriculture or Horticulture

A qualifying agricultural or horticultural tract that is being converted to forestry should likely be allowed to continue in present-use value. The converted acreage will have to be at least 20 acres to meet the size requirement. There is no income requirement for forestry.

The conversion should be done quickly and should not take more than one agricultural or horticultural growing season. Otherwise, the land will be out of production and should not receive present-use value if lying unused.

Upon completion of the conversion, the owner should file an updated application during the next regular listing period. The owner must submit with the application a sound management plan for the commercial production of timber.

B. Conversion to Agriculture from Horticulture

Conversion to agricultural classification from horticultural classification will likely always qualify if the tract has at least 10 acres in production. The horticultural tract was already satisfying the income requirement and therefore was in production for at least the last 3 years. Additionally, the new agricultural crops

will immediately begin producing income, thus continuing to meet the income requirement.

The conversion should be done quickly and should not take more than one agricultural or horticultural growing season. Otherwise, the land will be out of production and should not receive present-use value if lying unused.

Upon completion of the conversion, the owner should file an updated application during the next regular listing period.

C. Conversion to Horticulture (Annual Crops) from Agriculture

Conversion to annual horticultural crops from agricultural classification will likely always qualify. The agricultural tract was already satisfying the income requirement, and therefore was in production for at least the last 3 years. Additionally, the new annual horticultural crops will immediately begin producing income, thus continuing to meet the income requirement. The size requirement would be met also since the agricultural size requirement is 10 acres and the horticultural requirement is only 5 acres.

The conversion should be done quickly and should not take more than one agricultural or horticultural growing season. Otherwise, the land will be out of production and should not receive present-use value if lying unused.

Upon completion of the conversion, the owner should file an updated application during the next regular listing period.

D. Conversion to Horticulture (Perennial Crops) from Agriculture

Conversion to perennial horticultural crops (orchards, vineyards, etc.) from agricultural classification should likely not qualify, but this scenario is rather troublesome. The agricultural tract was already satisfying the income requirement, and therefore was in production for at least the last 3 years. However, the new perennial horticultural crops will not begin producing income for a number of years, thus failing to meet the income requirement.

For example, Owner A buys an unimproved tract and plants apple trees on it. It may be a number of years before the orchard can even produce the first year of income. Owner A must wait until the orchard has produced three years of income before the property can qualify for present-use value.

Owner B owns the tract across the street that is currently in agricultural present-use value but he decides to convert his tract to an apple orchard at the same time as his neighbor. Should he continue to receive present-use value even though it may be six or seven years before the tract can show three years of income?

Equity issues indicate that Owner B should not continue receiving present-use value. If Owner A cannot receive present-use value until the income requirement has been met, then Owner B should not be able to continue in present-use value for a number of years without meeting the income requirement.

Additionally, while Owner B had met the requirements for agricultural PUV, it has not been proven that Owner B can adequately manage the growth and production of the significantly different perennial horticultural crops.

It may seem questionable to remove the owner from PUV when the land is still being farmed (although with no crop or income production), but the equity issues mentioned above and the uncertainty that a crop will ever be produced from the converted land lends additional credence to the disqualification.

E. Conversion to Agriculture or Horticulture (Annual Crops) from Forestry

Conversion to agricultural or horticultural classification from forestry classification is the most difficult scenario. If the land is immediately cleared and then planted in annual crops, the land will immediately begin producing income. There was no income requirement when the land was in forestry. However, there is an income requirement for agriculture and horticulture. Technically, upon conversion, the tract will not be able to show that it has produced an average gross income of $1,000 for the three preceding years, but the tract will be able to immediately show income.

If the conversion is done quickly and does not take more than one agricultural or horticultural growing season, the assessor may consider allowing the property to continue in present-use value. The tract does not meet the technical income requirements but may (or may not) come close to meeting the overall intention of

the present-use value statutes. The other conversion scenarios lend themselves to clearer guidance as to whether the conversion should be allowed with continued classification or whether a disqualification should occur. This particular scenario falls somewhere between the others. The assessor will have to decide whether to adhere to the technically correct interpretation, or take a position that may or may not be more in line with the estimated intent of the present-use value statutes.

Income Summary

Agricultural and horticultural land must have at least one qualifying tract that had a minimum average gross income requirement of $1,000 over the last three preceding years at the time of application and each year thereafter.

Income must be from the sale of products produced from the land, or from payments received from a government soil conservation or land retirement program, or any payments received as part of the Tobacco Buyout Program.

Forestland does not have an income requirement.

Unfortunately, the statutes do not directly address the conversion from one present-use value classification to another present-use value classification. However, application of the existing statutes gives partial guidance that some conversions may continue in present-use value while others may not.

Income Examples

4-1 Owner applies for agricultural PUV on a 15-acre tract of land, all growing hay. The owner submits gross income for the three prior years as $1,200, $800, and $1,000. Expenses for the three years total $3,500.

The property will meet the income requirement since the average gross income over the three prior years was at least $1,000.

While the negative net income of $500 ($3,000 gross income less $3,500 expenses) cannot be used to disqualify the property based on the income requirement, it may be taken into consideration in determining whether the property is under sound management.

4-2 Owner applies for agricultural PUV on a 15-acre tract of land, all growing hay. The owner submits gross income for the three prior years as $1,100, $700, and $1,000.

The property will not meet the income requirement since the average gross income of $933 over the three prior years was not at least $1,000.

4-3 Owner applies for agricultural PUV on a 15-acre tract of land, all growing hay. The owner submits rental income for the three prior years as $1,200, $800, and $1,000.

Rental income is not a valid source of income for PUV classification. The owner will need to report the gross income from the sale of products produced from the land. The owner may need to contact the tenant farmer to obtain this information.

If the tenant farmer cannot or will not provide the income information to the owner, the owner may ask for the quantity produced from the land. While the assessor is not required to accept this data, discretion may be used to accept the data and apply known market rates to the quantity produced to determine an estimated income.

If neither the income nor production quantities can be obtained, the property will not be able to meet the income requirement.

4-4 Owner applies for agricultural PUV and submits the following income from the three past years: $2,500 from sale of crops, $800 in tobacco buyout payments.

The property will meet the income requirements since the average gross income is $1,100. Tobacco buyout payments can be used to meet the income requirement.

4-5 Owner applies for agricultural PUV and submits the following income from the three past years: $2,500 from sale of crops, $800 in soil conservation program payments. The tract is 15 acres with 11 acres planted in tobacco and 4 acres are enrolled in a soil conservation program (not CRP) that prohibits production on the land.

The property will meet the income requirements since the average gross income is $1,100. Soil conservation program payments can be used to meet the income requirement. The 4 acres are not considered to be in actual production.

4-6 Owner applies for agricultural PUV and submits the following income from the three past years: $2,500 from sale of crops, $800 in soil conservation program payments. The tract is 13 acres with 9 acres planted in tobacco and 4 acres are enrolled in a soil conservation program (not CRP) that prohibits production on the land.

The property will meet the income requirements since the average gross income is $1,100. Soil conservation program payments can be used to meet the income requirement. The 4 acres are not considered to be in production and will not receive PUV. Therefore, the property only has 9 acres in production and will not meet the size requirement for PUV.

4-7 Owner applies for agricultural PUV and submits the following income from the three past years: $2,500 from sale of crops, $800 from leasing of hunting rights.

The property will not meet the income requirements since the average gross income is only $833. Income from the leasing of hunting rights cannot be used to meet the income requirement.

4-8 Owner owns and operates a 20-acre apple orchard. Apples harvested from the orchard are converted on site to apple cider and other apple-related products as part of the owner's overall operation. Owner applies for horticultural PUV.

For products grown and consumed as part of an overall operation, there will be no direct income from the sale of the product (in this case, apples). However, this is clearly a legitimate horticultural operation that could have sold the apples to a processor instead. In this instance, the assessor may allow the owner to report the quantity of products grown. The assessor may then use market rates to determine an income that would be realistic if the product had been sold rather than consumed.

4-9 Owner purchased a 20-acre tract of pastureland five years ago. Three years ago, the owner purchased a number of young calves and has been raising them for eventual sale as beef cattle. However, the farm has not yet produced any income. This January the owner applied for agricultural PUV and claimed that the increased value of the herd should be considered as imputed income.

The assessor should deny the request for PUV. The property has not produced any final crop or product and therefore has not produced any income.

This example differs from the apple orchard example where the product is grown and consumed. In that case, the product has actually been harvested and could have been sold rather than used in an on-site process. In our beef cattle example, the cattle are not yet ready to either be sold or used on site.

Note: This position differs from the previous NCDOR position, however, it is believed that the current position is correct and is the most equitable. This places the beef cattle operations on an equal footing with other enterprises that require a number of years before they can produce the required three years of income for PUV classification, such as vineyards, apple orchards, and peach orchards.

4-10 During a compliance review, an owner reports no income for last year but reports an income of $1,200 for each of the two years prior to last year. Owner reports that a hail storm completely destroyed the crop last year.

Even though the owner only averaged gross income of $800 over the last three years, it is recommended that the assessor use discretion when natural disasters significantly affect the farming operation. In this example, the property should be allowed to remain in PUV as long as the owner was meeting the requirements prior to the natural disaster and is working towards a quick return to commercial productivity.

4-11 During a compliance review, the owner refuses to provide income information and states that satisfaction of the income requirement is only required during initial qualification.

The income requirement states that the property must have produced the required income for the three years preceding January 1 of the year for which the benefit of present-use value is claimed. The statutes do not state that the income should be for the three years preceding January 1 of the year for which the benefit of present-use value is **first** claimed.

Until the property is disqualified or the owner voluntarily removes the property from the present-use value program, the owner is claiming the benefit of the program every year and must be able to meet the income requirement every year. Therefore, the assessor has the authority to request income information to determine if the property continues to meet the average gross income requirement.

4-12 A taxpayer requests to view PUV applications filed by his neighbors.

The taxpayer has the right to view the applications but does not have the right to view any income information that the applications may contain. The income information should be masked or otherwise protected before the taxpayer is allowed to view the applications.

4-13 Owner applies for horticultural PUV on three tracts. One tract has 15 acres in production and reports income of $3,000 per year. The other two tracts are 5 acres and 6 acres but the owner does not report any income on these two tracts.

The farm unit will meet the income requirement. It is only required that at least one of the tracts in the farm unit meet the average gross income requirement.

However, it would be incorrect to assume that no other tracts are required to produce income. Agricultural and horticultural land is land that is actively engaged in the commercial production of agricultural and horticultural products, unless the land is woodland or wasteland. Each tract is also required to be under sound management. Therefore all non-woodland and all non-wasteland acres need to be actively engaged in commercial production under sound management. Commercial production clearly contemplates that the land has been put to an income-producing use.

Failure to produce income may be a sign that the property is not in actual production or does not meet the sound management requirement.

4-14 A 25-acre tract is in agricultural PUV. The owner obtains a forestry management plan and plants the entire tract in trees according to the plan requirements. Owner files the management plan and a new application for forestry PUV during the next listing period.

This change in use is not addressed in the statutes, but the property should likely continue in PUV. Forestry size requirement is met and there is no income requirement.

4-15 An 18-acre tract is in agricultural PUV. The owner obtains a forestry management plan and plants the entire tract in trees according to the plan requirements. Owner files a new application for forestry PUV and the management plan during the next listing period.

This change in use is not addressed in the statutes, but the property will not be able to continue in PUV. Forestry size requirement is not met since forestry requires a minimum of 20 acres in production.

4-16 A 15-acre tract is in horticultural PUV. The owner converts to growing cotton on all the acres. Owner files a new application for agricultural PUV during the next listing period.

This change in use is not addressed in the statutes, but the property should likely continue in PUV. Agricultural size requirement is met and the income requirement is the same for agriculture and horticulture.

4-17 A 15-acre tract is in agricultural PUV. The owner converts to growing an annual horticultural crop on all the acres. Owner files a new application for horticultural PUV during the next listing period.

This change in use is not addressed in the statutes, but the property should likely continue in PUV. Horticultural size requirement is met and the income requirement is the same for agriculture and horticulture. Since the crop is annual, the tract will continue to produce income without interruption.

4-18 A 15-acre tract is in agricultural PUV. The owner converts the tract to a vineyard. It will be five years before the vineyard produces income and eight years before the vineyard has produced three years of income. Owner files a new application for horticultural PUV during next year's listing period.

This change in use is not addressed in the statutes, but the property should likely be disqualified from PUV. Horticultural size requirement is met and the income requirement is the same for agriculture and horticulture. However, the tract will be unable to produce income without interruption. The tract should not continue to receive PUV for a number of years without meeting the horticultural income requirements.

4-19 A 23-acre tract is fully planted in trees and is in forestry PUV. The owner clears all 23 acres and immediately plants an annual horticultural crop. Owner files a new application for horticultural PUV during the next listing period.

This change in use is not addressed in the statutes, and it is unclear whether the property should be disqualified from PUV. Horticultural size requirement is met and the property will immediately begin producing income. However, at the time of conversion to horticulture, the property cannot show that it has produced an average gross income of $1,000 for the three preceding years. The tract was previously in trees and no income was produced, nor was it required. The tract probably does not meet the income requirements but may or may not come close

to meeting the overall intention of the present-use value statutes. Whatever the decision of the assessor is, the policy should be consistently applied to other similar requests.

Chapter 5

Sound Management Requirements

[Primary Statutes: G.S. 105-277.2(6), G.S. 105-277.3(f) and (g)]

Overview

All land that is required to be in commercial production is also required to be under sound management. Forestry has a different sound management requirement than agriculture and horticulture.

I. Sound Management Defined

Sound management is a program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement.

This definition continues the overall statutory theme that the present-use value program is intended for properties that are legitimate and active farming operations. A review of language used elsewhere in the present-use value statutes finds phrases such as commercial production or growing, actively engaged, producing income, expected net income, active production, and sale of the products.

Sound management requires land to be used for the production of agricultural, horticultural, or forestry products in a manner that maximizes the return from the land. A legitimate farming operation will seek to maximize the return from the land. If this is not the objective of the owner, it should be questioned whether the land is being used for commercial production as required by the statutes.

The phrase “consistent with its conservation and long-term improvement” simply denotes that a legitimate farming operation will not seek to abuse the land and that the land should be farmed in a manner consistent with maintaining its long-term commercial productivity.

II. Sound Management for Forestry

If the owner of forestland demonstrates that the forestland complies with a written sound forest management plan for the commercial production and sale of forest products, then the forestland is operated under a sound management plan.

The forestland must be in compliance with the written sound forest management plan as of January 1 of the year for which the present-use value classification is requested. A copy of the forestry management plan must be submitted with the application.

Forest management plans can be prepared by an independent consulting forester, by a forester with the North Carolina Division of Forest Resources, and by the property owner. However, if the owner prepares the plan, the owner must have the appropriate forestry management and analysis skills to properly prepare a plan comparable to a plan prepared by a qualified forester.

Key elements in a written plan for a sound forestland management program are listed below:

1. Management and Landowner Objectives Statement—Long range and short range objectives of owner(s) as appropriate.

2. Location—Include a map or aerial photograph that locates the property described and also delineates each stand referenced in the "Forest Stand(s) Description/Inventory and Stand Management Recommendations" (item 3 below).

3. Forest Stand(s) Description/Inventory and Stand Management Recommendations—Include a detailed description of various stands within the forestry unit. Each stand description should detail the acreage, species, age, size (tree diameter, basal area, heights), condition (quality and vigor), topography, soils and site index or productivity information. Stand-specific forest management practices needed to sustain productivity, health, and vigor must be included with proposed timetable for implementation.

4. Regeneration-Harvest Methods and Dates—For each stand, establish a target timetable for harvest of crop trees, specifying the type of regeneration-harvest (clear cut, seed-tree, shelterwood, or selection regeneration systems as applicable).

5. Regeneration Technique—Should include a sound proposed regeneration plan for each stand when the harvest of final crop trees is done. Specify intent to naturally regenerate or plant trees.

Forest management plans can and should be updated as forest conditions significantly change (e.g. change in product class mix as the stand ages and grows, storm damage, insect or disease attack, timber harvest, thinning, wildfire). The plans should not be open-ended and should include a timetable for re-evaluating the forestry management plan, especially in the early growth years of a forest unit.

Forest management plans may include other objectives such as improving wildlife habitat and enhancing limited recreation. However, the primary objective of the management plan must be commercial production of timber, and any secondary objectives must not significantly detract from the primary objective.

III. Sound Management for Agriculture and Horticulture

For agricultural land and horticultural land, if the property owner demonstrates any one of the following factors, then the land is operated under a sound management program:

1. Enrollment in and compliance with an agency-administered and approved farm management plan.

2. Compliance with a set of best management practices for the commercial production of agricultural or horticultural products.

3. Compliance with a minimum gross income per acre test.

4. Evidence of net income from the farm operation.

5. Evidence that farming is the farm operator's principal source of income.

6. Certification by a recognized agricultural or horticultural agency within the county that the land is operated under a sound management program.

A property owner only has to prove that one of the above tests has been satisfied in order for the sound management requirement to be met. All other tests for size, income, and ownership will still have to be met.

When analyzing an initial application for qualification or while performing a compliance review, the assessor may choose to use any one (or more) of the factors listed above to determine sound management. However, if the property owner cannot meet the sound management test used by the assessor, the owner has a right to bring forward proof that at least one of the other allowable tests has been met.

In the interest of due process and full disclosure, if the owner has been disqualified for failure to meet the sound management test used by the assessor, the assessor should state in the notice of disqualification that the owner may attempt to prove sound management under one of the other statutory tests. Some of the tests are easier to administer than others.

Tests 3, 4, and 5 are somewhat objective in that they require an analysis of measurable factors.

- Test 3—A minimum gross income per acre test is determined by dividing the total gross income derived from production by the total acres in production. This number is then compared to a minimum gross income per acre benchmark as determined by the county. If the county uses this test, the minimum acceptable gross income per acre should be readily accessible by the public and should probably be adopted in some public manner. If the owner wishes to use this test, the county must have already adopted some standard as the minimum acceptable gross income per acre. The owner cannot be allowed to set the minimum standard.

- Test 4—Net income from the farm operation only requires that the farm operation achieve a positive financial return from the operation (i.e. revenues must exceed expenses).

- Test 5—Evidence that farming is the farm operator's principal source of income would require comparing all of the farm operator's income in relation to the income attributable to farming operations. More than 50% of the operator's income would have to come from farming operations. The statutes do not state whether the income should be gross income or net income.

Tests 1, 2, and 6 are more difficult tests to administer and evaluate.

- Test 1—Enrollment in and compliance with an agency-administered and approved farm management program. It is unclear which agencies and which programs were intended by this statute.

- Test 2—Compliance with a set of best management practices. Best management practices (BMPs) generally deal with managing an on-going operation in an environmentally conscious manner. This test should be fairly straightforward as long as the BMPs provide the ability to meet the statutory definition of sound management (a program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement).

- Test 6—Certification by a recognized agricultural or horticultural agency within the county that the land is operated under a sound management program. No agencies are known to provide this certification at this time. Additionally, it is unclear who determines whether an agency is a "recognized" agricultural or horticultural agency, should the issue be disputed.

The statutes also provide that sound management can be demonstrated by evidence of other similar factors. This provision is vague and without any guidelines. Primarily, it gives the assessor the discretion to consider any other factors but does not give any guidance as to which factors should merit consideration. Realistically speaking, if a property owner cannot meet one of the six tests mentioned above, it is unlikely that there will be any other similar factors they can provide that will prove sound management. However, the statutes do provide the opportunity for the property owner to make the argument.

Sound Management Summary

Sound management is a program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement.

All land that is required to be in commercial production is also required to be under sound management. Forestry has a different sound management requirement than agriculture and horticulture.

If the owner of forestland demonstrates that the forestland complies with a written sound forest management plan for the commercial production and sale of forest products, then the forestland is operated under a sound management plan.

For agricultural land and horticultural land, if the property owner can show that the land meets any one of several tests, then the land is operated under a sound management program.

Sound Management Examples

5-1 Owner applies for forestry PUV on a 300-acre tract of woodland and submits a management plan that emphasizes wildlife protection and aesthetic qualities. The plan calls for the removal of dead and diseased trees but does not allow for the harvesting of timber for sale.

Forestland classification is only for land that is actively engaged in the commercial growing of trees under a sound management program. The tract is not engaged in the commercial growing of trees and will not qualify.

5-2 Owner applies for forestry PUV on a 300-acre tract of woodland and submits a forestry stewardship management plan that provides for wildlife protection and recreation. However, the plan does require that the land be managed for the commercial production of timber and has included the proper recommendations to accomplish this goal.

This tract will likely qualify. A stewardship plan (or any management plan) that provides for wildlife protection or other similar objectives may still qualify if the commercial production of timber is also one of the primary objectives of the owner and the management plan. The non-commercial aspects of the plan cannot significantly impair the ability to manage the land under a program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement. Good stewardship in the context of the PUV program still must emphasize commercial production.

5-3 Owner applies for forestry PUV and submits a management plan that the owner has prepared.

Forest management plans can be prepared by an independent consulting forester, by a forester with the North Carolina Division of Forest Resources, and by the property owner. However, if the owner prepares the plan, the owner must have the appropriate forestry management and analysis skills to properly prepare a plan comparable to a plan prepared by a qualified forester. The owner prepared plan should not be held to a lesser standard just because the owner prepared it. If the

owner is not capable of producing an adequate plan, then a professional forester should be retained to provide a plan.

5-4 Owner applies for agricultural PUV and submits income information that indicates a gross income per acre of $50. The county has adopted a minimum gross income per acre of $65.

The assessor should deny the application on the grounds that the property did not meet the county's sound management test. However, the assessor should inform the owner that the application may be approved if the owner can prove sound management under one of the other statutorily mandated criteria for sound management.

Alternatively, the assessor could require the owner to submit with the application all data needed to determine if the owner might meet sound management under any of the six tests. However, this would probably be considered burdensome by the taxpayer. For example, the owner would probably not want to submit proof that farming is the owner's principal source of income as part of the application process. Additionally, sound management may often be determined without having to reach that more difficult test.

It is probably more expedient to request the standard application information and determine sound management based on the available data, as long as the assessor informs the taxpayer that other options may exist for the establishment of sound management, should the owner's application be denied based on sound management criteria.

5-5 Owner submits $3,900 in gross income from the farm but shows expenses of $4,200.

The owner will not be able to show sound management under the net income test since the farm has a negative net income of $300. The owner may be able to show sound management under another test.

Chapter 6

Evergreens Intended For Use As Christmas Trees

[Primary Statutes: G.S. 105-277.3(a)(2), G.S. 105-277.7(c)(6), G.S. 105-289(a)(6)]

Evergreens intended for use as Christmas trees are part of the horticultural classification. Therefore, the minimum acreage for classification is 5 acres of land actively engaged in the commercial production of evergreens.

Instead of the standard income requirement for other horticultural land, the General Assembly requires that the North Carolina Department of Revenue establish an "in lieu of gross income" requirement until the evergreens are harvested.

NCDOR is also required to establish a gross income requirement for this type of horticultural land that differs from other horticultural land. This separate gross income requirement will be applied when the evergreens are harvested from the land. Until that time, the property must meet the standards established in the "in lieu of gross income" requirement.

While Christmas trees farms are generally associated with the mountains, there are a number of Christmas tree farms located throughout the state. NCDOR establishes one "in lieu of gross income" requirement and one gross income requirement for the mountains (Major Land Resource Area 130). NCDOR also establishes a second "in lieu of gross income" requirement and a second gross income requirement for the rest of the state (Major Land Resource Areas 133A, 136, 137, 153A, and 153B).

The Christmas tree requirements are published annually by NCDOR in the UVAB *Use-Value Manual for Agricultural, Horticultural, and Forestland*.

I. "In Lieu of Gross Income" Requirement

The "in lieu of gross income" requirement is that the trees must be managed under a sound management program until they are harvested. While the recommended numbers (spacing, harvest cycle, etc.) differ between the two regions, the principles of the sound management program are the same:

1. Proper site preparation, controlling problem weeds and saplings, taking soil samples, and applying fertilizer and lime as appropriate.

2. Proper tree spacing.

3. A program for insect and weed control.

4. An appropriate harvest cycle.

II. Gross Income Requirement

At the date of this publication, the gross income requirement for acres undergoing Christmas tree harvest is $2,000 per acre for the mountains (MLRA 130) and $1,500 per acre for the rest of the State (all other MLRAs). Once the specific acres are harvested, the acres revert to the "in lieu of gross income" requirement until it is time to harvest once more.

Christmas Tree Examples

6-1 Owner applies for horticultural PUV on an 8-acre tract recently planted in Christmas trees. The owner has no income to report for the tract.

There is no gross income requirement for this tract until the trees are being harvested. Instead the tract must meet the "in lieu of gross income" requirement for the years preceding the harvest years, which basically details the sound management practices for Christmas tree production in that geographic region.

6-2 A 9-acre tract planted in Christmas trees is currently receiving present-use value. The trees are entering the harvest cycle and it will take 3 years to harvest the entire tract. There are 4 acres are undergoing harvesting this year. The tract is located in MLRA 130 Mountains.

The gross income requirement for acres undergoing Christmas tree harvest in MLRA 130 Mountains is $2,000 per acre. Since 4 acres are undergoing harvest this year, the tract needs to produce a minimum of $8,000 gross income for the year.

Once the harvest is completed on the 4 acres, the requirement for those acres will revert to the "in-lieu of income" requirement.

6-3 A 9-acre tract planted in Christmas trees is currently receiving present-use value. The trees are entering the harvest cycle and it will take 3 years to harvest the entire tract. There are 4 acres are undergoing harvesting this year. The tract is located in MLRA 136 Piedmont.

The gross income requirement for acres undergoing Christmas tree harvest in MLRA 136 Piedmont is $1,500 per acre. Since 4 acres are undergoing harvest this year, the tract must produce a minimum of $6,000 gross income for the year.

Once the harvest is completed on the 4 acres, the requirement for those acres will revert to the "in-lieu of income" requirement.

Chapter 7

Conservation Reserve Program

[Primary Statutes: G.S. 105-277.3(d)]

Overview

The present-use value program contains special provisions for land enrolled in the Conservation Reserve Program (CRP). Farming is usually not allowed on CRP land, however, CRP land is considered to be in actual production and the acreage counts toward the minimum acreage requirements for present-use value classification.

Subchapter I summarizes the CRP program and Subchapter II explains the specific provisions in the present-use value statutes for CRP land.

I. The Conservation Reserve Program (CRP)

A. Administration of CRP

There are many conservation and preservation programs administered by numerous agencies. However, the provisions of G.S. 105-277.3(d) apply **only** to land enrolled in the federal Conservation Reserve Program authorized by 16 U.S.C. Chapter 58. Also, 16 U.S.C. Chapter 58 includes many programs other than CRP, but the statutes provide the preferential treatment only to the portion of 16 U.S.C. Chapter 58 which authorizes the Conservation Reserve Program.

It should be noted that CRP is administered by the Farm Service Agency (FSA) of the United States Department of Agriculture. If anyone seeks the advantages of the provisions of G.S. 105-277.3(d) but presents documentation of a program that is not administered by the Farm Service Agency, then that program is not part of CRP. On the other hand, not every program administered by FSA is part of CRP.

B. Sign-up for CRP

Traditionally, CRP has conducted general periodic sign-ups through a competitive bidding process and this practice still exists. However, there is also a CRP continuous sign-up process whereby environmentally desirable land devoted to certain conservation practices may be enrolled at any time. All participants must enter the CRP program through one of these two sign-up methods, and the participant should be able to show to the tax office that application was made and that acceptance into a CRP program was granted through this sign-up process.

C. Components of CRP

There are currently several components of CRP:

1. Conservation Reserve Program (CRP)
2. Conservation Reserve Enhancement Program (CREP)
3. Farmable Wetlands Program (FWP)
4. Bottomland Timber Establishment on Wetlands
5. Northern Bobwhite Quail Habitat Initiative (also known as Upland Bird Habitat Buffer)
6. Wetlands Restoration Initiative
7. Longleaf Pine Initiative
8. State Acres for Wildlife Enhancement (SAFE)

CRP is a flexible program and there may be new programs and initiatives that are approved under the authority of CRP in the future. There may also be existing programs that were not listed above. When trying to determine if the program is part of CRP, always determine if the program is administered by FSA and if the participant signed up either during a general CRP sign-up or through the CRP continuous sign-up process.

II. CRP and the Present-Use Value Program

A. CRP Land Is Considered to Be in Actual Production

By statute, land enrolled in CRP is considered to be in actual production. Any combination of CRP land and non-CRP land in production may be used to meet the minimum acreage in production requirement for agriculture or forestry, whichever is appropriate.

Land enrolled in the federal Conservation Reserve Program must be assessed as agricultural land if it is planted in vegetation other than trees, or as forestland if it is planted in trees.

- Agricultural Example: In order to meet the 10-acre minimum for agricultural classification, 4 acres of CRP land planted in vegetation other than trees can be used in conjunction with 6 or more acres of contiguous non-CRP agricultural land being soundly managed for the commercial production of agricultural products. It is theoretically possible to qualify 10 acres or more of solely CRP land planted in vegetation other than trees, but the income requirement may be a limiting factor (see *Section B: Treatment of CRP Income*).

- Forestry Example: In order to meet the 20-acre minimum for forestry classification, 11 acres of CRP land planted in trees can be used in conjunction with 9 or more acres of contiguous non-CRP woodland under sound management for forestry. It would also be possible to qualify 20 acres or more of solely CRP land planted in trees since the land is, by definition, considered to be in actual production. (Income is not a limiting factor in this instance since there is no income requirement for forestry.)

CRP land planted in trees must be assessed as forestland and cannot be used to meet the minimum size requirement for agricultural classification.

CRP land planted in vegetation other than trees must be assessed as agricultural land and cannot be used to meet the minimum size requirement for forestry classification.

B. Treatment of CRP Income

Income received from CRP can be used to meet the three-year $1,000 minimum average gross income requirement for agricultural classification, either separately or in combination with income from actual production.

However, CRP payments are generally less than $100 per acre, so it is unlikely that 10 acres of CRP land would meet the income requirement even though it may meet, by statutory definition, the requirement that at least 10 acres be in actual production. For example, if the CRP payments were $50 per acre, it would take 20 acres of CRP land to meet the $1,000 minimum gross income requirement for agricultural classification.

CRP income can be used to supplement income for land in actual production. For example, a tract could qualify for agricultural PUV if it contains 6 acres in production with $820 income, and 4 acres in CRP (non-wooded) with $180 in CRP payments.

G.S. 105-277.3(a)(1) states in part: "Gross income includes income from the sale of the agricultural products produced from the land, [and] any payments received under a governmental soil conservation or land retirement program." While this statute includes CRP payments, it also includes other non-CRP governmental soil conservation or land retirement programs. <u>However, land enrolled in these other programs is not considered to be in actual production and cannot be used to meet the minimum size requirements</u>.

C. When Enrollment in CRP Results in Loss of PUV Eligibility

Despite the preferential treatment given to land enrolled in CRP, it is still possible for enrollment in CRP to cause some tracts to lose their eligibility for PUV. This would primarily occur in two situations.

1. The enrollment results in a lower income that fails to meet the minimum gross income requirement. G.S. 105-277.4(d)(1) states that deferred taxes are not due and the lien for deferred taxes is extinguished if the property loses its eligibility for PUV **solely** due to a change in income caused by enrollment of the property in CRP. So, while the property will lose present-use value status, the deferred taxes are not due.

2. The CRP agreement may require that the land be converted to a use that is different than the use under which the tract is currently qualified for PUV, and the conversion to a different use lowers the amount of land in qualified use below the minimum requirement. For instance, a tract contains 14 acres of agricultural land and the owner enrolls 8 acres in a CRP program that requires the 8 acres to be planted in trees. The tract no longer has 10 acres in production for agricultural purposes since the 8 acres must now be considered as forestland.

   It appears that deferred taxes would be due since the provisions of G.S. 105-277.4(d)(1) apply only when the disqualification occurs **solely** due to a loss in income. In this situation, the disqualification is due to a change in use and for failure to meet the size requirements.

CRP Summary

Land enrolled in the Conservation Reserve Program is considered to be in actual production, and the income derived from participation in CRP can be used to meet the income requirement.

CRP land planted in trees must be considered as forestland and cannot be used to meet the minimum size requirement for agricultural classification.

CRP land planted in vegetation other than trees must be considered as agricultural land and cannot be used to meet the minimum size requirement for forestry classification.

No deferred taxes are due if the land loses its eligibility for present-use value solely due to a change in income caused by enrollment in CRP.

Conservation Reserve Program Examples

7-1 Property is a 20-acre tract, all in agricultural production, and is currently in PUV. Owner enrolls all 20 acres in the Conservation Reserve Program and the 20 acres are required to be planted in vegetation other than trees. The owner will receive $60 per acre.

By statute, all 20 acres are considered to be in actual production and the $1,200 in yearly CRP income payments can count toward meeting the income requirements. Total agricultural acreage in production is 20 acres. Average gross income is $1,200 per year.

The tract meets the size requirements since it has at least 10 acres in agricultural production. The tract meets the average gross income requirement since it will average at least $1,000 gross income per year.

7-2 Property is a 12-acre tract, all in agricultural production, and is currently in PUV. Owner enrolls all 12 acres in the Conservation Reserve Program and the 12 acres are required to be planted in vegetation other than trees. The owner will receive $60 per acre.

By statute, all 12 acres in CRP are considered to be in actual production and the $720 in yearly CRP income payments can count toward meeting the income requirements. Total agricultural acreage in production is 12 acres. Average gross income is $720 per year.

The tract meets the size requirements since it has at least 10 acres in agricultural production. The tract does not meet the average gross income requirement since it will not average at least $1,000 gross income per year.

In this example, enrollment in CRP will result in removal from the present-use value program. However, since the removal is solely due to a change in income caused by enrollment in CRP, no deferred taxes are due as a result of the disqualification.

7-3 Property is a 20-acre tract, all in agricultural production, and is currently in PUV. Owner enrolls 10 acres in the Conservation Reserve Program and the 10 acres are required to be planted in vegetation other than trees. The owner will receive $60 per acre yearly for the CRP land. The 10 acres in actual production average $500 per year in gross income.

By statute, the 10 acres in CRP are considered to be in actual production and the $600 in yearly CRP income payments can count toward meeting the income requirements. Total agricultural acreage in production is 20 acres. Average gross income is $1,100 per year.

The tract meets the size requirements since it has at least 10 acres in agricultural production. The tract meets the average gross income requirement since it will average at least $1,000 gross income per year.

7-4 Property is a 12-acre tract, all in agricultural production, and is currently in PUV. Owner enrolls 9 acres in the Conservation Reserve Program and the 9 acres are required to be planted in vegetation other than trees. The owner will receive $60 per acre yearly for the CRP land. The 3 acres in actual production average $150 per year in gross income.

By statute, the 9 acres in CRP are considered to be in actual production and the $540 in yearly CRP income payments can count toward meeting the income requirements. Total agricultural acreage in production is 12 acres. Average gross income is $690 per year.

The tract meets the size requirements since it has at least 10 acres in agricultural production. The tract does not meet the average gross income requirement since it will not average at least $1,000 gross income per year.

In this example, enrollment in CRP will result in removal from the present-use value program. However, since the removal is solely due to a change in income caused by enrollment in CRP, no deferred taxes are due as a result of the disqualification.

7-5 Property is a 25-acre tract, all in forestry production, and is currently in PUV. Owner enrolls all 25 acres in the Conservation Reserve Program and the owner will receive $60 per acre yearly. The tract will remain planted in trees.

By statute, all 25 acres are considered to be in actual production. Average gross income is $1,200 per year.

The tract meets the size requirements since it has at least 20 acres in forestry production. There is no average gross income requirement for forestland.

7-6 Property is a 20-acre tract, with 15 acres in trees and 5 acres in agricultural production. The property is not in PUV. Owner enrolls all 20 acres in the Conservation Reserve Program. The 15 acres are required to remain planted in trees and the 5 acres are required to be planted in vegetation other than trees. The owner will receive $60 per acre. Owner applies for PUV as either agriculture or forestry.

By statute, all 20 acres are considered to be in actual production and the $1,200 in yearly CRP income payments can count toward meeting the income requirements. Total forestland in production is 15 acres and total agricultural acreage in production is 5 acres. Average gross income is $1,200 per year.

The tract does not meet the size requirement since it does not have at least 10 acres in agricultural production or at least 20 acres in forestry production.

7-7 Property is a 20-acre tract, with 15 acres in trees and 5 acres in agricultural production. The property is not in PUV. Owner enrolls all 20 acres in the Conservation Reserve Program. The 15 acres are required to remain planted in trees and the 5 acres are required to be planted in trees. The owner will receive $60 per acre. The owner plants the 5 acres in trees before January 1 and then applies for forestry PUV.

By statute, all 20 acres are considered to be in actual production. Total forestland in production is 20 acres.

The tract meets the size requirement since it has at least 20 acres in forestry production. There is no income requirement for forestland.

7-8 Property is a 25-acre tract, all in agricultural production, and is currently in PUV. Owner enrolls all 25 acres in the Conservation Reserve Program and the 25 acres are required to be planted in trees.

By statute, the 25 acres in CRP are considered to be in actual production. Total forestland acreage in production is 25 acres. The tract meets the forestland size requirement since it has at least 20 acres in forestry production.

The statutes do not address the situation where a qualifying tract under one classification is converted to a qualifying tract under a different classification. In this example, the conversion should probably be allowed and the property should probably remain in PUV. The change to forestry does not fail to meet any income requirement since there is no income requirement for forestry. For further discussion on this issue, see *Chapter 4: Income Requirements, Subchapter III: Conversion to a Different Classification*.

7-9 Property is a 12-acre tract, all in agricultural production, and is currently in PUV. Owner enrolls all 12 acres in the Conservation Reserve Program and the 12 acres are required to be planted in trees.

By statute, the 12 acres in CRP are considered to be in actual production. Total forestland acreage in production is 12 acres. The tract does not meet the forestland size requirement since it does not have at least 20 acres in forestry production.

Deferred taxes are not due if the property loses its eligibility solely due to a change in income caused by enrollment in CRP.

This CRP agreement requires that the land be converted to a use that is different than the use under which the tract is currently qualified for PUV, and the conversion to the different use lowers the amount of land in qualified use below the minimum requirement. The tract no longer has 10 acres in production for agricultural purposes since the 12 acres must now be considered as forestland, and the 12 acres are not sufficient to meet the forestry size requirement.

It appears that deferred taxes would be due since the provisions of G.S. 105-277.4(d)(1) apply only when the disqualification occurs **solely** due to a loss in income. In this situation, the disqualification is due to a change in use and for failure to meet the size requirements.

7-10 A 15-acre tract has 5 acres in corn production, 3 acres in CRP, and 7 acres not in production due to participation in a non-CRP soil conservation program.

The 5 acres of corn generates $300 per year. The 3 acres in CRP will generate $180 per year. The 7 acres in the other soil conservation program will generate $600 per year.

All three sources of income can be used to meet the income requirement, and will produce an average gross income of $1,080. This amount will be sufficient to meet the $1,000 average gross income requirement.

However, the 7 acres in the non-CRP soil conservation program are not considered to be in actual production. Only acreage in CRP is considered to be in actual production when it is, in fact, not in production. Therefore, the 5 acres of corn and the 3 acres of CRP are in production. Since the tract has only 8 acres in production, the tract will not qualify for PUV since it fails to meet the agricultural size requirement.

Chapter 8

Conservation Easements

[Primary Statutes: G.S. 105-277.3(d1)]

I. Background

Conservation easements come in varying forms and restrict property rights based on the particular desires of the person granting the easement. Some easements are therefore more restrictive than others. Some prevent development but allow all levels of farming and forestry. Others will not even allow farming or the cutting of timber.

Therefore, it is possible for a property owner to convey a restrictive conservation easement and still qualify for present-use value, **without any special provisions**, if the easement allows the owner to continue to farm or timber the land for commercial production under a sound management program designed to obtain the greatest net return from the land.

The present-use value program has historically been a program that provided preferential tax treatment for land that was actively engaged in the commercial production of agricultural, horticultural, or forestry products. Sound management required that the property be under a program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement. The reference to conservation is to ensure the wise use of the land while in production.

Historically, those easements that restricted farming and forestry on present-use value land were in conflict with the clear commercial intent of the present-use value statutes. As a result, properties encumbered with such easements were disqualified from present-use value and the deferred taxes were due and payable.

II. Exception for Certain Qualifying Easements

A. Requirements

Effective for the 2010 tax year, the General Assembly revised the original special provision (effective January 1, 2003) that allows present-use value properties encumbered with certain qualifying conservation easements to continue in the present-use value program without regard to actual production or income requirements. The following are the requirements effective as of January 1, 2010:

1. The easement must be placed on the property on or after January 1, 2003, the effective date of the original enabling legislation.

2. The property must be in present-use value at the time the easement is placed on the property.

3. The property must be legitimately receiving present-use value. If the property is in present-use value at the time the easement is conveyed but does not actually qualify for present-use value, the property should be disqualified. Therefore the special provisions described in this chapter would not apply.

4. The easement must be enforceable and must meet the qualifications for the conservation income tax credit. This determination should be made by the Department of Environment and Natural Resources.

5. Effective for easements donated on January 1, 2010 or later, the taxpayer may not receive more than 75% of the fair market value of the donated property interest in compensation. In other words, the taxpayer must donate at least 25% of the market value of the easement.

B. Special Provisions

If the property and the conservation easement meet all of the above requirements, the following special provisions apply to **that part of the property that is subject to the easement**:

1. The property will remain in present-use value and no deferred taxes are due.

2. The property is no longer subject to production requirements.

3. The property is no longer subject to income requirements.

4. The property is probably no longer subject to the size requirements. This provision is not stated in the statutes but seems to be consistent with the intent.

5. If the property is transferred, the additional ownership requirements on the conditions of the transfer do not apply. For instance, the property does not have to transfer to a relative, or be the owner's place of residence, or transfer to a member of the business entity if transferring from a business entity.

6. However, the provision in #5 above does not remove the requirement that the property be owned by a **qualifying owner**. It only means that a new qualifying owner does not have to meet the additional ownership requirements in G.S. 105-277.3(b) and (b1). The new owner must be an owner that meets the definition of individually owned in G.S. 105-277.2(4). As noted in *Chapter 2: Ownership Requirements, Subchapter I: Qualifying Forms of Ownership*, this Guide uses the non-statutory term "qualifying owner" as a proxy for "individually owned" since the latter term can be misinterpreted to require ownership only by individuals.

7. If transferred to a new owner, a new application would need to be filed by the new owner stating its desire for the property to remain in the present-use value program. The application must be filed within 60 days of the date of transfer or the property will become disqualified. The present-use value program is a voluntary program with tax consequences and the tax assessor cannot make the participation decision for the new owner.

Overlapping Provision

If a conservation easement meets all of the above requirements but does not restrict farming or forestry, the property owner may not need these special provisions if the owner wishes to continue farming the property. However, the provisions are available if the owner should subsequently desire to stop production on the easement acreage.

Additional Points

- The provisions described in this chapter apply only to the part of the property that is subject to the easement.

- The qualifying easement land is not required to be in production. Also, the easement land is not considered to be in actual production, and, therefore, does not count toward the minimum size requirement for classification of non-easement land. Only land enrolled in the Conservation Reserve Program can be considered to be in actual production when it is actually not in production (see *Chapter 7: Conservation Reserve Program*).

- The remainder of the tract that is not subject to the easement must continue to meet all the requirements for present-use value classification. Failure to do so will result in the disqualification of the non-easement land and the deferred taxes on the non-easement land will become due and payable.

- Because easements often border and include rivers and streams, it is likely that an easement will bisect an existing tract, resulting in land on either side of the easement that is in production but that cannot meet present-use value requirements on its own. If the ownership of all the land remains the same, including the easement land, it is recommended that the land on either side of the easement be considered together for qualification purposes. This is consistent with the recommendation that contiguous parcels constitute one tract. Therefore, all land in production on the tract can count toward the qualification requirements.

Conservation Easement Examples

8-1 Owner has a 30-acre tract in agricultural PUV and all acreage is planted in crops. The owner received 100% compensation for a conservation easement placed on the property. The easement prohibits all development but allows all forms of commercial agriculture.

Property will continue to qualify for PUV if the owner continues to farm the property. Since the owner received 100% compensation for the easement, the owner will have to continue to farm the property to retain PUV. The owner is not eligible for the additional provisions for certain conservation easement property because the owner did not donate at least 25% of the fair market value of the easement.

8-2 Owner has a 30-acre tract in agricultural PUV and all acreage is planted in crops. Conservation easement is fully donated on the property, and the easement prohibits all development but allows all forms of commercial agriculture. The easement qualifies for the conservation tax credit.

Property will continue to qualify for PUV. Since the owner donated at least 25% of the fair market value of the easement, the owner may continue to farm the property or may elect to cease farming. The owner is eligible for the additional provisions for certain conservation easement property because the easement was at least 25% donated and qualifies for the conservation tax credit. Therefore, the owner may choose to discontinue farming and will still qualify for PUV.

8-3 Owner has a 30-acre tract in agricultural PUV and all acreage is planted in crops. The owner received 100% compensation for a conservation easement placed on the property. The easement prohibits all development and also prohibits all forms of commercial agriculture.

Property will be disqualified from PUV. The owner cannot continue to farm the property and therefore cannot qualify under the standard commercial production criteria. Additionally, the owner is not eligible for the additional provisions for certain conservation easement property because the owner did not donate at least 25% of the fair market value of the easement.

8-4 Owner has a 30-acre tract in agricultural PUV and all acreage is planted in crops. Conservation easement is fully donated on the property, and the easement prohibits all development and also prohibits all forms of commercial agriculture. The easement qualifies for the conservation tax credit.

Property will continue to qualify for PUV. The owner cannot continue to farm the property and therefore cannot qualify under the standard commercial production criteria. However, since the easement was at least 25% donated and qualifies for the conservation tax credit, the owner is eligible for the additional provisions for certain conservation easement property. The owner does not have to continue to farm the property.

8-5 Owner has a 30-acre tract in agricultural PUV and all acreage is planted in crops. The owner received 85% compensation for a conservation easement placed on the property. The easement prohibits all development and also prohibits all forms of commercial agriculture.

Property will be disqualified from PUV. The owner cannot continue to farm the property and therefore cannot qualify under the standard commercial production criteria. Additionally, the owner is not eligible for the additional provisions for certain conservation easement property because the owner did not donate at least 25% of the fair market value of the easement.

8-6 Owner has a 30-acre tract in agricultural PUV and all acreage is planted in crops. A new survey divides the tract into two parcels, a 20-acre parcel and a 10-acre parcel. An easement will be fully donated on the 20-acre parcel. A second easement will be sold for full market value by separate deed on the second 10-acre parcel. Both easements prohibit all development and also prohibit all forms of commercial agriculture.

Since there are two separate easements which are conveyed by separate deeds on two separate parcels, it is possible to distinguish the property on which the easement has met the 25% donation requirement. The 20-acre parcel with the fully donated easement will continue in PUV. The 10-acre parcel will be disqualified from PUV and deferred taxes will be due.

8-7 Owner has a 30-acre tract that is not in agricultural PUV and all acreage is planted in crops. Conservation easement is fully donated on the property and the easement prohibits all development and also prohibits all forms of commercial agriculture. The easement qualifies for the conservation tax credit.

Property will not be able to qualify for PUV. The owner cannot continue to farm the property and therefore cannot qualify under the standard commercial production criteria. Additionally, the owner is not eligible for the additional provisions for certain conservation easement property because the property must be in PUV at the time the easement was donated.

8-8 Property that is in PUV has been subjected to a fully donated conservation easement that qualifies for the conservation tax credit. The land is no longer required to be in actual production. The owner transfers the property to an LLC. The principal business of the LLC is shopping center construction.

The property must continue to be "individually owned." Therefore, the LLC must meet the requirements for qualifying business entities as defined under the "individually owned" definition in G.S. 105-277.2(4). Since the principal business of the LLC is not agriculture, horticulture, or forestry, the LLC will not meet the definition of a qualifying business entity.

If the LLC had met the definition of individually owned, then it could take ownership without being subject to the Standard Ownership Requirements (such as length of ownership) or to the Exceptions to the Standard Ownership Requirements (such as Continued Use). The LLC would need to file an application within 60 days of the date of transfer.

8-9 Property has been subjected to a fully donated conservation easement that qualifies for the conservation tax credit. The land is no longer required to be in actual production. The owner transfers the property to an individual.

The property must continue to be "individually owned." Since an individual meets the definition of "individually owned" as set out in G.S. 105-277.4, the individual can take ownership without being subject to the Standard Ownership Requirements (such as length of ownership, transfer to relative, and place of residence) or to the Exceptions to the Standard Ownership Requirements (such as Continued Use).

The new owner would still need to file a new application within 60 days of the date of transfer.

8-10 Tract is 25 acres and is in forestry PUV. Subsequently, 10 acres have been subjected to a fully donated conservation easement that qualifies for the conservation tax credit. The 10 acres are no longer required to be in actual production to retain PUV classification.

The 10 acres will continue to qualify for PUV but the remaining 15 acres may or may not continue to qualify. Although the 10 acres are not required to be in actual production, they are not considered to be in actual production if they are, in fact, not in actual production. Only land enrolled in CRP is given this particular treatment.

If the easement allows the commercial production of timber and the owner continues to manage the entire 25 acres accordingly, the entire tract will continue to qualify.

If the easement allows the commercial production of timber but the owner chooses to stop managing the 10 acres accordingly, the 10 acres will continue to qualify but the remaining 15 acres will be disqualified from PUV. The tract only has 15 acres in production for the commercial production of timber, and it cannot meet the forestry size requirement.

If the easement does not allow the commercial production of timber, the 10 acres will continue to qualify but the remaining 15 acres will be disqualified from PUV. The tract only has 15 acres in production for the commercial production of timber, and it cannot meet the forestry size requirement.

Chapter 9

Exception for Turkey Disease

[Primary Statutes: G.S. 105-277.3(e)]

As a result of some previous issues with the turkey disease, Poult Enteritis Mortality Syndrome, the General Assembly made special provisions for this situation.

Agricultural land is considered to be in actual production and to meet the minimum gross income requirements if it meets all of the following conditions.

1. The land was in actual production for turkey growing within the preceding two years and qualified for present-use value while it was in actual production.

2. The land was taken out of actual production for turkey growing solely for health and safety considerations due to the presence of Poult Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.

3. The land is otherwise eligible for present-use value.

This provision only applies to two-year periods at a time since the land had to be in production within the preceding two years. If the land is taken out of production for more than two years, it cannot have been in production within the preceding two years as required, and therefore the provisions of this exception would not apply.

Turkey Disease Examples

9-1 Owner is currently receiving agricultural PUV for turkey production. The turkey disease, Poult Enteritis Mortality Syndrome, is discovered among the owner's turkey population. The owner ceases turkey production immediately and therefore has no income to report. The owner resumes turkey production in two years and again is able to generate sufficient income to meet the income requirement.

The property will continue to qualify for PUV during the two years that production has been halted. By statutory direction, the land is considered to be in actual production and to meet the minimum gross income requirement.

9-2 Owner is currently receiving agricultural PUV for turkey production. The turkey disease, Poult Enteritis Mortality Syndrome, is discovered among the turkey population in a neighboring county. The owner ceases turkey production immediately and therefore has no income to report. The owner resumes turkey production in two years and again is able to generate sufficient income to meet the income requirement.

The property will continue to qualify for PUV during the two years that production has been halted. By statutory direction, the land is considered to be in actual production and to meet the minimum gross income requirement. The statutes allow the owner to halt production and still qualify if the disease is found in a "neighboring" county. This may not necessarily be the same as an "adjacent" county. It seems that, if the disease is located close enough that it is prudent to halt production, then it is not necessary that the disease be limited to location in an "adjacent" county.

9-3 Owner is currently receiving agricultural PUV for turkey production. The turkey disease, Poult Enteritis Mortality Syndrome, is discovered among the owner's turkey population. The owner ceases turkey production immediately and therefore has no income to report. The owner resumes turkey production in four years and again is able to generate sufficient income to meet the income requirement.

The property will continue to qualify for PUV during the first two years that production has been halted. By statutory direction, the land is considered to be in actual production and to meet the minimum gross income requirement if the land was in **actual** production for turkey growing within the preceding two years. The requirement is not that the land was **considered** to be in actual production for turkey growing within the preceding two years.

If the land is taken out of production for more than two years, it cannot have been in actual production within the preceding two years as required, and therefore the provisions of this exception would not apply. If land is taken out of production for more than two consecutive years due to turkey disease, the deferred taxes would be due in the third consecutive year that the land was not in production.

Chapter 10

Annexation of Present-Use Value Land

[Primary Statutes: G.S. 160A-58.54, G.S. 160A-58.55, G.S. 105-277.4(b)]

"Annexation Reform" legislation enacted in 2011 brought substantial changes both to the process of annexation and to its interaction with the PUV program.

I. Involuntary annexation

A. Overview & Prior Law

Involuntary annexation is the typical annexation process, by which a municipality (city/town/village) decides to extend its boundaries to include adjacent, contiguous properties. "Contiguous" is an important term, because a municipality cannot normally jump over one property to annex another without special authorization from the General Assembly.

Under prior law, PUV properties could be annexed, but those property owners did not pay taxes to (or get services from) the municipality, unless and until the property came out of the PUV program. However, because the PUV property was still technically annexed, the municipality could continue its expansion to other property which was contiguous to the PUV property. In these situations, the PUV property became sort of a bridge to allow the annexation of additional property by the municipality.

It is no longer necessary for a property to be removed from PUV in order to be "fully" annexed—that is, to become both liable for taxes and entitled to services. Municipal taxes on an annexed property that remains in PUV will be based on the present-use value, and deferred taxes will need to be accounted for, just as with county taxes. If an annexed property comes out of PUV, rollback taxes will become due for both the county and the municipality.

B. Consent of Property Owner

As a result of the 2011 annexation law revisions, PUV property can no longer be annexed without the written consent of the owner. When informed of the annexation resolution and the affected property owners, the assessor is now required to send a list of affected parcels to the Board of Elections, which will prepare petitions for the affected property owners to sign, indicating their opposition to annexation.

Furthermore, other types of property deemed by statute to be used for "bona fide farm purposes" are also protected from annexation without the owner's consent. Therefore, a property which is removed from the PUV program after the annexation does not automatically become subject either to annexation or municipal taxation. As long as the property owner can provide one of the statutory forms of proof, the property will still be considered used for bona fide farm purposes, and will still be protected from involuntary annexation.

The statutory forms of evidence to establish use for bona fide farm purposes are provided in G.S. 153A-340(b)(2)(a)*****:

a. A farm sales tax exemption certificate issued by the Department of Revenue.
b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
d. A forest management plan.
e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.

***These items are not to be used for purposes of determining whether a property is eligible for participating in the PUV program. For property tax purposes, they are relevant only for determining whether a property which loses PUV status will automatically become subject to annexation and municipal taxation.**

Because PUV and other farm property owners can now prevent the annexation of their property, it is expected that this revision will effectively put an end to annexation "bridging" by municipalities.

C. Effective Date

Previously, the effective date of annexation could be any day of the year, with the result being that the tax liability on an annexed property would often have to be prorated, depending on when the annexation became effective during the July 1-June 30 fiscal year. Annexations which are initiated on or after July 1, 2011 must now have June 30 as their effective date, which will eliminate the need to prorate municipal tax bills.

II. Voluntary Annexation

In some situations, property owners may wish to petition for annexation by a municipality. There are somewhat different procedures involved, but it is useful to note that the above-mentioned restrictions on forced annexations don't apply to voluntary annexations. The annexed properties don't have to be contiguous with municipal boundaries, and any effective date can be selected. Consent is not an issue, since the property owners have sought to be annexed.

Annexation Examples

10-1 Property is currently in PUV and is not in the city limits. City proposes annexing several properties, including the PUV tract.

The PUV tract will be annexed into the city only with the written consent of the owner.

10-2 Property is currently in PUV and is not in the city limits. City proposes annexing several properties, including the PUV tract. The owner decides that it wishes to pay city taxes and receive city services.

With the owner's written consent, the property will be annexed without requiring removal from the PUV program. The annexation becomes effective on June 30 of the year specified in the annexation ordinance. As of the effective date, the owner becomes both liable for city property taxes (based on the reduced present-use value), and eligible for city services.

10-3 A city proposes annexing several properties, including a large PUV tract with a valuable house. The owner refuses to consent to annexation. The city requests that the assessor split the property to create a separate tax parcel for the homesite. This would allow the city to tax the homesite parcel, since the house and its homesite acreage could not qualify for PUV or, presumably, for any other "bona fide farm purpose."

The assessor should deny this request by the city. There is no provision in the statutes that allow an assessor to arbitrarily create a separate tax parcel to facilitate favorable tax situations for the city.

If there is a publicly recorded document (plat, deed, etc.) that justifies the separate parcel, the assessor may do so.

Still, it would likely be difficult for the city to establish that the owner's consent was not required as to the house, since the statutory forms of evidence establishing use for bona fide farm purposes are not necessarily tied to a specific tax parcel.

10-4 A landowner with property in PUV joins with other area property owners in a petition to be annexed into a nearby municipality.

Except in certain situations, the municipality is not required to grant the petition. If granted, however, the effective date of the annexation can be set at any date desired by the municipality, and the municipality tax bill which results from the annexation will have to be prorated if the effective date is anything other than June 30.

10-5 A municipality adopts an annexation ordinance. An affected landowner with property in PUV refuses consent to annexation. Several years later, the landowner requests to be annexed and to receive services from the municipality.

If the annexation request is granted, the property will be annexed without requiring removal from the PUV program. The annexation becomes effective when the request is granted. As of the effective date, the owner becomes both liable for city property taxes (based on the reduced present-use value), and eligible for city services. The municipality tax bill which results from the annexation will have to be prorated if the effective date is anything other than June 30.

Chapter 11

Application for Present-Use Value

[Primary Statutes: G.S. 105-277.4(a) and (a1)]

The present-use value program is a **voluntary** program that provides the owner with preferential tax treatment if the owner and the property meet the eligibility requirements. Acceptance into the program also requires that the owner and the property continue to meet the requirements, and failure to do so is generally subject to financial consequences.

Therefore, every owner who wishes to claim the benefits of present-use value must file a **proper** and **timely** application with the tax assessor's office. Under limited conditions, an untimely application may be filed.

I. Requirements for a Proper Application

A **proper** application must:

- Clearly show that the property comes within one of the three present-use value classifications.
- Contain any other relevant information required by the assessor to properly appraise the property at its present-use value.
- Be filed in the county in which the property is located.

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II. Requirements for a Timely Application

There are two major categories of applications:

- Initial applications where the property was not in present-use value at the time of the transfer of the property, or where the property was removed from present-use value as a result of the transfer.

- Applications required due to a transfer of a property already in present-use value where the new owner seeks continued and immediate classification.

A. Timely Initial Application

An initial application is needed when the property is not currently in present-use value. This may occur when:

- The property has never been in present-use value.

- The transfer to the current owner resulted in removal from the present-use value program.

Initial applications must be filed during one of the two following time periods:

1. Regular Listing Period—Most initial applications must be filed during the regular listing period, which typically is the month of January. The statutes require that ownership be determined as of January 1, therefore an applicant must be the record owner as of January 1 for the year for which application is made.

2. Within 30 Days of a Notice of Change in Value—If the tax assessor sends a notice of change in value on a property not currently in use value, the owner has 30 days from the date shown on the notice of change in value to timely file an initial application for the tax year for which the valuation change was made. The notice may be due to a countywide revaluation or a specific change to the property in a non-revaluation year. The notice may be due to a change in land values or building values. Either of these notices will open a 30-day time period for the owner to timely file an initial application for present-use value.

There are situations where the property has been removed from the program and the deferred taxes are due and payable, but the new owner may subsequently be immediately eligible for present-use value. Since removal from the program requires that the property be taxed for the year of the disqualification as if the property was not classified for that year, a new owner cannot qualify for the program in the year of disqualification. The property cannot be both disqualified and qualified for the same year. Immediate eligibility means that the new owner may file an **initial** application for the next year following the year of disqualification.

B. Application Required Due to Transfer of Property Already in Present-Use Value

There are several situations where a transfer of property already in present-use value can occur that will not necessarily result in the disqualification of the property from present-use value. Examples of those situations are:

- Transfer of the property to a relative.
- Transfer from a husband and wife as tenants by the entirety to the husband and/or wife as individuals.
- Transfer from a husband and/or wife as individuals to the husband and wife as tenants by the entirety.
- Transfer from a business entity to one or more of its members.
- Transfer from a trust to a beneficiary of the trust.
- Transfer from a member of a qualifying business entity to the business entity.
- Transfer from a creator of a qualifying trust to the trust.
- Transfer to an unrelated party but where the new ownership is a qualifying form of ownership and the new owner meets the requirements for Continued Use. (See *Chapter 2: Ownership Requirements, Subchapter II: Requirements for Qualifying Owners, Section B: Two Exceptions to the Standard Ownership Requirements, Subsection 1: Exception for Continued Use*)

Application required due to transfer of the land must be filed within 60 days of the date of the property's transfer.

If the new owner does not file a new application within 60 days of the property's transfer, the property will be removed from the present-use value program for failure to file a timely application.

If the previous owner chose to remove the property from present-use value prior to the transfer, the new owner will have to file an initial application for the following year during the next listing period. The new owner will have to meet all the requirements for initial qualification, and may or may not be immediately eligible for that year depending on the specifics of the situation.

III. Untimely Application

A. Untimely Initial Application

An initial application is untimely if it is filed after the listing period of the year for which the benefit is requested, or if it is filed more than 30 days after a notice of a change in value.

Untimely applications may be approved:

1. By the Board of Equalization and Review, or, if that board is not in session, by the Board of County Commissioners, and

2. If the applicant can show good cause for failure to file a timely application.

Untimely applications apply only to property taxes levied in the calendar year in which the untimely application is filed. Since initial applications are always for properties that are not currently in the present-use value program, the taxes will always be levied in the same calendar year that the timely application would have been due (i.e. there are no deferred tax issues).

Therefore, untimely **initial** applications must be filed before the end of the same calendar year in which the timely application should have been filed.

B. Untimely Application Required Due to Transfer of Property Already in Present-Use Value

An application for continued eligibility for property already in present-use value is untimely if it is filed more than 60 days after the date of the property's transfer. For property tax purposes, the date of the property's transfer will be the date that the deed of transfer is recorded in the county Register of Deeds Office.

Untimely applications apply only to property taxes levied in the calendar year in which the untimely application is filed.

Whenever a rollback of deferred taxes is billed in any calendar year, the taxes are considered levied in that calendar year. Notice of removal from PUV does not suffice in establishing the levy of the taxes; it is necessary to actually bill the deferred taxes to create the levy. For application purposes, it is irrelevant which fiscal year the collector considers the rollback to be in since the untimely application only concerns itself with the calendar year in which the taxes were levied.

Therefore, untimely applications required due to transfer of property already in present-use value may be filed in any calendar year in which a rollback is billed and may apply to the years included in the rollback.

IV. Signing the Application

The present-use value program is a voluntary program that imposes specific requirements on the owner, as well as specific financial consequences if those requirements are not met. Therefore, it is vital that all owners sign the application for present-use value. The following are guidelines for who should sign the application:

- Tenancy in Common—All tenants should sign the application.

- Husband and Wife as Tenants in Common—Both the husband and wife should sign the application.

- Husband and Wife as Tenants by the Entirety—Either the husband or wife may sign the application. It is preferred that both husband and wife sign so

that both are aware that the property is receiving preferential tax treatment with resulting responsibilities on the owner.

- Corporations—Application should be signed by an officer of the corporation who has authority to make financial decisions for the corporation.

- Limited Liability Companies—Application should be signed by an officer of the company who has authority to make financial decisions for the corporation.

- Partnerships—All partners, both general and limited, should sign the application.

- Trusts—Application should be signed by the trustee for the trust.

Application Examples

11-1 Owner has owned the property for 10 years and the property has never been in PUV. Owner filed an application for PUV on January 15 of this year.

Initial applications are timely if filed during the regular listing period. The regular listing period runs from January 1 through January 31, at a minimum.

Owner has timely filed the application for PUV for the current year.

11-2 Owner has owned the property for 10 years and the property has never been in PUV. Owner filed an application for PUV on February 20 of this year. The county has granted a general extension of the listing period until the end of February.

Initial applications are timely if filed during the regular listing period. The regular listing period includes any general extensions of the listing period.

Owner has timely filed the application for PUV for the current year.

11-3 Owner has owned the property for 10 years and the property has never been in PUV. Owner filed an application for PUV on February 20 of this year. The county has granted the owner an individual extension of the listing period until the end of February.

Initial applications are timely if filed during the regular listing period. The regular listing period includes any individual extensions of the listing period.

Owner has timely filed the application for PUV for the current year.

11-4 Owner has owned the property for 10 years and the property has never been in PUV. The county conducted a revaluation of all real property in the county effective January 1 of this year. The revaluation notices were sent out on February 15 of this year. Owner filed an application for PUV on March 10 of this year.

There have been no general extensions of the listing period and the owner did not request an individual extension of the listing period.

If the tax assessor sends a notice of change in value on a property not currently in use value, the owner has 30 days from the date shown on the notice of change in value to timely file an initial application for the tax year for which the valuation change was made. The notice may be due to a countywide revaluation or a specific change to the property in a non-revaluation year. The notice may be due to a change in land values or building values. Each of these notices will open a 30-day time period for the owner to timely file an initial application for present-use value.

Owner filed the application within 30 days of the date of notice of change in value and has timely filed the application for PUV for the current year.

11-5 Owner purchased the property last year but the prior owner voluntarily removed the property from PUV prior to transfer. The deferred taxes were paid at closing. The owner established the property as his place of residence prior to January 1 of this year.

The new owner may be immediately eligible for PUV this year if certain requirements are met. A timely application should be filed during the regular listing period following the year of removal from PUV.

11-6 Owner purchased the property last year but the prior owner voluntarily removed the property from PUV prior to transfer. The deferred taxes were paid at closing. The owner owns other property in the county already in PUV under the same classification and ownership as the purchased property.

Since the property is no longer in PUV, the new owner must file an initial application during the regular listing period following the year of disqualification and may qualify under the Exception for Expansion of Existing Unit. The owner is not filing an application required due to transfer of the property, where the application should be filed within 60 days of the date of transfer. The new owner is filing an application for a property that is no longer in PUV, and therefore, is filing an initial application. In this case, the owner has been granted immediate eligibility rights, because of the pre-existing ownership of other PUV tracts, which can be claimed by filing an initial application during the regular listing period following the year of disqualification.

11-7 Property is in PUV and transfers from father to son on May 20 of this year. Son files a new application on June 30 of this year.

This transfer is a qualifying transfer per G.S. 105-277.3(b)(2) but a new application is required to maintain PUV status. New applications required due to transfer of the land must be submitted within 60 days of the date of the property's transfer to be considered timely.

Son timely filed the new application.

11-8 Property is in PUV and transfers from father to son on December 15 of last year. Son files a new application on February 1 of this year.

This transfer is a qualifying transfer per G.S. 105-277.3(b)(2) but a new application is required to maintain PUV status. New applications required due to transfer of the land must be submitted within 60 days of the date of the property's transfer to be considered timely. The 60 day time period may extend into the next calendar year for those transfers occurring in November and December.

Son timely filed the new application.

11-9 Property is in PUV and transfers from a business entity to one of its members on May 20 of this year. Member files a new application on June 30 of this year.

This transfer is a qualifying transfer per G.S. 105-277.3(b)(3) but a new application is required to maintain PUV status. New applications required due to transfer of the land must be submitted within 60 days of the date of the property's transfer to be considered timely.

Member timely filed the new application.

11-10 Property is in PUV and transfers from an individual to a business entity on May 20 of this year. The individual is a member of the business entity. Business entity files a new application on June 30 of this year.

This transfer is a qualifying transfer per G.S. 105-277.3(b1) but a new application is required to maintain PUV status. New applications required due to transfer of the land must be submitted within 60 days of the date of the property's transfer to be considered timely.

Business entity timely filed the new application.

11-11 Property is in PUV and transfers from an individual to a qualifying trust on May 20 of this year. The individual is the creator of the trust. Trustee of the trust files a new application on June 30 of this year.

This transfer is a qualifying transfer per G.S. 105-277.3(b1) but a new application is required to maintain PUV status. New applications required due to transfer of the land must be submitted within 60 days of the date of the property's transfer to be considered timely.

Trustee of the trust timely filed the new application.

11-12 Property is in PUV and transfers from husband and wife (as tenants by the entirety) to the wife on May 20 of this year. Wife files a new application on June 30 of this year.

This transfer is a qualifying transfer per G.S. 105-277.3(b)(2) but a new application is required to maintain PUV status. New applications required due to transfer of the land must be submitted within 60 days of the date of the property's transfer to be considered timely.

Ownership by husband and wife as tenants by the entirety is a separate ownership than ownership by either the husband or wife separately. Transfers between the different combinations of ownerships involving the husband and wife should be considered qualifying transfers per G.S. 105-277.3(b)(2). However, the transfers require the filing of new applications for continued PUV classification.

Wife timely filed the new application.

11-13 Property is in PUV and transfers to a new owner who wishes to immediately qualify using the Exception for Continued Use. Property transfers on

January 5 of this year. The new owner files a new application on February 1 of this year.

This transfer is a qualifying transfer per G.S. 105-277.3(b2)(1) but a new application is required to maintain PUV status. New applications required due to transfer of the land must be submitted within 60 days of the date of the property's transfer to be considered timely.

The new owner timely filed the new application.

11-14 Father owns tract of land in PUV but transfers the property to his son. Father retains a life estate on the tract. Son is the remainderman.

The owner of the life estate is considered the owner of the real property. Therefore, the father remains the owner of the property and the property continues to qualify. The assessor might wish to request that the father file an updated application indicating his status as owner of the life estate, however, the statutes do not require it.

11-15 Property has been subjected to a fully donated conservation easement that qualifies for the conservation tax credit. The land is no longer required to be in actual production. The owner transfers the property to an unrelated individual on August 5 of this year. The new owner filed a new application on September 23 of this year.

The property must continue to be "individually owned." Since an individual meets the definition of "individually owned", the individual can take ownership without being subject to the Standard Ownership Requirements (such as length of ownership, transfer to relative, and place of residence) or to the Exception for Continued Use. See *Chapter 8: Conservation Easements, Subchapter II: Exception for Certain Qualifying Easements, Section B: Special Provisions*.

This transfer is a qualifying transfer but a new application is required to maintain PUV status. Applications required due to transfer of the land must be submitted within 60 days of the date of the property's transfer to be considered timely.

The new owner timely filed the new application.

11-16 Owner has owned property for 10 years and the property has never been in PUV. Owner filed an application for PUV on July 15 of this year.

Initial applications are timely if filed during the regular listing period. The regular listing period runs from January 1 through January 31, if no extensions of the listing period have been granted.

Owner has not timely filed the application for PUV for the current year.

Untimely applications apply only to property taxes levied in the calendar year in which the untimely application is filed. Since initial applications are always for properties that are not currently in the present-use value program, the taxes will always be levied in the same calendar year that the timely application would have been due (i.e. there are no deferred tax issues).

Therefore, untimely initial applications must be filed before the end of the same calendar year in which the timely application should have been filed.

Untimely applications may be approved by the Board of Equalization and Review, or, if that board is not in session, by the Board of County Commissioners. The applicant must show good cause for failure to file a timely application.

11-17 Owner has owned property for 10 years and the property has never been in PUV. Owner filed an application for PUV on January 15 of this year and requested PUV classification for last year.

Untimely applications apply only to property taxes levied in the calendar year in which the untimely application is filed. The application cannot be considered since last year's taxes were not levied in this calendar year. The owner can file an untimely application for this year.

11-18 Property in PUV transfers from father to son on May 1 of this year. Son fails to file a new application within 60 days of the date of transfer. The assessor notices the failure to file a new application and bills the deferred taxes resulting from the disqualification. The deferred taxes are billed on October 8 of this year.

Untimely applications apply only to property taxes levied in the calendar year in which the untimely application is filed.

Whenever a rollback of deferred taxes is billed in any calendar year, the taxes are considered levied in that calendar year. Therefore, untimely applications required due to transfer of property already in present-use value may be filed in any calendar year in which a rollback is done and may apply to the years included in the rollback.

Son has until the end of the current calendar year to file an untimely application.

11-19 Property in PUV transfers from father to son on August 25 of last year. Son fails to file a new application within 60 days of the date of transfer. This year the assessor notices the failure to file a new application and bills the deferred taxes resulting from the disqualification. The deferred taxes are billed on July 6 of this year.

Son has until the end of the current calendar year to file an untimely application. The application will apply to the years covered by the billed deferred taxes since those deferred taxes were levied in this calendar year.

11-20 Property transfers from father to son on August 25 of two years ago. Son fails to file a new application within 60 days of the date of transfer. The assessor has not yet noticed the failure to file a new application and the property is still receiving PUV.

Untimely applications apply only to property taxes levied in the calendar year in which the untimely application is filed. The assessor has not yet levied the deferred taxes and the time limit for the untimely application will not be established until the deferred taxes are billed.

Therefore, the son currently has an undetermined final deadline to file an untimely application. Until the assessor bills (levies) the deferred taxes, the son may file an untimely application at any time. Once the assessor bills (levies) the deferred taxes, the son has until the end of the calendar year in which the deferred taxes are billed to file an untimely application.

11-21 Property transfers from father to son on August 25 of last year. Son fails to file a new application within 60 days of the date of transfer. On December 3 of

last year, the assessor notices the failure to file a new application and sends notice to the taxpayer of pending disqualification from PUV. However, the assessor bills the deferred taxes on January 15 of this year.

Whenever a rollback of deferred taxes is billed in any calendar year, the taxes are considered levied in that calendar year. Notice of removal from PUV does not suffice in establishing the levy of the taxes; it is necessary to actually bill the deferred taxes to create the levy.

Son has until the end of the current calendar year to file an untimely application.

Chapter 12

Calculation of Present-Use Value

[Primary Statutes: G.S. 105-277.4(b) and (c), G.S. 105-277.6, G.S. 105-277.7, G.S. 105-317(c), G.S. 105-289(a)(5) through (6)]

Each property that qualifies for present-use value classification will be appraised at both its market value and its present-use value.

Market value is the estimated price at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the property.

Present-use value is the value of land in its current use as agricultural land, horticultural land, or forestland based solely on its ability to produce income and assuming an average level of management.

Upon receipt of a properly executed application, the assessor must appraise the property at its present-use value as established in the schedule of values adopted for the most recent county revaluation. Present-use value is usually much less than market value, and the difference between the market value and the present-use value is maintained in the tax assessment records as **deferred taxes**. When land becomes disqualified from present-use value, the deferred taxes for the current year and the three previous years with interest will usually become due and payable.

I. The Schedule of Values

In preparation for each county's periodic revaluation of real property as required by statute, counties must develop and adopt a schedule of values, standards, and rules (more commonly known as the Schedule of Values).

Separate schedules are developed for valuing property at its market value and for valuing property at its present-use value. The two schedules may be adopted on the same timeline but they should be adopted by separate votes with separate

orders of adoption in case the public should challenge either schedule. The county must use these schedules of values for determining market value and present-use value until new schedules are adopted for the next revaluation.

A. Market Value Schedules

Since market value is dependent on many factors such as location and zoning, the market schedule of values usually specifies a range that the elements which comprise market value should fall within, but does not indicate specific values for specific properties. The assessor must appraise the market values within the ranges provided in the schedule of values.

Improvements are not eligible for present-use value and must be appraised at market value.

B. Present-Use Value Schedules

Present-use value is based solely on the value of land in its current use as agricultural land, horticultural land, or forestland and its ability to produce income in that use. Therefore, the present-use value of land is not affected as much by factors such as location and zoning.

More important to present-use value is the productivity of the land for either agricultural, horticultural, or forestry production, and the productivity of the land is very closely tied to soil types. As a result, the present-use schedules of values are usually more specific than the market schedules of values, and often adopt actual rates for specific soil types, rather than a range of rates.

In determining present-use value, the statutes require that:

- Qualifying properties must be valued at present-use value.
- Present-use value must be the value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income and assuming an average level of management.
- Forestland values must be based on its expected net income.

- A rate of nine percent (9%) must be used to capitalize the expected net income of forestland.

- The capitalization rate for agricultural land and horticultural land must be determined by the Use-Value Advisory Board. The rate must be no less than six percent (6%) and no more than seven percent (7%). The current rate is six and one-half percent (6.5%).

- The Use-Value Advisory Board must annually submit a recommended use-value manual to the North Carolina Department of Revenue.

- The North Carolina Department of Revenue must annually prepare and distribute to each assessor the recommended manual, as developed by the Use-Value Advisory Board, who establishes the cash rental rates for agricultural lands and horticultural lands and the net income ranges for forestland.

The assessor is ultimately responsible for establishing the present-use values for the county, but the General Assembly provides the resources to assist in that effort by requiring that a set of recommended values be developed each year. The assessor **must** use the capitalization rates established by statute and **may choose** to adopt the recommended present-use values from the Use-Value Advisory Board.

> Note: Since present-use value is based on a limited portion of the elements of market value, present-use value will likely always be less than market value for any particular property. It is recommended that a statement be included in the present-use value schedules which states that the present-use value will not exceed the market value should the specific circumstance arise where the adopted present-use value rate might actually exceed the market value rate. Otherwise, the situation could exist where the property is being assessed based on a negative value since the difference between market value and present-use value would be negative in that circumstance.

II. Use-Value Advisory Board

The Use-Value Advisory Board (UVAB) is established under the supervision of the Agricultural Extension Service of North Carolina State University and is comprised of the following members:

- Director of the NCSU Agricultural Extension Service (serves as Chair),
- Representative of the Department of Agriculture and Consumer Services,
- Representative of the DENR Division of Forest Resources,
- Representative of the NC A&T Agriculture Extension Service,
- Representative of the North Carolina Farm Bureau Federation, Inc.,
- Representative of the North Carolina Association of Assessing Officers,
- Director of the NCDOR Property Tax Division,
- Representative of the North Carolina Association of County Commissioners, and
- Representative of the North Carolina Forestry Association.

III. UVAB Recommended Use-Value Manual

The Use-Value Advisory Board must annually submit a recommended use-value manual to the North Carolina Department of Revenue, which then prepares and distributes the final version to the county assessors.

The UVAB Manual addresses three major areas:

- Agricultural and Horticultural Values and Capitalization Rates

- Forestland Values

- Evergreens Intended For Use As Christmas Trees

A. Agricultural and Horticultural Values and Capitalization Rates

Agricultural and horticultural land values are based on the capitalization of the estimated cash rental rates for the various classes of soils found in the state.

The North Carolina Department of Revenue, in conjunction with the North Carolina Department of Agriculture, will see that studies of the cash rents for agricultural and horticultural land are conducted periodically. The results are provided to the UVAB to use in establishing the recommend present-use value rates.

The cash rental rates are analyzed with respect to geographic location and soil productivity. As a result, a cash rental rate will be determined for each soil classification.

The soils will be divided into four categories (three productive soils categories and one unproductive soils category). On a larger scale, the soils are grouped by geographic region as determined by the Major Land Resource Area delineations.

The last step is to divide the cash rental rate by the capitalization rate to determine the present-use value. The General Assembly has mandated that the capitalization rate for agricultural and horticultural land must be no less than six percent (6%) and no more than seven percent (7%) but has delegated to the UVAB the authority for setting the actual rate.

The current rate for agricultural and horticultural lands, as set by the UVAB, is six and one-half percent (6.5%).

Agricultural present-use value rates cannot exceed $1,200 as mandated by the General Assembly.

B. Forestland Values

Forestland values are determined by capitalizing the net income ranges for forestland. A five-year rolling average of the income and cost data is used to offset any abrupt changes in the market.

Differing somewhat from agriculture and horticulture, the soils are divided into six categories (five productive soils categories and one unproductive soils category). On a larger scale, the soils are grouped by geographic region as determined by the Major Land Resource Area delineations.

The last step is to divide the net income by the capitalization rate to determine the present-use value. The General Assembly has mandated that the capitalization rate for forestland must be nine percent (9%).

C. Evergreens Intended for Use as Christmas Trees

For horticultural land on which evergreens are grown intended for use as Christmas trees, the North Carolina Department of Revenue is required to:

- Establish an "in lieu of income requirement" until the evergreens are harvested from the land, and

- Establish a gross income requirement for this type of land that differs from other horticultural land.

The UVAB *Use-Value Manual for Agricultural, Horticultural, and Forest Land* contains the Department of Revenue's requirements for horticultural land on which evergreens are produced and intended for use as Christmas trees.

Also see *Chapter 6: Evergreens Intended For Use As Christmas Trees*.

Calculation of Present-Use Value Examples

12-1 The assessor has developed the Schedule of Values in preparation for the next revaluation. Separate schedules have been prepared for market value and for present-use value. The county commissioners will be voting on the adoption of the schedules at their next meeting.

The county commissioners may consider both schedules at the same meeting. However, they should vote on each schedule separately and issue separate orders adopting each schedule. If a taxpayer should choose to appeal the adoption of either schedule, the remaining schedule will not be affected by the appeal and can be used without concern for future adjustment by adverse court decisions.

12-2 In preparing the PUV Schedule of Values, the assessor has analyzed the market and believes that the proper capitalization rate for forestry is 8%.

The assessor must use the statutorily mandated capitalization rate of 9% for forestry.

12-3 In preparing the PUV Schedule of Values, the assessor has analyzed the market and believes that the proper capitalization rate for agriculture and horticulture is 5%.

The General Assembly has established that the capitalization rate for agriculture and horticulture must be no less than 6% and no more than 7%. The General Assembly also requires that the Use-Value Advisory Board must set the actual rate, within the statutory limits. The UVAB has set the current rate at 6.5%.

Even though the current rate is published in the recommended use-value manual, the rate itself is mandated and is not a recommendation.

The assessor must use the statutorily mandated capitalization rate, as currently set for agriculture and horticulture at 6.5% by the UVAB.

12-4 The assessor is preparing the PUV schedule of values and has analyzed the local market for agricultural land. The assessor has reviewed the UVAB recommended cash rents for the county but feels that his analysis of the local market is more accurate.

The assessor is not required to use the UVAB recommended cash rents if the assessor believes the local market data can support different cash rents. Indeed, the assessor does not even have to use cash rents (although it is recommended) if the assessor instead chooses to do an analysis of net income by some other method.

However, the assessor must capitalize the rents or net income at the rate established by the UVAB, currently set at 6.5%.

12-5 The assessor is preparing the PUV schedule of values and has analyzed the local market for agricultural land. The assessor has reviewed the UVAB recommended cash rents for his county and believes that most of the numbers are accurate. However, the county contains some very productive agricultural land which the assessor believes should have a present-use value of at least $1,500.

While the assessor is not required to use the values derived from the capitalized cash rents as recommended by the UVAB, the statutes state that agricultural land present-use values cannot exceed $1,200.

Chapter 13

Disqualification and Removal from Present-Use Value (or Rollback)

[Primary Statutes: G.S. 105-277.4(c) and (d), G.S. 105-277.5, G.S. 40A-6, G.S. 136-121.1]

Overview

Present-use value is a voluntary program that requires compliance with certain rules by the owner in exchange for preferential tax treatment. As long as the owner continues to meet the statutory requirements, the property will remain in present-use value.

However, failure to meet the requirements will result in removal from the program, and, in most instances, the billing of the deferred taxes for the year of disqualification and the three previous years with interest.

I. How a Disqualification Occurs

Land meeting the conditions for classification at present-use value must be taxed on the basis of the value of the land in its present use. The difference between the taxes due on the present-use basis and the taxes that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of the taxing unit or units as deferred taxes.

The deferred taxes become due and payable when the property loses its eligibility as a result of a disqualifying event. A disqualifying event occurs when the land fails to meet any condition or requirement for classification.

The statutes do not provide a list of the disqualifying events or circumstances. If the property no longer meets the conditions or requirements for the program, then the property is removed from the program and the deferred taxes become due and payable. The property must continue to meet the requirements for classification on a continuing basis, not just at the time of application. Whenever a question arises as to continued eligibility, it will be necessary to review all of the conditions and requirements needed for initial and on-going classification.

II. Notice of Change in Use

The owner has the responsibility and duty to notify the assessor of any change that could disqualify all or a part of a tract of land receiving present-use value. Notice to the assessor must include complete information regarding the change and notice must be given before the close of the listing period following the change in use.

Any property owner who fails to notify the assessor of potential disqualifying changes will be subject to a penalty of ten percent (10%) of the total amount of the deferred taxes and interest thereon for each listing period for which the failure to report continues.

While the assessor has every legal right to impose the penalty as provided by the statute, very few assessors, if any, actually impose the penalty. Previous decisions by the assessor to disregard the penalty do not prevent the imposition of the penalty in the future. However, if the assessor does seek to impose the penalty, it should be applied consistently and in compliance with the statutes.

The assessor's choice to disregard the penalty in no way diminishes the obligation of the owner to notify the assessor of any possible disqualifying change, as the statute clearly defines the owner's responsibility to give notice.

III. Disqualifying Events

While the statutes do not provide a specific list of disqualifying events, analysis of the conditions and requirements for classification will help to determine the events and circumstances that will cause a property to fail to meet the conditions and requirements for classification.

Listed below is a partial and illustrative list of many of the reasons why a disqualification may occur.

1. Request by the owner for voluntary removal from the program.

2. Failure to have an approved application.

3. Transfer to a non-relative who does not qualify for the Exception for Continued Use.

4. Transfer to a new owner who may qualify for the Exception for Continued Use but fails to file an application or accept the deferred liability.

5. Transfer to a relative who fails to file an application.

6. Failure to maintain sufficient acreage in production to meet the minimum size requirements.

7. Transfer of a portion of the acreage reduces the remaining acreage in production below the minimum size requirements.

8. Failure to meet the minimum average gross income requirement (agriculture and horticulture only).

9. Failure to provide a sound forestry management plan (when required).

10. Failure to meet sound management requirements for the property.

11. Conservation easement is placed on the property which prohibits commercial production of crops, and the conservation easement does not qualify for the conservation tax credit.

IV. Exception for Wildlife Conservation Land

When an owner of land classified under the present-use value program does not transfer the land and the land becomes eligible for classification as wildlife conservation land, no deferred taxes are due. The deferred taxes remain a lien on the property and the rules of the wildlife conservation program now apply to the land. See *Chapter 16: Wildlife Conservation Program* for more details.

V. Billing of Deferred Taxes

The difference between the taxes due on the present-use basis and the taxes that would have been due on market value basis, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property of the taxpayer. The difference in taxes is carried forward in the records of the taxing unit or units as deferred taxes.

Except as provided later in *Subchapter IX: Exception When Deferred Taxes Are Not Due*, a disqualification from present-use value will result in the billing of the deferred taxes. Two main steps are involved in determining the taxes due when a property is disqualified:

1. Year of Disqualification—The tax for the fiscal year that opens in the calendar year in which the disqualification occurred is computed as if the land had not been classified for that year.

2. Previous Three Years—The deferred taxes for the three fiscal years preceding the year of disqualification are immediately due and payable with interest. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due.

If only a part of the qualifying tract of land fails to meet a condition or requirement for classification, the assessor must determine the amount of deferred taxes applicable to that part and that amount becomes payable with interest as provided above.

Upon the payment of the deferred taxes for the three years immediately preceding a disqualification, all liens arising under this statute are extinguished.

Example of Deferred Tax Billing: Taxpayer sells a present-use value tract in November 2009 to a non-qualifying owner. The assessor removes the present-use value status and issues the rollback bills in November as shown in the table below.

Year	Amt of Deferred Value	Tax Rate	Taxes Before Interest	Initial January 2% Int.	# Months of ¾% Interest	Total ¾% Interest	Total Taxes Due
2009	$100,000	0.70	$700.00	$0.00	0	$0.00	$700.00
2008	$100,000	0.68	$680.00	$13.60	10	$51.00	$744.60
2007	$75,000	0.68	$510.00	$10.20	22	$84.15	$604.35
2006	$75,000	0.69	$517.50	$10.35	34	$131.96	$659.81

Note that if the property had been removed from the present-use value program prior to the 2009 regular billing, the assessor would bill 2009 tax year at market value and only send rollback bills for 2008, 2007, and 2006.

VI. Voluntary Payment of Deferred Taxes

All or part of the deferred taxes that are not yet due and payable may be paid to the tax collector at any time without affecting the property's eligibility for deferral. A partial payment is applied first to accrued interest. Payments are immediately applied to the existing deferred taxes and are not held for application to additional deferred taxes resulting from any future removal from the program.

Payment of all or part of the deferred taxes is not considered a request for voluntary removal from present-use value and should not result in disqualification.

However, as discussed in *Subchapter VII: Voluntary Removal from Present-Use Value*, a request for voluntary removal will result in disqualification and the billing of deferred taxes. It is vitally important that the tax office be completely clear on whether the taxpayer wishes to voluntarily pay the deferred taxes without disqualification or whether the taxpayer wishes to be voluntarily removed from the program, thus resulting in the billing of deferred taxes.

If the taxpayer only wishes to voluntarily pay deferred taxes without disqualification, it is strongly recommended that the counties require the owner or the owner's attorney to submit and sign *Form AV-3: Voluntary Payment of Deferred Taxes Without Requesting Disqualification*.

VII. Voluntary Removal from Present-Use Value

If the taxpayer wishes to voluntarily remove the property from present-use value, it is strongly recommended that the counties require the owner or the owner's attorney to submit and sign *Form AV-6: Request for Voluntary Disqualification from Present-Use Value Classification*.

It is vitally important that the tax office be completely clear on whether the taxpayer wishes to be voluntarily removed from the program, thus resulting in the billing of deferred taxes, or whether the taxpayer only wishes to voluntarily pay the deferred taxes without disqualification.

Once *Form AV-6* has been signed and filed with the tax assessor, the request cannot be rescinded or reversed. The filing of the form results in disqualification. The deferred taxes become due and payable as of the date of disqualification.

The date of disqualification is the date that the form is filed with the tax assessor.

There is no statutory provision for releasing or refunding a tax imposed due to voluntary disqualification, even if voluntary disqualification was requested in error by the owner.

For the very important reasons above, the assessor should only accept *Form AV-6* from the current owner of the property. A potential owner cannot request the removal of property from present-use value when they do not own the property.

VIII. Date of Disqualification

As discussed in *Subchapter I: How a Disqualification Occurs*, the deferred taxes become due and payable when the land fails to meet any condition or requirement for classification.

As discussed in *Subchapter IV: Billing of Deferred Taxes*, the taxes for the year of disqualification are computed as if the property was not in present-use value for that year and the deferred taxes for the preceding three years, with interest, are immediately due and payable.

Instances can arise where a property clearly failed to meet a condition or requirement for classification in a **prior** year but was only recognized by the assessor in the **current** year. The issue is whether the rollback should be done for the current year and three prior years, or whether the rollback should be done for the actual year in which the property failed to meet a condition or requirement for classification and for the three years prior to that year.

For example, a property was transferred to a clearly non-qualifying owner in 2007. The assessor notices the disqualifying transfer in 2009. Is it proper to execute the rollback for 2007, 2006, 2005, and 2004 (with 2008 and 2009 deferred taxes recovered as corrected billings)? Or is it proper to execute the rollback for 2009, 2008, 2007, and 2006 only?

The statutes require that the year in which the property failed to meet a condition or requirement for classification be billed as if the property was not in present-use

value for that year, and the three prior year's deferred taxes with interest are due and payable. The statutes do not set the determining date for the year of the disqualification to be the year in which the assessor **notices** the failure of the property to meet a condition or requirement for classification.

In the example above, the property failed to meet a condition or requirement for classification in 2007. Therefore the rollback should be done for 2007, 2006, 2005, and 2004.

However, caution should be used when the rollback is executed for a prior year of disqualification. The assessor should be able to conclusively prove that the prior year was actually the year in which the property failed to meet a condition or requirement for classification. In subjective areas such as sound management, where it may be difficult to prove exactly when the property failed to meet a condition or requirement for classification, it may be advisable to determine that the current year is the year of disqualification, not an inconclusive prior year.

IX. Exception When Deferred Taxes Are Not Due

If property loses its eligibility for present use value classification **solely** due to one of the following reasons, no deferred taxes are due and the lien for the deferred taxes is extinguished:

1. There is a change in income caused by enrollment of the property in the federal Conservation Reserve Program.

   (For discussion on when enrollment in CRP might result in the billing of deferred taxes, see *Chapter 7: Conservation Reserve Program, Subchapter II: CRP and Present-Use Value, Section C: When Enrollment in CRP Results in Loss of PUV*.)

2. The property is conveyed by gift to a nonprofit organization and qualifies for exclusion from the tax base pursuant to G.S. 105-275(12) or G.S. 105-275(29).

   Since these two statutes require that the property be exclusively used for the stated purposes in order to qualify for exclusion, it seems that the properties must already be used for these purposes at the time the property is transferred to the nonprofit organization. Otherwise, the property cannot

qualify for exclusion under the statutes because it is not being used for the required purposes. It does not appear that the deferred taxes are forgiven merely if the property is transferred to an organization that has future plans (immediate or not) to use the property for the statutory purpose.

There may be infrequent instances where the property can qualify for present-use value and be exclusively used for the required purposes of G.S. 105-275(12) or G.S. 105-275(29). The assessor should question whether the property was properly in present-use value at the time of the transfer if the property was being exclusively used for the required purposes in G.S. 105-275(12) or (29). If the property was not properly in present-use value, the property should be disqualified due to failure to meet the requirements of the present-use value program and the deferred taxes would be due. The provisions of this section would not apply since the property did not lose its eligibility solely due to one of the reasons listed in G.S. 105-277.4(d).

The most likely scenario for the G.S. 105-275(12) exception to the deferred taxes would occur when the taxpayer had previously donated a conservation easement under the provisions of G.S. 105-277.3(d1) which allowed the property to remain in the present-use value program without any production or income requirements. If the taxpayer subsequently began to use the property consistent with the requirements in G.S. 105-275(12), it would then be possible to donate the property to the nonprofit and for the land to qualify under G.S. 105-275(12) at the time of transfer.

3. The property is conveyed by gift to the State, a political subdivision of the State, or the United States.

Exception 2 and Exception 3 above apply to transfer of the property itself (i.e. fee simple transfer generally by a warranty deed) and does not apply to transfer of easements on the property. The statutes distinguish between the property and easements on the property [see G.S. 105-277.3(d1)] and it is clear that the property itself must be transferred, not just an easement on the property.

Exception 2 and Exception 3 above require that the gift be a complete gift and not a partial gift. If a partial gift were intended, the statute would likely have stated that a portion of the property or a portion of the property's value could be gifted. Lacking any such language, it is clear that the property (in total) must be gifted to the appropriate grantee.

Deferred Taxes for the Current Year

If a property loses its eligibility for present-use value classification solely due to one of the above reasons, no deferred taxes are due and the lien for the deferred taxes is extinguished. Clearly, the taxes for the three previous years are deferred taxes and would therefore not be due and the lien would be extinguished. The question is whether the taxes for the current year are deferred taxes and would therefore not be due and the lien would be extinguished.

G.S. 105-277.4(c) states that land meeting the conditions for classification must be taxed on the basis of the value of the land for its present use. The difference between the taxes due on the present-use basis and the taxes that would have been payable in the absence of this classification are a lien on the real property. The difference in taxes must be carried forward in the records of the taxing unit or units as deferred taxes.

If the property meets the conditions for classification on January 1, then the property is assessed at present-use value and the difference is carried forward as deferred taxes.

For the current year's taxes, the difference between market value and present-use value is also a deferred tax and would therefore not be due, whether or not the tax bills have actually been generated for the current year.

Under the provisions of G.S. 105-277.4(d), all four years of deferred taxes are forgiven and the lien for the deferred taxes for all four years is extinguished.

X. Special Provision for Condemned Property

Under the provisions of G.S. 40A-6 and G.S. 136-121.1, if present-use value property is taken by a condemnor exercising the power of eminent domain, the property owner is entitled to reimbursement from the condemnor for all deferred taxes paid by the owner as a result of the condemnation if both of the following conditions are met:

1. The owner is a natural person whose property is taken in fee simple by a condemnor exercising the power of eminent domain.

2. The owner also owns agricultural land, horticultural land, or forestland that is contiguous to the condemned property and that is in active production.

The following points need to be emphasized with regards to this special provision:

1. The statutes establish a relationship between the condemnor and the property owner, and do not involve the tax assessor.

2. The tax assessor should bill the deferred taxes and pursue appropriate collection procedures when needed.

3. The owner must be a natural person and cannot be a business entity or trust.

4. The statutes require the condemnor to reimburse the taxes paid by the property owner. Therefore, the property owner is responsible for payment of the taxes.

5. The taking of the property must be in fee simple where the owner retains no rights to the property. This provision does not apply to easements since the taking is not in fee simple.

6. The owner must also own agricultural land, horticultural land, or forestland that is contiguous to the condemned property and that is in active production. It appears that the condemnor will not be responsible for reimbursement if the condemnation leaves no contiguous agricultural, horticultural, or forestland that is in actual production.

7. If the condemnation does leave contiguous agricultural, horticultural, or forestland that is in actual production, but does not leave enough acreage in production to meet the minimum size requirements, the assessor should also bill deferred taxes on the portion that was not condemned (unless there is another tract in the farm unit with the same classification that does meet the minimum size requirement).

8. Governmental condemning agencies that seek to acquire property by gift or purchase must give the property owner written notice of these reimbursement provisions. This seems to imply that reimbursement does not apply when the property owner, under the expectation of possible condemnation, agrees to transfer the property. However, since this is not directly a property tax issue, the owner should consult with the condemning agency to discuss this issue.

Disqualification and Deferred Taxes Summary

Present-use value is a voluntary program that requires compliance by the owner with certain rules in exchange for preferential tax treatment. As long as the owner and the property continue to meet the requirements, the property will remain in present-use value.

Failure to meet the requirements will result in removal from the program, and, in most instances, the billing of the deferred taxes for the year of disqualification and the three previous years with interest.

The deferred taxes become due and payable when the land fails to meet any condition or requirement for classification.

The owner has the responsibility and duty to notify the assessor of any change which would disqualify all or a part of a tract of land receiving present-use value. Any property owner who fails to notify the assessor of potential disqualifying changes may be subject to a penalty of ten percent (10%) of the total amount of the deferred taxes and interest thereon for each listing period for which the failure to report continues.

The taxes for the year of disqualification are computed as if the property was not in present-use value for that year and the deferred taxes for the preceding three years, with interest, are immediately due and payable.

In limited circumstances, the property may be disqualified without resulting in the billing of deferred taxes and the liens for the deferred taxes are extinguished.

In certain condemnation actions, the property owner may be entitled to reimbursement from the condemning agency for the deferred taxes due as a result of the condemnation.

Disqualification and Removal from Present-Use Value (or Rollback) Examples

NOTE: Practically all these examples deal with properties that are initially in present-use value. The assumption for each example will be that the property is in PUV, unless otherwise stated. It is also assumed that disqualification will result in the billing of deferred taxes for the current year and the three prior years with interest, unless the disqualification is subject to the exceptions in G.S. 105-277.4(d) where no deferred taxes are due.

13-1 Property is transferred from an individual to an unrelated individual. The buyer does not own any other property in PUV and does not assume the liability for deferred taxes.

Property should be disqualified. Buyer fails to meet either the standard ownership requirements or the exceptions to the standard ownership requirements.

13-2 Property is transferred from an individual to a relative. The buyer does not own any other property in PUV and does not specifically assume the liability for deferred taxes.

Property will meet the ownership requirements. Buyer meets the ownership requirement that the property has been owned by the owner or a relative of the owner for the four preceding years. Buyer must file a new application within 60 days of the transfer.

13-3 Property is transferred from a business entity to an individual. The individual is not a member of the business entity. The buyer does not own any other property in PUV and does not assume the liability for deferred taxes under the Exception for Continued Use.

Property should be disqualified. Buyer fails to meet either the standard ownership requirements or the exceptions to the standard ownership requirements. The new owner must have been a member of the business entity when the entity transferred ownership, or the new owner must meet the requirements of the Exception for Continued Use.

13-4 Property transfers from an individual to a business entity. The principal business of the business entity is construction.

Property should be disqualified. The principal business of the business entity must be agriculture, horticulture, or forestry. The buyer is not a qualifying owner since the new owner fails to meet the requirements for business entities.

13-5 Property transfers from an individual to a business entity. None of the members of the business entity are related. The land is leased to a tenant farmer who is allowed to farm the property as desired.

Property should be disqualified. Unless all members of the business entity are related, leasing the land out to someone else to farm is not allowed. The buyer is not a qualifying owner since the new owner fails to meet the requirements for business entities.

13-6 Property transfers from an individual to a business entity. None of the five members of the business entity are related. Three members actually farm the land but the other two members have no involvement in the farming operation. The principal business of the business entity is agriculture.

Property should be disqualified. All members must be actively engaged or related to a member who is actively engaged. The buyer is not a qualifying owner since the new owner fails to meet the requirements for business entities.

13-7 Property is owned by two tenants in common. One tenant transfers its interest to an LLC whose principal business is manufacturing.

A qualifying tenancy in common can consist of individuals, business entities, and trusts. However, a tenancy in common can qualify for present-use value only if each tenant would qualify as an owner if the tenant were the sole owner.

The LLC is not a qualifying owner since its principal business is not agriculture, horticulture, or forestry. Since all tenants do not qualify, the entire property will be disqualified and the deferred taxes will be billed.

13-8 Property is owned by two tenants in common. One tenant transfers its interest to a trust of which the transferring tenant is a beneficiary.

A qualifying tenancy in common can consist of individuals, business entities, and trusts. However, a tenancy in common can qualify for present-use value only if each tenant would qualify as an owner if the tenant were the sole owner.

The property will qualify since the trust in this example is a qualifying trust and meets the standard ownership requirements for trusts.

13-9 Property transfers to a buyer. No removal from the present-use value program was requested by the seller. The buyer does not file a new application within 60 days of the date of transfer.

The property should be disqualified and deferred taxes should be billed for the current year and three previous years with interest. Under certain conditions the buyer may file an untimely application.

13-10 Property will be transferred next week. The buyer, or the buyer's attorney, requests that the property be removed from present-use value and the deferred taxes billed.

The assessor should deny the request. The buyer does not yet own the property and has no authority to request that the seller's property be removed from the present-use value program.

The assessor may provide an estimate of the amount of taxes that would be due if the property were removed from the program, but any such statement should clearly indicate that it is for informational purposes only.

13-11 Property will be transferred next week. The seller, or the seller's attorney, requests that the deferred taxes on the property be billed.

It is vitally important that the tax office be completely clear on whether the taxpayer wishes to voluntarily pay the deferred taxes without disqualification or whether the taxpayer wishes to be voluntarily removed from the program, thus resulting in the billing of deferred taxes.

If the taxpayer only wishes to voluntarily pay deferred taxes without disqualification, it is strongly recommended that the counties require the owner or the owner's attorney to submit and sign *Form AV-3: Voluntary Payment of Deferred Taxes Without Requesting Disqualification*.

If the taxpayer wishes to voluntarily remove the property from present-use value, it is strongly recommended that the counties require the owner or the owner's attorney to submit and sign *Form AV-6: Request for Voluntary Disqualification from Present-Use Value Classification*.

13-12 The owner requests to pay the deferred taxes for the current year only.

This should not be considered a request to voluntarily disqualify the property. If the taxpayer only wishes to voluntarily pay deferred taxes without disqualification, it is strongly recommended that the counties require the owner or the owner's attorney to submit and sign *Form AV-3: Voluntary Payment of Deferred Taxes Without Requesting Disqualification*.

13-13 Property will be transferred next week. The seller, or the seller's attorney, submits *Form AV-6* to the assessor and requests that the property be voluntarily removed from the present-use value program. After further discussion with the buyer, the seller asks that the property be placed back in present-use value and that the rollback of deferred taxes be reversed.

Once *Form AV-6* has been signed and filed with the tax assessor, the request cannot be rescinded or reversed. The filing of the form results in disqualification. The deferred taxes become due and payable as of the date of disqualification.

The date of disqualification is the date that the form is filed with the tax assessor.

There is no statutory provision for releasing or refunding a tax imposed due to voluntary disqualification, even if voluntary disqualification was requested in error by the owner. The only potential statutory remedy for the owner is to request a release or refund under the provisions of G.S. 105-381, but the valid reasons to release or refund a tax do not seem to cover a situation where a taxpayer voluntarily disqualifies the property but later experiences a change of mind.

13-14 A father owns a 25-acre tract in PUV and splits out 1 acre to his son for a homesite.

The 1-acre split should be disqualified and deferred taxes should be billed for the current year and three previous years with interest. Even though it is a transfer to a relative, the land must still meet all other PUV requirements.

13-15 A father has a 10-acre tract in agricultural PUV and splits out 1 acre to his son for a homesite. The father does not own any other PUV property.

The entire 10-acre tract should be disqualified and deferred taxes should be billed for the current year and three previous years with interest. The split leaves the original tract with only 9 acres, which is insufficient to meet the size requirements.

13-16 A father has a 15-acre tract in agricultural PUV and splits out 8 acres to his son. The father does not own any other PUV property. The son already has other agricultural tracts in PUV.

The remaining 7-acre tract should be disqualified and deferred taxes should be billed for the current year and three previous years with interest. The split leaves the original tract with only 7 acres, which is insufficient to meet the size requirements.

Since this is a transfer to a relative, the son does not need to specifically assume deferred liability for the 8-acre split property. (Since the Standard Ownership Requirement is met, there is no need to meet the Exception for Continued Use.) The tract is insufficient in size to meet the size requirements on its own but **may** qualify as an additional tract in the son's existing farm unit. If so, the son should file a new application within 60 days of the transfer to request continued present-use eligibility for the property.

13-17 A seller has a 15-acre tract in agricultural PUV and splits out 8 acres to an unrelated buyer. The seller does not own any other PUV property. The buyer already has other agricultural tracts in PUV.

The remaining 7-acre tract should be disqualified and deferred taxes should be billed for the current year and three previous years with interest. The split leaves the original tract with only 7 acres, which is insufficient to meet the size requirements.

Since the Standard Ownership Requirements are not met, the buyer must meet the Exception for Continued Use. The 8-acre tract is insufficient in size to meet the size requirements on its own but **may** qualify as an additional tract. If the buyer chooses to files an application and accepts any existing deferred liability, the property may immediately qualify as part of the buyer's existing farm unit. A new application should be filed within 60 days of the transfer.

However, if the seller voluntarily removes the property from present-use value prior to transfer or if the buyer does not fulfill the requirements of the Exception for Continued Use, the buyer may immediately qualify for the following year through the Exception for Expansion of Existing Unit. An initial application should be filed during the next listing period.

13-18 A seller has a 15-acre tract in agricultural PUV and splits out 8 acres to an unrelated buyer. The seller already has other agricultural tracts in PUV. The buyer already has other agricultural tracts in PUV.

The remaining 7-acre tract is insufficient in size to meet the size requirements on its own but **may** qualify as an additional tract in the farm unit. The seller's farm unit must still have at least one tract that meets the minimum size requirements. If none of the remaining tracts in the farm unit meet the size requirement, then all tracts of the farm unit should be disqualified.

Since the Standard Ownership Requirements are not met, the buyer must meet the Exception for Continued Use. The 8-acre tract is insufficient in size to meet the size requirements on its own but **may** qualify as an additional tract. If the buyer chooses to files an application and accepts any existing deferred liability, the property may immediately qualify as part of the buyer's existing farm unit. A new application should be filed within 60 days of the transfer.

However, if the seller voluntarily removes the property from present-use value prior to transfer or if the buyer does not fulfill the requirements of the Exception for Continued Use, the buyer may immediately qualify for the following year through the Exception for Expansion of Existing Unit. An initial application should be filed during the next listing period.

13-19 Property is 25 acres in agricultural PUV. The owner has historically farmed 17 acres of the tract and the remaining 8 acres are wooded. After the tobacco buyout, the owner reduced the acreage in agricultural production to 9 acres.

The property no longer meets the size requirements. The property should be disqualified and deferred taxes should be billed.

13-20 Property is in horticultural PUV and averages $800 per year in gross income.

The property does not meet the income requirements. The property should be disqualified and deferred taxes should be billed.

13-21 Property has been in forestry PUV for 20 years but the owner has never submitted a forestry management plan. Since the law now requires one, the assessor asks the owner to submit a plan. The owner refuses.

The property does not meet the sound management requirements. The property should be disqualified and deferred taxes should be billed.

13-22 In the current year, the assessor notices that a property in PUV was transferred two years ago to a non-qualifying owner.

The property should be disqualified and deferred taxes should be billed. Since the disqualification **clearly** occurred two years ago, it would be proper to consider that year as the year of disqualification. Therefore, the deferred taxes would be for that year and the three years preceding the year of disqualification. Last year's deferred taxes and this year's deferred taxes would be billed as corrected billings.

However, caution should be used when the rollback is executed for a prior year of disqualification. The assessor should be able to conclusively prove that the prior year was actually the year in which the property failed to meet a condition or requirement for classification. In subjective areas such as sound management, where it may be difficult to prove exactly when the property failed to meet a condition or requirement for classification, it may be advisable to determine that the current year is the year of disqualification, not an inconclusive prior year.

13-23 Property is transferred to the State of North Carolina. The seller gifts the property to the State and receives no compensation. The transfer occurs in November of the current year.

Since the property was gifted to the State, no deferred taxes are due and the lien for the deferred taxes is extinguished, including the taxes that have already been deferred for the current year.

13-24 Property is transferred to the State of North Carolina. The seller gifts the property to the State and receives no compensation. The transfer occurs in February of the current year.

Since the property was gifted to the State, no deferred taxes are due and the lien for the deferred taxes is extinguished, including the taxes that have already been deferred for the current year. Even though the bills have not yet been generated for the current tax year, the difference between market value and present-use value is already considered a deferred tax, based on the January 1 qualifications.

13-25 Property is a 12-acre tract, all in agricultural production, and is currently in PUV. Owner enrolls all 12 acres in the Conservation Reserve Program and the 12 acres are required to be planted in vegetation other than trees. The owner will receive $60 per acre.

By statute, all 12 acres in CRP are considered to be in actual production and the $720 in yearly CRP income payments can count toward meeting the income requirements. Total agricultural acreage in production is 12 acres. Average gross income is $720 per year.

The tract meets the size requirements since it has at least 10 acres in agricultural production. The tract does not meet the average gross income requirement since it will not average at least $1,000 gross income per year.

In this example, enrollment in CRP will result in removal from the present-use value program. However, since the removal is solely due to a change in income caused by enrollment in CRP, no deferred taxes are due as a result of the disqualification.

13-26 Property is a 12-acre tract, all in agricultural production, and is currently in PUV. Owner enrolls all 12 acres in the Conservation Reserve Program and the 12 acres are required to be planted in trees.

By statute, the 12 acres in CRP are considered to be in actual production. Total forestland acreage in production is 12 acres. The tract does not meet the forestland size requirement since it does not have at least 20 acres in forestry production.

Deferred taxes are not due if the property loses its eligibility solely due to a change in income caused by enrollment in CRP.

However, this CRP agreement requires that the land be converted to a use that is different than the use under which the tract is currently qualified for PUV, and the conversion to the different use lowers the amount of land in qualified use below the minimum requirement. The tract no longer has 10 acres in production for agricultural purposes since the 12 acres must now be considered as forestland, and the 12 acres is not sufficient to meet the forestry 20-acre size requirement.

It appears that deferred taxes would be due since the provisions of G.S. 105-277.4(d)(1) apply only when the disqualification occurs **solely** due to a loss in

income. In this situation, the disqualification is due to a change in use and for failure to meet the size requirements.

13-27 Property is a 15-acre tract in agricultural PUV. All acres are planted in crops. DOT condemns and takes 4 acres for a highway project. The assessor does the rollback on the 4 acres and bills the deferred taxes. The owner tells the assessor that no taxes are due because DOT is responsible for loss in PUV.

The rollback should stand and the deferred taxes are due as billed. The owner is responsible for payment of the deferred taxes but may be eligible for reimbursement from DOT.

Chapter 14

Compliance Reviews

[Primary Statutes: G.S. 105-296(j)]

I. Compliance Review Period

The tax assessor must annually review at least one-eighth of the properties in present-use value to verify that those properties continue to qualify for present-use value classification. This process will ensure that all present-use value properties are reviewed in an eight-year period.

Since most counties were on an eight-year revaluation cycle when the statute was written, the statutory language seems to anticipate that all the parcels will be reviewed during a county's eight-year revaluation cycle. However, the statutes do not prevent more frequent reviews of properties, and some counties that are on more frequent revaluation cycles have chosen to review all properties within the shorter cycles.

The period of the review process is based on the average of the preceding three year's data. Therefore, the county may ask for any income, production, or sound management documentation for the three preceding years as part of the review process.

II. Compliance Review Form

Since a property generally needs to meet the same requirements for continued classification as it met for initial classification, the assessor may ask for information that is very similar to the information requested on an initial application.

Technically, the assessor cannot ask for a new application as part of a compliance review, but there is nothing wrong with asking for the same information on a

compliance review form. If an assessor should happen to ask for a new application as part of the review process, the owner will not have been harmed since the information is the same as that needed for the review process. The fact that the title of the form may be different should not be a major issue. However, the assessor should consider the timeliness of any "application" received as a result of compliance review under the time limitations for compliance reviews, not under the time limitations for applications.

III. Types of Compliance Review Information

When a compliance review is conducted, the review for agriculture and horticulture will be based primarily on the preceding three year's data. The review for forestry may cover a greater time period since the growth cycle for timber encompasses many years.

The assessor may require the owner to submit any information needed by the assessor to verify that the property continues to qualify for present-use value.

Examples of information that may be requested include (but are not limited to):

- Sound management plans for forestland.
- Documentation of compliance with any forestry management practices whose recommended implementation dates have passed.
- Income information for the past three years.
- IRS Schedule F to verify farm income.
- Acreage in production broken down by acres per product.
- If owned by a business entity, evidence of the principal business of the business entity (including income and expense information).
- If owned by a business entity, information documenting the members' participation in the farming operations.
- Evidence that the property is under sound management.

The owner may submit additional information concerning any weather conditions or other acts of nature that prevented the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must consider this information when determining whether the property is operating under a sound management program. Therefore, the compliance review form should provide the owner a place to document this information.

As part of the compliance review process, the assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Division of Forest Resources of the Department of Environment and Natural Resources, and other similar organizations.

IV. Compliance Review Process

The assessor may conduct compliance reviews under two main scenarios:

- Based upon information already available to the assessor, the assessor makes a determination whether the property still qualifies for classification.

- The assessor requests additional information from the owner prior to making a determination as to whether the property still qualifies for classification.

A. Determination Without Requesting Additional Information

Several situations may arise where, based on information already available, it is apparent to the tax assessor that a property no longer qualifies for present-use value classification. Examples include instances where:

- A property has clearly transferred to a non-qualifying ownership.

- A field review indicates the land has not been farmed for a number of years.

- A transfer of a portion of the property has caused the tract to fall below the minimum acreage requirement.

In these and similar cases, the assessor may send a notice to the owner that a determination has been made that the property no longer qualifies (or in these

obvious disqualification situations, the assessor may decide to bill the deferred taxes without advance notice). As discussed in *Chapter 15: Appeal Process*, the owner has 60 days from the date of the notice of the decision of the assessor to appeal to the county board.

Because the assessor never requested additional information, the owner does not have the statutorily mandated additional time period (as discussed next in *Section B: Determination When Additional Information Is Requested*) to submit more information that the assessor must consider.

The owner may, however, submit the information as part of a timely appeal of the assessor's decision to the county board, and the county board should receive the information and give it appropriate consideration.

B. Determination When Additional Information Is Requested

As part of the compliance review process, it is common for the assessor to require the owner to submit information so that the assessor can make a fully informed decision regarding the qualification of the property.

The most common type of information requested by the assessor is a questionnaire covering the requirements for continued qualification. Often the questionnaires are insufficiently completed, and the assessor certainly has the right to disqualify the property at this point for failure to provide the requested information.

However, sometimes the assessor chooses to again request the missing information. Also, even if the questionnaire was correctly completed, the assessor may still request additional information based upon the responses to the questionnaire.

Each of these requests should be in writing to the owner, and each request should be considered a request by the assessor that the owner submit the requested information.

Upon a written request by the assessor for information, the owner has 60 days from the date of the written request to submit the information. If the information is submitted, not submitted, or submitted incompletely, the assessor may make an additional written request for information. If so, the owner has an additional 60 days to submit the additional information.

The assessor will make a determination of the qualification of the property. The compliance review process and appeal rights will depend on whether the owner had submitted the information to the assessor.

1. Owner Has Submitted the Requested Information

If the owner **HAS SUBMITTED** the requested information and the assessor determines that the property no longer qualifies, then:

- The property loses its present-use value classification and the deferred taxes become due and payable.
- The owner has 60 days from the date of the notice of the decision of the assessor to appeal to the county board.
- Because the owner has submitted the requested information, the owner does not have the statutorily mandated additional time period (as discussed next in *Subsection 2: Owner Has NOT Submitted the Requested Information*) to submit more information that the assessor must consider.
- The owner may, however, submit the information as part of a timely appeal of the assessor's decision to the county board, and the county board should receive the information and give it appropriate consideration.

2. Owner Has NOT Submitted the Requested Information

If the owner **HAS NOT SUBMITTED** the requested information and the assessor determines that the property no longer qualifies, then:

- The property loses its present-use value classification and the deferred taxes become due and payable.
- The owner has 60 days from the date of the notice of the decision of the assessor to appeal to the county board.
- However, this time limit will be modified if, and only if, the owner submits the previously requested information within 60 days of the date

of the notice of the assessor's decision. If this occurs, the assessor must take the additional information into consideration and render another assessor's decision on the qualification of the property. The owner then has 60 days from the date of the notice of this second decision of the assessor to appeal to the county board.

- If the additional information shows that the property continues to meet the requirements for classification, the assessor must reinstate the present-use value classification retroactive to the date that the classification was revoked. Any deferred taxes that have been paid due to the revocation must be refunded.

A property owner may not sidestep the 60-day time limit to appeal to the county board by submitting information to the assessor that the assessor **did not request**. The owner should submit the information with the owner's appeal to the county board.

Compliance Review Examples

14-1 Assessor is conducting compliance reviews and notices that a tract in forestry PUV has less than 20 acres in forestry. The owner owns no other tracts in PUV. The assessor has not sent a questionnaire to property owner. The assessor notifies the owner that the property has been disqualified and the deferred taxes are billed.

The assessor may disqualify the property without requesting additional information if the assessor believes no further information is required.

If the owner wishes to submit information, the owner must appeal the decision of the assessor within 60 days and the information can be submitted with the appeal. Because the assessor never requested additional information, the owner does not have the statutorily mandated additional 60 days to provide the assessor with additional information. The local board can consider the information as part of the appeal.

14-2 Assessor is conducting compliance reviews and sends questionnaires to a number of PUV properties. Owner returns the completed questionnaire and the assessor determines that the property no longer qualifies. Notice is sent to the owner and the deferred taxes are billed.

Since the owner has provided the requested information, the owner must appeal the decision of the assessor within 60 days. If the owner wishes to submit additional information, it can be submitted with the appeal. Because the assessor did receive the requested additional information, the owner does not have the statutorily mandated additional 60 days to provide the assessor with additional information. The local board can consider the information as part of the appeal.

14-3 Assessor is conducting compliance reviews and sends questionnaires to a number of PUV properties. Owner returns the completed questionnaire. Based on the information in the questionnaire, the assessor requests additional information which the taxpayer subsequently provides. The assessor determines that the property no longer qualifies. Notice is sent to the owner and the deferred taxes are billed.

Since the owner has provided the requested information, the owner must appeal the decision of the assessor within 60 days. If the owner wishes to submit additional information, it can be submitted with the appeal. Because the assessor did receive the requested additional information, the owner does not have the statutorily mandated additional 60 days to provide the assessor with additional information. The local board can consider the information as part of the appeal.

14-4 Assessor is conducting compliance reviews and sends questionnaires to a number of PUV properties. Owner does not return the questionnaire and the assessor disqualifies the property. Notice is sent to the owner and the deferred taxes are billed.

Since the owner has not provided the requested information, the owner has two options. The owner may appeal the decision of the assessor to the local board within 60 days, or, if the owner wishes to submit the requested information, it can be submitted within 60 days of the notice of the assessor's decision. Because the assessor did not originally receive the requested information, the owner does have the statutorily mandated additional 60 days to provide the assessor with additional information.

If the owner decides to provide the requested information instead of filing an appeal, the assessor must consider the information and render a decision based on the information. The owner must appeal that decision of the assessor to the local board within 60 days.

However, if the information indicates that the property continues to meet the requirements for classification, the assessor must reinstate the present-use value classification retroactive to the date that the classification was revoked. Any deferred taxes that have been paid due to the revocation must be refunded.

Chapter 15

Appeal Process

[Primary Statutes: G.S. 105-277.4(b1), G.S. 105-322(g)(5)]

I. Venue for Hearing of Appeals

Decisions regarding the qualification or appraisal of property may be appealed to the county board of equalization and review or, if that board is not in session, to the board of county commissioners.

The statutes provide that the board of equalization and review may continue to meet after it has adjourned from its regular session to hear certain types of appeals, if the county commissioners wish that those appeals be heard by the board of equalization and review rather than the county commissioners. Appeals resulting from the compliance review process fall into this category. However, it is up to the individual county to decide whether it wishes for these appeals to be heard by the board of county commissioners or by the board of equalization and review. It is recommended that the counties adopt an updated board of equalization and review resolution setting forth which board should hear the appeals when the jurisdictions of the two boards overlap.

Appeals resulting from adverse decisions on timely applications where the decisions were made by the tax assessor after the board of equalization and review has adjourned from its regular session do not fall into the category of appeals that the board of equalization and review may continue to sit and hear. The board of county commissioners should hear these appeals if the board of equalization and review has adjourned from its regular session.

Consideration of untimely applications filed after the board of equalization and review has adjourned from its regular session do not fall into the category of appeals that the board of equalization and review may continue to sit and hear. The board of county commissioners should hear these appeals if the board of equalization and review has adjourned from its regular session. Tax assessors do not have the authority to approve untimely applications.

II. Time Limits for Appeals

An appeal must be filed within 60 days after the decision of the assessor.

The assessor's decision should be in writing and should contain the date the notice was mailed. This date should be used to determine whether the appeal was filed within 60 days after the decision of the assessor.

If the owner submits additional information to the assessor as part of the compliance review process, the appeal must be filed within 60 days after the assessor's decision, as based on the additional information. (Please see *Chapter 14: Compliance Reviews* for an in-depth discussion.)

III. Appeals from the County Board

Decisions of the county board of equalization and review or the board of county commissioners may be appealed to the North Carolina Property Tax Commission.

Appeals to the Property Tax Commission must be made in writing within 30 days after the date the county board mailed a notice of its decision to the owner.

Exception: If a taxpayer has filed a request for refund or release under the provisions of G.S. 105-381, the taxpayer must contest the decision of the county commissioners by filing suit in Superior Court. The appeal does not proceed to the North Carolina Property Tax Commission.

Appeal Process Examples

15-1 Owner has filed a late application before the board of equalization and review has adjourned from its duties under G.S. 105-322(g)(1) and (g)(2).

The board of equalization and review has the responsibility to decide on the late application if the board is still in session.

15-2 Owner has filed a late application after the board of equalization and review has adjourned following completion of its duties under G.S. 105-322(g)(1) and (g)(2). The county commissioners prefer that the board of equalization and review decide whether to approve the late application.

Once the board of equalization and review has adjourned, the board of county commissioners must decide on the late application. The board of equalization and review has not been given this authority by the General Assembly in G.S. 105-322(g)(5).

15-3 Owner has filed a late application. The assessor decides that the taxpayer has provided good cause for failure to timely file the application and approves the late application.

The assessor does not have the authority to approve a late application. The applicant should be scheduled for a hearing before the board of equalization and review, or if that board is not in session, before the board of county commissioners.

15-4 Owner files a timely application. The assessor denies the application after the board of equalization and review has adjourned.

The appeal must be heard by the county commissioners.

15-5 The assessor disqualifies a property as part of the periodic compliance review of PUV properties. The board of equalization and review is still in session.

The appeal should be heard by the board of equalization and review.

15-6 The assessor disqualifies a property as part of the periodic compliance review of PUV properties. The board of equalization and review has adjourned from its duties under G.S. 105-322(g)(1) and (g)(2).

The board of equalization and review has the authority to hear the appeal per G.S. 105-322(g)(5). However, the board of county commissioners also has the authority to hear the appeal per G.S. 105-277.4(b1).

It is up to the individual county to decide whether it wishes for these compliance review appeals to be heard by the board of county commissioners or by the board of equalization and review. It is recommended that the county commissioners adopt an updated resolution for the board of equalization and review setting forth which board should hear the appeals when the jurisdictions of the two boards overlap.

15-7 Owner files a timely application. The assessor denies the application and mails the notice of decision on May 1 of this year. The owner notifies the assessor on August 10 of this year that he wishes to appeal the decision of the assessor.

An appeal must be filed within 60 days after the decision of the assessor. The owner has failed to timely file an appeal and has lost the avenue for appeal.

Chapter 16

Wildlife Conservation Program

[Primary Statutes: G.S. 105-277.15, G.S. 105-277.3(d2)]

Overview

Beginning with the 2010 tax year, a new program for the taxation of wildlife conservation land goes into effect. There are provisions that allow for switching between the present-use value program and the wildlife conservation program. When the wildlife conservation program is discussed in this chapter and in other locations in this guide, it must be emphasized that the present-use value program for agricultural, horticultural, and forest land is a separate program from the wildlife conservation program. When the term "present-use value program" is used in this guide, it is specifically referring to the present-use value program for agricultural, horticultural, and forest land, and not to the wildlife conservation program discussed in this chapter.

Only the basics of the program are presented here to serve as a summary. The program is new and will likely have some issues in implementation. This chapter will be updated after the program has gone into effect and some of those issues have been identified and/or resolved.

I. Classification

Land that meets all the requirements for classification as wildlife conservation land must be appraised and assessed as if it were classified under the present-use value program as agricultural land. Therefore, wildlife conservation land will be assessed using the present-use value rates for agricultural land, regardless of whether the land is open or wooded.

II. Use Requirements

The land must be managed under a written wildlife habitat conservation agreement with the North Carolina Wildlife Resources Commission (NCWRC) and the plan must be in effect as of January 1 of the year for which qualification for this program is claimed.

Additionally, the owner must do one of the following:

- Protect an animal species that lives on the land and that is on a North Carolina protected animal list published by the NCWRC.

- Conserve any one of the following priority animal wildlife habitats:
    - Longleaf pine forest.
    - Early successional habitat.
    - Small wetland community.
    - Stream and riparian zone.
    - Rock outcrop.
    - Bat cave.

The land must have been classified under the present-use value program when the wildlife habitat conservation agreement was signed, or the owner must demonstrate to both the Wildlife Resources Commission and the assessor that the owner used the land for a purpose specified in the signed wildlife habitat conservation agreement for the three years preceding January 1 of the year for which qualification for the wildlife conservation program is requested.

III. Size Requirements

Minimum Size Requirement—The land must consist of at least 20 contiguous acres that meet the use requirements.

Maximum Size Requirement—No more than 100 acres of an owner's land in a county may be classified as wildlife conservation land.

IV. Ownership Requirements

A. Types of Qualifying Owners

The land must be owned by an individual, a family business entity, or a family trust.

A family business entity is a business entity whose members are, directly or indirectly, individuals and are all related. An individual is indirectly a member of a business entity if the individual is a member of a business entity or a beneficiary of a trust that is part of the ownership structure of the business entity that owns the land.

A family trust is a trust that was created by an individual and whose beneficiaries are, directly or indirectly, individuals who are the creator of the trust or a relative of the creator. An individual is indirectly a beneficiary of a trust if the individual is a beneficiary of another trust or a member of a business entity that has a beneficial interest in the trust that owns the land.

B. Length of Ownership Requirements

The land must have been owned by the qualifying owner for the previous five years unless one of the following situations applies:

- If the land is owned by a family business entity, the land was owned by one or more members of the family business entity for the previous five years.

- If the land is owned by a family trust, the land was owned by one or more beneficiaries of the family trust for the previous five years.

- If an owner acquires land that was classified as wildlife conservation land at the time it was acquired and the owner continues to use the land as wildlife conservation land, the length of ownership requirement is met if the new owner files an application and signs the wildlife habitat conservation agreement in effect for the property with 60 days after acquiring the property.

V. Deferred Taxes

The difference between the taxes that are due on wildlife conservation land and that would be due if the land were taxed based on its true value is a lien on the property.

The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes.

The deferred taxes for the preceding three fiscal years are due and payable when the land loses its eligibility for deferral as a result of a disqualifying event. Additionally, the tax for the fiscal year that begins in the calendar year in which the deferred taxes are due and payable is computed as if the property had not been classified for that year.

A disqualifying event occurs when the property no longer qualifies as wildlife conservation land.

VI. Exceptions to Payment (Lien Remains)

No deferred taxes are due and the deferred taxes remain a lien on the land in the following two situations:

- When the owner of wildlife conservation land that was previously classified under the present-use value program before the wildlife habitat conservation agreement was signed does not transfer the land and the land again becomes eligible for the present-use value program. In this situation, the present-use value program rules once again apply.

- When land that is classified as wildlife conservation land is transferred to a new owner who signs the wildlife habitat conservation agreement in effect for the land at the time of transfer and the land remains classified under this section. In that situation, the wildlife conservation program rules continue to apply.

VII. Exceptions to Payment and Lien

No deferred taxes are due and lien for the deferred taxes is extinguished if the land loses its eligibility for deferral solely due to one of the following reasons:

- The land is conveyed by gift to a nonprofit organization and qualifies for exclusion from the tax base under G.S. 105-275(12) or G.S. 105-275(29).

- The land is conveyed by gift to the State, a political subdivision of the State, or the United States.

VIII. Application

A. Initial Application for the Wildlife Conservation Program

If the property is not already in the present-use value program, then the taxpayer will be filing an initial application for classification. The wildlife habitat conservation agreement must be in effect as of January 1 of the year for which the benefit is claimed, which implies that the initial application should be filed during the regular listing period. However, the statutes do not specifically address the proper time period for filing an initial application under this program. Therefore, absent any statutory guidance, the best assumption is that the application provisions for the present-use value program as found in G.S. 105-277.4(a) should be used as a guide. Under this assumption, the initial application must be filed during the regular listing period to be timely, and an untimely application must be filed before the end of the calendar year to apply to the taxes levied in that calendar year.

B. Transfers of Wildlife Conservation Program Land

If the property is already in the wildlife conservation program and the property is transferred to another owner who wishes to continue in the program, the new owner must file an application and sign the wildlife habitat conservation agreement in effect for the property with 60 days after acquiring the property. The

statutes do not specifically address the possibility of filing an untimely application under this scenario. Therefore, absent any statutory guidance, the best assumption is that the application provisions for the present-use value program as found in G.S. 105-277.4(a) should be used as a guide. Under this assumption, an untimely application must be filed before the end of the calendar year to apply to the taxes levied in that calendar year.

C. Conversion from Present-Use Value Program to Wildlife Conservation Program

When the land is converted from the present-use value program to the wildlife conservation program, an application and a wildlife habitat conservation agreement must be filed. The wildlife habitat conservation agreement must be in effect as of January 1 of the year for which the benefit is claimed, which implies that the application should be filed during the regular listing period. However, the statutes do not specifically address the proper time period for filing the application required under this scenario. Therefore, absent any statutory guidance, the best assumption is that the application provisions for the present-use value program as found in G.S. 105-277.4(a) should be used as a guide. Under this assumption, the application must be filed during the next regular listing period following the implementation of the wildlife habitat conservation agreement to be timely, and an untimely application must be filed before the end of the calendar year to apply to the taxes levied in that calendar year.

D. Conversion from Wildlife Conservation Program to Present-Use Value Program

When the land is converted from the wildlife conservation program to the present-use value program, an application must be filed. However, the statutes do not specifically address the proper time period for filing the application required under this scenario. Therefore, absent any statutory guidance, the best assumption is that the application provisions for the present-use value program as found in G.S. 105-277.4(a) should be used as a guide. It could be argued that the application should be filed either during the next listing period following the return to commercial production or within 60 days following the return to commercial production. A third but less persuasive argument is that the application should be filed before the return to commercial production. Since the property is not in the present-use value program at the time of application, it seems that filing an initial application is the proper procedure. Under this assumption, the initial application must be filed

during the regular listing period following the return to commercial production to be timely, and an untimely application must be filed before the end of the calendar year to apply to the taxes levied in that calendar year.

Wildlife Conservation Land Examples

Examples will be provided in future revisions, once the program has been implemented.

Form AV-4

Present-Use Value Statutes

Form AV-4 is a compilation of the primary statutes that govern present-use value. Any updates to Form AV-4 since the publication of this Guide can be viewed online at: www.dornc.com/downloads/property.html

References were made in this Guide to other statutes not included in Form AV-4 that govern property taxation generally, including aspects of present-use value. These statutes can be viewed online at www.ncleg.net.

NORTH CAROLINA GENERAL STATUTES PERTAINING TO

PRESENT USE VALUE ASSESSMENT AND TAXATION

OF AGRICULTURAL, HORTICULTURAL, AND FORESTLANDS

§ 105-277.2. Agricultural, horticultural, and forestland – Definitions.

The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

(1) Agricultural land. – Land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program. If the agricultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent agricultural land, protect water quality of adjacent agricultural land, or serve as buffers for adjacent livestock or poultry operations.

(1a) Business entity. – A corporation, a general partnership, a limited partnership, or a limited liability company.

(2) Forestland. – Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit must be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a sound management program.

(3) Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program. If the horticultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent horticultural land or protect water quality of adjacent horticultural land. Land used to grow horticultural and

agricultural crops on a rotating basis or where the horticultural crop is set out or planted and harvested within one growing season, may be treated as agricultural land as described in subdivision (1) of this section when there is determined to be no significant difference in the cash rental rates for the land.

(4) Individually owned. – Owned by one of the following:

a. An individual.

b. A business entity that meets all of the following conditions:

1. Its principal business is farming agricultural land, horticultural land, or forestland.

2. All of its members are, directly or indirectly, individuals who are actively engaged in farming agricultural land, horticultural land, or forestland or a relative of one of the individuals who is actively engaged. An individual is indirectly a member of a business entity that owns the land if the individual is a member of a business entity or a beneficiary of a trust that is part of the ownership structure of the business entity that owns the land.

3. It is not a corporation whose shares are publicly traded, and none of its members are corporations whose shares are publicly traded.

4. If it leases the land, all of its members are individuals and are relatives. Under this condition, "principal business" and "actively engaged" include leasing.

c. A trust that meets all of the following conditions:

1. It was created by an individual who owned the land and transferred the land to the trust.

2. All of its beneficiaries are, directly or indirectly, individuals who are the creator of the trust or a relative of the creator. An individual is indirectly a beneficiary of a trust that owns the land if the individual is a beneficiary of another trust or a member of a business entity that has a beneficial interest in the trust that owns the land.

d. A testamentary trust that meets all of the following conditions:

1. It was created by an individual who transferred to the trust land that qualified in that individual's hands for classification under G.S. 105-277.3.

2. At the date of the creator's death, the creator had no relatives.

3. The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes as defined in G.S. 105-278.3(d).

e. Tenants in common, if each tenant would qualify as an owner if the tenant were the sole owner. Tenants in common may elect to treat their individual shares as owned by them individually in accordance with G.S. 105-302(c)(9). The ownership requirements of G.S. 105-277.3(b) apply to each tenant in common who is an individual, and the ownership requirements of G.S. 105-277.3(b1) apply to each tenant in common who is a business entity or a trust.

(4a) Member. – A shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.

(5) Present-use value. – The value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income and assuming an average level of management. A rate of nine percent (9%) shall be used to capitalize the expected net income of forestland. The capitalization rate for agricultural land and horticultural land is to be determined by the Use-Value Advisory Board as provided in G.S. 105-277.7.

(5a) Relative. – Any of the following:

a. A spouse or the spouse's lineal ancestor or descendant.

b. A lineal ancestor or a lineal descendant.

c. A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.

d. An aunt or an uncle.

e. A spouse of an individual listed in paragraphs a. through d. For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term "spouse" includes a surviving spouse.

(6) Sound management program. – A program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement.

(7) Unit. – One or more tracts of agricultural land, horticultural land, or forestland. Multiple tracts must be under the same ownership and be of the same type of classification. If the multiple tracts are located within different counties, they must be within 50 miles of a tract qualifying under G.S. 105-277.3(a). (1973, c. 709, s. 1; 1975, c. 746, s. 1; 1985, c. 628, s. 1; c. 667, ss. 1, 4; 1987, c. 698, s. 1; 1995, c. 454, s. 1; 1995 (Reg. Sess., 1996), c. 646, s. 17; 1998-98, s. 24; 2002-184, s. 1; 2004-8, s. 1; 2005-313, ss. 1, 2; 2008-146, s. 2.1.)

§ 105-277.3. Agricultural, horticultural, and forestland – Classifications.

(a) Classes Defined. – The following classes of property are designated special classes of property under authority of Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

(1) Agricultural land. – Individually owned agricultural land consisting of one or more tracts, one of which satisfies the requirements of this subdivision. For agricultural land used as a farm for aquatic species, as defined in G.S. 106-758, the tract must meet the income requirement for agricultural land and must consist of at least five acres in actual production or produce at least 20,000 pounds of aquatic species for commercial sale annually, regardless of acreage. For all other agricultural land, the tract must meet the income requirement for agricultural land and must consist of at least 10 acres that are in actual production. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.

To meet the income requirement, agricultural land must, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the agricultural products produced from the land, any payments received under a governmental soil conservation or land retirement program, and the amount paid to the

taxpayer during the taxable year pursuant to P.L. 108-357, Title VI, Fair and Equitable Tobacco Reform Act of 2004.

(2) Horticultural land. – Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have met the applicable minimum gross income requirement. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products. Land that has been used to produce evergreens intended for use as Christmas trees must have met the minimum gross income requirements established by the Department of Revenue for the land. All other horticultural land must have produced an average gross income of at least one thousand dollars ($1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program.

(3) Forestland. – Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) Individual Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, land owned by an individual must also satisfy one of the following conditions:

(1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust that transferred the land to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

(b1) Entity Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, land owned by a business entity must meet the requirements of subdivision (1) of this subsection and land owned by a trust must meet the requirements of subdivision (2) of this subsection.

(1) Land owned by a business entity must have been owned by one or more of the following for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed:

a. The business entity.

b. A member of the business entity.

c. Another business entity whose members include a member of the business entity that currently owns the land.

(2) Land owned by a trust must have been owned by the trust or by one or more of its creators for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed.

(b2) Exceptions to Ownership Requirements. – Notwithstanding the provisions of subsections (b) and (b1) of this section, land may qualify for classification in the hands of the new owner if all of the conditions listed in either subdivision of this subsection are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land.

(1) Continued use. – If the land qualifies for classification in the hands of the new owner under the provisions of this subdivision, then any deferred taxes remain a lien on the land under G.S. 105-277.4(c), the new owner becomes liable for the deferred taxes, and the deferred taxes become payable if the land fails to meet any other condition or requirement for classification. Land qualifies for classification in the hands of the new owner if all of the following conditions are met:

a. The land was appraised at its present use value at the time title to the land passed to the new owner.

b. The new owner acquires the land and continues to use the land for the purpose for which it was classified under subsection (a) of this section while under previous ownership.

c. The new owner has timely filed an application as required by G.S. 105-277.4(a) and has certified that the new owner accepts liability for any deferred taxes and intends to continue the present use of the land.

(2) Expansion of existing unit. – Land qualifies for classification in the hands of the new owner if, at the time title passed to the new owner, the land was not appraised at its present-use value but was being used for the same purpose and was eligible for appraisal at its present-use value as other land already owned by the new owner and classified under subsection (a) of this section. The new owner must timely file an application as required by G.S. 105-277.4(a).

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. – Land enrolled in the federal Conservation Reserve Program authorized by 16 U.S.C. Chapter 58 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program must be assessed as agricultural land if it is planted in vegetation other than trees, or as forestland if it is planted in trees.

(d1) **(Effective for taxes imposed for taxable years beginning before July 1, 2010)** Exception for Easements on Qualified Conservation Lands Previously Appraised at Use Value. – Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 as long as the property is subject to an enforceable conservation easement that would qualify for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12, without regard to actual production or income requirements of this section. Notwithstanding G.S. 105-277.3(b) and (b1), subsequent transfer of the property does not extinguish its present-use value eligibility as long as the property remains subject to an enforceable conservation easement that qualifies for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12. The exception provided in this subsection applies only to that part of the property that is subject to the easement.

(d1) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2010)** Exception for Easements on Qualified Conservation Lands Previously Appraised at Use Value. – Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 as long as (i) the property is subject to an enforceable conservation easement that would qualify for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12, without regard to actual production or income requirements of this section; and (ii) the taxpayer received no more than seventy-five percent (75%) of the fair market value of the donated property interest in

compensation. Notwithstanding G.S. 105-277.3(b) and (b1), subsequent transfer of the property does not extinguish its present-use value eligibility as long as the property remains subject to an enforceable conservation easement that qualifies for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12. The exception provided in this subsection applies only to that part of the property that is subject to the easement.

(d2) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2010)** Wildlife Exception. – When an owner of land classified under this section does not transfer the land and the land becomes eligible for classification under G.S. 105-277.15, no deferred taxes are due. The deferred taxes remain a lien on the land and are payable in accordance with G.S. 105-277.15.

(e) Exception for Turkey Disease. – Agricultural land that meets all of the following conditions is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.
(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poult Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.
(3) The land is otherwise eligible for present use value treatment.

(f) Sound Management Program for Agricultural Land and Horticultural Land. – If the property owner demonstrates any one of the following factors with respect to agricultural land or horticultural land, then the land is operated under a sound management program:

(1) Enrollment in and compliance with an agency-administered and approved farm management plan.
(2) Compliance with a set of best management practices.
(3) Compliance with a minimum gross income per acre test.
(4) Evidence of net income from the farm operation.
(5) Evidence that farming is the farm operator's principal source of income.
(6) Certification by a recognized agricultural or horticultural agency within the county that the land is operated under a sound management program.

Operation under a sound management program may also be demonstrated by evidence of other similar factors. As long as a farm operator meets the sound management requirements, it is irrelevant whether the property owner received income or rent from the farm operator.

(g) Sound Management Program for Forestland. – If the owner of forestland demonstrates that the forestland complies with a written sound forest management plan for the production and sale of forest products, then the forestland is operated under a sound management program. (1973, c. 709, s. 1; 1975, c. 746, s. 2; 1983, c. 821; c. 826; 1985, c. 667, ss. 2, 3, 6.1; 1987, c. 698, ss. 2-5; 1987 (Reg. Sess., 1988), c. 1044, s. 13.1; 1989, cc. 99, 736, s. 1; 1989 (Reg. Sess., 1990), c. 814, s. 29; 1995, c. 454, s. 2; 1997-272, s. 1; 1998-98, s. 22; 2001-499, s. 1; 2002-184, s. 2; 2005-293, s. 1; 2005-313, s. 3; 2007-484, s. 43.7T(c); 2007-497, s. 3.1; 2008-146, s. 2.2; 2008-171, ss. 4, 5.)

§ 105-277.4. Agricultural, horticultural and forestland – Application; appraisal at use value; appeal; deferred taxes.

(a) Application. – Property coming within one of the classes defined in G.S. 105-277.3 is eligible for taxation on the basis of the value of the property in its present use if a timely and proper application is filed with the assessor of the county in which the property is located. The application must clearly show that the property comes within one of the classes and must also

contain any other relevant information required by the assessor to properly appraise the property at its present-use value. An initial application must be filed during the regular listing period of the year for which the benefit of this classification is first claimed, or within 30 days of the date shown on a notice of a change in valuation made pursuant to G.S. 105-286 or G.S. 105-287. A new application is not required to be submitted unless the property is transferred or becomes ineligible for use-value appraisal because of a change in use or acreage. An application required due to transfer of the land may be submitted at any time during the calendar year but must be submitted within 60 days of the date of the property's transfer.

(a1) Late Application. – Upon a showing of good cause by the applicant for failure to make a timely application as required by subsection (a) of this section, an application may be approved by the board of equalization and review or, if that board is not in session, by the board of county commissioners. An untimely application approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Decisions of the county board may be appealed to the Property Tax Commission.

(b) Appraisal at Present-use Value. – Upon receipt of a properly executed application, the assessor must appraise the property at its present-use value as established in the schedule prepared pursuant to G.S. 105-317. In appraising the property at its present-use value, the assessor must appraise the improvements located on qualifying land according to the schedules and standards used in appraising other similar improvements in the county. If all or any part of a qualifying tract of land is located within the limits of an incorporated city or town, or is property annexed subject to G.S. 160A-37(f1) or G.S. 160A-49(f1), the assessor must furnish a copy of the property record showing both the present-use appraisal and the valuation upon which the property would have been taxed in the absence of this classification to the collector of the city or town. The assessor must also notify the tax collector of any changes in the appraisals or in the eligibility of the property for the benefit of this classification. Upon a request for a certification pursuant to G.S. 160A-37(f1) or G.S.160A-49(f1), or any change in the certification, the assessor for the county where the land subject to the annexation is located must, within 30 days, determine if the land meets the requirements of G.S. 160A-37(f1)(2) or G.S. 160A-49(f1)(2) and report the results of its findings to the city.

(b1) Appeal. – Decisions of the assessor regarding the qualification or appraisal of property under this section may be appealed to the county board of equalization and review or, if that board is not in session, to the board of county commissioners. An appeal must be made within 60 days after the decision of the assessor. If an owner submits additional information to the assessor pursuant to G.S. 105-296(j), the appeal must be made within 60 days after the assessor's decision based on the additional information. Decisions of the county board may be appealed to the Property Tax Commission.

(c) Deferred Taxes. – Land meeting the conditions for classification under G.S. 105-277.3 must be taxed on the basis of the value of the land for its present use. The difference between the taxes due on the present-use basis and the taxes that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of the taxing unit or units as deferred taxes. The deferred taxes for the preceding three fiscal years are due and payable in accordance with G.S. 105-277.1F when the property loses its eligibility for deferral as a result of a disqualifying event. A disqualifying event occurs when the land fails to meet any condition or requirement for classification or when an application is not approved.

(d) Exceptions. – Notwithstanding the provisions of subsection (c) of this section, if property loses its eligibility for present use value classification solely due to one of the following reasons, no deferred taxes are due and the lien for the deferred taxes is extinguished:

(1) There is a change in income caused by enrollment of the property in the federal conservation reserve program established under 16 U.S.C. Chapter 58.

(2) The property is conveyed by gift to a nonprofit organization and qualifies for exclusion from the tax base pursuant to G.S. 105-275(12) or G.S. 105-275(29).

(3) The property is conveyed by gift to the State, a political subdivision of the State, or the United States.

(e) Repealed by Session Laws 1997-270, s. 3, effective July 3, 1997. (1973, c. 709, s. 1; c. 905; c. 906, ss. 1, 2; 1975, c. 62; c. 746, ss. 3-7; 1981, c. 835; 1985, c. 518, s. 1; c. 667, ss. 5, 6; 1987, c. 45, s. 1; c. 295, s. 5; c. 698, s. 6; 1987 (Reg. Sess., 1988), c. 1044, s. 13.2; 1995, c. 443, s. 4; c. 454, s. 3; 1997-270, s. 3; 1998-98, s. 23; 1998-150, s. 1; 2001-499, s. 2; 2002-184, s. 3; 2005-313, s. 4; 2006-30, s. 4; 2008-35, s. 2.3.)

§ 105-277.5. Agricultural, horticultural and forestland – Notice of change in use.

Not later than the close of the listing period following a change which would disqualify all or a part of a tract of land receiving the benefit of this classification, the property owner shall furnish the assessor with complete information regarding such change. Any property owner who fails to notify the assessor of changes as aforesaid regarding land receiving the benefit of this classification shall be subject to a penalty of ten percent (10%) of the total amount of the deferred taxes and interest thereon for each listing period for which the failure to report continues. (1973, c. 709, s. 1; 1975, c. 746, s. 8; 1987, c. 45, s. 1.)

§ 105-277.6. Agricultural, horticultural and forestland – Appraisal; computation of deferred tax.

(a) In determining the amount of the deferred taxes herein provided, the assessor shall use the appraised valuation established in the county's last general revaluation except for any changes made under the provisions of G.S. 105-287.

(b) In revaluation years, as provided in G.S. 105-286, all property entitled to classification under G.S. 105-277.3 shall be reappraised at its true value in money and at its present use value as of the effective date of the revaluation. The two valuations shall continue in effect and shall provide the basis for deferred taxes until a change in one or both of the appraisals is required by law. The present use-value schedule, standards, and rules shall be used by the tax assessor to appraise property receiving the benefit of this classification until the next general revaluation of real property in the county as required by G.S. 105-286.

(c) Repealed by Session Laws 1987, c. 295, s. 2. (1973, c. 709, s. 1; 1975, c. 746, ss. 9, 10; 1987, c. 45, s. 1, c. 295, s. 2.)

§ 105-277.7. Use-Value Advisory Board.

(a) Creation and Membership. – The Use-Value Advisory Board is established under the supervision of the Agricultural Extension Service of North Carolina State University. The Director of the Agricultural Extension Service of North Carolina State University shall serve as the chair of the Board. The Board shall consist of the following additional members, to serve ex officio:

(1) A representative of the Department of Agriculture and Consumer Services, designated by the Commissioner of Agriculture.

(2) A representative of the Division of Forest Resources of the Department of Environment and Natural Resources, designated by the Director of that Division.

(3) A representative of the Agricultural Extension Service at North Carolina Agricultural and Technical State University, designated by the Director of the Extension Service.

(4) A representative of the North Carolina Farm Bureau Federation, Inc., designated by the President of the Bureau.

(5) A representative of the North Carolina Association of Assessing Officers, designated by the President of the Association.

(6) The Director of the Property Tax Division of the North Carolina Department of Revenue or the Director's designee.

(7) A representative of the North Carolina Association of County Commissioners, designated by the President of the Association.

(8) A representative of the North Carolina Forestry Association, designated by the President of the Association.

(b) Staff. – The Agricultural Extension Service at North Carolina State University must provide clerical assistance to the Board.

(c) Duties. – The Board must annually submit to the Department of Revenue a recommended use-value manual. In developing the manual, the Board may consult with federal and State agencies as needed. The manual must contain all of the following:

(1) The estimated cash rental rates for agricultural lands and horticultural lands for the various classes of soils found in the State. The rental rates must recognize the productivity levels by class of soil or geographic area, and the crop as either agricultural or horticultural. The rental rates must be based on the rental value of the land to be used for agricultural or horticultural purposes when those uses are presumed to be the highest and best use of the land. The recommended rental rates may be established from individual county studies or from contracts with federal or State agencies as needed.

(2) The recommended net income ranges for forestland furnished to the Board by the Forestry Section of the North Carolina Cooperative Extension Service. These net income ranges may be based on up to six classes of land within each Major Land Resource Area designated by the United States Soil Conservation Service. In developing these ranges, the Forestry Section must consider the soil productivity and indicator tree species or stand type, the average stand establishment and annual management costs, the average rotation length and timber yield, and the average timber stumpage prices.

(3) The capitalization rates adopted by the Board prior to February 1 for use in capitalizing incomes into values. The capitalization rate for forestland shall be nine percent (9%). The capitalization rate for agricultural land and horticultural land must be no less than six percent (6%) and no more than seven percent

(7%). The incomes must be in the form of cash rents for agricultural lands and horticultural lands and net incomes for forestlands.

(4) The value per acre adopted by the Board for the best agricultural land. The value may not exceed one thousand two hundred dollars ($1,200).

(5) Recommendations concerning any changes to the capitalization rate for agricultural land and horticultural land and to the maximum value per acre for the best agricultural land and horticultural land based on a calculation to be determined by the Board. The Board shall annually report these recommendations to the Revenue Laws Study Committee and to the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(6) Recommendations concerning requirements for horticultural land used to produce evergreens intended for use as Christmas trees when requested to do so by the Department. (1973, c. 709, s. 1; 1975, c. 746, s. 11; 1985, c. 628, s. 2; 1989, c. 727, s. 218(44); c. 736, s. 2; 1997-261, s. 109; 1997-443, s. 11A.119(a); 2002-184, s. 4; 2005-313, s. 5; 2005-386, s. 1.3.)

§ 105-277.1F. Uniform provisions for payment of deferred taxes.

(a) Scope. – This section applies to the following deferred tax programs:

(1) G.S. 105-275(12)f., real property held for future transfer to government unit for conservation purposes.

(1a) G.S. 105-275(29a), historic district property held as future site of historic structure.

(2) G.S. 105-277.1B, the property tax homestead circuit breaker.

(2a) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2010. See note for repeal.)** G.S. 105-277.1D, the inventory property tax deferral.

(3) G.S. 105-277.4(c), present-use value property.

(4) G.S. 105-277.14, working waterfront property.

(4a) **(Effective for taxes imposed for taxable years beginning on or after July 1, 2010)** G.S. 105-277.15, wildlife conservation land.

(5) G.S. 105-278(b), historic property.

(6) G.S. 105-278.6(e), nonprofit property held as future site of low- or moderate-income housing.

(b) Payment. – Taxes deferred on property under a deferral program listed in subsection (a) of this section are due and payable on the day the property loses its eligibility for the deferral program as a result of a disqualifying event. If only a part of property for which taxes are deferred loses its eligibility for deferral, the assessor must determine the amount of deferred taxes that apply to that part and that amount is due and payable. Interest accrues on deferred taxes as if they had been payable on the dates on which they would have originally become due.

The tax for the fiscal year that begins in the calendar year in which the deferred taxes are due and payable is computed as if the property had not been classified for that year. A lien for deferred taxes is extinguished when the taxes are paid.

All or part of the deferred taxes that are not due and payable may be paid to the tax collector at any time without affecting the property's eligibility for deferral. A partial payment is applied first to accrued interest. (2008-35, s. 2.2; 2008-107, s. 28.11(h); 2008-171, s. 2; 2009-308, s. 3.)

§ 105-289. Duties of Department of Revenue. (in part)

(a) It is the duty of the Department of Revenue:

…

(5) To prepare and distribute annually to each assessor the manual developed by the Use-Value Advisory Board under G.S. 105-277.7 that establishes the cash rental rates for agricultural lands and horticultural lands and the net income ranges for forestland.

(6) To establish requirements for horticultural land, used to produce evergreens intended for use as Christmas trees, in lieu of a gross income requirement until evergreens are harvested from the land, and to establish a gross income requirement for this type horticultural land, that differs from the income requirement for other horticultural land, when evergreens are harvested from the land.

(7) To conduct studies of the cash rents for agricultural and horticultural lands on a county or a regional basis, such as the Major Land Resource Area map designated and developed by the U.S. Department of Agriculture. The results of the studies must be furnished to the North Carolina Use-Value Advisory Board. The studies may be conducted on any reasonable basis and timetable that will be reflective of rents and values for each local area based on the productivity of the land.

§ 105-296. Powers and duties of assessor. (in part)

…

(j) The assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Division of Forest Resources of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). If the property loses its present-use value classification for failure to provide the requested information, the assessor must reinstate the property's present-use value classification when the owner submits the requested information within 60 days after the disqualification unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner. The owner may appeal the final decision of the assessor to the county board of equalization and review as provided in G.S. 105-277.4(b1).

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or

harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination.

§ 40A-6. Reimbursement of owner for taxes paid on condemned property.

(a) An owner whose property is totally taken in fee simple by a condemnor exercising the power of eminent domain, under this Chapter or any other statute, shall be entitled to reimbursement from the condemnor of the pro rata portion of real property taxes paid by the owner that are allocable to a period subsequent to vesting of title in the condemnor, or the effective date of possession of the real property, whichever is earlier.

(b) An owner who meets the following conditions is entitled to reimbursement from the condemnor for all deferred taxes paid by the owner pursuant to G.S. 105-277.4(c) as a result of the condemnation:

(1) The owner is a natural person whose property is taken in fee simple by a condemnor exercising the power of eminent domain under this Chapter or any other statute.

(2) The owner also owns agricultural land, horticultural land, or forestland that is contiguous to the condemned property and that is in active production.

The definitions in G.S. 105-277.2 apply in this subsection. (1975, c. 439, s. 1; 1981, c. 919, s. 1; 1997-270, s. 1.)

§ 136-121.1. Reimbursement of owner for taxes paid on condemned property.

(a) A property owner whose property is totally taken in fee simple by any condemning agency (as defined in G.S. 133-7(1)) exercising the power of eminent domain, under this Chapter or any other statute or charter provision, shall be entitled to reimbursement from the condemning agency of the pro rata portion of real property taxes paid that are allocable to a period subsequent to vesting of title in the agency, or the effective date of possession of the real property, whichever is earlier.

(b) An owner who meets the following conditions is entitled to reimbursement from the condemning agency for all deferred taxes paid by the owner pursuant to G.S. 105-277.4(c) as a result of the condemnation:

(1) The owner is a natural person whose property is taken in fee simple by a condemning agency exercising the power of eminent domain under this Chapter or any other statute.

(2) The owner also owns agricultural land, horticultural land, or forestland that is contiguous to the condemned property and that is in active production.

A potential condemning agency that seeks to acquire property by gift or purchase shall give the owner written notice of the provisions of this section. The definitions in G.S. 105-277.2 apply in this subsection. (1975, c. 439, s. 1; 1997-270, s. 2.)

NOTE: The following statutes are relevant only to annexation situations, and are not relevant to qualifying a parcel for present-use valuation.

§ 160A-58.54 Character of area to be annexed. (in part)

…

(c) As used in this subsection, "bona fide farm purposes" is as described in G.S. 153A-340. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that is being used for bona fide farm purposes on the date of the resolution of intent to consider annexation may not be annexed without the written consent of the owner or owners of the property.

Note: The following section is a part of Chapter 153A (Counties), Article 18 (Planning and Regulation of Development).

§ 153A-340 Grant of power. (in part)

…

(b) (2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture as defined in G.S. 106-581.1. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a 'Goodness Grows in North Carolina' product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

a. A farm sales tax exemption certificate issued by the Department of Revenue.
b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
d. A forest management plan.
e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.

Form AV-5

Application for Agriculture, Horticulture, and Forestry Present-Use Value Assessment

Any updates to Form AV-5 since the publication of this Guide can be viewed online at: www.dornc.com/downloads/property.html

This document is included here to give an indication of the types of information that will be requested upon application for present-use value at the county tax office. While many county tax offices use this application, they are not required to do so. Some counties have developed their own application. If applying for present-use value, please contact the county tax assessor's office to obtain the county's present-use value application.

AV-5
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Application for Agriculture, Horticulture, and Forestry Present-Use Value Assessment

(G.S. 105-277.2 through G.S. 105-277.7)

PRINT CLEAR

County of _____ **, NC** **Tax Year** _____

Full Name of Owner(s)

Mailing Address of Owner

City **State** **Zip Code**

Home Telephone Number **Work Telephone Number** **Ext.** **Cell Phone Number**

Instructions

Application Deadline: This application must be filed during the regular listing period, or within 30 days of a notice of a change in valuation, or within 60 days of a transfer of the land.

Where to Submit Application: Submit this application to the county tax assessor where this property is located. County tax assessor addresses and telephone numbers can be found online at: www.dornc.com/downloads/CountyList.pdf. **DO NOT submit this application to the North Carolina Department of Revenue.**

- Office Use Only:

This application is for: (check all that apply)

☐ **AGRICULTURE (includes Aquaculture)** ☐ **HORTICULTURE** ☐ **FORESTRY**

Enter the Parcel Identification Number, acreage breakdown, and acreage total for each tax parcel included in this application:

PARCEL ID	OPEN LAND in Production	OPEN LAND not in Production	WOOD LAND	WASTE LAND	CRP LAND	HOME SITE	OTHER (Describe in Comments)	TOTAL ACRES
								0.00
								0.00
								0.00
								0.00
								0.00

Comments:

☐ Yes ☐ No ➤ Does the applicant own property in other counties that is also in present-use value and is within 50 miles of this property? If **YES**, list the county or counties and parcel identification number(s):

County: Parcel ID:

County: Parcel ID:

IMPORTANT!

AGRICULTURE and HORTICULTURE applications with LESS than 20 acres of woodland generally need to complete PARTS 1, 2, and 4.

AGRICULTURE and HORTICULTURE applications with MORE than 20 acres of woodland generally need to complete PARTS 1, 2, 3, and 4.

FORESTRY applications need to complete PARTS 1, 3, and 4.

ADDITIONALLY, applications for CONTINUED USE of existing present-use value classification need to complete PART 5.

Please contact the Tax Assessor's office if you have questions about which parts should be completed.

Part 1. Ownership

On what date did the applicant become the owner of the property? **DATE:**

If owned less than four full years on January 1, provide: **Name of Previous Owner:**

How the Applicant is Related to the Previous Owner:

☐ Yes ☐ No ➡ Did one of the applicants reside on the property on January 1 of the year for which this application is made?

If **YES**, provide name of resident:

☐ Yes ☐ No ➡ Are any of the acres leased out to a farmer? If **YES**, indicate: Number of acres leased out:

Name of farmer leasing the land: Phone:

Choose the legal form of ownership from "a - e" below, and answer the questions, if any, for that ownership:

☐ **a. One Individual** ☐ **b. Husband and Wife** (as tenants by the entirety)

☐ **c. Business Entity. (Circle one: Corporation, Limited Liability Company, Partnership)** List all the direct shareholders, members, or partners of the business entity and their farming activities:

Member: Farming Activities:

Member: Farming Activities:

Member: Farming Activities:

Member: Farming Activities:

☐ Yes ☐ No ➡ Are any of the direct shareholders, members, or partners either a business entity or trust (i.e. not an individual)? If YES, you must attach a breakdown of those business entities or trusts until you reach the individual level of ownership interest and you must describe those individuals' farming activities.

☐ Yes ☐ No ➡ Once you have reached the individual level of ownership interest, are all of the individuals relatives of each other? (See G.S. 105-277.2(5a) for the definition of relative.)

State the principal business of the business entity:

☐ **d. Trust.** List the trustee(s), name of the trust, and all of the beneficiaries:

Trustee(s): Name of trust:

Beneficiary: Farming Activities:

Beneficiary: Farming Activities:

Beneficiary: Farming Activities:

Beneficiary: Farming Activities:

☐ Yes ☐ No ➡ Are any of the beneficiaries either a business entity or trust (i.e. not an individual)? If **YES**, you must attach a breakdown of those business entities or trusts until you reach the individual level of ownership interest and you must describe those individual's farming activities.

☐ Yes ☐ No ➡ Once you have reached the individual level of ownership interest, are all of the beneficiaries either the trust's creator or relatives of the creator? (See G.S. 105-277.2(5a) for the definition of relative.)

☐ **e. Tenants in common.** List the tenants and their percentage of ownership (round to the nearest 0.1%):

Owner % Owner %

Owner % Owner %

☐ Yes ☐ No ➡ Are any of the tenants either a business entity or trust? If **YES**, you must make a copy of this page for each business entity or trust. You must complete the business entity section only or trust section only for each tenant, as appropriate, labeling each copy with the name of the business entity or trust.

The Tax Assessor may contact you for additional information after reviewing this application.

Part 2. Agriculture and Horticulture

For the past three years and for each tax parcel within the farm unit, enter the agricultural or horticultural products actually produced on the land and the gross income from the sale of the products, including livestock, poultry, and aquatic species. **INCOME INFORMATION IS SUBJECT TO VERIFICATION.**

If payments are received from any governmental soil conservation or land retirement program, indicate the acres and amount of income in the table below. Provide the name of the program in the Product column.

Do not include income received from the rental of the land. Income must be from the sale of the product.

	ONE YEAR AGO 20			TWO YEARS AGO 20			THREE YEARS AGO 20		
Parcel ID	Product	Acres	Income	Product	Acres	Income	Product	Acres	Income
	Totals	0.00	0	Totals	0.00	0	Totals	0.00	0
	Totals	0.00	0	Totals	0.00	0	Totals	0.00	0
	Totals	0.00	0	Totals	0.00	0	Totals	0.00	0
	Totals	0.00	0	Totals	0.00	0	Totals	0.00	0
	Totals	0.00	0	Totals	0.00	0	Totals	0.00	0

☐ Yes ☐ No ➤ If this application covers a horticultural tract used to grow **Christmas trees**, has a written management plan been prepared? If **YES**, attach a copy. If **NO**, attach a full explanation of your operation that contains at least the following: year each tract was planted, gross income from each tract, site management practices, number of trees per acre, and expected date of harvesting for each tract.

If this application covers an aquatic species farming operation, enter the total pounds produced for commercial sale annually for the last three years: Year 20 ____ : ____ lbs, Year 20 ____ : ____ lbs, Year 20 ____ : ____ lbs

Part 3. Forestry

Attach a complete copy of your forest management plan. Indicate below who prepared the plan:

☐ **N.C. Division of Forest Resources** ☐ **Consulting Forester** ☐ **Owner** ☐ **Other**

Note: The property must be actively engaged in the commercial growing of trees under a sound management program as of January 1 of the year for which application is made.

Key elements in a written plan for a sound forestland management program are listed below:

1. Management and Landowner Objectives Statement—Long range and short range objectives of owner(s) as appropriate.
2. Location--Include a map or aerial photograph that locates the property described and also delineates each stand referenced in the "Forest Stand(s) Description/Inventory and Stand Management Recommendations" (item 3 below).
3. Forest Stand(s) Description/Inventory and Stand Management Recommendations -- Include a detailed description of various stands within the forestry unit. Each stand description should detail the acreage, species, age, size (tree diameter, basal area, heights), condition (quality and vigor), topography, soils and site index or productivity information. Stand-specific forest management practices needed to sustain productivity, health and vigor must be included with proposed timetable for implementation.
4. Regeneration-Harvest Methods and Dates--For each stand, establish a target timetable for harvest of crop trees, specifying the type of regeneration-harvest (clear cut, seed tree, shelter wood, or selection regeneration systems as applicable).
5. Regeneration Technique--Should include a sound proposed regeneration plan for each stand when harvest of final crop trees is done. Specify intent to naturally regenerate or plant trees.

NOTE: Forest management plans can and should be updated as forest conditions significantly change (e.g. change in product class mix as the stand ages and grows, storm damage, insect or disease attack, timber harvest, thinning, wildfire). The county will audit plans periodically and, to remain eligible for use-value treatment, the plan must be implemented.

Part 4. Affirmation

AFFIRMATION OF APPLICANT – I (we) the undersigned declare under penalties of law that this application and any attachments hereto have been examined by me (us) and to the best of my (our) knowledge and belief are true and correct. In addition, I (we) fully understand that an ineligible transfer of the property or failure to keep the property actively engaged in commercial production under a sound management program will result in the loss of eligibility. I (we) fully understand that loss of eligibility will result in removal from the program and the immediate billing of deferred taxes.

Signature of Owner (All tenants of a tenancy in common must sign.)	**Title**	**Date**
Signature of Owner (All tenants of a tenancy in common must sign.)	**Title**	**Date**
Signature of Owner (All tenants of a tenancy in common must sign.)	**Title**	**Date**

Part 5. Continued Use *(Complete only if the property is currently in Present-Use Value and you are applying for immediate eligibility under the Continued Use exception. See G.S. 105-277.2(b2)(1) for full details.)*

I certify:
1. **The property is currently in Present-Use Value.**
2. **I intend to continue the current use of the land under which it currently qualifies.**
3. **I understand I will be responsible for all deferred taxes due because of any disqualification.**
4. **I ACCEPT FULL LIABILITY FOR ANY EXISTING DEFERRED TAXES.**

Note: If the property is currently in Present-Use Value and liability is not accepted, the full amount of the deferred taxes will typically be due in the name of the grantor immediately. Liability need not be accepted and no deferred taxes are due for qualifying transfers pursuant to G.S. 105-277.3(b) and (b1). For example, liability does not need to be accepted for qualifying transfers to relatives. However, any deferred taxes existing at the time of transfer will remain a lien on the property. Owners already receiving Present-Use Value on properties not included in this application may wish to review the alternative provisions of G.S. 105-277.3(b2)(2).

Signature of Owner (All tenants of a tenancy in common must sign.)	**Title**	**Date**
Signature of Owner (All tenants of a tenancy in common must sign.)	**Title**	**Date**
Signature of Owner (All tenants of a tenancy in common must sign.)	**Title**	**Date**

FOR OFFICE USE ONLY: ☐ APPROVED ☐ DENIED BY:_____ REASON FOR DENIAL: _____

Form AV-3

Voluntary Payment of Deferred Taxes Without Requesting Disqualification

Any updates to Form AV-3 since the publication of this Guide can be viewed online at: www.dornc.com/downloads/property.html

AV-3
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Voluntary Payment of Deferred Taxes Without Requesting Disqualification

PRINT CLEAR

Full Name of Owner(s)

Telephone Number **Fax Number**

Instructions

Use this form to: Voluntarily pay any or all of the deferred taxes without requesting disqualification from present-use value classification.

G.S. 105-277.1D allows a property owner receiving present-use value to voluntarily pay any or all of the deferred taxes without affecting the eligibility of the property for present-use value classification. **The payments are immediately applied to the existing deferred taxes and are not held for application to additional deferred taxes resulting from any future removal from the program.**

If you wish to be removed from present-use value classification, file **Form AV-6** instead of this form.

List the properties for which the deferred taxes will be paid.

Tax Years	Parcel ID	Total Acres in Parcel

ACKNOWLEDGEMENT

I (we), the undersigned, hereby acknowledge the following:

1. I (we) are voluntarily paying deferred taxes. I (we) are not requesting disqualification.
2. Payment of the deferred taxes does not result in disqualification.
3. The payments will be immediately applied to the existing deferred taxes and will not be held for application to additional deferred taxes resulting from any future removal from the program.

Signatures—All owners must sign this form. An attorney licensed to practice law in North Carolina who is representing the **current owner** may sign for the owner. All tenants of a tenancy in common must sign this form. If husband and wife own the property as tenants by the entirety, either the husband or the wife may sign, but both are recommended to sign. All general partners of a partnership must sign. An officer of a corporation may sign for the corporation. An officer of an LLC may sign for the LLC. A trustee may sign for the trust.

Name (Owner or Owner's Attorney - Please Print) **Signature** (Owner or Owner's Attorney) **Date**

Name (Owner or Owner's Attorney - Please Print) **Signature** (Owner or Owner's Attorney) **Date**

Name (Owner or Owner's Attorney - Please Print) **Signature** (Owner or Owner's Attorney) **Date**

Name (Owner or Owner's Attorney - Please Print) **Signature** (Owner or Owner's Attorney) **Date**

Contact Person for Owner's Attorney **Phone** **Fax**

ASSESSOR'S USE ONLY: DATE FILED:_____ ☐ MAIL ☐ HAND-DELIVERED

Form AV-6

Request for Voluntary Disqualfication from Present-Use Value Classification

Any updates to Form AV-6 since the publication of this Guide can be viewed online at: www.dornc.com/downloads/property.html

AV-6
Web
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Request for Voluntary Disqualification from Present-Use Value Classification

PRINT CLEAR

Full Name of Owner(s)

Telephone Number **Fax Number**

Instructions

Use this form to:
1. Request voluntary disqualification from present-use value classification, and
2. Cause the deferred taxes for the current year and the three preceding years to be due and payable as a result of the voluntary disqualification.

The deferred taxes for the three tax years preceding disqualification become due and payable when the property is disqualified from present-use value classification. (G.S. 105-277.4(c))

Voluntary disqualification should not be requested if you wish to pay any or all of the deferred taxes and still retain your present-use value classification. File Form AV-3, not this form, if you wish to voluntarily pay some or all of your taxes and retain present-use value classification.

Important! Please Read! -- Once this form has been signed and filed with the tax assessor, the request cannot be rescinded or reversed. The filing of the form results in disqualification. The deferred taxes become due and payable as of the date of disqualification.

The date of disqualification is the date that this form is filed with the tax assessor.

There is no statutory provision for releasing or refunding a tax imposed due to voluntary disqualification, even if voluntary disqualification was requested in error by the owner.

PLEASE CONSIDER YOUR REQUEST CAREFULLY.

List the parcel(s) for which voluntary disqualification from present-use value classification is requested.

Parcel ID	Total Acres in Parcel	Full or Partial Disqualification **(check one)**	If partial disqualification, describe and state the number of acres to be disqualified. **Attach plat and/or documentation.**
		☐ Full ☐ Partial	
		☐ Full ☐ Partial	
		☐ Full ☐ Partial	
		☐ Full ☐ Partial	
		☐ Full ☐ Partial	

Comments:

Voluntary Payment of Deferred Taxes Without Disqualification - File **Form AV-3**, not this form, if you wish to pay any or all of the deferred taxes without being disqualified from the present-use value program. G.S. 105-277.1D allows a property owner receiving present-use value to pay any or all of the deferred taxes for that property without affecting the eligibility of the property for present-use value classification. The payments are immediately applied to the existing deferred taxes and are not held for application to additional deferred taxes resulting from any future removal from the program.

Request for Estimate of Deferred Taxes - File **Form AV-7**, not this form, if you are only requesting an estimate of deferred taxes potentially due as of the estimate date. An estimate does not disqualify the property from present-use value classification.

ACKNOWLEDGEMENT

I (we), the undersigned, hereby acknowledge the following:

1. **I (we) are the owner(s) of record of the above listed property on the date this form is filed with the tax assessor.**
2. **I (we) acknowledge that voluntary disqualification should not be requested if I (we) wish to voluntarily pay the deferred taxes and still retain present-use value classification.**
3. **Voluntarily disqualification from present-use value classification is requested for the above listed property.**
4. **The date of voluntary disqualification is the date that this form is filed with the tax assessor.**
5. **I (we) understand that the request for voluntary disqualification, once filed with the tax assessor, cannot be rescinded or reversed. If the request was made in anticipation of a property transfer but the property does not actually transfer, the owner may be able to immediately re-qualify for the next tax year under certain conditions; however, the taxes billed as a result of the disqualification resulting from the filing of this form remain in force.**
6. **Voluntary disqualification (but not voluntary payment only) will preclude a potential buyer from immediate present-use value eligibility under the provisions of G.S. 105-277.3(b2)(1) for Continued Use. The new owner may or may not be able to immediately qualify under other statutory provisions for the next tax year.**

Signatures—All owners must sign this form. An attorney licensed to practice law in North Carolina who is representing the **current owner** may sign for the owner. All tenants of a tenancy in common must sign this form. If husband and wife own the property as tenants by the entirety, either the husband or the wife may sign, but both are recommended to sign. All general partners of a partnership must sign. An officer of a corporation may sign for the corporation. An officer of an LLC may sign for the LLC. A trustee may sign for the trust.

Name (Owner or Owner's Attorney - Please Print)	**Signature** (Owner or Owner's Attorney)	**Date**
Name (Owner or Owner's Attorney - Please Print)	**Signature** (Owner or Owner's Attorney)	**Date**
Name (Owner or Owner's Attorney - Please Print)	**Signature** (Owner or Owner's Attorney)	**Date**
Name (Owner or Owner's Attorney - Please Print)	**Signature** (Owner or Owner's Attorney)	**Date**

Contact Person for Owner's Attorney	**Phone**	**Fax**

ASSESSOR'S USE ONLY: DATE FILED:_____ ☐ MAIL ☐ HAND-DELIVERED

Form AV-7

Request for Estimate of Deferred Taxes

Any updates to Form AV-7 since the publication of this Guide can be viewed online at: www.dornc.com/downloads/property.html

AV-7
Web
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Request for Estimate of Deferred Taxes

PRINT CLEAR

Owner's Name

Telephone Number **Fax Number**

Requestor's Name (if different than owner)

Telephone Number **Fax Number**

Instructions

Use this form to: Request an estimate of the deferred taxes that would be due and payable upon a potential disqualification from present-use value classification.

An estimate of deferred taxes does not disqualify the property from present-use value classification, but neither are the deferred tax bills generated. **If you later wish to pay the deferred taxes, you must file either Form AV-3 to voluntarily pay the taxes without disqualification or Form AV-6 to voluntarily disqualify the property.**

List the parcel(s) for which you are requesting an estimate of the deferred taxes that would be due and payable upon a potential disqualification from present-use value classification.

Parcel ID	Total Acres in Parcel	Full or Partial Disqualification **(check one)**	If partial disqualification, describe and state the number of acres to be disqualified. **Attach plat and/or documentation.**
		☐ Full ☐ Partial	
		☐ Full ☐ Partial	
		☐ Full ☐ Partial	
		☐ Full ☐ Partial	
		☐ Full ☐ Partial	

Request is for an Estimate of Deferred Taxes as of (date):

Comments:

ACKNOWLEDGEMENT

I (we), the undersigned, hereby acknowledge the following:

1. This request for an estimate of deferred taxes does not disqualify the property from present-use value classification, but neither are the deferred tax bills generated.
2. If you later wish to pay the deferred taxes, you must file either **Form AV-3** to voluntarily pay the taxes without disqualification or **Form AV-6** to voluntarily disqualify the property.

Name (Requestor - Please Print) **Signature** (Requestor) **Date**

ASSESSOR'S USE ONLY: DATE FILED:_____ ☐ MAIL ☐ HAND-DELIVERED

Form AV-56

Application for Wildlife Conservation Program

Any updates to Form AV-56 since the publication of this Guide can be viewed online at: www.dornc.com/downloads/property.html

AV-56
Web
5-11

Application for Wildlife Conservation Program

(G.S. 105-277.15)

PRINT CLEAR

County of _____ **, NC** **Tax Year** _____

Full Name of Owner(s)

Mailing Address of Owner

City **State** **Zip Code**

Home Telephone Number **Work Telephone Number** **Ext.** **Cell Phone Number**

Enter the Parcel Identification Number, acreage breakdown, and acreage total for each tax parcel included in this application:

PARCEL ID	OPEN LAND in Wildlife Conservation	WOODLAND in Wildlife Conservation	OPEN LAND NOT in Wildlife Conservation	WOODLAND NOT in Wildlife Conservation	HOME SITE	OTHER (Describe in Comments)	TOTAL ACRES
							0.00
							0.00
							0.00

Comments:

List any other land you own in this county that is also in the wildlife conservation program? Parcel IDs:

On what date did you become the owner of the property? DATE:

You must own the property in one of the four qualifying forms of ownership. Indicate the legal form of ownership of the property. (Note: A business entity is defined as a corporation, limited liability company, general partnership, or limited partnership.)

☐ **One Individual** ☐ **Husband and Wife (Tenants by the Entirety only)** ☐ **Family Business Entity** ☐ **Family Trust**

If the property is owned by a business entity or trust, answer the two following questions:

☐ Yes ☐ No ➜ Are any of the members of the business entity or beneficiaries of the trust either a business entity or a trust (i.e. not an individual)? If YES, you must attach a complete description of the ownership structure of the business entity or trust which shows the individual level of ownership interest.

☐ Yes ☐ No ➜ Once you have determined the individual level of ownership interest, are all of the individuals relatives of each other? (See G.S. 105-277.2(5a) at www.ncleg.net for the definition of relative.) List all of the individuals:

1. 2. 3.

4. 5. 6.

****You must submit a complete copy of your wildlife habitat conservation agreement with this application.****

AFFIRMATION OF APPLICANT – I, the undersigned, declare under penalties of law that this application and any attachments are true and correct to the best of my knowledge and belief. I have read the governing exclusion statute. I fully understand that an ineligible transfer of the property or failure to meet the requirements of the wildlife conservation program will result in the loss of eligibility. I fully understand that loss of eligibility will result in removal from the program and the immediate billing of deferred taxes.

Signature of Owner (please print) **Title** **Date**

Signature of Owner (please print) **Title** **Date**

The Tax Assessor may contact you for additional information after reviewing this application.

FOR OFFICE USE ONLY: ☐ APPROVED ☐ DENIED BY:_____ REASON FOR DENIAL: _____