



WEST VIRGINIA STATE TAX DEPARTMENT

PROPERTY TAX DIVISION PUBLICATION

PTD – 3
(2020)

VALUATION OF FARMLAND

Introduction

The purpose of this publication is to help owners of farmland understand their real property assessments. This publication is particularly relevant because the West Virginia Constitution and statutes provide for farmland to be assessed differently than other types of real property for ad valorem property tax purposes.

Table of Contents

Introduction	1
Farm Use Valuation	2
Valuation of Farmland.	2
Farm Use Valuation	3
Qualification for Farm Use Valuation	3
Small Farm Rule	4
Woodland	4
Managed Timberland	4
Application Procedure	5
Criteria for Farm Use Valuation	5
Categories of Farmland	6
Tillable	7
Pasture	7
Woodland	8
Valuation of Farmland	9
Valuation.	10
Other Valuation Matters	12
When Owner of Farmland Owns Minerals Under Farmland.	12

When Owner of Farmland Does Not Own the Minerals Under Farmland..... 12

Active Farm Properties..... 12

Towers 13

Farmhouse..... 13

Farmland Fee Estates 13

Farm Buildings..... 15

Common Reason’s for County 15

Assessor Denying Farm Use Valuation 15

Disqualifications..... 15

Exceptions 16

Appealing Denial of Farm Use Valuation..... 16

Timetable for Filing Application and Appeals 16

Definitions..... 17

Laws and Rules 20

Farm Use Valuation

Farms in West Virginia are valued using a special method of valuation whether the farm is operated by the owner or the owner’s bona fide tenant. This publication explains this special valuation method and how one applies for farm use valuation.

An application for farm use valuation must be submitted annually, on or before the first day of September of the calendar year, to the assessor of the county in which the farm is located.

When the farmland is located in two or more counties, the application must be filed in each county.

Valuation of Farmland.

County Assessors are required to appraise farm real property at its fair and reasonable value for farming purposes regardless of what the value of the property might be if the property were used for some other purpose. Appraised value is determined by giving consideration to the fair and reasonable income the farmland might be expected to earn in the locality wherein situated, if rented. The fair and reasonable value for farming purposes is deemed to be the market value of the farmland for appraisal purposes. W. Va. Code § 11-1A-10(a). Assessed value is 60 percent of appraised value of the farmland.

Please note that a person is not engaged in farming if the person is primarily engaged in forestry or growing timber.

Additionally, a corporation is not engaged in farming unless its principal activity is the business of farming. In the event that the controlling stock interest in the corporation is owned by another corporation, the corporation owning the controlling interest must also be primarily engaged in the business of farming. W. Va. Code § 11-1A-10(b).

Farm Use Valuation

Farm use valuation (“FUV”) is a special valuation method applied by the county assessor to property that is actively farmed. It is not an exemption from property taxes, although it may result in a lower tax bill than if the property is appraised at its fair market value. Property that is actively being used for farming purposes is treated as Class II property for tax levying purposes. This is the same classification as owner-occupied residential property.

Farmland that qualifies for the special valuation method will be appraised at its value for farming purposes only. Farmland that does not qualify for this special method of valuation method will be appraised at its fair market value, but it will remain Class II property for levy purposes.

Qualification for Farm Use Valuation

In general, to qualify for farm use valuation, each of the following criteria must be met:

- The property must consist of five (5) or more acres; and
- The property must be used to annually produce agricultural products with a value of \$1,000 or more, for use, consumption or sale.

“Agricultural products” include plants and/or animals that are raised by cultivation of the soil or animal husbandry, for human consumption or other use. It also includes horticulture and nursery products, such as bedding plants for resale or Christmas trees.

Wildlife and wild forest products are not considered agricultural products, nor is commercially harvested timber. Likewise, animals that are bred or kept as pets, including pleasure horses, are not considered farm animals.

For more information, see the Legislative Rule on Valuation of Farmland, Title 110, Series 1A of the West Virginia Code of State Rules which is available at the Secretary of State’s website: <http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=110-01A>

Small Farm Rule

Property consisting of less than five acres may still qualify for farm use valuation, but the owner, or bona fide tenant, must be able to show actual annual sales of farm produce with a value of at least \$500.

Woodland

Generally, woodland is not eligible for farm use valuation. However, woodland that is a part of an overall farming operation is eligible if it is contiguous to the actively farmed land, or, if it is noncontiguous but in close proximity to the farmland, and the woodland is appurtenant to the farming operation -- that it somehow contributes to the farming operation.

The county assessor may take into account the ratio of farmland to woodland in determining whether the woodland may be treated as a part of the farm, but there is no fixed rule as to what the minimum acceptable ratio is. The assessor has discretion to make these determinations on a case-by-case basis.

The value of woodland products, in relatively small quantities, may be counted towards meeting the minimum production value required for farm use valuation. Woodland products include such things as wild mushrooms or other food items found on the land that are not the products of cultivation. The phrase “relatively small quantities” is not a defined term and what it means is left to the discretion of the county assessor.

If the value of timber sold from farm woodland exceeds the value of the agricultural production, then the woodland will be assessed as commercial timberland for that year, and the farmland will be assessed separately.

Managed Timberland

Land that is certified by the Division of Forestry as “managed timberland” is not eligible for farm use valuation. If it is part of a single tract that otherwise qualifies for farm use valuation, the portion that is certified managed timberland is assessed separately as managed timberland. Separate tax bills will be issued for the managed timberland and for the farmland.

It is sometimes advantageous to have woodland certified as managed timberland because that may result in a lower assessed value than the land would receive if it were valued as farmland. However, farmland is Class II property for tax levy purposes while managed timberland is Class III or Class IV property depending upon whether the property is located within or outside a municipality.

The Legislative Rule for managed timberland recognizes that only part of a tract may be managed timberland. In that situation, the balance of the tract is to be valued by the county assessor. See CSR 110-1H-11.6.1.

Application Procedure

In order to have farmland appraised at its farm use value, the owner, or bona fide tenant, of the property must annually file with the county assessor the West Virginia State Farm Census and Farm Use Valuation Application.

- The application must be filed with the county assessor on or before September 1 of the then current calendar year.
- “Filed” means that the application must be received by the assessor on or before the first day of September. The so-called “mailbox rule” (postmark date) does not apply here.
- The application filed with the county assessor on or before September 1 of the calendar year is for the next property tax year that begins on January 1 of the next calendar year.
- All sections of the application must be completed for it to be considered a valid application.
- The application must be signed by the farm owner or bona fide tenant.

Criteria for Farm Use Valuation

The following factors are indicative of, but are not conclusive in determining, whether lands which appear to be actively devoted to farm or agricultural use are in fact bona fide farms:

1. Present and past use of the land and, in particular, the use of the land during the calendar year immediately preceding the then current tax year in which the application for farm use valuation is filed with the county assessor.

2. Participation in governmental or private agricultural programs such as soil conservation, farmland preservation or federal farm lending agencies.

3. Extent of production for sale of plants, livestock and food for human and animal consumption.

4. Size of the parcel or parcels farmed. In particular, whether the size is economically compatible with the agricultural use to which the land is purportedly devoted.

5. The amount of acreage in crops, pasture and woodland.

6. The amount of livestock or poultry maintained on the land.

7. Whether or not the farmer practices "custom farming" on the land in question.

8. The inventory of farm equipment and the condition thereof.

9. The number, type, utility and condition of farm buildings on the land.

10. The ratio of farm or agricultural use of the land to other uses of the land.

11. The occurrence of multiple sales for nonfarm uses of parcels out of a larger tract of land on which farming occurs. The marketing of land as evidenced by such sales is strong, but not conclusive, evidence that the property is not a bona fide farm.

12. Woodland is considered land of a bona fide farm only if:

a. It is part of or appurtenant to a tract of land which is determined by the assessor to be actively devoted to farm or agricultural use; or

b. It is contiguous to or operated in common with a tract of land in the same ownership which has been determined by the assessor to be actively devoted to agricultural use, and such woodland is not used primarily in commercial forestry or the growing of timber for commercial purposes or any nonfarm use.

Categories of Farmland

Farmland is divided into three (3) categories according to the utility or use of the land.

Farmland is categorized as:

(1) Tillable. - The term "tillable land" means land used or usable and intended for use in raising crops.

(2) Pasture. - The term "pastureland" means used or usable and intended for use in grazing livestock.

(3) Woodland. - The term "woodland" means land used for growing timber.

Each of these three (3) categories is divided into five (5) subcategories which grade the property according to quality and fitness for the particular utility or use category to which it has been classified. These subcategories are designated "Grade A" through "Grade E." Land having less than the highest quality and fitness is classified as "Grade B" through "Grade E" "Grade E" being the lowest quality and fitness classification.

Any given tract of land may fall into any number of these categories and subcategories in accordance with the actual use to which the land is suited.

Tillable

Tillable land is categorized into five (5) grades.

Grade "A" land is good loam soil that is easy to work (a tract approximately ten (10) acres or more in one (1) continuous parcel) and can be cultivated safely with ordinary good farm methods. Grade "A" land is nearly level and there is little or no erosion.

Grade "B" land is level to rolling and can be cultivated safely with ordinary good farm methods. The soil may need lime or fertilizing. The bottom land may need improved drainage.

Grade "C" land is also level to rolling crop land. The drainage of the property is generally good. A small amount of erosion may be taking place. This land can be cultivated with care. It needs contour strip cropping usually best suited for hay and other grass crops. This type of property may be cut into smaller sections due to some sort of natural or man-made obstructions.

Grade "D" land -is good hillside farmland; 80 percent of this land can be farmed with a tractor. The soil is generally of a good quality and the drainage is good. This type of land is generally best suited for the raising of hay.

Grade "E" land is very steep hillside that is too steep to farm with modern farm machinery. The soil is generally of a poor quality and its cultivation may cause severe erosion.

Pasture

Pastureland is categorized into five (5) grades.

Grade "A" pastureland could be used for either pasture or crop land. Its topography is level to rolling. The land can be clipped with a tractor; lime and fertilizer can be applied with modern farm equipment. The drainage of the property will be good

and the soil will be good quality. The land is clear of any significant overgrowth such as excess trees or brush.

Grade "B" pastureland is of similar nature to Grade "A" pastureland except that the quality of the soil is not good. The size of the parcel will be small. This type of land is generally not suitable for tilling and generally best suited for use as permanent pasture.

Grade "C" - This land will generally have a moderate amount of erosion. The topography of the land will be average.

Grade "D" - This land is generally hillside pasture that has a very steep degree of slope. The pasture will generally have some natural obstruction such as overbrush, etc. The type of soil is generally of poor quality.

Grade "E" - This land is generally very steep and there may be a mixture of overbrush and pasture throughout. Brush must be cleared with hand tools. The soil consistency is generally of poor quality; lime or fertilizer is seldom applied to this type of land and then only with hand tools.

Woodland

Woodland is categorized into five (5) grades:

Grade "A" woodland land is adaptable, upon clearing, for use as tillable land or pasture. The topography of the land will be level to slightly rolling. The soil type is generally of loam quality. There will be a stand of trees of commercial species.

Grade "B" woodland is also level to rolling. It is adaptable for other profitable uses. There may be a minimal amount of erosion. The soil is generally of a good quality.

Grade "C" woodland is land that due to its topography is best used for the growing of timber. The land includes a stand of sound trees of commercial species in good form.

Grade "D" woodland is land that due to its topography is generally not economically feasible to use for anything other than growing trees. There may be some erosion of the soil.

Grade "E" woodland that generally has a steep topography and is generally land from which it is difficult to harvest the timber. This land generally has poor soil quality.

Valuation of Farmland

The true and actual value of all farms used, occupied and cultivated by their owners or bona fide tenants is arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose. The true and actual value is arrived at by giving consideration to the fair and reasonable income which the farm might be expected to earn if rented under normal conditions in the locality wherein situated.

The following factors shall be indicative of, but not conclusive in determining, whether lands which appear to be actively devoted to farm or agricultural use are in fact bona fide farms:

1. Present and past use of the land, in particular, the use during the year immediately preceding the then current tax year.
2. Participation in governmental or private agricultural programs such as soil conservation, farmland preservation or federal farm lending agencies.
3. Extent of production for sale of plants, livestock and food for human and animal consumption.
4. Size of the parcel or parcels farmed. In particular, whether such size is economically compatible with the agricultural use to which the land is purportedly devoted.
5. The amount of acreage in crops, pasture and woodland.
6. The amount of livestock or poultry maintained thereon.
7. Whether or not the farmer practices "custom farming" on the land in question.
8. The inventory of farm equipment and the condition thereof.
9. The number, type, utility and condition of farm buildings.
10. The ratio of farm or agricultural use of the land to other uses of the land.
11. The occurrence of multiple sales for nonfarm uses of parcels out of a tract. The marketing of land as evidenced by such sales shall be strong, but not conclusive, evidence that the property is not a bona fide farm.
12. Woodland shall be considered land of a bona fide farm only if:

a. It is part of or appurtenant to a tract of land which is determined by the assessor to be actively devoted to farm or agricultural use; or

b. It is contiguous to or operated in common with a tract of land in the same ownership which has been determined by the assessor to be actively devoted to agricultural use, and such woodland is not used primarily in commercial forestry or the growing of timber for commercial purposes or any nonfarm use.

Valuation.

1. **Farmland.** - Farmland shall be classified based upon its actual farm use in the categories illustrated in Appendix 1. Rental amounts by class shall be assigned to each class of land on a per acre basis. The per acre rental value shall be capitalized to yield an appraised value per acre. The appraisal value per acre thus determined shall be multiplied by the number of farm surface acres to yield the appraised value of farmland. This value shall be the farm use value as required by W. Va. Code §11-1A-10.

2. **Farm Buildings.** - Rental value of farm buildings and other improvements on the farmland, shall be valued by determining the replacement cost of the building or structure by usual farm construction practices, and farm labor standards and subtracting therefrom depreciation. Both of these determinations shall be made in accordance with the Tax's Department's real property appraisal manual as filed in the State Register in accordance with Chapter 29A of the Code of West Virginia, 1931, as amended, and as it relates to agricultural buildings and structures. One (1) acre of land shall be assigned to all buildings as a unit situate on the property, regardless of the actual acreage occupied by such buildings and shall be appraised at its farm-use valuation based on the highest class of farmland present on the farm.

3. **Timber & Other Natural Resources.** - Minerals, timber and other natural resources on or under farmland subject to farm use valuation will (except for woodlots) be valued based upon the following circumstances, except that timber managed in accordance with Section 2.6.4.2.b of the Legislative Rule shall be subject to farm use appraisal only.

a. Fee estates which include natural resources, where income is not derived from such natural resource(s), shall be subject to farm use valuation only. Such natural resource(s) as may underlie or be present on such fee estates shall not be valued so long as income is not derived therefrom.

b. Fee estates which include natural resources, where income is derived from such natural resource(s), shall be valued as follows:

1. Fee estates where the annual wholesale value of farm commodities or products, as enumerated in Section 2.5 of these regulations is fifty percent (50%) or more

of the usual annual gross income from all uses of the property, shall be subject to farm use valuation.

2. Fee estates where the annual wholesale value of farm commodities or products as enumerated in Section 2.5 of these regulations is less than fifty percent (50%) of the usual annual gross income from all uses of the property, shall be valued by adding to the surface farm use value, the applicable natural resource value as provided in West Virginia Leg. R. Series 1 11.4, 11.5, 11.6, 11.7, 11.8.

3. For the purposes of these regulations, payments in kind of natural resources to any person from such fee estates shall be considered nonfarm income. For example: Payments of so called “free gas” to lessors or tenants of a natural gas producing tract are nonfarm income for the purposes of these regulations.

c. Estates in land arising from the severance of the surface and any mineral estate, shall be valued as follows:

1. Each separate estate in land, if owned by the person requesting farm use valuation, shall be valued as follows:

a. Where the annual wholesale value of farm commodities or products 50% or more of the usual annual gross income from all separate estates, the property is subject to farm use valuation only.

b. Where the annual wholesale value of farm commodities or products is less than 50% of the usual annual gross income from all uses of the separate estates, the property shall be valued by adding to the surface farm use value, the applicable natural resource value as provided in West Virginia Leg. Reg. Series 1 11.4, 11.5, 11.6, 11.7, 11.8.

2. Where the owner of any freehold estate in land is not the person requesting farm use valuation, those estates are valued as follows:

a. The estate which encompasses the surface land is subject to farm use valuation.

b. The estate(s) which do not encompass surface land are valued as provided in West Virginia Leg. Reg. Series 1, 11.4, 11.5, 11.6, 11.7, 11.8. Property owned by a corporation or an unincorporated business is not considered a farm or land used for farming purposes unless the principal activity of the corporation or unincorporated business is the business of farming, and in the event that the controlling stock interest in a corporation is owned by another corporation, the corporation owning the controlling interest must also be in the business of farming, corporation or unincorporated business

shall be deemed to be primarily engaged in the business of farming if, the wholesale value of farm commodities or products is 50% or more of the annual gross income of the corporation or unincorporated business.

Other Valuation Matters

When Owner of Farmland Owns Minerals Under Farmland.

The owner of the farmland may also own the coal, oil, natural gas or other natural resource under the farmland. In this situation eligible farmland will receive farm use valuation and be taxed in Class II. Natural resources under the farmland will be valued like other similar natural resources and taxed in Class III or Class IV, depending upon whether the natural resource is located within or outside a municipality.

When Owner of Farmland Does Not Own the Minerals Under Farmland.

When the owner of the farmland does not own the natural resources under the farmland, use of part of the farmland by the owner of the natural resources to extract the natural resources from the ground will not destroy the farmer's farm use valuation for the portion of that acreage used as a bona fide farm.

Active Farm Properties.

When coal rights are part of a "fee" estate and the surface qualifies as an active farm, the coal rights will be valued in the following manner:

(A) Where income or royalty is not derived from the coal rights (coal rights not leased or non-producing) the coal interest is not valued for property tax purposes.

(B) Where income or royalty is derived from the coal rights (coal rights leased or producing) the coal interest is valued as follows:

(1) Fee estates, where the annual wholesale value of farm commodities or products is 50% or more of the usual annual gross income from all uses of the property, are subject to farm use valuation. The coal interests are not valued in this situation.

(2) Fee estates, where the annual wholesale value of farm commodities or products is less than 50% of the usual annual gross income from all uses of the property, the applicable coal values are added to the surface farm use value. See 110 CSR 1-11.4(c)(8).

Towers

When a tower (typically a cell tower) is located on land eligible for farm use valuation, the location of the tower will not defeat farmland valuation for the land on which the tower is located. However, the tower is not farm equipment. It is valued by the county assessor like other towers and assessed to the owner of the tower.

Note: In the case of towers constructed on or after July 1, 2019 but before July 1, 2024, the value of the tower is determined by the West Virginia Board of Public Works and not be the county assessor. See W. Va. Code §§ 11-6L-2 and 11-6L-3.

Farmhouse

When a farmhouse is located on the farmland, the house and one acre surrounding the farmhouse is valued as a homestead in the same manner as surrounding homes and properties not situated on farmland, taking into consideration such variables as location, resale value and accessibility. See W. Va. Code § 11-1A-3(f).

Farmland Fee Estates

Farmland fee estates which include natural resources, where income is not derived from the natural resource(s), are shall subject to farm use valuation only. Natural resource(s) that may underlie or be present on the fee estate are not be valued so long as they do not produce income. CSR 110-1H-2.6.6.3.a.

Farmland fee estates which include natural resources, where income is derived from such natural resource(s), are valued as follows:

1. Fee estates where the annual wholesale value of farm commodities or products, as enumerated in 110-1H-2.5, is 50% or more of the usual annual gross income from all uses of the property, are subject to farm use valuation. CSR 110-1H-2.6.6.3.b.1.

2. Fee estates where the annual wholesale value of farm commodities or products, as enumerated in 110-1H-2.5, is less than 50% of the usual annual gross income from all uses of the property, are valued by adding to the surface farm use value the applicable natural resource value as provided in West Virginia Leg. Reg. Series 1 11.4, 11.5, 11.6, 11.7, 11.8. See CSR 110-1H-2.6.6.3.b.2.

3. For the purposes of valuation, payments in kind of natural resources to any person from the fee estates are considered nonfarm income. For example: Payments of so called "free gas" to lessors or tenants of a natural gas producing tract are nonfarm income for the purposes of valuation. See CSR 110-1H-2.6.6.3.b.3.

Estates in land arising from the severance of the surface and any mineral estate, are valued as follows:

1. Each separate estate in land, if owned by the person requesting farm use valuation, are valued as follows:

a. Where the annual wholesale value of farm commodities or products is 50% or more of the usual annual gross income from all separate estates, the property is only subject to farm use valuation. See CSR 110-1H-2.6.6.3.c.1.a.

b. Where the annual wholesale value of farm commodities or products is less than 50% of the usual annual gross income from all uses of the separate estates, the property is valued by adding to the surface farm use value, the applicable natural resource value as provided in West Virginia Leg. Reg. Series 1 11.4, 11.5, 11.6, 11.7, 11.8. See CSR 110-1H-2.6.6.3.c.1.b.

2. Where the owner of any freehold estate in land is not the person requesting farm use valuation, those estates shall be valued as follows:

a. The estate which encompasses the surface farmland is subject to farm use valuation.

b. The estate(s) which do not encompass surface farmland are valued as provided in West Virginia Leg. Reg. Series 1, 11.4, 11.5, 11.6, 11.7, 11.8. However, nothing in the legislative rule alters the method of valuation of lands or minerals owned by domestic or foreign corporations. Property owned by a corporation or an unincorporated business is not considered a farm or land used for farming purposes unless the principal activity of the corporation or unincorporated business is the business of farming, and in the event that the controlling stock interest in a corporation is owned by another corporation, the corporation owning the controlling interest must also be in the business of farming. A corporation or unincorporated business is deemed to be primarily engaged in the business of farming if, the wholesale value of farm commodities or products is 50% or more of the annual gross income of the corporation or unincorporated business.

Rental information on a cash or share basis for pasture, tillable and wood lot land is collected and verified by the Tax Commissioner, or assessors in each county. However, where rental information is not available or is deemed insufficient by the assessor in any given locale then rental information from similar neighboring locales, may be considered in order to determine the rent attributable to each classified acre of farmland. If that information is also deemed by the Tax Commissioner to be insufficient, the Commissioner may use the best rental information available to the Commissioner. See CSR § 110-1H-2.6.5.1.

Rental rates shall be established annually by the county assessor after a review of identifiable, willing seller-willing buyer arms-length farmland leases that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code §11-1A-3) prior to the appraisal date and through review of any other appropriate information. The review shall give primary emphasis to the information and leases transacted during the most recent years. See CSR § 110-1H-2.6.5.2.

Farm Buildings.

The rental value of farm buildings and other improvements on the farmland but not the farmhouse, are valued by determining the replacement cost of the building or structure by usual farm construction practices, and farm labor standards and subtracting therefrom depreciation. Both of these determinations are made in accordance with the Tax's Department's real property appraisal manual as filed in the State Register in accordance with Chapter 29A of the Code of West Virginia, 1931, as amended, and as it relates to agricultural buildings and structures. One (1) acre of land shall be assigned to all buildings as a unit situate on the property, regardless of the actual acreage occupied by such buildings and shall be appraised at its farm-use valuation based on the highest class of farmland present on the farm. See CSR § 110-1H-2.6.6.2. The farm building rule does not apply to the farmhouse.

Common Reason's for County Assessor Denying Farm Use Valuation

The most common reasons for denial of farm use valuation are:

- Failure to file the application on time.
- Failure to file a complete application.
- Failure to provide sufficient information on the application.
- Failure to meet the minimum production and income requirements.

Disqualifications

- Property that is owned by a corporation or an unincorporated business, e.g., a partnership or LLC, is not eligible for farm use valuation unless farming is the primary business activity of the entity.
- The "primary business activity" of a corporation or other business entity is determined by the ratio of the value of its farm production to the entity's gross income from all sources. If the value of farm products is 50% or more of the gross income of the business, then farming is deemed to be its primary business activity.

- The assessor may require a business to provide verification of its gross income, in the form of the entity's federal income tax return. If so, the information may be used by the assessor for that limited purpose only. The federal income tax return is confidential information under W. Va. Code § 11-1A-23 and may not be disclosed to the public or used for any other purposes.

Exceptions

- If the land is used to grow a crop that does not produce a harvest annually, it may still qualify for farm use valuation, provided it meets all of the other criteria to be a farm during the years when it does produce a crop.
- If the crops fail due to a natural disaster, such as a flood, earthquake, or hurricane that causes great damage or loss of life, the land may still qualify for farm use valuation.
- If a farming operation is in the planning stages, and will not produce a crop in a given year, it may still qualify for farm use valuation, provided that the crops are in the ground, or the livestock has been acquired, on or before July 1 of the assessment year, and a written plan of production is filed with the county assessor along with the application for farm use valuation.

Appealing Denial of Farm Use Valuation

Timetable for Filing Application and Appeals

The following timetable shows the final dates for filing the farm use application, for filing appeals and for the issuance of administrative decisions at each step of the application and appeal procedure.

September 1 - The taxpayer's farm use application must be filed with the county assessor after June 30th and on or before September 1st of the calendar year for the next property tax year. When September 1st falls on a weekend or holiday, or other non-business day, the deadline for filing is extended by law until the next business day.

October 1 - The county assessor must grant or deny the application in writing and notify the applicant of his or her decision within thirty (30) days of receipt of the application.

October 31 - The applicant may appeal the assessor's decision to the Tax Commissioner within thirty (30) days of notification of the decision.

January 1 of next calendar year - The Tax Commissioner must rule on the applicant's appeal on or before January 1st. An adverse decision of the Tax Commissioner may be

appealed to the circuit court of the county where the property is located, under the procedures set forth in W. Va. Code §11-3-25. Information on how to file an appeal may be obtained from the clerk of the circuit court.

February 1 - When the Tax Commissioner rules in favor of the applicant, finding that the property in controversy is a "farm" or "farms" within the meaning of W. Va. Code §11-1a-3(i) and the legislative rules for farmland valuation, and the applicant disagrees with the county assessor's assessed value for the property, the taxpayer may appeal that value to the county commission sitting as a board of equalization and review under the provisions of W. Va. Code §11-3-24. The county commission begins meeting as a board of equalization and review not later than February 1 of the property tax year for the purpose of equalization and review of property values for that year. The board may adjourn sine die any time after February 15 when its work for the year is completed. The board must complete its work adjourn sine die by February 28 of that year. See W. Va. Code §11-3-24.

Appeal to Circuit Court – When the taxpayer protests the assessed value of the farm determined by the county assessor and the taxpayer disagrees with the value determined by the board of equalization and review, the taxpayer may appeal the board's value to circuit court within 30 days after the board of equalization and review adjourns sine die. See W. Va. Code § 11-3-25.

Definitions

Certain terms used in this publication and in the statutes and rules providing for farm use valuation are defined as follows:

"Agriculture" means cultivation of the soil, including the planting and harvesting of crops and the breeding and management of livestock. See W. Va. Code §11-5-3. Unless the context requires a more limited meaning, the term "agriculture" includes "horticulture" and "grazing". In this context, the term "agriculture" shall mean the production of food, fiber, and ornamental woodland products, by means of cultivation, tillage of the soil and by the conduct of farm animal; livestock, dairy, apiary, equine or poultry husbandry, and the practice of horticulture, or any other plant or farm animal production and all farm practices related, usual or incidental thereto, including storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by persons other than the producer thereof. See W. Va. Code §19-19-2(a). Agriculture does not include commercial forestry or the growing of timber for commercial purposes. However, the growing of Christmas trees, orchards and nursery stock is not deemed to be commercial forestry or the growing of timber for commercial purposes. See W. Va. Code §11-1a-3(f) and (g), definitions "farm" and "farming purposes".

"Agricultural" means of or relating to agriculture.

“Agricultural land” means

1. Not less than five (5) acres of land and the improvements thereupon, used or usable in the production of agricultural or farm products having an annual value of one \$1,000.00, or more, by the conduct of the business of agriculture, as defined above. See W. Va. Code §19-19-2(b), or

2. Less than five (5) acres of land, part or all of which is used to produce agricultural or farm products for sale, if annual gross proceeds from such sales are \$500.00 or more.

“Custom farming” means farming undertaken for others under a contract.

“Farm” means and includes land currently being used primarily for farming purposes, whether by the owner thereof or by a tenant, and which has been so used for at least seasonally during the year next preceding the then current tax year, but shall not include lands used primarily in commercial forestry or the growing of timber for commercial purposes; and shall not include one acre surrounding the principal residence situate on a farm which shall be valued as a homesite in the same manner as surrounding homes and properties not situated on farmland, taking into consideration such variables as location, resale value and accessibility. The commissioner of agriculture shall formulate criteria upon which a parcel of land qualifies as a "farm." The county assessor may require the assistance of the Commissioner of Agriculture in making a determination of whether a parcel of land qualifies as a "farm." W. Va. Code § 11-1A-2(f).

“Farm animal” means and includes any animal commonly found on a farm except that wildlife shall not be considered or deemed to be a farm animal unless intentionally and legally nurtured or raised and is intended for farm work, consumption as food or other commercial activity. This would include, but not be limited to, catfish, rabbits, buffalo, mink, foxes and otters. 110 CSR 1A, §2.5.7.

"Farming purposes" means the utilization of land to produce for sale, consumption or use, any agricultural products, including, but not limited to, livestock, poultry, fruit, vegetables, grains or hays or any of the products derived from any of the foregoing, tobacco, syrups, honey, and any and all horticultural and nursery stock, Christmas trees, all sizes of ornamental trees, sod, seed and any and all similar commodities or products including farm wood lots and the parts of a farm which are lands lying fallow, or in timber or in wastelands. W. Va. Code § 11-1A-2(g)

“Farm building” means structures which directly contribute to the operation of the farm. Farm building includes tenant houses and quarters furnished farm employees without rent as part of the terms of their employment. 110 CSR 1A, §2.5.8

“Farm rent” means the consideration paid by a lessee to lease land used for farming purposes. Such consideration may be in cash or in kind, or a combination thereof. 110 CSR 1A, §2.5.10

“Farm use valuation” means a value estimated by capitalizing the fair and reasonable income which farm property might be expected to earn in the locality where situated, if rented.

“Grazing” means the use of land for pasturage. W. Va. Code §11-5-3; 110 CSR 1A, §2.5.15.

“Horticulture” means plant production of every character except forestry and plants not legally grown. 110 CSR 1A, §2.5.16.

“Horticultural” means of or relating to horticulture. 110 CSR §2.5.17

“Normal gross rent” means the rental amount which a property would attain in the open market at the time of appraisal, whether it is higher, lower or the same as the actual contract rent. 110 CSR §2.5.21

“Nursery” means and includes any ground or premises on or in which plants are grown for sale or distribution and transplanting. This may include any place where nursery stock is being treated, packed or stored in preparation for sale, if such place is leased to or owned by the same person (including a firm or corporation) who owns the plants while they are growing in the same nursery. 110 CSR 1A, §2.5.22.

“Nursery stock” means all trees, shrubs and woody vines, including ornamentals, bush fruits, grapevines, fruit trees and nut trees, whether cultivated, native or wild, and all buds, grafts, scions, fruit pits and cuttings from such plants. It also shall mean sod, including sod plugs and sod producing plants, and herbaceous plants, including strawberry plants, narcissus plants and narcissus bulbs. Florists' or greenhouse plants for inside culture or use shall not be considered nursery stock, except that all woody plants, whether greenhouse or field grown, if for outside planting, are hereby defined as "nursery stock". See West Virginia Code §19-12-2(g). No plant is considered nursery stock unless it is situated in an actual "nursery," as defined above and in 110 CSR 1A, §2.5.21.

“Plant” and “plant products” mean trees, shrubs, vines; forage, fiber, cereal plants and all other plants; cuttings, grafts, scions, buds and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds and all other parts of plants and plant products. See W. Va. Code §19-12-2(i), and 110 CSR 1A, §2.5.24.

“Timberland” means any surface real property except farm woodlots of not less than 10 contiguous acres which is primarily in forest and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least 40

percent normal stocking of forest trees which are well distributed over the growing site.
W. Va. Code § 11-1C-2(a)

“Managed timberland” is defined in and means surface real property, except farm woodlots, of not less than 10 contiguous acres which is devoted primarily to forest use and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least 40 percent normal stocking of forest trees which are well distributed over the growing site and that is managed pursuant to a plan provided for in W. Va. Code § 11-1C-10. W. Va. Code § 11-1C-2(b). However, none of the following may be considered as managed timberland:

(1) Any tract or parcel of real estate, regardless of its size, which is part of any subdivision that is approved or exempted from approval pursuant to the provisions of a planning ordinance adopted under the provisions W. Va. Code § 8-24-1 *et seq.*; or

(2) Any tract or parcel of real estate, regardless of its size, which is subject to a deed restriction, deed covenant or zoning regulation which limits the use of that real estate in a way that precludes the commercial production and harvesting of timber upon it.

“Wood lot” means that portion of a farm in timber but shall not include land used primarily for the growing of timber for commercial purposes except that Christmas trees, or nursery stock and woodland products, such as nuts or fruits harvested for human consumption, shall be considered farm products and not timber products. 110 CSR §2.5.26.2.

“Woodland products” means cut trees, firewood, posts, rails, splints, logs, limbs and similar wood products and hickory nuts, walnuts, beechnuts, butternuts, and similar edible nuts or fruits of woody plants and maple sap used in making syrup and maple sugar. 110 CSR §2.5.26.3

Laws and Rules

W. Va. Const. Article X, § 1b, Property tax limitation and homestead exemption amendment of 1982, Subsection B.

W. Va. Code § 11-1A-3. Definitions.

W. Va. Code § 11-1A-10. Valuation of farm property.

W. Va. Code § 11-1C-2. Definitions.

The West Virginia Constitution and the Sections of the West Virginia Code listed above are posted at the Legislature’s website. <http://www.wvlegislature.gov/#>

W. Va. Code of State Rules, Title 110, Series 1A. Valuation of Farmland and Structures Situated Thereon for Ad Valorem Property Tax Purposes. This rule is posted at the

Secretary of State's website. <http://apps.sos.wv.gov/adlaw/csr/rule.aspx?rule=110-01A>

Note: This publication is intended to provide general information. It does not alter or supersede any West Virginia laws or rules promulgated by the State Tax Department.