

Assessment Of Farmland For Property Taxation In Kentucky

**Adopted
December 13, 2016**

Program Review and Investigations Committee

Project Staff

Perry Nutt

Abstract

The Kentucky Constitution allows farmland to be assessed based on its agricultural use value. Other types of real property are assessed based on fair cash value. To receive the preferential agricultural assessment, a tract of land must meet a minimum acreage requirement and be used for agricultural, aquaculture, or horticultural purposes. The statutes relating to agricultural valuation are ambiguous, and certain legal findings have influenced the application of the agricultural assessment. The common practice among property valuation administrators is to grant the preferential assessment if a tract meets the minimum acreage requirement and has income-producing capability from agricultural use. Recent attention has focused on tracts that are assessed as agricultural land but with no apparent agricultural activities. The deferred assessment from the 324,000 agricultural tracts in Kentucky is \$36.6 billion, which results in foregone state property tax revenue of \$44.7 million per year. Changes in the interpretation and application of the statutes could result in a reduction in misclassified farms. The higher assessments would increase state, local, and school district property tax revenue. The amount of the increase is unknown, however, and may be small relative to total property tax revenue. State, local, and school tax property tax rates will not be affected directly by a reduction in misclassified farms.

Legislative Research Commission

Frankfort, Kentucky

lrc.ky.gov

Paid for with state funds

Acknowledgments

The authors of this report would like to thank David L. Gordon, Executive Director, and Thomas S. Crawford, Director of Local Valuation Support, Office of Property Valuation, and Richard W. Bertelson III, Staff Attorney, Office of Legal Services for Revenue, with the Department of Revenue; David S. Beck, Executive Vice President, and Mr. Jeff Harper, Director of Public Affairs, with the Kentucky Farm Bureau; William “Mack” Bushart, Executive Director of the Kentucky Property Valuation Administrators Association; David O’Neill, Fayette County Property Valuation Administrator; members of the Kentucky PVA Farm Committee; PVAs that participated in a group discussion on agricultural valuation at the PVA fall conference, and LRC Appropriations and Revenue staff for their assistance.

Contents

Summary	v
Chapter 1: Introduction	1
Major Conclusions	2
Organization Of This Report	3
Chapter 2: Constitutional Amendment And Enabling Legislation	5
Chapter 3: Relevant Statutes	9
Chapter 4: Legal Issues And Limitations Pertaining To Statutes For Agricultural And Horticultural Land	15
Legal Issues From Six Relevant Cases	15
Two Supreme Court Cases	16
Four Board Of Tax Appeals Cases	17
Limitations Of The Statutes	19
Chapter 5: Interviews With Property Valuations Administrators, Department Of Revenue Officials, And Kentucky Farm Bureau Officials	23
Property Valuation Administrators	23
Department Of Revenue Officials	27
Kentucky Farm Bureau Officials	30
Chapter 6: Recent Events Concerning Agricultural And Horticultural Land	33
Lexington <i>Herald Leader</i> Series	33
Agricultural Assessments And Number Of Farms Based On Census Of Agriculture	35
Request For Guidance By Fayette County Property Valuation Administrator And Department Of Revenue Response	36
HB 576: And Act Relating To Agricultural And Horticultural Value For Property Taxes	39
Chapter 7: Effects Of Deferred Farm Assessments On State, Local, And School District Revenue	41
Assessments	41
State Tax Expenditure	44
Effects On State, Local And School Property Tax Revenue	45
State	46
Local	47
School Districts	48
SEEK	48

Appendix A: Agricultural Assessment Eligibility Requirements.....53
 Appendix B: Letter From Department Of Revenue To Fayette County
 Property Valuation Administrator.....57
 Appendix C: 2015 Kentucky Deferred Farm Assessments71

Tables

7.1 Kentucky Deferred Farm Assessments 2015, Top 15 Counties42

Figures

7.A Kentucky Farm Assessments, 1998 To 2015.....43
 7.B Kentucky Deferred And Agricultural Assessments As A Percentage
 Of Fair Cash Value, 1998 To 201544
 7.C State Property Tax Revenue Foregone Due To Deferred Assessments, 1999 To 201545

Summary

The Program Review and Investigations Committee directed staff to examine the statutes related to the assessment of farmland in Kentucky, how these statutes are applied by property valuation administrators, and the impact of changes in agricultural assessments on property tax revenues and property tax rates.

All types of real property (commercial, residential, and farm) are subject to the same state real property tax rate, but the basis for assessment differs for farm property. Commercial and residential property are assessed based on fair cash value. Farm property (agricultural and horticultural land) is assessed based on its income-producing capability from agricultural use. The preferential agricultural assessment was instituted in 1969 with the passage of a constitutional amendment. The constitutional amendment contained a rollback provision that allowed an additional tax to be levied if the use of the farmland changed.

Nearly all states, including Kentucky, determine the agricultural use value of farmland based on its income-producing capability. Kentucky's eligibility requirements for farmland differ from a number of other states and from the Census of Agriculture.

Under the enabling legislation, to qualify as farmland the property had to contain a minimum number of acres (10 acres for agricultural land and 5 acres for horticultural land), had to be used for agricultural or horticultural purposes, the property owner had to apply for the preferential assessment and demonstrate a minimum income from the property, and property owners were subject to the rollback provision if the property was converted to another use.

Legislation enacted in 1992 removed the application requirement, the minimum income requirement, and the rollback provision. Current statutes require farmland to contain a minimum number of acres and require that it be used for agriculture, aquaculture, or horticultural purposes. The 1992 legislation included language that is referred to as the retired farmer provision. This provision allows a property owner who met the requirements for agricultural or horticultural land for 5 or more consecutive years, but has ceased to farm the land, to continue to have the tract assessed based on its agricultural use, if the use of the tract has not changed.

In reviewing the statutes related to agricultural and horticultural land, staff identified areas that were ambiguous, areas that may benefit from additional language, and technical issues related to statute construction. Interpretation of the statutes relating to farmland is dependent on those providing guidance and supervision of the tax (Department of Revenue) and public officials who administer the tax (property valuation administrators).

Staff identified six legal cases that addressed the statutes related to the assessment of farmland. The primary question in these cases concerned the valuation of farmland, not the requirements necessary to qualify as farmland. The opinions and rulings from these cases have influenced the department's interpretation of the statutes and the application of the preferential assessment by property valuation administrators (PVAs).

Interviews With Property Valuation Administrators, Department Of Revenue, And Kentucky Farm Bureau

PVAs indicated that since 1992 the common practice used in determining whether a tract qualifies is to grant the preferential agricultural assessment if the tract has income-producing capability from agricultural use and meets the minimum acreage requirement. PVAs interviewed indicated they had implemented this practice based on guidance provided by the department and in recognition of certain court decisions. PVAs noted that for certain tracts it was difficult to determine whether a tract was being used for agriculture, but did not suggest any changes to the existing statutes.

PVAs are aware that certain tracts may not have agricultural use but receive the preferential assessment. The prevailing opinion of PVAs interviewed was that misclassification was more likely to occur in counties with significant urban pressure and may be concentrated in a limited number of counties. PVAs noted that in most counties, there are few tracts that would be exactly, or close to, the 10 acre minimum. PVAs said they knew their counties well and for the vast majority of tracts receiving the preferential assessment, visual inspection was adequate to determine whether or not farming was taking place. Nearly all the PVAs interviewed said that the reduced assessment amount from misclassified tracts had a negligible effect on the total value of property tax assessments and property tax receipts in their county. The executive director of the PVA association said it would reexamine the existing process based on recent guidance provided by the department and PVAs would closely monitor tracts to determine agricultural use, if so instructed.

The department shared the same concern as PVAs concerning the determination of whether a tract was used for agriculture but noted that interpretation and application of the law had been influenced by Kentucky Supreme Court and Kentucky Board of Tax Appeals rulings. The department acknowledged there were instances in which a tract qualified for the preferential assessment without being used for agriculture, but indicated the effect may be limited to certain areas.

Department of Revenue officials indicated that once the income requirement was removed in 1992, the policy that was adopted was if a tract had 10 acres for agricultural land or 5 acres for horticultural land the tract qualified for the preferential assessment, as long as the tract had income-producing capability. The department noted that prior to 1992, the application and income requirements were not uniformly or consistently enforced in each county.

Staff identified six PVAs who, before granting the agricultural exemption, require an application from the property owner verifying a tract is used for agricultural purposes. A few PVAs indicated they were considering instituting an application process. Other PVAs noted in the training provided by the department they were instructed the statutes did not require an application, but there is permissive language that allows a PVA to request information from the taxpayer. The PVAs interviewed by staff noted they, along with taxpayers, were familiar with an application process since there is an application required for the homestead exemption and for the disability exemption.

During staff interviews, the Department of Revenue indicated assistance was provided to PVAs on a case-by-case basis and the primary educational efforts concerning agricultural assessments was conducting a farm appraisal class and providing area-specific guidelines of cash rent data used by PVAs to determine the valuation of agricultural land.

Staff discussed the availability of assessment data with Department of Revenue and PVA officials. These officials indicated there were four to five different data systems in county PVA offices and it would be difficult to integrate the different systems. Before an estimate could be made of the number of misclassified farms, PVAs would have to reexamine tracts receiving the preferential agricultural assessment. Due to these limitations, it was not possible to develop an estimate of the number of tracts and the amount of deferred assessments attributable to agricultural tracts that are misclassified.

The executive vice president of the Kentucky Farm Bureau indicated that it had supported the 1969 constitutional amendment, but over time there were issues with the process for determining whether a tract qualified as farmland. The bureau supported the 1992 legislative changes. A bureau official stated that the position of the bureau is the law should include all types of agriculture, the retired farmer provision should be preserved, the minimum income and rollback provisions should not be reinstated, and agricultural tracts should remain assessed as such until the use of the tract changes.

Recent Events Concerning Agricultural And Horticultural Land

The Lexington *Herald Leader* published a series of articles in early 2016 on farmland assessments in Fayette County. There were examples of properties that were assessed as farmland even though the property was about to be developed, development was underway, or the land appeared to be idle. The *Herald Leader* also found examples of 10 acre residential tracts in which the land was assessed as agricultural land, but no apparent agricultural activities were taking place.

In response to the *Herald Leader* articles, the Fayette County PVA requested guidance from the Department of Revenue regarding certain statutory provisions relating to agricultural and horticultural land.

The department responded with a letter. The department's opinion is that in most instances, in order to qualify as farmland a tract must be actively used for agricultural, aquaculture, or horticultural purposes and the minimum acreage must be met after the statutory acreage adjustments are applied. The department noted that it had not fully considered previously the interaction between the acreage adjustments and the minimum acreage requirements. The department indicated that an application was not necessary for a PVA to grant the preferential assessment.

For tracts that may soon be developed, the department's opinion was that in most instances the agricultural assessment should be removed when it is no longer being used for agriculture and the new use has begun. The department's letter indicated that if the land was idle, a PVA could

remove the agricultural assessment. However, if the land qualified under the retired farmer provision it should continue to be assessed as farmland.

The Fayette County PVA indicated he will remove all agricultural assessments, and an application verifying agricultural, aquaculture, or horticultural use will be required before the preferential assessment will be granted. He indicated agricultural and horticultural tracts will have to meet the minimum acreage after the statutory adjustments have been made, and that commercial properties must have current agricultural use. If a proposed commercial property is idle, the tract owner must meet the qualifications under the retired farmer provision to receive the agricultural assessment.

Legislation introduced during the 2016 Regular Session addressed issues related to farmland assessments. HB 576 specified the PVA must obtain documentation regarding tract size and use before granting the agricultural assessment, the land tied to the permanent residence must be excluded when determining the minimum acreage, and any size tract may qualify if there is a current enforceable agreement under a state or federal agricultural program.

Effects Of Deferred Farm Assessments On State, Local, And School District Revenue

In 2015, Kentucky had more than 324,000 parcels that receive the preferential agricultural assessment which resulted in \$44.7 million in foregone property tax receipts. The deferred assessment amount (fair cash value less agricultural use value) from these parcels is \$36.6 billion. The deferred assessment amount for the top 15 counties is 36 percent of the total farm assessments in Kentucky. Fayette County ranked first with \$1.6 billion in deferred farm assessments.

A reduction in the number of misclassified farms will lead to an increase in real property assessments. As assessments increase, this will increase state, local, and school district property tax revenues. State, local, and school district property tax rates would remain unchanged since the increase in assessments would be classified as new property, which is excluded from the property tax revenue and rate calculations.

It was not possible to estimate the number of misclassified farms at either the state or county level. The fiscal impacts at the state, local, and school district level will be positive because misclassified farms will be assessed at fair cash value, instead of agricultural use value. The increase in state property tax revenues from a reduction in misclassified farms will be offset by 5 percent to 6 percent by a decline in individual income tax receipts due to an increase in itemized deductions. Local school property tax revenues will increase due to a reduction in misclassified farms but the increase will be partially offset due to a reduction in Support Education Excellence in Kentucky funding. Because the number of misclassified farms and the deferred assessment amount from these farms is unknown, the magnitude of the positive fiscal effects at the state, local, and school district level is indeterminable.

Chapter 1

Introduction

At its May 2016 meeting, the Program Review and Investigations Committee directed staff to examine the assessment of farmland in Kentucky, how the relevant statutes are applied by property tax administrators (PVAs), and how changes in agricultural assessments affect property tax revenues and rates and the distribution of state Support Education Excellence in Kentucky (SEEK) funds.

The Kentucky Constitution allows farmland to be assessed based on its agricultural use value instead of its fair cash value.

The Kentucky Constitution allows farmland (agricultural or horticultural land) to be assessed based on its agricultural use value instead of its fair cash value. Agricultural use valuation typically results in a lower assessed value per acre compared to fair cash valuation. The benefit received by the property owner is a reduction in property taxes.

In 1992, substantive changes were made to the farmland assessment statutes.

Prior to 1992, a property owner had to apply for the preferential assessment and had to demonstrate a minimum amount of income was generated from agricultural use of the property, and the tract had to meet a minimum acreage requirement. The property owner was also subject to an additional tax if the use of the land changed. The application, minimum income, and the additional tax were removed from the statutes in 1992.

Since 1992, property valuation administrators (PVAs) have granted the preferential assessment if a tract meets the minimum acreage requirement and has income-producing capability.

The common practice among PVAs since 1992 has been to grant the preferential assessment if the tract meets the minimum acreage requirement and has income-producing capability. Kentucky Supreme Court opinions and rulings by the Kentucky Board of Tax Appeals have influenced the interpretation of the statutory provisions by the Department of Revenue and how PVAs apply the statutes. PVAs adopted the common practice based on guidance provided by the department that was developed in consideration of the 1992 legislative changes, relevant court opinions, and board rulings.

In 2016, the Lexington *Herald Leader* identified tracts in Fayette County that are assessed as agricultural land but have no apparent agricultural use.

In 2016, the Lexington *Herald Leader* published a series of articles that identified tracts in Fayette County that are assessed as agricultural land but have no agricultural use. In response to the series, the Fayette County PVA requested guidance from the Department of Revenue regarding the meaning and application of the statutes relating to agricultural assessments. The department

The Fayette County PVA requested assistance from the Department of Revenue regarding the meaning and application of the statutes relating to agricultural assessments. The department responded in a legal opinion letter.

responded with a legal opinion letter. The Fayette County PVA indicated he will implement certain procedures based on the guidance provided by the department. During the 2016 Regular Session, legislation was proposed that would have required PVAs to obtain documentation regarding the use of the land before granting the preferential agricultural assessment.

More than 324,000 tracts in Kentucky receive the preferential farmland assessment. In 2015, the deferred assessment (fair cash value less agricultural use value) from these tracts was \$36.6 billion and the deferred state property tax was \$44.7 million.

Changes in the interpretation and application of the statutes could result in a reduction in the number of misclassified farms.

Changes in the interpretation and application of the statutes could result in a reduction in the number of misclassified farms: tracts that are assessed as agricultural land, but have no active agricultural use. If farmland is reclassified, the assessed value will change from agricultural use value to fair cash value, and real property assessments and property tax revenues will increase.

A reduction in misclassified farms will have a positive impact on property tax revenues but will not impact property tax rates.

As state property tax revenues increase, other tax revenues will be affected. If local school district revenues increase as a result of higher property assessments, state SEEK funds received by the school district will be impacted. As property tax revenues rise due to farmland reclassifications, this may impact state, local, and school district property tax rates.

Major Conclusions

This report has seven major conclusions.

This report has seven major conclusions.

- Legislative changes in 1992 removed the income requirement that provided documentation that the land was being used for agriculture or horticultural purposes. This requirement may not have been uniformly or consistently enforced.
- Current statutory language is ambiguous regarding the types of agricultural activities and the minimum threshold of agricultural activity that must be present for a tract to qualify and does not define the specific criteria or process that would ensure a tract is being used for agriculture, aquaculture, or horticultural purposes.
- Two Kentucky Supreme Court opinions and four Kentucky Board of Tax Appeals rulings have influenced the interpretation and application of the agricultural assessment.

Rulings by the board indicate the statute requires only that land have income-producing capability.

- Common practice used by PVAs does not always correspond with the original intent of the enabling legislation. For certain tracts, the benefit is not limited to bona fide users of agricultural land. Statutory limitations and rulings by the Kentucky Board of Tax Appeals may not have promoted reasonable and workable guidelines for assessment officials, which was an original goal of the enabling legislation.
- Fayette County has a substantial number of residential tracts in which the land receives the preferential assessment, but no apparent agricultural activities are present. Land use and valuation in Fayette County may be distinctive compared to other counties. The number of misclassified farms in Fayette County and the deferred assessment from these farms may not be representative of the impact in other counties.
- Recent guidance provided by the department indicates in most cases, to qualify for the preferential assessment the acreage adjustment must be applied in determining if the minimum acreage requirement is met, and the tract must be used for the production of agriculture, aquaculture, or horticultural purposes. To implement these changes, PVAs will have to reexamine tracts that currently receive the preferential assessment.
- The number of misclassified farms or the deferred assessment amount from these farms could not be determined.

Organization Of This Report

Chapter 2 examines the constitutional amendment allowing farmland to be assessed differently than other types of real property and the enabling legislation that established the criteria for the preferential assessment. Chapter 3 examines the statutes related to agricultural and horticultural land. Legal issues and statutory limitations that have influenced the interpretation and application of the relevant statutes are discussed in Chapter 4. Chapter 5 summarizes staff interviews with PVAs and officials with the Department of Revenue and Kentucky Farm Bureau. Chapter 6 summarizes the Lexington *Herald Leader* series on farmland assessments, the subsequent actions taken by the Fayette County PVA, the Department of Revenue's legal opinion letter,

and legislation introduced during the 2016 Regular Session relating to farmland assessments. The final chapter examines the amount of deferred assessments, the state property tax expenditure attributable to the preferential assessment, and how changes in assessments effect state, local, and school property tax revenues and property tax rates.

Chapter 2

Constitutional Amendment And Enabling Legislation

A 1969 amendment of Kentucky's Constitution allows farmland to be assessed differently than commercial and residential property.

On November 4, 1969, Kentucky voters approved a constitutional amendment (Section 172A) that allowed for the preferential assessment of farmland (agricultural and horticultural land) for property tax purposes.¹ Previously, agricultural and horticultural land had been assessed like other types of real property (residential and commercial), in which the basis for valuation was fair cash value.^a

Two factors influenced the passage of the amendment. First, there was growing evidence that farmland was being rapidly converted to residential and commercial development. From 1940 to 1969, Kentucky lost 21 percent of its farmland, falling from 20.3 million acres to 16.0 million acres.²

The second factor was the Kentucky Court of Appeals decision in *Russman v. Luckett* (1965).³ The case summary noted that real property in Kentucky had not been assessed at 100 percent of fair cash value. The court record indicated the statewide average real estate assessment was approximately 27 percent of fair cash value. Recognizing that immediately raising real property assessments would be difficult, the court provided direction whereby assessments would reach 100 percent of fair cash value.

Farmland receives a preferential assessment based on its value for agricultural use instead of fair cash value.

The 1969 amendment removed agricultural and horticultural land from the fair cash valuation standard and allowed its assessment to be based on agricultural or horticultural use. The rationale behind section 172A was “to encourage perpetuation of property used for agricultural and horticultural purposes and to provide that it be so assessed, and not valued at some speculative future potential use for commercial or subdivision purposes.”⁴

The 1969 constitutional amendment permitted an additional tax to be levied if the use of the farmland changed. This tax was known as the rollback provision.

The constitutional amendment mandated the preferential assessment of agricultural and horticultural land and contained permissive language granting the General Assembly the power to levy an additional tax if there was a change in the use of the land. The levy was limited to the additional tax that would have been due if the land had been assessed at fair cash value instead of agricultural value. The levy, known as the rollback provision,

^a Fair cash value is the estimated price a tract would bring at a fair voluntary sale.

specified the additional tax would be due for the current year and the previous 2 years.⁵

HB 442 (1970) established the statutes specifying the requirements for land to qualify for the preferential assessment.

HB 442, enacted in 1970, was the enabling legislation that established the conditions under which land used for agricultural or horticultural purposes (farmland) would be assessed.⁶ Agricultural and horticultural assessments under the provisions of HB 442 were based on the estimated value of the land if its use was limited to agricultural or horticultural purposes. Prior to HB 442, all real property (commercial, residential, and farmland) was assessed based on the property's fair cash value, which was mandated by the constitution. The preferential assessment for agricultural and horticultural land resulted in lower assessments for agricultural and horticultural land.

The preamble to HB 442 indicated the intent of the General Assembly was to limit the preferential assessment to bona fide farmers, limit the effects of a reduction in the property tax base, and provide reasonable and workable guidelines for assessment officials.

According to the preamble to HB 442,

- The intent of the General Assembly is to limit the benefits associated with the preferential assessment to bona fide agricultural and horticultural uses of land,
- The public interest must be protected from an undue shift in the tax burden and an indiscriminate application of the amendment provisions,
- The integrity of the revenue base of local taxing jurisdictions must be maintained, and
- Assessment officials must be provided with reasonable and workable guidelines for classification and valuation of agricultural and horticultural land.⁷

Differences exist among the states regarding the eligibility requirements for farmland to receive preferential assessment. The common approach in determining agricultural value is to estimate the income-producing capability based on agricultural use.

With the passage of HB 442, Kentucky became the 13th state to assess agricultural land based on its use. By 1984, all but three states assessed agricultural land based on agricultural use.⁸ In comparing the states, the common approach in determining agricultural value is to estimate the income-producing capability of the land. In contrast, differences exist among the states regarding the eligibility requirements that must be met before land is designated as agricultural. Twenty-nine states impose some type of rollback provision. A number of states require an application documenting agricultural production or require the owner to notify the county tax assessor if the use of the land changes. Thirty states have a minimum acreage requirement, 26 states have a minimum income requirement, and 20 states have a minimum income and a minimum acreage requirement. A summary of the farmland assessment eligibility requirements for selected states is in Appendix A.⁹

¹ 1970 Ky. Acts ch. 249, preamble.

² United States Department of Commerce. Census Bureau. 1974 Census of Agriculture. Kentucky State and County Data. Volume 1, Part 17. Summary Data. Table 1. June 1977.

³ *Russman v. Lockett*, 391 S.W.2d 694 (1965).

⁴ *Dolan v. Land*, 667 S.W.2d 684 (Ky. 1984). P. 6.

⁵ 1968 Ky. Acts ch. 103, sec. 1.

⁶ 1970 Ky. Acts ch. 249, sec. 1-5.

⁷ 1970 Ky. Acts ch. 249, preamble.

⁸ Anderson, John E., Seth H. Giertz, and Shafiun N. Shimul. "Property Taxes For Agriculture. Use-Value Assessment and Urbanization across the United States." August 2015. Mercatus Center. George Washington University. Web. Nov. 5, 2016. P. 37.

⁹ "Significant Features of the Property Tax." Lincoln Institute of Land Policy and George Washington Institute of Public Policy. Web. July 9, 2016.

Chapter 3

Relevant Statutes

This chapter summarizes how property taxes are applied to agricultural and horticultural land, lists the current statutes relating to agricultural and horticultural land, and summarizes statutory changes.

The two basic questions in implementing the provisions of Section 172A of Kentucky's Constitution are what qualifies as agricultural or horticultural land and what method or approach is used to assess (place a value on) the parcels that qualify. Statutes identify the requirements for designation as agricultural or horticultural land, the standard used to determine the value of the land, and list the factors to consider in assessing the land.

The property valuation administrator determines if a tract of land qualifies for the preferential assessment and assesses the land based on its income-producing capability.

The application of property taxes on agricultural and horticultural land is a three-step process. The property valuation administrator determines whether or not a tract meets the qualifying requirements. The administrator then assesses the qualifying tract based on what the land would bring if its use was limited to agricultural or horticultural purposes. The assessed value is determined by estimating the income-producing capability of the land. The valuation method and factors used to estimate the income-producing capability of Kentucky farmland are discussed in Chapter 5.

January 1 is the assessment date, taxpayers receive their property tax bills by October 1, and payment is due by December 31.

Once qualifying property has been assessed, the applicable tax rates are applied to the assessed value to determine the property taxes due. January 1 of each calendar year is the assessment date. Once assessments are certified, property tax bills are prepared and delivered to the sheriff by September 15. Taxpayers typically receive their property tax bills by October 1, and payment is due by December 31. In Kentucky, agricultural and horticultural land like other types of real property, is subject to full state and local rates.

To qualify as agricultural land, the tract must have 10 acres and be used for the production of certain types of animals and/or crops, including timber.

KRS 132.010, KRS 132.450, and KRS 132.454 are the controlling statutes related to the assessment of agricultural and horticultural land. The requirements for determining whether a tract qualifies as agricultural or horticultural land are in KRS 132.010(9) and (10).

(9) "Agricultural land" means:

If the owner uses the tract for aquaculture or horticultural purposes, the minimum acreage requirement is 5 acres.

Any size tract of land may qualify for the preferential assessment if it meets the requirements for a state or federal agricultural program.

Initially, property owners had to apply for the preferential assessment, demonstrate a minimum amount of income was generated from the property, use the land for agricultural or horticultural purposes, and meet the minimum acreage requirements. If the property was converted to another use, the rollback provision applied.

HB 585 (1992) removed the application process, the minimum income requirement, and the rollback provision.

- (a) Any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber;
 - (b) Any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for aquaculture;^a or
 - (c) Any tract of land devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government;
- (10) “Horticultural land” means any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants.

The current requirements for agricultural and horticultural land differ from those contained in the enabling legislation. Based on the enabling statutes, property owners had to apply for the preferential assessment, had to demonstrate they generated a minimum amount of income from the tract, and had to have a minimum of 10 acres for agricultural land, or 5 acres for horticultural land. The enabling statutes also contained a rollback provision. This provision stipulated that if the use of the land changed, deferred taxes (equal to the deferred assessment multiplied by the real property tax rate) were due for the current tax year and the 2 preceding years.¹

HB 585, enacted in 1992, removed the application process, the minimum income requirement, and the rollback provision.² In interviews with Department of Revenue officials, PVAs, and Farm Bureau officials, it was noted that prior to 1992 the application, income, and rollback provisions were not uniformly or consistently enforced in each county. Few changes have been made in the controlling statutes since 1992.

Kentucky’s initial definition of agricultural or horticultural land was similar to the definition of a farm used by the Census of Agriculture in 1969.³ The common thread was that each contained

^a This provision was added in 2002 (SB 179).

a minimum acreage and minimum gross income requirement.^b The US Department of Commerce changed the definition of a farm for the 1974 Census of Agriculture by removing the minimum acreage requirement. The 1974 Census definition of a farm remains in effect.^{c,4}

The Census definition of a farm is based on a minimum agricultural sales measure and does not have a minimum acreage requirement. Twenty-six states have an income requirement that must be met before the agricultural use valuation is granted.

Farmland is assessed based on its income-producing capability. Individual farm characteristics such as type of land, soil productivity, improvements, and interest rates are used to estimate the value of the land.

Once a tract qualifies as agricultural or horticultural land, the tract is assessed based on its agricultural or horticultural value. KRS 132.010(11) identifies the standard used for assessing agricultural or horticultural land and lists the factors to consider when determining the value of the farmland.

“Agricultural or horticultural value” means the use value of “agricultural or horticultural land” based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value.

This statute also specifies that in determining the value of agricultural or horticultural land, consideration should be given to important factors that affect income-producing capability. These factors include the type of land (cropland, pastureland, and woodland), soil productivity, improvements to or on the land, and other factors such as interest rates and production costs.

In the enabling legislation, the definition of agricultural or horticultural value did not include “income-producing capability” and did not include the important factors relevant to income-producing capability. In *Kentucky Board of Tax Appeals v. Gess*, the Kentucky Supreme Court confirmed the use of comparable sales was the “most reliable indicia of fair cash value,” but noted Section 172A of Kentucky’s Constitution called for a different type of valuation, one based on the value of land if its use was limited to agricultural or horticultural purposes.⁵ In its decision, the court said that whenever farm property sells for more than its

^b The 1969 Census definition of a farm was any place of less than 10 acres if gross agricultural sales were \$250 or more, or any place of more than 10 acres if gross agricultural sales were at least \$50.

^c The 1974 Census farm definition was any establishment, which had, or normally would have had, gross agricultural sales of \$1,000 or more.

income-producing capability, the sales price reflects factors unrelated to its value assuming the land was used for agricultural purposes. The court indicated farm property assessments should reflect the income-producing capability of the land. After the *Gess* decision, “income-producing capability” was added to the definition of agricultural and horticultural value, along with the important factors to consider when determining the value of farmland.

In determining if a tract meets the minimum acreage requirements, land used in connection with the owner’s dwelling and other non-farm uses is excluded.

KRS 132.450(2)(a) contains language identifying the areas to include, or exclude, in determining whether the minimum acreage requirement is met and the tract qualifies as agricultural or horticultural land.

In determining the total area of land devoted to agricultural or horticultural use, there shall be included the area of all land under farm buildings, greenhouses and like structures, lakes, ponds, streams, irrigation ditches and similar facilities, and garden plots devoted to growth of products for on-farm personal consumption but there shall be excluded, land used in connection with dwelling houses including, but not limited to, lawns, drives, flower gardens, swimming pools, or other areas devoted to family recreation.^d

For most tracts, this provision will not result in the tract failing to meet the minimum acreage requirement. However, for tracts where the acreage is equal to or slightly exceeds the 10 or 5 acre minimum requirement, this provision could impact whether or not the tract qualifies as agricultural or horticultural land.

Tracts that qualify as agricultural or horticultural land retain the preferential assessment until the use of the land changes.

KRS 132.450(2)(b) addresses instances in which a tract is transitioning from agricultural or horticultural use to another use and specifies when the tract is no longer eligible for the preferential assessment.

Land devoted to agricultural or horticultural use, where the owner or owners have petitioned for, and been granted, a zoning classification other than for agricultural or horticultural purposes qualifies for the agricultural or horticultural assessment until such time as the land changes from agricultural or horticultural use to the use granted by the zoning classification.^e

The earliest date an assessment can change is January 1 of the year after the change in use takes place.

The earliest date an assessment can change is January 1 of the year after the change in use takes place. Since assessments are based on

^d This language was included in the enabling legislation.

^e This language has been in effect since 1982.

the value as of January 1, a tract's use can change before its assessed value can change. If a tract is currently devoted to agricultural purposes and the tract has been zoned for commercial purposes, this tract qualifies for the preferential assessment if it is kept in agricultural production and meets the minimum requirements. Once the use of the tract changes, the earliest the assessment can change is the following January 1.

In the enabling legislation, the agricultural assessment was removed when the change in zoning classification was granted, not when the change in use occurred. In 1982, the agricultural assessment was removed when the use of the land changed. The 1982 amendment specified that once the use changed and the preferential agricultural assessment was removed, the tract was subject to the rollback provision, which levied a deferred tax for each of the previous 2 years. The rollback provision was removed by legislative changes in 1992.⁶

If the use of a tract changes, a part of the tract can still receive the preferential assessment if it is used for agricultural purposes and meets the minimum acreage requirement.

KRS 132.450(2)(c) also addresses instances in which a tract is transitioning to another use, but a part of the tract remains undeveloped.

When the use of a part of a tract of land which is assessed as agricultural or horticultural land is changed either by conveyance or other action of the owner, the right of the remaining land to be retained in the agricultural or horticultural assessment shall not be impaired provided it meets the minimum requirements.^f

The part of the tract devoted to agricultural use can maintain its preferential assessment status as long as it meets the minimum requirements for agricultural or horticultural land under KRS 132.010(9) and (10), and KRS 132.450(2)(a).^g

If a property owner has used the land for agricultural or horticultural purposes for 5 consecutive years but ceases to farm the land, the tract still receives the preferential assessment. This language is sometimes referred to as the retired farmer provision.

A provision of the 1992 legislation specified that a tract owner, who had met the requirements for agricultural or horticultural land for 5 or more consecutive years but had ceased to farm the land and had not used the land for any other purpose would still have the tract assessed as agricultural or horticultural land, as long as he or she or a spouse owned it (KRS 132.450(3)). This is sometimes referred to as the retired farmer or surviving spouse provision.⁷

^f This language has been in effect since 1992.

^g KRS 132.454 also relates to KRS 132.450(2)(a). This statute states that any part of the land in which the use has changed shall be taxed in the following year based on its fair cash value.

¹ 1970 Ky. Acts ch. 249, sec. 1-5.

² 1992 Ky. Acts ch. 397, sec. 1-3.

³ United States. Census Bureau. *1974 Census of Agriculture*. United States Summary and State Data. Volume 1, Part 54. December 1977. P. IX.

⁴ United States. Census Bureau. *2012 Census of Agriculture*. United States Summary and State Data. Volume 1, Part 51. May 2014. P. VIII.

⁵ *Kentucky Board of Tax Appeals v. Gess*. 534 S.W.2d 247 (Ky. 1976).

⁶ 1982 Ky. Acts ch. 264, sec. 18.

⁷ 1992 Ky. Acts ch. 397, sec. 2.

Chapter 4

Legal Issues And Limitations Pertaining To Statutes For Agricultural And Horticultural Land

Legal Issues From Six Relevant Cases

Department of Revenue officials and representatives from the Kentucky Property Valuation Administrators Association noted certain legal opinions had influenced (limited) the interpretation and application of the statutes when determining if a tract qualified as agricultural or horticultural land.

Two Kentucky Supreme Court opinions and four Kentucky Board of Tax Appeals rulings have influenced the interpretation and application of the relevant statutes.

LRC staff identified 10 legal cases that address Section 172A and the interpretation of the controlling statutes. Six of the cases contained findings relevant to this report. Two of the six cases were heard by the Kentucky Supreme Court. The other four were heard by the Kentucky Board of Tax Appeals. The primary question in these six cases was the valuation of agricultural and horticultural land. Staff did not identify a case in which the central question focused solely on the requirements for land to be considered agricultural or horticultural.

These six cases provide limited guidance regarding the requirements pertaining to agricultural and horticultural land.

Collectively the six cases provide limited guidance regarding the requirements pertaining to agricultural and horticultural valuation. First, based on a Kentucky Supreme Court decision and language in Section 172A, the General Assembly has the power to define agricultural or horticultural land, and it has the power to determine the process, procedures, and methods used to determine agricultural or horticultural value. According to the same decision, income-producing capability is the primary factor to consider when assessing agricultural or horticultural land. In a second Supreme Court decision, PVAs were directed to consider the individual characteristics of the tract, such as type of land, slope, and soil characteristics, and the court found the income and acreage requirements in place at that time were not unreasonable. A Kentucky Board of Tax Appeals case provided guidance on the assessment of partially developed tracts. Three other board decisions linked agricultural value of the land to its income-producing capability.

Two Supreme Court Cases

In the *Gess* decision, the Supreme Court indicated the valuation of farmland should reflect its income-producing capability.

After passage of the 1969 constitutional amendment, the first tax appeal involving agricultural land to reach the Kentucky Supreme Court was *Kentucky Board of Tax Appeals v. Gess* (1976).¹ The question presented to the court involved the “meaning and essential principles for determining the value of agricultural and horticultural land.”² The court indicated the method used to assess farm property should reflect its income-producing capability. In summary, the court found the comparable sales method did not reflect the agricultural or horticultural use value of farm property. The court noted that when farm property sells for more than its income-producing capability, the price difference reflects factors that are not related to the value of the property, assuming its use was limited to agricultural or horticultural purposes.

The *Gess* decision, along with language contained in Section 172A, suggests the General Assembly has the power to establish the requirements that must be met before land is designated as agricultural or horticultural land. Therefore, the General Assembly has the power to define what agricultural or horticultural land is and it has the power to determine the process, procedures, and methods used to determine agricultural or horticultural value, but the valuation method must reflect the income-producing capability of the land assuming it is used for agricultural or horticultural purposes.

In *Dolan v. Land*, the Supreme Court ruled PVAs must consider the individual characteristics of the property being assessed, including the type of land, slope, and soil productivity.

In the 1984 Kentucky Supreme Court case of *Dolan v. Land*,³ an agricultural assessment was challenged because it was based on general averages instead of the individual characteristics of the tract. The court ruled a PVA must consider the individual characteristics of a tract when determining income-producing capacity. The characteristics mentioned by the court were soil type, slope of the land, and type of land (cropland, pastureland, and woodland).

The court found the income and acreage requirements were not unreasonable but did not identify the factors it considered in reaching this conclusion.

The *Dolan* case provides the only legal guidance addressing the requirements used to determine what constitutes agricultural or horticultural land, but the reasoning offered by the court provided little detail. The court examined the statutes that list the requirements for a tract to qualify as agricultural or horticultural land (KRS 132.010(9) and (10) and KRS 132.450(2)(a)). The court found the income and acreage requirements, and the acreage adjustments were “not unreasonable.”⁴ The majority opinion did not identify income or acreage requirements that would be

unreasonable and did not identify the factors it considered in concluding the requirements were not unreasonable.

Four Board Of Tax Appeals Cases

In the *Nolan* case, heard by the Kentucky Board of Tax Appeals, a part of the tract had been platted for residential development, while the remaining part had not been platted. The board ruled the owner met the agricultural requirements because he was growing timber.

Staff examined two related cases (hereafter referred to collectively as *Nolan*) that pertain to agricultural land valuation.⁵ These two cases involved a tract in which a part had been platted for residential development, while the remaining part had not been platted. The central issue concerned the point at which land use changes from agricultural to residential.

In 2007, the property owner had 44 lots that were platted as a subdivision. The PVA assessed the 44 subdivided lots at fair cash value. The remaining part of the tract was assessed as agricultural. At the time of the appeal to the Kentucky Board of Tax Appeals, two lots had been sold. There were paved roads with road signs in the development, there was water access, lots in the subdivision were advertised, and included in the subdivision provisions was language indicating “all lots shown on said plat are hereby retired from agricultural production.”⁶ The owner of the property said he did not pursue agricultural production on the property, but he had previously sold timber from it, and that he was actively growing timber at the present time. The board ruled the sale of two lots was not sufficient to reclassify the property from agricultural to residential. The board ruled the owner had “met the minimum requirements for agricultural property through the growing of timber.”⁷

In the second *Nolan* dispute, the assessment of three lots was appealed. These lots were not being used for agricultural purposes. The board directed the PVA to assess the three lots at fair cash value and the rest of the tract according to its agricultural value.

The central question in this dispute resurfaced five years later. In 2012, the Kentucky Board of Tax Appeals was asked to reexamine the assessment of the *Nolan* tract. In this appeal, the owner contested the fair cash valuation of three lots that were for sale. The board found the three lots were surrounded by lots that had been sold and there was “no activity to validate its agricultural value.”⁸ The board directed the PVA to assess the three lots using fair cash value and the remaining part of the parcel based on its agricultural value.

Three other board rulings indicate the statutes only require that land have income-producing capability to receive the preferential assessment.

Other relevant Kentucky Board of Tax Appeals cases are *Le v. McCreary County Property Valuation Administrator (2013)*, *Reeder v. McCreary County Property Valuation Administrator (2013)*, and *Corum v. Harlan County Property Valuation Administrator (2015)*. The focus in these three cases was the assessed value for agricultural use. These cases are similar to the *Gess* decision in one aspect—language included in each board

ruling linked agricultural value to the income-producing capacity of the land. In examining the provisions of KRS 132.010(9), (10) and (11), the board ruled in each case that “subsequent to the 1992 amendment, and to current date, the statute *only requires* that the land have an income-producing capability” (emphasis added).⁹

The rulings by the Kentucky Supreme Court and the Kentucky Board of Tax Appeals support certain aspects of how agricultural and horticultural land is currently classified. For example, the current process for valuing agricultural and horticultural land utilizes individual farm characteristics such as land class and soil type. Cash rent data is then applied to these individual characteristics to determine the income-producing capacity of the land, which the court has indicated is the critical factor in determining the value of agricultural land.^a

The court opinions and board rulings support the current valuation process for farmland, but other aspects are not as clear. This complicates the application of the statutory provision that land must be used for agricultural purposes to receive the preferential assessment.

Other aspects are not as clear. Based on the *Nolan* cases, one might infer that as long as a tract has some woodlands then it has the capacity to produce timber income, which would allow it to qualify as agricultural land. Of utmost concern are the *Le, Reeder, and Corum* cases heard by the Kentucky Board of Tax Appeals. A review of these cases indicates the board examined the provisions of KRS 132.010(9), (10), and (11), in conjunction with one another. By interpreting these statutes together—and not considering that determining if land qualifies as agricultural or horticultural is independent of its subsequent valuation—the board’s opinion is that besides the minimum acreage requirement, the only requirement for a tract to be granted an agricultural assessment is that it have income-producing capability. This interpretation complicates the application of the “used for” provision for agricultural land.

Further complicating the issue is that neither the Kentucky Supreme Court nor the Kentucky Board of Tax Appeals has had the opportunity to hear a case in which the central question concerns only the qualifying requirements under KRS 132.010(9) and (10). This is a threshold question that has not been examined separately from the other statutory provisions relating to the valuation of agricultural and horticultural land.

^a Cash rent is the estimated return a property owner could receive from renting the land for agricultural use. Cash rent for assessment purposes is estimated based on survey data from the United States Department of Agriculture, National Agricultural Statistics Service.

Limitations Of The Statutes

Staff identified areas of the statutes that are ambiguous and areas that may benefit from additional language.

In reviewing the statutes related to agricultural and horticultural land (KRS 132.010, 132.450, 132.454), staff identified areas that were ambiguous, areas that may benefit from additional language, and technical issues related to statute construction.

In defining agricultural land, the statutes indicate the tract must be ‘used for’ the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber. This phrase “used for” is also found in the definition of aquaculture and horticultural land.

The statutes indicate a tract must be used for agricultural, aquaculture, or horticultural purposes but do not define what “used for” means.

“Used for” is not defined within the statutes. No administrative regulations, or other tax-related informational sources (typically published by the Department of Revenue) provide guidance on its interpretation. However, the ability to accurately, equitably, and uniformly determine what “used for” means is critical in determining whether or not a tract qualifies for the preferential agricultural assessment.

Interpretation of what constitutes agricultural use is based on guidance provided by the Department of Revenue and PVAs who administer the tax.

The preamble of the enabling legislation indicates that preferential assessment is limited to “bona fide” agricultural and horticultural users of land. As currently constructed, interpretation is left to those providing guidance and supervision of the tax (Department of Revenue) and to public officials who administer the tax (PVAs).

The definition of agricultural and horticultural land does not indicate how much of the land must be used, or the scale of agricultural production that must take place, for the tract to qualify for the preferential assessment.

The statutes that define agricultural and horticultural land are not clear as to what portion of the minimum acreage required must be used for agricultural production to qualify for the preferential assessment. Moreover, there is no direct reference to the scale of agricultural production that must take place. For example, on a 10 acre tract would it take 1, 2, or more bee hives in order to qualify? Would 5 hens suffice? On a 10 acre tract in which the owner is raising vegetables on 2 acres, and using some of the produce for home consumption and selling the excess at a farmers market, would this tract qualify? If there are a few horses on a tract, are they for recreational use, or are they integral to an equine business enterprise?

The definition of agriculture limits its applicability to other types of agriculture not listed in the statutes.

The definition of agriculture in the enabling legislation was written within the context of the type of agriculture that was prevalent in 1970.^b KRS 132.010(9)(a) lists specific types of animal enterprises, along with the production of tobacco, and/or other

^b There are other statutory definitions of agriculture besides the definition in KRS 132.010.

crops including timber, as qualifying agricultural activities. What is not clear is if other alternative animal enterprises or other agricultural-related activities meet the statutory provisions.

For example, in other statutes equine is not defined as livestock. A strict reading of KRS 132.010 would not permit equine farms to qualify for the preferential agricultural assessment, although the common practice used by PVAs is to include equine farms. Do other types of (alternative) animal enterprises such as llamas, alpacas, rabbits, emus, ostriches, cervids, minks, foxes, and bees qualify? Other, non-animal, enterprises would include sod, mushroom, and Christmas tree farms and maple syrup and sorghum production. Additional examples include wind and solar farms and crops that are not used for food or fiber but produce a crop used for energy such as switchgrass. Lastly, does a strict reading of the statute cover agriculture-related activities that may not involve animals or crop production but are related to farmland preservation? For example, if a conservation-minded owner devotes the land to improving wildlife habitat, or manages the land to sell hunting rights, would these tracts qualify?

KRS 132.010(9)(c) permits any size tract to qualify as agricultural land if it meets the requirements for state and local agricultural payments.

KRS 132.010(9)(c) permits any size tract of land (the minimum acreage provision does not apply) to qualify as agricultural land if the tract is “devoted to and meeting the requirements and qualifications for payments pursuant to agricultural programs under an agreement with the state or federal government.”

Staff were unable to identify why this statutory provision was included in the enabling legislation. However, in 1970, nearly three-quarters of Kentucky farms produced tobacco. Most of these tobacco farms had sales of less than \$2,500, so it is likely this provision was tied to the number of small Kentucky tobacco farms.

The number and types of governmental assistance programs available to Kentucky farmers has grown since 1970.

The number and types of governmental assistance programs available to Kentucky farms have expanded since 1970. Conservation program assistance is available through the United States Department of Agriculture, Natural Resources Conservation Service.¹⁰ This assistance is provided through the soil and conservation district offices which are located in each county in Kentucky. The state and county cost-share programs include assistance for livestock water tanks and lines, vegetative filter strips, sinkhole protection, cropland erosion, heavy use area protection, rotational grazing, forest land erosion, pasture and hayland quality/quantity, erosion control, soil quality/health improvement, and other eligible conservation practices. Assistance to Kentucky farmers is also provided through the United States

Department of Agriculture Farm Service Agency. Farm Service Agency offices are located in many counties in Kentucky. Programs offered through the offices include conservation, income assistance, and financial assistance programs.¹¹

Local agricultural assistance programs are not included under the provisions of KRS 132.010(9)(c).

The provisions of KRS 132.010(9)(c) do not allow a tract to qualify if the owner is receiving local agricultural program assistance. An example is the County Agricultural Investment Program, which is available in most Kentucky counties through funding provided by the Tobacco Master Settlement Agreement.

It is not clear from the language in the statute whether an owner has to be participating in the federal or state program and receiving payments, simply has to apply for the program, or just has to meet the eligibility requirements, to qualify under this statute.

As the number and types of agricultural assistance programs has expanded to include not only state and federal programs but local programs as well, the provisions of KRS 132.010(9)(c) may be more important today than in 1970.

Staff identified five technical issues concerning the relevant statutes. The provision allowing a tract owned by a retired farmer or spouse to retain its agricultural assessment (KRS 132.450(3)) applies only to agricultural land and not horticultural land. The terms “timber” and “commercially” in KRS 132.010, and “dwelling houses” in 132.450(2)(a) are not defined. The term “minimum requirements” in KRS 132.450(2)(a) should reference the requirements found in KRS 132.010.

¹ *Kentucky Board of Tax Appeals v. Gess*, 534 S.W.2d 247 (Ky. 1976).

² *Ibid.* P. 1.

³ *Dolan v. Land*, 667 S.W.2d 684 (Ky. 1984).

⁴ *Ibid.* P. 3.

⁵ *Nolan v. Anderson County Property Valuation Administrator*. Commonwealth of Kentucky. Board of Tax Appeals. Order No. K-22014. April 18, 2012.

Anderson County Property Valuation Administrator v. Richard J. Nolan, Jr. Commonwealth of Kentucky. Anderson Circuit Court. 53rd Judicial Circuit. Civil Action No.: 07-CI-00379. March 17, 2009.

⁶ *Ibid.* Anderson Circuit Court. P. 3.

⁷ *Ibid.* Anderson Circuit Court. P. 4.

⁸ *Nolan*. Board of Tax Appeals. Order No. K-22014. P. 1.

⁹ *Le v. McCreary County Property Valuation Administrator*. Commonwealth of Kentucky. Board of Tax Appeals. Order No. K-24102. Oct. 24, 2013. P. 2; *Reeder v. McCreary County Property Valuation Administrator*. Commonwealth of Kentucky. Board of Tax Appeals. Order No. K-24101. Oct. 24, 2013. P. 2; *Corum v. Harlan County Property Valuation Administrator*. Commonwealth of Kentucky. Board of Tax Appeals. Order No. K-24840. May 19, 2015. P. 3.

¹⁰ United States Department of Agriculture. Natural Resources Conservation Service. Kentucky. Web. Nov. 6, 2016.

¹¹ United States Department of Agriculture. Farm Service Agency. Kentucky. Web. Nov. 6, 2016.

Chapter 5

Interviews With Property Valuation Administrators, Department Of Revenue Officials, And Kentucky Farm Bureau Officials

Property Valuation Administrators

Staff interviewed PVAs and Department of Revenue and Kentucky Farm Bureau officials.

Staff met with the farm committee of the Kentucky Property Valuation Administrators Association and the executive director of the association. At the association's fall conference, staff interviewed and participated in a group discussion of PVAs to gather information regarding how determinations of agricultural and horticultural land are made.

The common practice among PVAs is to grant the preferential assessment if a tract meets the minimum acreage requirement and has income-producing capability.

PVAs indicated the common practice used in determining whether a tract qualifies as agricultural or horticultural land is to apply the minimum acreage requirement. They said that as a result of the 1992 legislation, supplemented with guidance by the Department of Revenue, an application and proof of income was no longer required to receive the preferential agricultural assessment. The prevalent view expressed was if a tract had income-producing capability, PVAs would designate the tract as agricultural or horticultural land if it met the minimum acreage requirement. The PVAs indicated reliance on the minimum acreage requirement ensured that a uniform standard was applied to each agricultural tract and this requirement was the only objective, quantifiable measure they had to guide them in making their determinations.¹

This practice does not consider whether the land is being used for agriculture, the acreage adjustment provision, or if the land may qualify under another statutory provision.

Relying solely on the minimum acreage requirement does not consider whether the land is being "used for" agriculture or horticulture and does not take into consideration the acreage adjustment provision in KRS 132.450(2)(a). Relying solely on the minimum acreage requirement excludes tracts that would qualify as agricultural land because they meet the requirements under an agreement with a federal or state agricultural program (KRS 132.010(9)(c)).

PVAs said a few of them monitored agricultural use, but this type of monitoring was not prevalent across the state. PVAs with more years of service said applying the minimum acreage requirement was the practice in place when they took office, or this was the guidance and instruction provided by the Department of Revenue.²

County assessment data is available but are in different data systems. It was not possible to estimate the number of misclassified farms or the deferred assessment amount from these farms.

Monitoring tracts for agricultural use by PVAs is not prevalent across the state. PVAs recognize there are tracts of land that do not have agricultural use but receive the preferential assessment.

PVAs noted that misclassified farms are more likely to occur in urban areas and the effect on assessments and property tax revenues may be small.

The PVA Association noted that certain court opinions and Kentucky Board of Tax Appeals rulings have hampered PVAs efforts regarding how diligently they can enforce the “used for” provision.

PVAs indicated that in many counties the prevalence of 10 acre tracts is small and the number of misclassified tracts is negligible.

LRC staff discussed the availability of assessment data with Department of Revenue and PVA officials. County assessment data are available for different types of real property. However, the officials interviewed indicated there were 4 to 5 different data systems in the county PVA offices, and some county offices had developed their own data system. One PVA indicated his data system was a mix of paper and electronic documents. Also, before developing an estimate of the fiscal impact of misclassified farms, PVAs would need to reexamine tracts with acreage close to the minimum, apply the acreage adjustments, and then determine whether the tract is being used for agriculture. For these reasons, it was not possible to develop an estimate of the number or amount of deferred assessments of tracts that are currently misclassified.³

Every PVA interviewed noted the difficulty in determining what “used for” means. They indicated that if they strictly enforced this provision, it would require them to make more judgment calls regarding which tracts qualify for agricultural or horticultural assessment. Collectively, the PVAs thought enforcing this provision may introduce more subjectivity into the determination process.⁴

The PVAs interviewed indicated there were tracts of land that do not have agricultural use but are misclassified and receive the agricultural assessment. However, they indicated this had a negligible effect on their counties’ overall property assessments and property tax revenues. They noted the potential for misclassification was more likely to occur in areas with significant urban pressure. The executive director of the Kentucky Property Valuation Administrators Association noted particular Kentucky Supreme Court and Kentucky Board of Tax Appeals rulings have hampered PVAs’ efforts regarding how diligently they can enforce the “used for” provision.⁵

All but three of the PVAs interviewed said their counties did not have a large number of tracts at, or close to, the 10 acre minimum. Two PVAs said there are more 10 acre tracts in their counties than in the past. In these two counties, 10 acre tracts are exempt from zoning regulations, which make them more costly to develop. These two PVAs knew these tracts well and allowed an agricultural exemption if the tract was used for agricultural purposes. PVAs in some agricultural based counties where urban pressure is not as prevalent said the difference between agricultural and fair cash value was small and the number of misclassified tracts was negligible. These PVAs noted that in their primarily rural counties, the difference in tax revenues if farms were

assessed at fair cash value instead of agricultural value would be minimal.⁶

PVAs said that for the vast majority of tracts determining agricultural use was not difficult because they could see if crops were planted or if livestock were present.

PVAs said they knew the properties in their counties very well. For the vast majority of tracts that qualify for agricultural assessment, PVAs indicated visual inspection was adequate to determine whether or not farming was taking place; they could see if crops were planted or harvested or if livestock were present. Only in limited instances would a tract qualify as agricultural land without it being used for agricultural or horticultural purposes.⁷

A number of PVAs had questions about the scale and type of agricultural activities necessary for a tract to qualify as agricultural land. The consensus was that it would be difficult to change the statutes to enable a PVA to distinguish, in every case, tracts that are devoted to agricultural production from those that are not, while ensuring one has not excluded tracts where agricultural production is taking place, and without making the process onerous for PVA offices.⁸

The Kentucky Property Valuation Administrators Association did not suggest changes to the existing statutes. Members of the association's farm committee said they would reexamine the existing process based on recent guidance provided by the Department of Revenue.

The Property Valuation Administrators Association did not offer any suggested changes to existing statutes. Methods, processes, and guidelines that would assist PVAs in making agricultural determinations were discussed. There was no consensus among the PVAs. Members of the association's farm committee said they would reexamine the existing process based on recent guidance provided by the Department of Revenue (see Appendix B). The association indicated a willingness to closely monitor the "used for" provision, if so instructed.⁹

PVAs indicated they received few taxpayer complaints with the current process and reclassifications would generate many taxpayer questions.

Most PVAs indicated they had few taxpayer complaints about the current process but noted this may be due to the minimum acreage requirement being the sole requirement for agricultural assessment. The PVAs indicated they would welcome statutory changes that reduce subjectivity but expressed concern about changing the current process. The PVAs said that changes resulting in a large number of reclassifications would generate many taxpayer questions. The PVAs wanted to be sure any changes would be based on an objective measure that did not detract from the uniform approach in place. The PVAs said that objective, quantifiable measures serve as the best guide when making assessments.¹⁰

A few PVAs said they were considering instituting an application process.

A few PVAs indicated they were considering instituting an application process but were uncertain whether an application is legal because it is not required in statute. KRS 132.220(2) allows a

PVA to request a tax return from the property owner to verify existing information, or to provide additional information for assessment purposes. Six property valuation administrators require an application to be filed by the property owner.¹¹

PVAs that staff interviewed who require an application, said an application was beneficial because it provided additional information that assists in determining the proper assessment. One PVA noted there was significant development pressure in his county, and the public was very aware of properties on the urban fringe. This PVA indicated the public monitored the assessment status of those properties, and as a result, he closely monitored each of those tracts and had adopted an application process.¹²

PVAs wondered how much processing time an application would take, but noted there are applications for the homestead exemption and the disability exemption.

Other PVAs noted that in the training they received by the Department of Revenue, they were instructed the statutes did not require an application, so they did not require it. The PVAs interviewed during their fall conference wondered how much processing time it would take if applications were required given there are more than 324,000 agricultural tracts in the state. Some PVAs said that requiring an application would be an additional task and burdensome in the beginning, but eventually things would smooth out. The PVAs noted they, along with taxpayers, were familiar with an application process since an application is required for both the homestead exemption and the disability exemption.¹³

Staff examined the website for each PVA that had one to see what information was available to taxpayers. Most PVAs had a website, and nearly every website contained information on the statutes relating to agricultural and horticultural land, although for some counties the information on the website was not current.

PVAs said they received adequate training from the Department of Revenue, and the farm appraisal course was beneficial to PVAs that do not have an agricultural background.

PVAs said they received adequate training on the methods used to estimate the income-producing capability of agricultural and horticultural land. This training is provided by the Department of Revenue through the Kentucky Course 90 Farm Real Property Appraisal course. The PVAs said the department also provided information on cash rents for different areas, which is an essential component in determining the income-producing capability of agricultural land. The PVAs indicated that since the common practice was to qualify tracts based on the minimum acreage requirement, if they had questions regarding a specific tract they relied on the department to provide guidance on a case-by-case basis.¹⁴

Department Of Revenue Officials

Staff also participated in a series of discussions regarding agricultural assessments with three Department of Revenue officials.

The Department of Revenue is required by statute to develop and administer education programs for property valuation administrators, deputy property valuation administrators, and department employees (KRS 132.385). In turn, PVAs assess the property in their counties, subject to the direction, instruction, and supervision of the department (KRS 132.420).

The director of local valuation of the department's office of property valuation indicated the department responded to questions from PVAs on a case-by-case basis. The primary educational efforts concerning agricultural assessments consist of providing a farm appraisal class and publishing guidelines of area-specific cash rent data, which is used in the valuation of agricultural land.¹⁵ The PVAs interviewed said the farm appraisal course was well attended, and the course was especially beneficial to PVAs who do not have an agricultural background.¹⁶

A key part of the department's educational program is the Kentucky Course 90 Farm Real Property Appraisal course and the Quadrennial Recommended Agricultural Assessment Guidelines.

A key part of the department's educational program relating to farm assessments is the Kentucky Course 90 Farm Real Property Appraisal course and the Quadrennial Recommended Agricultural Assessment Guidelines.

The farm appraisal course covers the appraisal methods used to determine the value of agricultural land.

The farm appraisal course reviews the controlling statutes for agricultural and horticultural assessments, provides information on different soil types and land classes and how these two factors affect income-producing capability, and provides detailed information on the appraisal concepts and methods used to determine agricultural use value. The course covers the income approach, which is used to determine the value of agricultural land, the cost approach, which is used to determine the value of farm buildings and improvements, and the market or comparable sales approach, which is used to estimate the fair cash value of residences on the farm property.¹⁷

The income approach is used to value agricultural land. This approach is based on the estimated returns from farming.

The income approach is used to value agricultural land because it eliminates factors that influence the market price, thereby, reflecting the income-producing capability of the land. The income stream—cash returns from agricultural production—is discounted to arrive at an estimate of the value of the land. In other words, the

income approach translates estimated future income from agricultural production into the present value of the property.

The Quadrennial Assessment Guidelines provide cash rent estimates that are used in the income approach. The cash rent estimates are used by PVAs in conjunction with tract-specific information to determine the agricultural value.

The Quadrennial Assessment Guidelines provide information on cash rents for cropland and pastureland for six agricultural statistical districts in Kentucky and provide examples of how to apply the cash rents to different classes of land.^a Once the cash rent data are adjusted for the value of improvements, the adjusted data are applied to the soil types and classes of land to develop an estimate of the agricultural use value. PVAs are then provided recommended guidelines of agricultural value for different land classes by agricultural statistical district. These guidelines can be used by a PVA to develop tract-specific agricultural valuation based on the individual land classes on a particular tract.¹⁸

A simplified example may help illustrate how the income approach, in conjunction with cash rents, is used to determine the agricultural use value of land.

The income capitalization formula is:

$$\text{Value} = \text{Income} / \text{Cost of Capital}$$

Value represents the value of the land for agricultural use. Income represents the estimated net income from agricultural use, and cost of capital is the interest rate on borrowed funds and the required rate of return on equity funds. Cash rents based on survey data from the six agricultural statistical districts are available to estimate net income from agricultural use. The cost of capital for borrowed funds is based on the interest rate for 20-year agricultural loans.

Assume a tract of land has 100 tillable acres, meaning each acre is suitable for crop production. Assume the cost of capital is 7 percent and the cash rent for cropland based on the survey data is \$125 per acre. Based on the income capitalization formula, the value of the land for agricultural use would be \$1,786 per acre (\$125 divided by 7 percent).

Department of Revenue officials confirmed many of the points discussed with the PVAs.

Department of Revenue officials confirmed many of the points that were discussed with the PVAs. The officials acknowledged their educational courses reflect the statutory qualifications for agricultural land, including that land assessed as agricultural must be used for agriculture. The officials indicated the department had advised PVAs the minimum acreage requirement and income-producing capability were all that was necessary to qualify for the

^a Cash rent information is also provided on a county basis.

agricultural assessment and that application of this requirement was the common practice among property valuation administrators.¹⁹

Department officials said that after the 1992 legislation, the policy that was adopted was if a tract met the minimum acreage requirement and had income-producing capability, then it qualified for the preferential assessment.

Department officials said that once the income requirement was removed in 1992, the adopted policy became the common practice, and that policy was a tract qualified if it had 10 acres for agricultural land or 5 acres for horticultural land. As time passed, in response to particular legal opinions and Kentucky Board of Tax Appeals rulings, the policy was modified slightly to include any tract that met the minimum acreage requirement and had income-producing capability. Department officials noted that prior to 1992, the application and income requirements were not uniformly or consistently enforced in each county.²⁰

PVAs may request information from the taxpayer.

Department officials noted that an application is not required by statute, but there is permissive language that allows a PVA to request information from the taxpayer. Because there is a limited amount of legal guidance in this area, it was unclear whether a taxpayer that failed to file an application, but had agricultural activity on his land, would be entitled to the agricultural assessment.²¹

The department and the PVAs agreed that application of the “used for” provision is difficult and there are tracts that are misclassified. The department’s opinion was that instances of misclassified tracts may be concentrated in certain areas, and perhaps limited to fewer than 10 counties.

Department officials and PVAs shared similar concerns regarding how to apply the “used for” provision in the statute and indicated there could be additional legislative guidance regarding imposition of the assessment for tracts that are transitioning from agriculture use. Department officials recognized that as the law is currently applied, there were instances in which a tract qualified for the agricultural assessment without being used for agriculture. Their opinion was the misclassification of agricultural land was perhaps concentrated in certain areas, and the majority of the cases may be in 5 to 10 counties.²²

The department and the Property Valuation Administrators Association agreed that removing the acreage adjustments and reducing the minimum acreage requirement would make it easier to apply the law. Overall, it was noted that without further legislative guidance, or more definitive court rulings, it was difficult to provide additional assistance or guidance, but the statutes do require current agricultural use.²³

Department officials acknowledged they have not given full consideration to the statutory acreage adjustments. The department provided a letter to the PVA Association detailing how this statute should be applied.

Department officials acknowledged they had not given full consideration to the acreage adjustments included in KRS 132.450(2)(a). As a result, the department provided a letter to the Property Valuation Administrators Association detailing how this

statute should be applied (Appendix B). This letter also addressed other areas of concern with respect to agricultural assessments. A summary of the Department of Revenue's letter is provided in Chapter 6.²⁴

Kentucky Farm Bureau Officials

Staff met with the executive vice president and director of public affairs of Kentucky Farm Bureau. Both officials indicated the Farm Bureau actively supported the constitutional amendment that allowed the agricultural assessment, their organization provided testimony in support of the enabling legislation, and the amendment was widely supported.²⁵

The Kentucky Farm Bureau supported the 1969 constitutional amendment and the 1992 legislative changes.

The Farm Bureau supported the 1992 legislative changes that removed the application process, the income requirement, and the rollback provision. Both officials indicated that for the majority of farmland in Kentucky, determining whether or not the land was being used for agriculture would not be difficult but recognized that strict enforcement of this provision would require additional resources and may be difficult given the current statutes.²⁶

Farm Bureau officials indicated the law should include all types of agriculture, the retired farmer provision and farmland assessments should not change until use changes, but should not include an income or rollback provision.

Both officials stressed that agriculture has changed since passage of the original legislation, but there was no need to change current law. The position of Farm Bureau is the law should include all types of agriculture, an income provision would be difficult to apply, the retired farmer provision should remain intact, the rollback provision was perhaps too punitive, and agricultural tracts should remain assessed as such until the use of the land changes.²⁷

¹ Bushart, William, David Best, Terry Rakes, and Clay Wells. Executive Director and Farm Committee members. Kentucky Property Valuation Administrators. Personal Interview. Oct. 6, 2016.

² Kentucky Property Valuation Administrators. Group Discussion. 2016 Fall Conference. Louisville. Oct. 25, 2016.

³ Bushart, William, David Best, Terry Rakes, and Clay Wells. Executive Director and Farm Committee members. Kentucky Property Valuation Administrators. Personal Interview. Oct. 6, 2016.

⁴ Kentucky Property Valuation Administrators. Group Discussion. 2016 Fall Conference. Louisville, Kentucky. Oct. 25, 2016.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Bushart, William, David Best, Terry Rakes, and Clay Wells. Executive Director and Farm Committee. Kentucky Property Valuation Administrators. Personal Interview. Oct. 6, 2016.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Kentucky Property Valuation Administrators. Group Discussion. 2016 Fall Conference. Louisville, Kentucky. Oct. 25, 2016.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Gordon, David L., Thomas S. Crawford, and Richard W. Bertelson III. Commonwealth of Kentucky. Finance and Administration Cabinet. Department of Revenue. Office of Property Valuation and Office of Legal Services for Revenue. Personal Interview. Oct. 13, 2016.

¹⁶ Kentucky Property Valuation Administrators. Group Discussion. 2016 Fall Conference. Louisville, Kentucky. Oct. 25, 2016.

¹⁷ Commonwealth of Kentucky. Department of Revenue. "Kentucky Course 90 Farm Real Property Appraisal—Agricultural vs. Fair Cash Value: An understanding of farm valuation in Kentucky." March 2016.

¹⁸ Commonwealth of Kentucky. Finance and Administration Cabinet. Department of Revenue. "2015-2018 Quadrennial Recommended Agricultural Assessment Guidelines." August 1, 2014.

¹⁹ Gordon, David L., Thomas S. Crawford, and Richard W. Bertelson III. Commonwealth of Kentucky. Finance and Administration Cabinet. Department of Revenue. Office of Property Valuation and Office of Legal Services for Revenue. Personal Interview. Oct. 13, 2016.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Bertelson, Richard W. III. Letter from Legal Services for Revenue, Department of Revenue, to Mr. David O'Neill, Fayette County PVA. June 6, 2016. Email.

²⁵ Beck, David S., and Jeff Harper. Executive Vice President and Director of Public Affairs, Kentucky Farm Bureau. Oct. 18, 2016.

²⁶ Ibid.

²⁷ Ibid.

Chapter 6

Recent Events Concerning Agricultural And Horticultural Land

Lexington *Herald Leader* Series

The Lexington *Herald Leader* found that before 1992, the statutes contained more effective provisions that prevented abuse of the preferential assessment.

The *Herald Leader* noted the statutes were weakened in 1992 and that other states have more stringent requirements.

The *Herald Leader* suggested the preferential assessment may result in an inequitable tax burden, negatively impacts state, local, and school property tax revenues, does not promote the preservation of farmland, and benefits property owners of land that is likely to be developed.

The *Herald Leader* found examples of commercial and 10 acre residential tracts that did not have agricultural use but received the preferential assessment.

In February 2016, the Lexington *Herald Leader* published a series of articles examining the determination and valuation of agricultural and horticultural land. In this series, the *Herald Leader* found that before 1992, the statutes relating to agricultural and horticultural land contained more effective provisions that prevented abuse of the preferential assessment.¹ The *Herald Leader* noted the statutes were weakened by the 1992 legislation that removed the income requirement and the rollback provision, and listed examples of states that have more stringent requirements for agricultural land.² These requirements include proof of income from farming, penalties if the use of the land changes, and removal of the preferential assessment when the land receives zoning approval for residential or commercial use.

The *Herald Leader* suggested lower property taxes for agricultural land may result in an inequitable tax burden and lower property tax assessments negatively impact state, local, and school district property tax revenues.³ The *Herald Leader* found the statutory provisions do not promote the preservation of farmland and the current application of the law may benefit property owners of land that is likely to be developed by lowering their property taxes.⁴

The *Herald Leader* noted the current application of the law does not consider whether the land is being used for agricultural or horticultural purposes before granting the preferential assessment.⁵ In their analysis, the *Herald Leader* found examples of commercial and 10 acre residential tracts that did not have agricultural use but received the preferential assessment.⁶

The following section provides additional context regarding the statutory provisions that apply to land that is transitioning to another use and to 10 acre residential tracts, how other factors could impact whether a tract qualifies if the application of the statutes changes, and the reasons why total deferred assessments in Fayette County may differ from other counties.

The *Herald Leader* found tracts in Fayette County that were assessed as agricultural, even though the land was about to be developed, development was underway, or the land was idle. This may be permissible under the current statutes.

The *Herald Leader* found examples of properties in Fayette County that were assessed as agricultural land, even though they were about to be developed, development was underway, or the land appeared to be idle.⁷ KRS 132.450(2)(b) states that land qualifies for agricultural or horticultural assessment until the use of the land changes. Since assessments change on January 1, a development in which work does not start until after January 1, is not reassessed under the current law until January 1 of the following year. For certain tracts, KRS 132.450(2)(c) may apply. If part of a tract remains undeveloped and meets the minimum requirements, that part retains its designation as agricultural land. For certain tracts, the retired farmer provision may apply, which would allow the tract to be assessed as agricultural even if it was idle and likely to be developed.

The *Herald Leader* found examples of 10 acre residential tracts in which the land was assessed based on agricultural use. These examples occurred because the PVA followed the common practice of granting the agriculture assessment if the tract met the minimum acreage requirement and had income-producing capability.

The *Herald Leader* series also examined 10 acre residential tracts in Fayette County.⁸ Residences on these tracts are assessed at fair cash value, but the land may be assessed at fair cash value or agricultural use value. The *Herald Leader* found instances in which no apparent agricultural activities were taking place, but the land on these 10 acre residential tracts was assessed as agricultural land. This disparity occurs because the prevailing legal interpretation is if a tract has income-producing capability and meets the minimum acreage requirement, then it qualifies as agricultural land.

The preferential assessment would not be removed on every 10 acre tract in Fayette County if monitoring standards were raised.

A number of 10 acre tracts in Fayette County may not qualify under a strict interpretation of agricultural land. However, not all of these tracts would lose their agricultural assessment if monitoring standards were raised. For example, if there is some timber on a tract, the tract would qualify as agricultural land under existing law. If the application of the statutes changes, then taxpayer behavior could change because they have a financial incentive to qualify or to maintain their tax status under the new rules. Also, tracts under 10 acres might qualify under KRS 132.010(9)(c) if this statute was enforced. Due to these three factors, additional assessment increases due to a reduction in the misclassification of agricultural land would, to some degree, be offset.

Previous land use requirements resulted in a substantial number of 10 acre tracts in Fayette County. The prevalence of 10 acre tracts in other counties may be smaller.

This series of articles focused on Fayette County. Land use and valuation in Fayette County are distinctive compared to other counties. Prior to 1999, Fayette County required a 10 acre minimum lot size for residential development outside the Urban Services Area, resulting in a substantial number of 10 acre tracts in Fayette County.⁹ A number of PVAs who were interviewed

indicated that zoning regulations do not apply in their county and residential lots are much smaller than 10 acres. Other PVAs noted there was a minimum lot size for residences in their county, but the minimum lot size was five acres or less. All but one of the PVAs who were interviewed said the prevalence of 10 acre lots in their counties was negligible. Most of the property valuation administrators interviewed estimated the number of 10 acre tracts would be less than 1 percent of the total agricultural tracts in their county, and the assessed value attributable to misclassification would be even less.¹⁰

On average, the difference between the fair cash value and agricultural use value for Fayette County farmland is nearly 5 times the same measure for all Kentucky counties. This differential is attributable to high farmland prices in Fayette County.

Farmland prices in Fayette County are higher than for other Kentucky farmland. High farmland prices in Fayette County result in large differences in the deferred assessment amount (fair cash value less agricultural value). Based on 2015 assessment data, the average per acre deferred assessment in Fayette County is nearly 5 times this same measure for all Kentucky counties (\$13,862 average per acre deferred assessment in Fayette County versus \$2,815 average per acre deferred assessment for all other Kentucky counties). In comparison to surrounding counties Bourbon, Jessamine, Madison and Woodford, the average per acre deferred assessment in Fayette County is approximately 3 times greater.^a

Fayette County may be an outlier in terms of the number of 10 acre tracts, the average deferred assessment per acre, and total deferred assessments.

When compared to other counties in Kentucky, Fayette County may be an outlier in the number of 10 acre tracts and the per acre deferred assessment. Fayette County also stands out when comparing the total value of deferred assessments by county. Since 1998, Fayette County has ranked first among Kentucky counties in terms of the value of deferred assessment.^b The prevalence of 10 acre tracts and high farmland values are the reasons Fayette County is the predominant county when considering the total value of deferred assessments.

Agricultural Assessments And Number Of Farms Based On Census Of Agriculture

There are 2,459 tracts assessed as agricultural land in Fayette County. The number of Fayette County farms reported by the 2012 Census of Agriculture was 718.

Based on an analysis of property tax records, the *Herald Leader* found there were 2,459 tracts assessed as agricultural land in Fayette County. The *Herald Leader* indicated the 2012 Census of Agriculture reported 718 farms in Fayette County.¹¹

^a Author's calculations based on 2015 Department of Revenue farm assessment data.

^b Author's rankings based on historical Department of Revenue farm assessment data.

The number of tracts assessed as agricultural for property tax purposes will not coincide with the number of farms as defined by the Census Bureau.

Land assessed as agricultural for property tax purposes and farms as defined by the Census Bureau are not the same. The Census of Agriculture definition of a farm is any place that produced and sold, or normally would have sold, \$1,000 or more of agricultural products during the year. The number of farms is tied to each survey respondent's farming operation. Farm operations are based on the land controlled (either through ownership or renting) by the respondent.¹² Since a farm operation may consist of more than one tract of land, the number of farms reported by the Census of Agriculture will be less than the number of agricultural tracts using assessment data. Another example would be a farmer that owns several farms within a single county. These farms may be listed as different tracts for assessment purposes (tracts are primarily tied to land deeds) but would be counted as one farm by the Census.

Request For Guidance By Fayette County Property Valuation Administrator And Department Of Revenue Response

The Fayette County PVA requested guidance from the Department of Revenue concerning agricultural use, exclusions to the acreage requirement, land that is idle, and taxpayer requests for agricultural assessment.

In response to the *Herald Leader* series, the Fayette County PVA requested guidance from the Department of Revenue regarding the meaning and applicability of certain sections in KRS 132 that relate to agricultural assessments.¹³ The Department of Revenue responded to the request in a letter dated June 6, 2016 (Appendix B).¹⁴

In his letter to the Department of Revenue, the Fayette County PVA asked for a legal opinion concerning the following questions:

- 1) Is a tract required to have active agricultural "use" or only "income producing capability?"
- 2) What qualifies as "used for the production of" which is found in KRS 132.010(9)?
- 3) If a 10 acre tract includes a house which is the property owner's primary residence, and the property is used for agriculture, does the property qualify as agricultural even though excluding the area under the house would cause the tract to fall short of the 10 acre minimum?
- 4) When a property planned for development ceases to be used for agriculture and is idle while awaiting final approval of a development plan and necessary zoning change, when should the agricultural classification be removed?

5) Do the statutes require that agricultural classifications only be approved at the taxpayer's request? ^c

The department's letter to the PVA noted that since 1992, it has been difficult to refute an owner's claim their property has the "potential" for agricultural use, even when current use is not present.

In its letter, the Department of Revenue noted there were areas of concern regarding how the taxation of agricultural land has been administered since the passage of HB 585 in 1992. The department noted that since HB 585 removed the proof of income provision, PVAs "have been left with slim legal footing from which to refute a landowner's claims that their property has the 'potential' to be used for agricultural or horticultural purposes, even when no such activities are likely to occur."¹⁵

The department's opinion is that agricultural tracts must have current use and contain the minimum acreage after the acreage adjustments have been applied. Any size tract may qualify if it meets the requirements under the agricultural program payment provision.

According to its letter, the department's opinion is a tract assessed for agricultural use must be actively engaged in agricultural, commercial aquaculture, or commercial horticultural use, and the minimum acreage requirement must be met after the acreage adjustments are taken into account. Any tract could qualify if it meets the requirements and qualifications for agricultural program payments under an agreement with the state or federal government.¹⁶

The department's letter may not have completely addressed the question of whether a tract has to have current agricultural use or income-producing capability, or both.

The department's letter indicated there is not a statutory requirement specifying the tract has to produce income in order to qualify for agricultural use.¹⁷ The Kentucky Board of Tax Appeals has ruled income-producing capability is the sole requirement in determining the valuation of agricultural land, but the question of whether a tract has to be actively used for agriculture to qualify for the agricultural assessment has not been directly addressed either by a court or the board. It is not clear the department's response completely addresses the Fayette County PVA's first question. Must a tract have to have active agricultural use or income-producing capability or both?

The department said that "used for production" was not defined in the statutes, so they referred to the common dictionary meaning.

Regarding what the term "used for the production of" means, the department indicated "used" and "production" were not statutorily defined, so they referred to the common dictionary meaning. In its letter the department said "used for the production of" could either mean

to have brought or put into service in the act or process of producing agricultural goods or services" or "to have brought or put into service in the creation of value by producing agricultural goods or services."¹⁸

^c This is a partial list of the questions submitted by the Fayette County PVA. The questions listed are those most pertinent to this report.

The department was not asked to address which agricultural activities qualify or if a minimum amount of use must take place before a tract qualifies.

This definition partially answers the question of what qualifies as “used for the production of,” which is found in KRS 132.010(9). The department was not asked to address which agricultural activities may qualify or if a minimum amount of agricultural use must take place before a tract qualifies.

The department’s opinion is the land under the owner’s residence should be excluded when determining if the minimum acreage is met.

The department acknowledged that for a number of years it had not fully considered how the acreage adjustments included in KRS 132.450(2) impact the minimum acreage requirement under KRS 132.010(9). The department’s letter indicated it, on occasion, had advised PVAs that land under the house did not have to be excluded. After reviewing the statutes, the department informed the Fayette County PVA the correct interpretation is that land under the house should be excluded when determining if the minimum acreage is met.¹⁹ Given this interpretation, a 10 acre tract would not qualify if the owner’s house is located on the tract because the minimum acreage requirement would not be met.

The department said in most instances, the agricultural assessment should be removed once the new use has begun. The department indicated a PVA would be justified in removing the agricultural assessment from idle land unless the tract’s owner qualified under the retired farmer provision.

The fourth question concerned when an agricultural assessment should be removed from property that is transitioning from agricultural use to commercial or residential use. In its response, the department indicated the answer to this question is not completely clear. In most instances, the agricultural assessment should be removed when there is no longer agricultural activity on the tract and the new use has begun. The department did note that if the land was idle, a PVA would be justified in removing the agricultural assessment under KRS 132.450(2)(d). However, if the tract had agricultural activity under the same ownership for the previous 5 years, then even if the tract was idle it could still be assessed as agricultural because it would fall under the retired farmer provision (KRS 132.450(3)).²⁰

PVAs can determine if a property qualifies for the agricultural assessment without a request from the taxpayer.

The department indicated that a taxpayer does not have to request an agricultural assessment. The determination of whether a tract qualifies for agricultural assessment is made by the PVA. If the PVA knows the property is being used for agricultural or horticultural purposes, it can be assessed as such. A PVA who needs additional information can require the taxpayer to verify existing information or provide additional information that will assist in determining the proper assessment.²¹

After receiving the department's letter, the Fayette County PVA indicated he would remove all agricultural exemptions and implement an application process, require commercial properties to have current use unless they qualify under the retired farmer provisions, and allow partial tracts to qualify if they meet the minimum acreage requirements and have agricultural use.

After receiving the department's response, staff interviewed the Fayette County PVA and he indicated he will implement the following procedures.²²

- Agricultural assessments will be removed, an application will be required, and agricultural assessments will be granted to tracts that meet the adjusted minimum acreage requirement and have current agricultural use.
- For commercial properties, precise criteria regarding when a tract will lose its agricultural exemption will be published.
- Commercial properties in which the use has not changed must have current agricultural use to be assessed as agricultural unless the tract qualifies under the retired farmer provision.
- A part of a commercial tract may qualify, if it meets the adjusted minimum acreage requirement and has current agricultural use.
- Commercial properties that are idle will no longer qualify for agricultural assessment unless the tract qualifies under the retired farmer provision.

The Fayette PVA noted tracts that are likely to be developed would still qualify if they have agricultural use. Tracts currently at the 10 acre minimum that have agricultural use will lose their preferential assessment.

The Fayette County PVA noted these changes will not prevent a tract that is currently devoted to agricultural use, which is likely to be developed, from receiving the agricultural assessment. Ten acre tracts that are currently receiving the agricultural assessment and have agricultural use will lose their preferential assessment as a result of applying the acreage adjustment.

HB 576: An Act Relating To Agricultural And Horticultural Value For Property Taxes

HB 576, introduced during the 2016 Regular Session, specified that PVAs must document agricultural use and tract size.

Representative Palumbo and Representative Flood introduced HB 576 in the 2016 Regular Session which addressed certain issues relating to the assessment of agricultural and horticultural land.

HB 576 specified PVAs must obtain documentation regarding tract size and use of the land before granting the agricultural or horticultural assessment, there must be current use for a tract to qualify as agricultural or horticultural land, that land tied to the permanent residence must be excluded when determining the acreage, and that a tract may qualify as agricultural land if there is a current enforceable agreement under a state or federal program.

¹ Cheves, John, and Linda Blackford. "Tax Relief intended to save Kentucky farms helps pave them instead." *Lexington Herald Leader*. Feb. 18, 2016. Web. Feb. 23, 2016.

² Cheves, John. "How other states guard against 'fake farmers.'" *Lexington Herald Leader*. Feb. 22, 2016. Web. Feb. 23, 2016.

³ Blackford, Linda, and John Cheves. "Fayette PVA calls for reform of Kentucky's farmland preservation tax break." *Lexington Herald Leader*. Feb. 23, 2016. Web. May 19, 2016.

⁴ Cheves, John. "Developers get farmland tax break as bulldozers approach." *Lexington Herald Leader*. Feb. 22, 2016. Web. May 19, 2016.

⁵ Blackford, Linda, and John Cheves. "Fayette County PVA pledges to restrict use of farmland preservation tax break." *Lexington Herald Leader*. Feb. 25, 2016. Web. May 19, 2016.

⁶ Blackford, Linda. "10-acre lawns get benefit meant for working Fayette County farms." *Lexington Herald Leader*. Feb. 21, 2016. Web. Feb. 23, 2016.

⁷ Cheves, John, and Linda Blackford. "Tax Relief intended to save Kentucky farms helps pave them instead." *Lexington Herald Leader*. Feb. 18, 2016. Web. Feb. 23, 2016.

⁸ Blackford, Linda. "10-acre lawns get benefit meant for working Fayette County farms." *Lexington Herald Leader*. Feb. 21, 2016. Web. Feb. 23, 2016.

⁹ O'Neill, David. Fayette County PVA. Personal Interview. Oct. 21, 2016.

¹⁰ Kentucky Property Valuation Administrators. Group Discussion. 2016 Fall Conference. Louisville, Kentucky. Oct. 25, 2016.

¹¹ Blackford, Linda. "10-acre lawns get benefit meant for working Fayette County farms." *Lexington Herald Leader*. Feb. 21, 2016. Web. Feb. 23, 2016.

¹² United States. Census Bureau. 2012 Census of Agriculture. United States Summary and State Data. Volume 1, Part 51. May 2014.

¹³ O'Neill, David. Fayette County PVA. Letter to David Gordon, Executive Director, Office of Property Valuation, Department of Revenue. March 1, 2016. Email.

¹⁴ Bertelson, Richard W. III. Letter from Department of Revenue Legal Services for Revenue to Mr. David O'Neill, Fayette County PVA. June 6, 2016. Email.

¹⁵ *Ibid.* P. 2.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.* P. 6.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² O'Neill, David. Fayette County PVA. Personal Interview. Oct. 21, 2016.

Chapter 7

Effects Of Deferred Farm Assessments On State, Local, And School District Revenue

Assessments

The same tax rate is applied to each type of real property, but the basis for assessment is different for farm property.

Commercial, residential, and farm property (agricultural and horticultural land) are subject to the same state real property tax rate of 12.2 cents per \$100 of assessed value, which has not changed since 2007. Commercial and residential property are assessed based on fair cash value and farm property is assessed based on its agricultural value.^a The same state tax rate is applied to each type of real property, but the basis for assessment is different for farm property.

In 2015, more than 324,000 parcels in Kentucky receive the agricultural assessment. The deferred assessments from these parcels was \$36.6 billion.

For the 2015 assessment year, more than 324,000 parcels in Kentucky were assessed as farm property. Farm assessments based on fair cash value were \$56.1 billion, farm assessments based on agricultural use were \$19.5 billion, and farm deferred assessments (fair cash value less agricultural use value) were \$36.6 billion.^{b,1} On a percentage basis, farm assessments based on agricultural use are 34.8 percent of the fair cash value and farm deferred assessments are 65.2 percent of the fair cash value.

Fayette County had \$1.6 billion in deferred assessments in 2015, the largest among Kentucky counties.

Table 7.1 displays the top 15 counties in terms of deferred farm assessments in 2015. Fayette County's \$1.6 billion in deferred farm assessments was 56 percent larger than second ranked Logan County's \$1.04 billion.² Total deferred farm assessments for these 15 counties combined is 36 percent of the total deferred farm assessments in Kentucky. Each of the 15 counties has a significant agricultural base and most are large in terms of farmland acres. Several of these 15 counties have a significant urban presence; others lie just outside an urban area. Appendix C contains the deferred farm assessments by county for 2015.

^a Residential, commercial and agricultural assessments are 65.6 percent, 26.2 percent, and 8.3 percent of total assessment, respectively.

^b Total fair cash value assessments were adjusted for the homestead exemption and the disability exemption.

Table 7.1
Kentucky Deferred Farm Assessments 2015
Top 15 Counties

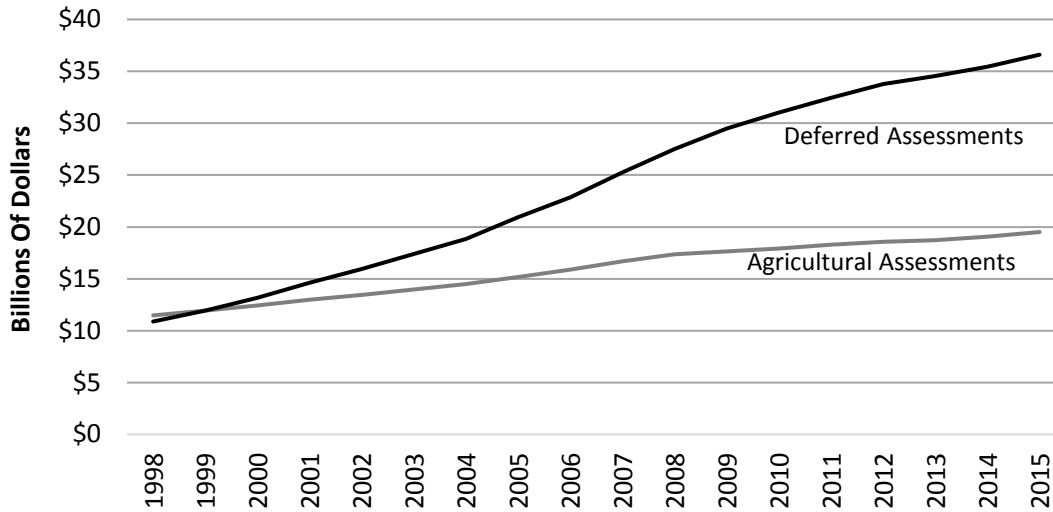
County	Amount Deferred	Percent Of State Total Deferred
Fayette	\$1,618,334,200	4.32%
Logan	\$1,040,424,218	2.88
Christian	\$1,038,872,224	2.87
Bourbon	\$1,024,655,661	2.70
Graves	\$981,741,957	2.54
Henderson	\$906,687,687	2.51
Warren	\$872,674,240	2.48
Woodford	\$861,914,160	2.34
Daviess	\$835,744,414	2.27
Shelby	\$768,464,467	2.13
Hardin	\$648,055,670	2.09
Pulaski	\$628,026,683	1.82
Nelson	\$618,154,817	1.79
Oldham	\$606,424,500	1.72
Scott	\$573,659,266	1.70

Source: Kentucky. Department of Revenue.

Deferred assessments have outpaced the growth in agricultural assessments due to increases in fair cash value.

Figure 7.A displays the deferred assessments and agricultural assessments for Kentucky farms from 1998 to 2015. Farm assessments based on agricultural use increased from \$11.4 billion in 1998 to \$19.5 billion in 2015. Deferred assessments for farms increased from \$10.9 billion in 1998 to \$36.6 billion in 2015.³ Since 1998, deferred assessments grew more than three times faster than agricultural assessments. This disparity occurred because the growth in fair cash assessments has consistently exceeded the growth in agricultural assessments.

Figure 7.A
Kentucky Farm Assessments
1998 To 2015

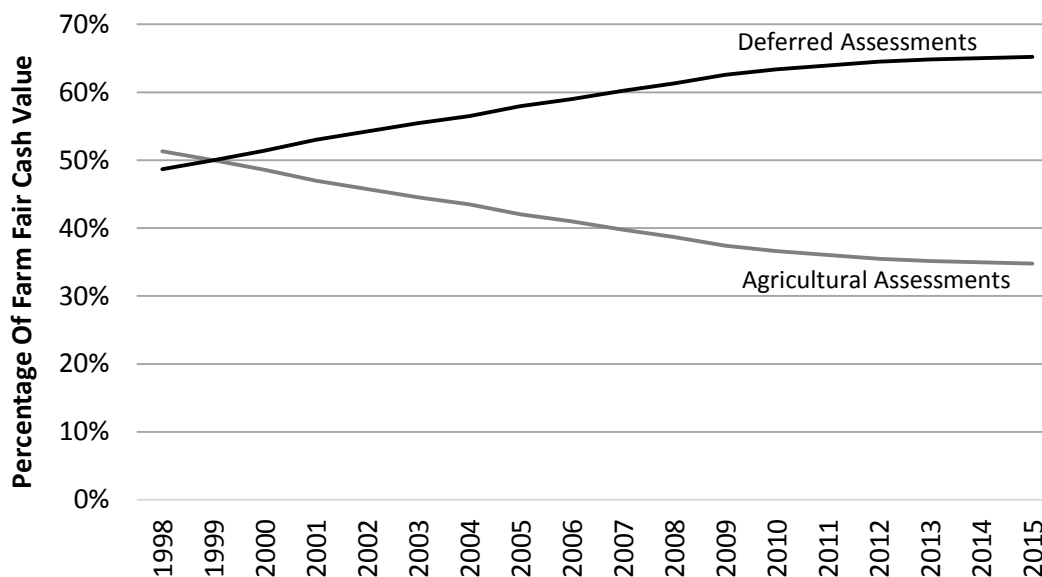


Source: Kentucky. Department of Revenue.

Deferred assessments are equal to 65.2 percent of the fair cash value.

Figure 7.B displays deferred assessments and agricultural assessments relative to fair cash value in percentage terms. In 1998, agricultural assessments were 51 percent of the fair cash value and deferred assessments were 49 percent. Since the fair cash value of farms has increased faster than agricultural assessments, deferred assessments as a percentage of fair cash value increased.

Figure 7.B
Kentucky Deferred And Agricultural Assessments As A Percentage Of Fair Cash Value
1998 To 2015



Source: Kentucky. Department of Revenue.

State Tax Expenditure

The state tax expenditure attributable to the preferential agricultural assessment is \$44.7 million—12.2 cents per \$100 of assessed value multiplied by \$36.6 billion in deferred assessments.^c This estimate represents the amount of state property tax revenue foregone due to the preferential agricultural assessment. The state tax expenditure estimate does not account for the negative impact on individual income tax revenues should the preferential assessment no longer exist.

State property tax revenue foregone due to the preferential agricultural assessment is \$44.7 million.

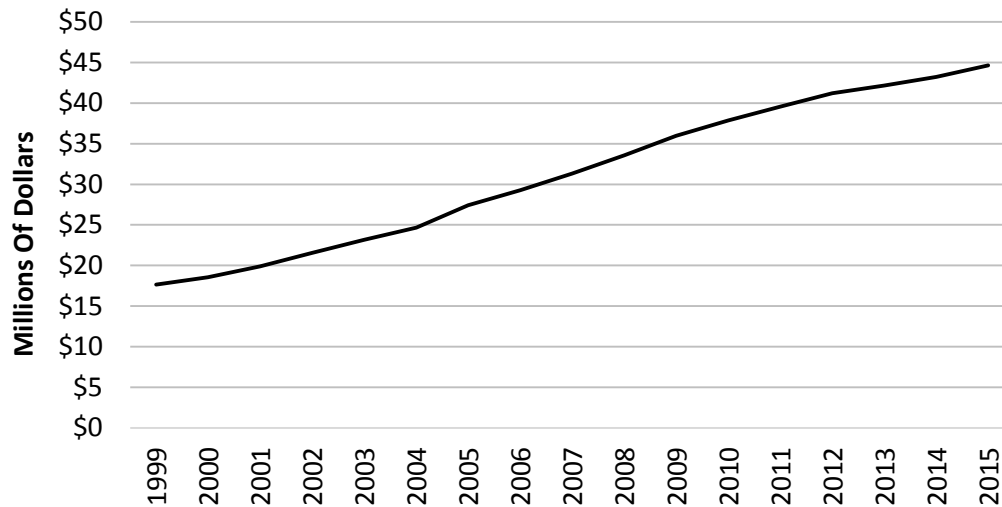
Figure 7.C shows how the state tax expenditure attributable to the agricultural assessment has changed over time. Foregone taxes from the agricultural assessment grew from \$17.7 million in 1999 to \$44.7 million in 2015, or \$1.7 million on average, per year.^d For the most recent fiscal year, the tax expenditure from the agricultural assessment is equal to 7.7 percent of total property tax receipts. The trend in state tax expenditures follows the trend in deferred assessments, but state tax expenditure growth has been

^c A tax expenditure is defined as an exemption, exclusion, or deduction from the base of a tax, a credit against a tax, a deferral of a tax, or a preferential tax rate.

^d Author's calculation based on historical farm assessment data and state property tax rates.

slower due to reductions in the real property tax rate. The growth in state tax expenditures from deferred assessments has declined since the 2008 recession due to a reduction in the growth in fair cash value.

Figure 7.C
State Property Tax Revenue Foregone Due To Deferred Assessments
1999 To 2015



Source: Kentucky. Department of Revenue.

Effects On State, Local And School Property Tax Revenue

At the state or county level, the number of misclassified farms and the deferred assessment amount from these farms could not be determined. This prevented staff from developing an estimate of the fiscal impact at the state, local, or school district level.

While the magnitude of the fiscal impact is indeterminable, the impact on state, local, and school district property tax revenues will be positive. State, local, and school property tax rates will not be impacted.

While the magnitude of the fiscal impact is indeterminable, the impact on state, local, and school tax revenues would be positive if assessments increase. State, local, and school property tax rates would remain unchanged since the increase in assessments would be classified as new property, which is excluded from the property tax revenue and rate calculations.

There is an interrelationship between changes in property assessments, property tax revenues, property tax rates and the state funding mechanism for local school districts.

To understand the interrelationship between changes in property assessments and state, local, and school property tax revenues and tax rates, it is necessary to examine the statutory provisions relating to property tax revenue growth and property tax rates, the process for determining local property tax rates, and the property tax provisions and funding mechanism for local school districts.

The following discussion examines the state, local, and school district fiscal impacts in more detail.

State

To determine the state fiscal impact, PVAs would need to reexamine tracts. Property owners may change behavior, and some tracts that currently do not qualify, may qualify under new rules.

Given the recent guidance by the department, to develop an estimate of the fiscal effect, PVAs would need to identify the tracts that do not have agricultural use (misclassified farms). PVAs will have to reexamine tracts with acreage close to the minimum, apply the statutory acreage adjustments, and then determine if the tract is being used for agriculture. If the statutory provisions are more closely monitored, there will be tracts in which the taxpayer may change behavior to qualify for the preferential assessment or to ensure the tract remains qualified. If the provisions of KRS 132.010(9)(c) are considered, some tracts under the minimum acreage requirement would qualify that currently do not. For these reasons, it was not possible to develop an estimate of the number, or amount of deferred assessments of tracts that are misclassified.

While a definitive estimate of the fiscal impacts could not be determined, one can contemplate the fiscal impact(s), assuming real property assessments increase due to a reduction in the number of misclassified farms.

The state fiscal impact will be positive because the misclassified farms will be assessed at fair cash value instead of agricultural value. The fiscal impact may be small relative to total property tax revenue.

Real property tax assessments would increase because the reclassified tracts will be assessed at fair cash value instead of agricultural value. The fiscal impact on state property tax revenues would be positive. However, the amount of additional state property tax revenue is indeterminable and may be small relative to total property tax revenue.

An increase in state property tax revenue due to an increase in assessments will be partially offset due to a reduction in individual income tax receipts.

An increase in state property tax revenues from an increase in assessments would be offset, to a small extent, by a reduction in individual income tax revenues. For taxpayers who itemize deductions, as their property taxes rise, so will their deductions. An increase in itemized deductions will reduce taxable income and individual income tax revenues. The reduction in individual income tax revenues would, based on income tax rates, equal 5 percent to 6 percent of the increase in property tax revenues.

HB 44 limits the growth in state real property tax revenue to 4 percent. The 4 percent is applied to existing property but not new property. If the 4 percent revenue cap is exceeded, state property tax rates are reduced.

One can also consider the relationship between increases in real property assessments and the revenue cap imposed under KRS 132.020(4). The real property revenue cap is often referred to as the HB 44 provision.^e Enacted in 1979, the HB 44 provision limits the state's real property tax revenue growth to 4 percent per year.

^e The real property revenue cap provision is KRS 132.020(4).

The 4 percent is applied to existing property assessments. The real property state tax rate for the current year is determined by allowing up to a 4 percent increase over the previous year's tax revenue from existing property.^f

If real property assessments rise due to a reduction in misclassified farms, this may cause property tax revenue growth to exceed the 4 percent cap.

If real property assessments rise due to a reduction in the number of misclassified farms, this may cause state property tax revenues to exceed the 4 percent real property revenue cap, which would result in a reduction in the state real property tax rate.

The key factor in determining changes in the state property tax rate is the growth in assessments on existing property. If assessment growth on existing property is less than or equal to 4 percent, the state property tax rate does not change. If assessment growth on existing property is greater than 4 percent, the state property tax rate must decrease to keep revenue growth within the 4 percent revenue cap.⁴

Assessment increases due to a reduction in misclassified farms will be classified as new property. New property is not included in the 4 percent revenue growth calculation and will not cause a reduction in state property tax rates.

Assessment increases due to a reduction in the number of misclassified farms will be classified as new property and not existing property. Since new property is not included in the property tax revenue calculation, it will not cause the growth in property taxes to exceed the 4 percent cap, which would lead to a reduction in the state property tax rate.^g

Local

Local property tax revenue growth is not subject to a 4 percent revenue cap, but local taxing districts must take certain actions before adopting a property tax rate that produces more revenue than the compensating tax rate.

Local property tax revenue growth is not subject to a 4 percent revenue cap that, if exceeded, would trigger a rate reduction. However, local taxing districts must take certain actions before adopting a real property tax rate that produces more revenue than the compensating tax rate.⁵

The compensating tax rate is the rate that when applied to the current year's property tax assessments, excluding new property, produces the same amount of revenue as the previous year.

The compensating tax rate is the rate that when applied to the current year's real property assessments, excluding new property, produces the same amount of revenue as the previous year. If the proposed local property tax rate would generate revenue growth of 4 percent or less when compared to the compensating tax rate, the district must hold a public hearing. If the proposed rate would generate revenue growth of more than 4 percent when compared to

^f Since the real property tax rate is applied to both new and existing property, total real property tax revenues can increase by more than 4 percent.

^g In subsequent years, the initial new property assessment increase is added to the existing property assessment base. This addition to the existing base will be small in comparison to total assessments and is unlikely to cause property tax revenues to exceed the 4 percent cap.

the compensating tax rate, the district must hold a public hearing and the portion of the tax that exceeds 4 percent is subject to a recall vote by the voters in the district.⁶

Local property tax revenues would increase if there was a reduction in misclassified farms.

The fiscal impact on local property tax revenues from a reduction in misclassified farms will be similar to the state fiscal impact. Local real property assessments and property tax revenues would increase because the misclassified farms will be assessed at fair cash value instead of agricultural value.

An increase in assessments due to a reduction in misclassified farms will be classified as new property. New property is excluded from the compensating rate calculation and will not impact local property tax rates.

The initial increase in assessments will be classified as new property and will not affect the compensating rate because this rate is determined based on existing property. Since the compensating rate is unaffected, the increase in assessments will not impact the 4 percent revenue threshold, which requires the local government to take certain actions.^h

School Districts

Property tax revenue is the primary revenue source for school districts.

Local school district revenue is primarily tied to the district's property tax on real estate, personal property, and motor vehicles. School districts are also permitted to levy utility gross receipts taxes, occupational taxes, and excise taxes.ⁱ All school districts levy property taxes and nearly all school districts impose a utility tax. Relatively few school districts levy an occupational tax, and no school district levies an excise tax.⁷

School districts receive state funds through the SEEK funding formula and capital funding through the Facilities Support Program of Kentucky.

School districts receive state funds from the Support Education Excellence in Kentucky (SEEK) funding formula. Capital project funding is provided to school districts through the Facilities Support Program of Kentucky (FSPK).⁸

The SEEK formula is based on property assessments, student counts and transportation costs. Schools are provided a guaranteed base SEEK amount. Add-ons to the base SEEK amount are not affected by property assessments.

SEEK. The SEEK formula allocates state funds to local school districts and is based on property assessments, the number and types of students, and transportation costs. The base SEEK amount provides a guaranteed amount of funding per pupil. This guaranteed per pupil amount is established in each biennial budget. Adjustments to the base SEEK funding level provide additional money for low-income students who qualify for free lunch, for -

^h In subsequent years, the initial new property assessment increase is added to the existing property assessment base. This increase in the existing base would lead to a lower compensating rate compared to the compensating rate assuming the assessment increase had not occurred. If a local taxing district decided to keep revenues from existing property equal to the previous year's revenue by adopting the compensating rate, local property tax rates would decline.

ⁱ The utility gross receipts tax for schools is limited to 3 percent (KRS 160.613(1)).

students with disabilities, for homebound students, for students in the hospital, for students with limited English language skills, and for transportation costs. These adjustments—often referred to as add-ons to the base SEEK amount—are not affected by property assessments.⁹

The minimum required local effort for SEEK is 30 cents per \$100 of assessed property. This minimum per pupil amount is subtracted from the per pupil state guarantee to determine the amount of base SEEK funds provided to the local school district.

To participate in SEEK, a local school district is required to generate a minimum amount of revenue. This minimum local effort is 30 cents per \$100 of assessed property. The minimum local effort is subtracted from the guaranteed base funding amount to determine the amount of base SEEK funding a district receives. For example, if the per pupil SEEK amount is \$4,000 and the minimum required local effort is \$1,500, the state provides \$2,500 per pupil to the local school district. Holding all other factors constant, districts with lower property assessments receive more funding from the state and provide less in local funds. Likewise, districts with higher property assessments receive less funding from the state and provide more in local funds. Districts are also required to provide a minimum level of funding to participate in the Facilities Support Program of Kentucky. The minimum local effort to participate in the FSPK equalization program is 6 cents per \$100 of assessed value.^{j,10}

There are four property tax rate options available to a local school district. The rates for these options are dependent on property tax assessments. Most school districts choose the compensating rate, the 4 percent increase rate, or a rate in between these two rates.¹¹ The calculation of the compensating rate for schools mirrors the compensating rate for local taxing districts. The 4 percent increase rate is the rate that produces 4 percent more revenue when compared to the compensating rate. The analysis provided below applies to school districts that levy the 4 percent increase rate or a rate that is below that level.

If property assessments increase due to a reduction in misclassified farms, this will have an impact on local school district revenues, the amount of state funding provided, and may impact local school property tax rates.

Increases in property assessments will reduce the amount of state SEEK funds a district receives. The increase in local funds due to an assessment increase will exceed the loss in state SEEK funds.

Increases in property assessments will increase local school property tax revenues but will reduce the amount of state funds a district receives through the SEEK formula. For districts at or above the maximum Tier I funding level, the additional local funds

^j This is the tax rate that must be levied to produce the 5 cent equivalent tax. The higher rate is levied because not all property is subject to the tax and the district will not collect 100 percent of the tax.

will exceed the reduction in state funds. Tier I funding provides additional state funds for school districts that raise revenue above the minimum required local effort. The maximum Tier I rate is the rate that produces 15 percent more revenue than the adjusted base SEEK amount.^k All school districts have a tax rate above the maximum Tier I tax rate.¹²

The minimum local effort for SEEK and Facilities funding is 36 cents per \$100 of assessed property. If a school district's property tax rate is above 36 cents, additional local funds from an assessment increase will exceed the loss in state funds.

The local effort required for SEEK and FSPK is 36 cents per \$100 of assessed property.¹³ If a school district's property tax rate is above this level, the additional local funds due to an increase in property assessments will exceed the loss in state SEEK funds.

This simplified example may better illustrate this point. Assume a local district has a property tax rate of 70 cents per \$100 of assessed property. If assessments increase by \$100 million, the district will generate \$700,000 in additional local funds. The district will lose \$360,000 in state funds through SEEK and FSPK (36 cents per \$100 of assessed property).¹ The combined effect will be \$340,000 in additional funds.

School district tax rates will not be directly impacted by an increase in assessments due to a reduction in misclassified farms.

A related issue is the impact on school district property tax rates assuming there is an increase in assessments from a reduction in misclassified farms. The compensating tax rate and the 4 percent increase rate are calculated based on current property assessments, excluding new property. The initial assessment increase will be classified as new property and will not affect the compensating rate or the 4 percent increase rate.^{m n} For school districts, there is not a property tax revenue threshold that, if exceeded, would require a rate reduction. Instead, if a school district proposes a tax rate that will generate more than a 4 percent increase in revenue compared to the compensating tax rate, a public hearing must be held and the

An increase in assessments due to a reduction in misclassified farms will be classified as new property and will not affect the compensating rate or the 4 percent increase rate.

^k Tier I funding is equalized based on 150 percent of the state average assessment level.

¹ This example does not account for the loss in Tier I funding due to a higher assessment amount. This loss would further reduce the fiscal impact of higher property assessments. For school districts that do not receive funds through FSPK, the loss in state funds would be smaller.

^m In the subsequent year, the initial increase in new property assessments is added to existing property assessments. This increase in the existing base would lead to a lower compensating rate compared to the compensating rate if the assessment increase had not occurred. If a local school district decided to keep revenues from existing property equal to the previous year's revenue by adopting the compensating rate, the local school district's property tax rate would decline.

ⁿ Increases in assessments will lead to an increase in the statewide average assessment used in calculating Tier I funding. However, the increase in assessments due to misclassified farms will be small in relation to total property tax assessments, which will lead to a small effect on Tier I funding.

portion of the proposed rate that exceeds the 4 percent increase rate is subject to a recall vote by the voters in the district.^o If the proposed rate would generate revenue growth of 4 percent or less, the district must hold a public hearing.¹⁴

¹ Kentucky. Department of Revenue. *Historical Farm Assessment Data*. July 27, 2016. Email.

² Ibid.

³ Ibid.

⁴ Legislative Research Commission. Program Review and Investigations Committee. *The Impact of Industrial Revenue Bonds on Property Taxes and School Funding*. Research Report No. 401. Frankfort: LRC. Jan. 13, 2011.

⁵ Ibid.

⁶ Ibid.

⁷ Legislative Research Commission. Office of Education Accountability. *Understanding How Tax Provisions Interact with the Seek Formula*. Research Report No. 354. Frankfort: LRC. Nov. 15, 2007.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

^o The process for recall is specified in KRS 132.017.

Appendix A

Agricultural Assessment Eligibility Requirements

Minimum Tract Size, Minimum Income, And Rollback Provisions*

State	Minimum Tract Size	Minimum Income	Rollback
Alabama	5 acres	none	3 years
Arizona	20 acres	none	25%
Arkansas	none	none	3 years
Connecticut	none	none	10 years
Delaware	10 acres	\$1,000	10 years
Georgia	none	*	10 years
Idaho	5 acres	\$1,000	none
Indiana	*	none	none
Kentucky	5 or 10 acres	none	none
Louisiana	3 acres	\$2,000	none
Maine	5 acres	\$2,000	5 years
Maryland	3 acres	\$2,500	25%
Massachusetts	5 acres	\$500	4 year
Michigan	5 acres	\$200 per tillable acre	7 years
Minnesota	10 acres	none	3 years
Montana	160 acre	\$1,500	none
Nebraska	*	none	none
Nevada	none	\$5,000	6 year
New Hampshire	10 acres	\$2,500	10%
New Jersey	5 acres	\$500	3 year
New Mexico	none	none	*
New York	7 acres	\$10,000	*
North Carolina	10 acres	\$1,000	4 years
North Dakota	10 acres	none	none
Ohio	10 acres	\$2,500	3 years
Oklahoma	*	none	none
Oregon	none	\$650 - \$3,000	5 - 10 years
Pennsylvania	10 acres	\$2,000	1 year
Rhode Island	5 acres	\$2,500	10%
South Carolina	10 acres	\$1,000	5 years
South Dakota	20 acres	*	none
Tennessee	15 acres	\$1,500	3 years
Texas	5 or 10 acres	none	5 years

State	Minimum Tract Size	Minimum Income	Rollback
Utah	5 acres	*	5 years
Vermont	25 acres	\$2,000	20%
Virginia	5 acres	none	5 year
Washington	none	\$1,500	7 years
West Virginia	none	\$500 - \$1,000	none
Wisconsin	none	none	5% to 10%
Wyoming	none	\$500	none

* Explanatory Notes For Agricultural Assessment Eligibility Requirements

State	Explanatory Notes
AL	<ul style="list-style-type: none"> • Parcels with 5 acres or less must document agricultural or timber use.
AZ	<ul style="list-style-type: none"> • 20 acre minimum for cropland. 10 acre minimum for permanent crops. Rollback is 25% of deferred tax.
DE	<ul style="list-style-type: none"> • 10 acre minimum. Minimum income for tracts of 10 acres or more is \$1,000. Tracts under 10 acres can qualify if income was \$10,000 within past 2 years.
GA	<ul style="list-style-type: none"> • Majority of income must come from farming. Rollback is reduced if tract has been used for agriculture over the past 10 years.
ID	<ul style="list-style-type: none"> • If 5 acres or less, must meet \$1,000 income requirement.
IN	<ul style="list-style-type: none"> • Tract size determined by local government.
LA	<ul style="list-style-type: none"> • 3 acre minimum or tract can qualify if it produced \$2,000 in income in 1 of last 4 years.
MA	<ul style="list-style-type: none"> • Additional 10% penalty added to rollback tax.
MD	<ul style="list-style-type: none"> • 5 acre minimum for woodlands. \$2,500 minimum income. Income requirement waived, if 70 or older or disabled. Rollback is 27.5% of deferred tax.
ME	<ul style="list-style-type: none"> • \$2,000 minimum income. Additional 25% penalty added to rollback tax.
MI	<ul style="list-style-type: none"> • \$200 per tillable acre for acres between 5 acre minimum and 40 acres.
MN	<ul style="list-style-type: none"> • Nurseries and greenhouse excluded from minimum acreage requirement.
MT	<ul style="list-style-type: none"> • Tracts under 160 acres can qualify if they meet \$1,500 income requirement.
NE	<ul style="list-style-type: none"> • Only land in certain geographic areas can qualify.
NH	<ul style="list-style-type: none"> • Tracts under 10 acres can qualify if they meet \$2,500 income requirement. Rollback is 10% of deferred tax.
NJ	<ul style="list-style-type: none"> • \$500 income requirement on first 5 acres and \$5 for each additional acre.
NM	<ul style="list-style-type: none"> • Rollback tax is higher of \$25 per acre or 25% of deferred tax.
NC	<ul style="list-style-type: none"> • 5 acre minimum for aquaculture or horticulture. 20 acre minimum for forestland and wildlife conservation land. Income requirement is \$1,000 over 3 years.
NY	<ul style="list-style-type: none"> • \$10,000 income requirement. Tracts less than 7 acres can qualify if they meet \$50,000 income requirement. Rollback is 5 years within agricultural district and 8 years outside agricultural district.

ND	<ul style="list-style-type: none">• 10 acre minimum. Tract cannot be platted or have infrastructure improvements or excavation.
OH	<ul style="list-style-type: none">• Tracts under 10 acres must meet \$2,500 income requirement.
OK	<ul style="list-style-type: none">• County assessor determines what qualifies as agricultural land.
OR	<ul style="list-style-type: none">• If outside farm zone, then subject to income requirement. Income requirements range from \$650 for 6.5 acres to \$3,000 for 30 acres or more. Rollback varies from 5 to 10 years based on number of years tract was used for agriculture.
PA	<ul style="list-style-type: none">• Additional 6% added to rollback tax.
RI	<ul style="list-style-type: none">• Minimum income of at least \$2,500. Rollback reduced 1% for each year tract had agricultural use.
SC	<ul style="list-style-type: none">• 5 acre minimum for timber. For agricultural tracts less than 10 acres, income requirement is \$1,000.
SD	<ul style="list-style-type: none">• Land cannot be platted. If less than 20 acres, can qualify if one-third of family income comes from agriculture.
TN	<ul style="list-style-type: none">• 3 acre minimum for recreational land. No rollback if owner is a retired farmer and tract had agricultural use for 25 years
TX	<ul style="list-style-type: none">• 5 acre minimum for hayland and 10 acre minimum for cropland.
UT	<ul style="list-style-type: none">• Income conditions applied to tracts under the minimum.
VA	<ul style="list-style-type: none">• 20 acre minimum for forestland. Simple interest added to the Rollback tax.
VT	<ul style="list-style-type: none">• \$2,000 minimum income if under 25 acres, \$75 for each acre over 25. Rollback is 10%, if tract was used for agriculture over previous 10 years.
WA	<ul style="list-style-type: none">• \$1,500 minimum income if under 5 acres. \$200 for every acre between 5 and 20 acres. No income requirement over 20 acres. Interest is added to rollback tax, plus a 20% penalty if not used for agriculture over past 10 years.
WI	<ul style="list-style-type: none">• Rollback tax varies based on the number of years the tract was used for agriculture.
WV	<ul style="list-style-type: none">• \$500 minimum income if under 5 acres, \$1,000 if 5 acres or more.

Source: Lincoln Land Institute.

Appendix B

Letter From Department Of Revenue To Fayette County Property Valuation Administrator



Matthew G. Bevin
Governor

COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
LEGAL SERVICES FOR REVENUE
P.O. BOX 423
FRANKFORT, KENTUCKY 40602-0423
Phone (502) 564-9581

Daniel Bork
Commissioner

William M. Landrum III
Secretary

Gwen R. Pinson
Office of General
Counsel

June 6, 2016

Mr. David O'Neill, PVA
Office of the Fayette County PVA
101 East Vine Street, Suite 600
Lexington, Kentucky 40507

Dear David:

This letter is in response to your letter of March 1, 2016 (copy attached at Tab A), in which you requested the assistance of David Gordon, Executive Director, Office of Property Valuation ("OPV"), Kentucky Department of Revenue ("Revenue"), in determining the meaning and applicability of several sections of KRS Chapter 132 relating to the "agricultural use" valuation for real property in Kentucky.

By prior agreement, Revenue deferred responding to your legal opinion request until after the adjournment of the 2016 General Assembly, in deference to the legislature's consideration of HB 576, filed by Rep. Palumbo on March 1, 2016 and co-sponsored by Rep. Flood. As you know, that bill was not enacted, but it is anticipated that the same or similar legislation may be filed for consideration by the 2017 General Assembly. The responses to your questions are based on the law as it exists on the date indicated above.

Ad valorem tax assessment of real property at "agricultural value" or "horticultural value" is authorized by Ky. Const. §172A, which provides as follows:

Notwithstanding contrary provisions of Sections 171, 172, or 174 of this Constitution—

The General Assembly shall provide by general law for the assessment for ad valorem tax purposes of agricultural and horticultural land according to the land's value for agricultural or horticultural use. The General Assembly may provide that any

David O'Neill, Fayette Co. PVA
Agricultural/horticultural valuation
June 6, 2016
Page 2 of 13

change in land use from agricultural or horticultural to another use shall require the levy of an additional tax not to exceed the additional amount that would have been owing had the land been assessed under Section 172 of this Constitution for the current year and the two next preceding years. The General Assembly may provide for reasonable differences in the rate of ad valorem taxation within different areas of the same taxing districts on that class of property which includes the surface of the land. Those differences shall relate directly to differences between nonrevenue-producing governmental services and benefits giving land urban character which are furnished in one or several areas in contrast to other areas of the taxing district.

This 1969 amendment to the Kentucky Constitution has been implemented through several provisions of KRS Chapter 132—i.e., KRS 132.010(9), (10), and (11); 132.450; and 132.454. For your convenience, copies of those statutes are attached hereto at Tab B.

You indicated that your questions arose out of public concern highlighted in a series of newspaper articles by the Lexington Herald-Leader. Copies of those articles dated February 18, 2016, through May 12, 2016, including your February 25, 2016 op-ed article, are attached hereto at Tab C. Revenue personnel, some of whom are quoted in the articles, have read these articles with interest and have also participated in the public discourse regarding this issue, having attended the public meeting you organized and facilitated at the Lexington Public Library on March 3, 2016, and the Lexington Forum meeting at Keeneland on April 7, 2016, where David Gordon participated with you and David Beck of the Kentucky Farm Bureau as part of the three-person panel facilitated by Tom Martin. Revenue also assisted the Legislative Research Commission staff in the drafting of HB 576.

Clearly, this issue has captured the public's attention, and there are certainly areas of concern with how the "agricultural valuation program" has been administered since the passage of HB 585 in 1992 (copy attached hereto at Tab D). HB 585 amended KRS 132.010(9) and (10) and KRS 132.450, removing all of the language requiring a landowner to provide proof of income from agricultural or horticultural activities on his or her property in order for the property to qualify for valuation as agricultural or horticultural land. Without such proof of income-producing activities from the properties they value and assess, the PVAs have been left with slim legal footing from which to refute a landowner's claims that their property has the "potential" to be used for agricultural or horticultural purposes, even when no such activities are likely to occur.

HB 585 also removed the "clawback" provisions of KRS 132.450(f) and 132.454. These requirements provided that when property valued and taxed as agricultural or horticultural land was converted to any other use, then the portion of the land upon which the use was changed was

David O'Neill, Fayette Co. PVA
Agricultural/horticultural valuation
June 6, 2016
Page 3 of 13

subject to deferred taxes for the prior two tax years. The current version of KRS 134.454, which was last amended in 1994, provides only that the “portion of the land upon which the use is changed shall be subject to tax for the *succeeding* tax year at its fair cash value.” (Emphasis added). Moreover, KRS 132.450(2)(b) provides that:

Land devoted to agricultural or horticultural use, where the owner or owners have petitioned for, and been granted, a zoning classification other than for agricultural or horticultural purposes qualifies for the agricultural or horticultural assessment until such time as the land changes from agricultural or horticultural use to the use granted by the zoning classification.

The Summit at Fritz Farm development on Nicholasville Road and Man O' War Blvd. in Lexington, Kentucky, has been highlighted in the Herald-Leader articles as an example of abuse of the “agricultural valuation program.” However, it is Revenue’s opinion that your office has handled the valuation of that property in precisely the manner required by current law, as work at the development site did not start until July of 2015. Under KRS 132.450 and 132.454, the value of the property was properly determined based on the agricultural or horticultural use of the land on January 1, 2015. Now that construction has been undertaken on the property, you have indicated in your public discussions that your office’s valuation of the property for the January 1, 2016 assessment will be \$19 million. That appears to be exactly what the legislature intended with its modifications to the statutes in 1992 and 1994.

The more pressing concern is the fact that for many years, when responding to questions from PVAs as to whether certain parcels qualify for an agricultural value, Revenue has not given full, critical consideration to how the ten-acre minimum mandated by KRS 132.010(9) is impacted by the requirements of KRS 132.450(2). In various situations Revenue has advised PVAs that the agricultural value *can* apply to ten-acre parcels that include a house and other improvements. However, in determining the minimum acreage under KRS 132.010(9), KRS 132.450(2)(a) specifically mandates that the acreage devoted to certain land usages associated with a “dwelling house” must be *excluded*. After examining more closely how these statutory provisions appear to work in tandem—in the context of this public discussion—we believe that the correct interpretation is that in determining whether a parcel qualifies as “agricultural land,” the acreage associated with the dwelling house cannot be included in the ten-acre minimum under KRS 132.010(9). KRS 132.450(2)(a) provides, in pertinent part, that:

In determining the total area of land devoted to agricultural or horticultural use, there shall be included the area of all land under farm buildings, greenhouses and like structures, lakes, ponds, streams, irrigation ditches and similar facilities, and garden plots devoted to growth of products for on-farm personal consumption but

David O'Neill, Fayette Co. PVA
Agricultural/horticultural valuation
June 6, 2016
Page 4 of 13

there shall be excluded, land used in connection with dwelling houses including, but not limited to, lawns, drives, flower gardens, swimming pools, or other areas devoted to family recreation....

Thus, a property consisting of only 10 contiguous acres (5 contiguous acres in the case of commercial aquaculture or horticulture) cannot qualify for valuation as agricultural or horticultural land if it contains a dwelling house or any property used in connection with a dwelling house, as described in the statute. However, most PVAs throughout the Commonwealth have not undertaken the process described in the statute to determine whether a particular parcel may qualify for the agricultural or horticultural use value once the acreage used in connection with the dwelling is removed.

In your February 25, 2016 op-ed article, you also announced your intention to “grandfather-in” all properties that have been assessed under the agricultural or horticultural use value for the past five years, pursuant to KRS 132.450(3) (“Land that has been assessed as agriculture and owned by the same person for five or more years will retain the agricultural classification until it changes ownership.”) However, it is not clear that is permissible in all instances.

KRS 132.450(3) provides as follows:

When land which has been valued and taxed as agricultural land for five (5) or more consecutive years under the same ownership fails to qualify for the classification through no other action on the part of the owner or owners other than ceasing to farm the land, the land shall retain its agricultural classification for assessment and taxation purposes. Classification as agricultural land shall expire upon change of use by the owner or owners or upon conveyance of the property to a person other than a surviving spouse. (Emphasis added).

This portion of the statute is intended to preserve the agricultural valuation for property owned by a farmer who retires from actively farming the property and who does not sell or devise the property to a new owner. Therefore, if the agricultural designation is removed from properties which should never have qualified for the agricultural valuation in the first place, due to their failure to meet the 10-acre minimum after removal of the acreage for portions of the land indicated in KRS 132.450(3), the property should not be allowed to qualify for the designation going forward, unless sufficient additional acreage is added to the parcel.

David O'Neill, Fayette Co. PVA
Agricultural/horticultural valuation
June 6, 2016
Page 5 of 13

Responses to Questions

It is the opinion of the Department of Revenue that real property which has not been actively engaged in an agricultural, horticultural, or commercial aquaculture use, or which has not been "devoted to and meeting the requirements and qualifications for payments pursuant to

agriculture programs under an agreement with the state or federal government," does not meet the requirements for agricultural or horticultural valuation under KRS 132.010(9)-(11).

The language of the applicable sections and paragraphs of KRS 132.010(9)-(10) speaks to a current and active use of the property for the indicated activities:

(9) "Agricultural land" means:

- (a) Any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber;
- (b) Any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for aquaculture; or
- (c) Any tract of land devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government;

(10) "Horticultural land" means any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants. (Emphasis added).

This statutory requirement that the land be "used for" agricultural, horticultural, or aquacultural purposes has become confused with the no longer extant requirement of active *income production*. In a number of recent Kentucky Board of Tax Appeals ("KBTA") cases, the issue of agricultural valuation has only involved the question of whether the property in question was actually producing income from the alleged agricultural activities. As the KBTA properly observed in those cases, that question was mooted by the legislature's 1992 amendments:

Nowhere in the statutory definition of agricultural land is there a requirement that the land actually be producing income, before it qualifies for the classification. There were income-producing

David O'Neill, Fayette Co. PVA
Agricultural/horticultural valuation
June 6, 2016
Page 6 of 13

requirements previously in the statute, but they were removed by the legislature in 1992. Subsequent to that 1992 amendment, and to current date, the statute requires only that the land have an "income-producing capability."

Hai and Muoi Le, Appellants v. McCreary County Property Valuation Administrator, Appellee, 2013 WL 5880135, at *2. See also Christopher and Jennifer Reeder, Appellants v. McCreary County Property Valuation Administrator, Appellee, 2013 WL 5880124, at *2; and Jamie Claire Corum, Appellant v. Harlan County Property Valuation Administrator, Appellee, 2015 WL 3444481, at *3 (attached hereto at Tab F).

The statute requires that the land be "used for" agricultural, horticultural, or aquaculture purposes, and there is no case law or KBTA ruling stating otherwise. Therefore, the response to your first question, to wit:

- 1. Is a property required to have active agricultural "use" in order to qualify for an agricultural classification or only that the land has an "income producing capability?"**

is that the property must be actively used for agricultural or horticultural purposes in order to qualify as agricultural or horticultural land under KRS 132.010(9) or (10).

Your second question is:

- 2. What qualifies as "used for the production of" as the term is applied in KRS §132.010(9)?**

There is no statutory definition of "used" or "production" in KRS 132.010. And, where there is no statutory definition of a particular term in a statute, "[a]ll words and phrases in [the] statute shall be construed according to the common and approved usage of language such as found in a common dictionary." Louisville & N. R. Co. v. Department of Revenue, 551 S.W.2d 259, 261 (Ky. App. 1977) (citing KRS 446.080(4)). Thus, the definition of "used" is, as found in Webster's II New College Dictionary, "[t]o bring or put into service or action," and the definition of "production" is "an act or process of producing," or "[c]reation of value or wealth by producing goods and services." Therefore, the phrase "used in production," as it is used in KRS 132.010(9), may mean either: "to have brought or put into service in the act or process of producing agricultural goods or services" or "to have brought or put into service in the creation of value by producing agricultural goods or services."

From the standpoint of fairly administering the "agricultural valuation program" it may be better to adopt the latter interpretation of the phrase, as the "creation of value" aspect could aid the PVAs in determining whether claimed agricultural activities on a particular piece of property are,

David O'Neill, Fayette Co. PVA
Agricultural/horticultural valuation
June 6, 2016
Page 7 of 13

in fact, legitimate (an activity which creates something of value or service to the owner) or merely a pretext for claiming the right to the agricultural valuation of the property for non-valuable activities (such as riding a tractor around the property without actually tilling the soil or doing anything aiding in the production of any crops or livestock). Note that something which has "value" to the owner would not necessarily have to produce income or any kind of profit.

Your third question asks:

3. What is meant by the phrase "in area used" for the production of agriculture contained in KRS §132.010(9)? Is this on the same tract or simply in an area where neighboring tracts use their land in that manner?

The phrase pointed to, "in area used," is actually part of two phrases within the statutory definition of "agricultural land." One phrase is "ten (10) contiguous acres in area," and the other is "used for the production of," which is explained *supra*. The words "in area" refer to the area of measurement immediately preceding them—10 contiguous acres—an acre being a common unit of land measurement in the U.S. Customary System. See Webster's II New College Dictionary at 10.

It also means on the same tract of land, because "contiguous" means "sharing a boundary or edge, touching." *Id.* at 243. See also Parsons v. Dils, 172 Ky. 774, 189 S.W. 1158, 1159 (1916), in which Kentucky's highest court, in the only case examining the meaning of "contiguous," and noting the apparent "divergence of opinion as to the exact meaning" of the word, stated that it was "inclined to adopt that meaning which would make two tracts of land contiguous where they have a common corner, and which would make it possible to step from one to the other without crossing any other tract of land."

In your fourth question, you ask:

4. What is meant by the phrase "in area commercially used" in the definition of horticultural land in KRS§132.010(10)? How does this differ from "in area used" in KRS §132.010(9)?

As with the response to your third question, the phrase pointed to is, again, part of two phrases in the statutory definition of "horticultural land." And, like the words "in area" in KRS 132.010(9)(a), the same words in KRS 132.010(10) refer to the area of measurement immediately preceding them—5 contiguous acres.

The term "commercial" in KRS 132.010(10) has no statutory definition. Therefore, as explained above, the term is given its common and approved usage. KRS 446.080(4). Again,

David O'Neill, Fayette Co. PVA
Agricultural/horticultural valuation
June 6, 2016
Page 8 of 13

referencing Webster's II New College Dictionary, the common and approved definition of "commercial" is "[e]ngaged in commerce." The word "commerce" is, in turn, defined as "[t]he buying and selling of goods, esp. on a large scale: Business." The term "commercial" is also defined as "[h]aving profit as a primary aim." Therefore, it appears that "horticultural land" must be used for horticulture aimed at making a profit in order to qualify for horticultural valuation—but that does not necessarily mean that the owner must demonstrate a profit every year from his or her activities on the property.

Your fifth question is:

- 5. If a 10 acre tract includes a house used as the owner's primary residence, but the property is otherwise used in the production of agriculture, can the property qualify for an agricultural classification even though excluding the area under the house would cause the tract to fall short of the 10 acre minimum?**

As explained above, pursuant to KRS 132.450(2)(a), "[i]n determining the total area of land devoted to agricultural or horticultural use... there shall be excluded, land used in connection with dwelling houses including, but not limited to, lawns, drives, flower gardens, swimming pools, or other areas devoted to family recreation."

A property owner's primary residence is considered the "dwelling house," and the acreage upon which the house is built is "land used in connection with" the dwelling house—the dwelling is, after all, *connected* to the ground. Therefore, under current law, a 10-acre lot cannot qualify as "agricultural land" if the owner's residence—i.e., "dwelling house"—is located on the lot, as the 10-acre minimum under KRS 132.010(9)(a) cannot be demonstrated under the exclusions proscribed by KRS 132.450(2)(a). Note that this does not apply to housing located on farm property occupied by a non-owner and used in income-producing activity of the farm as dwellings for tenant farmers and farm workers. Dolan v. Land, 667 S.W.2d 684, 687 (Ky. 1984).

Your sixth question concerns commercial development of formerly agricultural land:

- 6. When a property planned for development in KRS §132.450(2)(b) ceases to be used in the production of agriculture, but rather is mostly dormant while awaiting final approval of a development plan and necessary zoning change, when should the agricultural classification be removed?**

The answer to this question is not completely clear, as explained below. However, it appears from our analysis that the proper answer is that the agricultural classification should be

David O'Neill, Fayette Co. PVA
Agricultural/horticultural valuation
June 6, 2016
Page 9 of 13

removed when the agricultural activity on the property ceases and the new classification use begins.

KRS 132.450(2)(b) provides that:

Land devoted to agricultural or horticultural use, where the owner or owners have petitioned for, and been granted, a zoning classification other than for agricultural or horticultural purposes qualifies for the agricultural or horticultural assessment until such time as the land changes from agricultural or horticultural use to the use granted by the zoning classification. (Emphasis added).

You have indicated that your office's policy is to treat such property as agricultural or horticultural land until such time as a final plat approved by the Lexington-Fayette Urban County Planning Commission has been recorded in the office of the county clerk—regardless of whether this filing coincides with the first day of earth moving or construction activities on the re-zoned site. The question, then, is whether, in and of itself, the filing of a plat changes the “use” of the land

The statutory language at issue is “changes...to the use granted by the zoning classification.” The question, therefore, is when the “use” of land “changes” following the granting of a change in a zoning classification. As noted in 82 Am. Jur. §156, “the term ‘use,’ as employed in the context of zoning, is generally described as a word of art denoting the purpose for which a parcel of land or building is utilized.” Courts in other jurisdictions have noted that the term can be somewhat “amorphous” in its meaning:

This Court recognizes the term “use” has amorphous meanings in the realm of zoning. Municipal Elec. Auth. of *409 Ga. v. 2100 Riveredge Assocs., 180 Ga.App. 326, 348 S.E.2d 890 (1986). In addition to the interpretation that “use” describes the actual purpose of a property, the word is also sometimes employed to refer to the types of activities, practices, and operations conducted in connection with the property's purpose. See Recovery House VI v. City of Eugene, 156 Or.App. 509, 965 P.2d 488, 512 n.2 (1998) (“We ... note ... that the word “use” has two different meanings, depending on the context. It sometimes refers to the actual activity that is conducted on or proposed for ... property, and sometimes to types of activities and operations that are or are not permissible in an area under zoning regulations.”).

David O'Neill, Fayette Co. PVA
Agricultural/horticultural valuation
June 6, 2016
Page 10 of 13

Heilker v. Zoning Bd. of Appeals for City of Beaufort, 346 S.C. 401, 408-09, 552 S.E.2d 42, 46 (Ct. App. 2001). Unfortunately, there is no Kentucky case law examining exactly what “use” means in the context of KRS 132.450(2)(b), as the reference to “zoning classification” in the statute confuses the matter to some degree.

If the intent of the legislature was to frame the term “agricultural or horticultural use” within the context of planning and zoning concepts, that does make for strange bedfellows, because, as the Court of Appeals has noted, the “agricultural supremacy clause” of KRS 100.203(4) “does not simply make a farm a legal nonconforming use but takes it outside the zoning ordinances’ jurisdiction, although not outside the master or comprehensive plan.” Grannis v. Schroder, 978 S.W.2d 328, 330 (Ky. App. 1997). Even when a zoning classification is changed from agricultural to another more dense use, such as commercial or residential, the agricultural or horticultural activity would still be allowed to continue as a non-conforming use. The change in classification by the planning commission would not, in and of itself, change the agricultural use of the property.

Under Kentucky’s planning and zoning statutes, “agricultural use” is defined as “*the use of*: ... [a] tract of at least five (5) contiguous acres for the production of agricultural or horticultural crops, including but not limited to livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers, or ornamental plants...” KRS 100.111(2)(a). (Emphasis added). If we employ that definition in our attempt to parse the meaning of KRS 132.450(2)(b), then the language in question would mean: “until such time as the land changes from [the use of the land for the production of agricultural or horticultural crops...] to the use granted by the zoning classification.”

If that is the proper interpretation of the statute, it would appear that, under KRS 132.450(2)(b) the land in question would continue to qualify for the agricultural or horticultural use valuation as long as the agricultural or horticultural activities on the property are being actively undertaken. If the land is simply sitting empty and unused, as far as can be objectively discerned from available evidence and observation, then a PVA would be justified in removing the agricultural or horticultural designation of the property pursuant to his authority under KRS 132.450(2)(d) and valuing it at fair cash value when the new classification use begins.

On the other hand, it might be argued that the filing of the final plat by the land owner is an act sufficient in and of itself, to change the “land use” *designation* of the property sufficiently to justify the removal of the agricultural designation under KRS 132.450(2)(b). However, taken in context with the rest of the language in that section, it appears that the legislature intended to allow the agricultural or horticultural designation to remain with the land for some period of time after the zoning change has “been granted” and “until such time as the land changes from agricultural or horticultural use to the use granted by the zoning classification.” So, it is unlikely that argument would prevail. It appears that the proper interpretation of the statute is to remove the agricultural

David O'Neill, Fayette Co. PVA
Agricultural/horticultural valuation
June 6, 2016
Page 11 of 13

or horticultural designation after the agricultural or horticultural activity ceases and the new classification use begins.

If the property in question was entitled to an agricultural or horticultural designation and was conveyed to a developer more than five (5) years prior to the current tax year, and the developer has maintained the agricultural activities on the property since that time, and the designation has not been subject to any change over that period of time, then the designation cannot be removed if the developer ceases the agricultural or horticultural activity, due to the operation of the "retired farmer" provision of KRS 132.450(3):

When land which has been valued and taxed as agricultural land for five (5) or more consecutive years under the same ownership fails to qualify for the classification through no other action on the part of the owner or owners other than ceasing to farm the land, the land shall retain its agricultural classification for assessment and taxation purposes. Classification as agricultural land shall expire upon change of use by the owner or owners or upon conveyance of the property to a person other than a surviving spouse. (Emphasis added).

However, as explained above, if no agricultural or horticultural activity has been maintained on the property after the prior conveyance, then the designation can be removed, because the developer is not the owner who ceased farming the land. The prior owner ceased farming the land, and the prior owner conveyed the property to someone other than a surviving spouse.

Your final question, or series of questions, is as follows:

7. What is meant by "Election by owner" in the title of KRS §132.450? What is meant by "listed by the taxpayer" in KRS § 132.450(4)? What is meant by "property schedule" in KRS §132.450(5)? Do any of these phrases imply that agricultural classifications should only be approved at the taxpayer's request? Can the PVA require the taxpayer to request the classification before considering the qualifications?

The words "[e]lection by owner," in the title of KRS 132.450 have no meaning. As the Kentucky Supreme Court has noted:

"Title heads, chapter heads, section and subsection heads or titles[] ... in the Kentucky Revised Statutes, do not constitute any part of the law[.]" KRS 446.140. The titles of sections and subsections in the statutes, vis-a-vis the titles of Acts, are often renamed and inserted

David O'Neill, Fayette Co. PVA
Agricultural/horticultural valuation
June 6, 2016
Page 12 of 13

by the reviser of the statutes after the enactment of the statute, *See* KRS 7.136(1) (“The [reviser of the statutes] ... shall not alter the sense, meaning, or effect of any act of the General Assembly, but may: ... (b) Change the wording of headnotes[.]”), and therefore, are not part of the legislature’s deliberations and debate. For that reason, unlike an *Act’s* title, *see infra* note 11, the title of any *statute*, including KRS 371.065, should not be used as an aid in its interpretation.

Wheeler & Clevenger Oil Co., Inc. v. Washburn, 127 S.W.3d 609, 613 fn. 10 (Ky. 2004).

The phrase “listed by the taxpayer” in KRS 132.450(4) refers to the duty of all owners of property in Kentucky to list their property with the PVA for assessment as of January 1 of each year under KRS 132.220.

The phrase “property schedule” in KRS 132.450(5) is an older term no longer in common use. It referred to the individual property record card that a property owner could sign to show the property had been properly listed. However, it is important to note that KRS 132.450(5) does not apply to agricultural or horticultural land. It applies to property that the owner “does not consider to be subject to taxation.” Those types of property are described in Ky. Const. § 170, and include public property used for public purposes, and real and personal property owned by institutions of religion, institutions of purely public charity, and institutions of education. Agricultural and horticultural land is not exempt from taxation, it is subject to taxation—just at a lower assessment than the fair cash value standard mandated by Ky. Const. § 172.

And, finally, a PVA *can* require a taxpayer to request the agricultural or horticultural classification for his or her property before the PVA considers whether the property qualifies for either of those designations, because KRS 132.220(2) provides that, “if requested in writing by the property valuation administrator or by the department, any real property owner shall submit a property tax return to verify existing information or to provide additional information for assessment purposes.” That information requested could include verification that agricultural or horticultural activities are being actively pursued on the property. However, the agricultural or horticultural classification does not have to be approved only at the taxpayer’s request. If the PVA knows that the property is being used for agricultural or horticultural purposes, he or she could continue to assess the land as such unless and until presented with evidence to the contrary.

I hope that the above analysis and advice will prove helpful to you. We are going to make a copy of this letter available on Revenue’s website, and are also sending a copy to Mack Bushart, Executive Director of the Kentucky PVA’s Association, for distribution to other PVAs throughout the state.

David O'Neill, Fayette Co. PVA
Agricultural/horticultural valuation
June 6, 2016
Page 13 of 13

Please let me know if you have any questions regarding this letter or the subjects addressed herein. Thank you for your inquiry and for the work that you do for the citizens of Fayette County.

Sincerely,



Richard W. Bertelson, III
Staff Attorney III, Office of Legal Services for Revenue

Appendix C

2015 Kentucky Deferred Farm Assessments

County	Amount Deferred	County	Amount Deferred
Adair	\$379,045,170	Gallatin	\$165,231,586
Allen	286,132,042	Garrard	207,145,222
Anderson	162,580,319	Grant	290,737,222
Ballard	271,922,243	Graves	981,741,957
Barren	403,299,104	Grayson	292,684,949
Bath	154,100,975	Green	231,337,619
Bell	35,342,525	Greenup	115,630,122
Boone	1,929,038	Hancock	178,934,256
Bourbon	1,024,655,661	Hardin	648,055,670
Boyd	66,929,615	Harlan	94,281,594
Boyle	263,507,972	Harrison	305,412,076
Bracken	92,918,455	Hart	294,453,799
Breathitt	66,705,364	Henderson	906,687,687
Breckinridge	381,208,652	Henry	299,420,607
Bullitt	354,365,186	Hickman	420,180,050
Butler	235,272,417	Hopkins	295,560,626
Caldwell	237,225,334	Jackson	111,776,795
Calloway	512,584,971	Jefferson	533,531,810
Campbell	217,644,529	Jessamine	555,938,711
Carlisle	143,727,453	Johnson	104,520,350
Carroll	125,962,790	Kenton	221,811,970
Carter	72,389,997	Knott	64,573,965
Casey	284,762,195	Knox	154,408,666
Christian	1,038,872,224	LaRue	264,933,038
Clark	481,164,073	Laurel	405,953,580
Clay	68,372,550	Lawrence	116,503,386
Clinton	136,723,440	Lee	59,884,797
Crittenden	157,696,995	Leslie	43,132,543
Cumberland	148,315,792	Letcher	73,696,964
Daviess	835,744,414	Lewis	160,901,110
Edmonson	169,002,086	Lincoln	297,245,791
Elliott	95,823,524	Livingston	212,107,735
Estill	81,234,596	Logan	1,040,424,218
Fayette	1,618,334,200	Lyon	149,563,997
Fleming	212,872,725	Madison	431,787,099
Floyd	67,288,998	Magoffin	77,804,830
Franklin	166,221,780	Marion	329,109,838
Fulton	287,747,867	Marshall	203,039,288

2015 Kentucky Deferred Farm Assessments

County	Amount Deferred	County	Amount Deferred
Martin	\$16,165,776	Powell	\$28,821,186
Mason	282,250,745	Pulaski	628,026,683
McCracken	196,693,538	Robertson	55,051,947
McCreary	30,895,792	Rockcastle	118,268,689
McLean	253,546,904	Rowan	89,236,435
Meade	381,957,604	Russell	261,506,683
Menifee	30,044,737	Scott	573,659,266
Mercer	337,866,565	Shelby	768,464,467
Metcalfe	183,204,881	Simpson	376,610,031
Monroe	265,959,581	Spencer	195,840,272
Montgomery	195,425,425	Taylor	269,178,452
Morgan	69,953,625	Todd	551,006,770
Muhlenberg	182,047,971	Trigg	497,568,306
Nelson	618,154,817	Trimble	156,078,200
Nicholas	85,073,702	Union	547,625,168
Ohio	346,121,368	Warren	872,674,240
Oldham	606,424,500	Washington	281,828,235
Owen	307,703,873	Wayne	278,248,297
Owsley	20,418,862	Webster	349,087,000
Pendleton	245,254,008	Whitley	452,839,500
Perry	62,748,007	Wolfe	65,625,201
Pike	159,384,315	Woodford	861,914,160
Total			\$36,601,228,578

Source: Kentucky Department of Revenue.