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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-053

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

I. Statutory Authority

SECTION 2 of Clearinghouse Rule 00-053, which ends the process for phasing in use value taxation of agricultural land and implements full use value taxation as of January 1, 2000, appears to be without statutory authority.

a. Introduction

As will be explained in more detail below, it is probable that a court would hold that s. 70.32 (2r), Stats., does not authorize the Department of Revenue (DOR) to end the process for implementing use value assessment of agricultural land and that the statutory language is unambiguous on this point. In addition, as will also be explained below, even if a court were to determine that s. 70.32 (2r) is ambiguous concerning this point, the legislative history of s. 70.32 (2r), Stats., to which the court would turn to determine the legislative intent of the statute, also supports an interpretation that DOR does not have the authority to end the process for implementing use value assessment of agricultural land and to implement full use value assessment as of January 1, 2000.

b. Text of Statute

The following is the text of s. 70.32 (2r), Stats.:

(a) For the assessments as of January 1, 1996, and January 1, 1997, or until the farmland advisory council under s. 73.03 (49) makes its recommendation, but not to extend beyond January 1, 2009, the assessed value of each parcel of agricultural land is the assessed value of that parcel as of January 1, 1995.

(b) For each year beginning with 1998 or upon completion of the farmland advisory council's recommendation and promulgation of rules and ending no later than December 31, 2008, the assessed value of the parcel shall be reduced as follows:

1. Subtract the value of the parcel as determined according to the income that is or could be generated from its rental for agricultural use, as determined by rule, from its assessed value as of January 1, 1996.

2. Multiply .1 by the number of years that the parcel has been assessed under this paragraph, including the current year.

3. Multiply the amount under subd. 1. by the decimal under subd. 2.

4. Subtract the amount under subd. 3. from the parcel's assessed value as of January 1, 1996.

(c) For the assessment as of the January 1 after the valuation method under par. (b) no longer applies and for each assessment thereafter, agricultural land shall be assessed according to the income that could be generated from its rental for agricultural use.

c. Discussion

There are certain well-established rules that courts use in interpreting statutes. First, a statute must be construed so as to effectuate the intent of the Legislature. [*County of Columbia v. Bylewski*, 94 Wis. 2d 153, 164, 288 N.W.2d 129 (1980).] Second, the primary source used in construing a statute is the statutory language itself. [*State v. Sher*, 149 Wis. 2d 1, 8-9, 437 N.W.2d 878 (1989).] Courts will not generally resort to sources other than the language of statutes to interpret them unless there is ambiguity in the statutory language. [*Department of Transportation v. Transportation Commission*, 111 Wis. 2d 80, 87-88, 330 N.W.2d 159 (1983).]

(1) Plain Meaning of Statute is Unambiguous

Section 70.32 (2r) (b), Stats., establishes the procedure for phasing in the use valuation of agricultural land. Under this statutory paragraph, the only role of the FAC and the DOR is, respectively, to issue a "recommendation" and to promulgate administrative rules for the phase-in period to *begin*. The word "or" between the phrases "for each year beginning with" and "upon completion of the farmland advisory council's recommendation and promulgation of

rules” clearly indicates that recommendation of the FAC and rules promulgated by DOR only affect when the phase-in period is to begin. The statutory paragraph provides that, once the phase-in period begins, the January 1, 1996 value of a parcel of agricultural land is to be reduced for each subsequent year’s assessment by 10% of the difference between the 1996 value and the parcel’s assessed value for agricultural use.

Some might argue that the phrase “and ending no later than December 31, 2008” implies that the phase in can be ended *earlier* than that date by DOR. However, it appears more reasonable to interpret this phrase as providing a flexible date for ending the phase-in period to accommodate the contingency that the phase-in period could begin on alternate dates under s. 70.32 (2r) (b), Stats. Because the statute is intended to phase in use value assessment of agricultural land at 10% per year, the phase-in period should end with the assessment in the ninth year and full use value assessment should begin in the subsequent year. These dates, of course, depend upon when the phase-in period is begun.

In addition, the phrase “and ending no later than December 31, 2008” also appears to provide a statutory guarantee that full use value assessment of agricultural land will occur for the assessment of property as of January 1, 2009 even if the phase-in period does not begin in time for it to be fully completed by that date.

(2) Statute is Ambiguous, Extrinsic Sources Used to Determine Legislative Intent

If a court finds the language of a statute to be ambiguous, it turns to sources outside of the text of the statute to assist in determining the legislative intent of the statute. If a court were to find s. 70.32 (2r), Stats., ambiguous concerning whether the DOR, upon the recommendation of the FAC, may terminate the phase in of use value of assessment of agricultural land and implementing full use value assessment of agricultural land on January 1, 2000, it would turn to extrinsic sources to determine the legislative intent as to this question.

One source of legislative history that would likely be highly influential to a court in determining the legislative intent of s. 70.32 (2r), Stats., is the budget summary document prepared by the Legislative Fiscal Bureau (LFB). “Reports prepared by the Legislative Fiscal Bureau are official reports of a legislatively created committee” and are “clearly valid evidence of legislative intent.” [*Ball v. District No. 4*, 117 Wis. 2d 529, 345 N.W.2d 389 (1984).] Legislative documents prepared while the Legislature is debating a bill are more influential to the court in ascertaining legislative intent, but even those prepared shortly after a statute is enacted are influential. “Not all of the Legislative Fiscal Bureau reports were available to the Legislature prior to adoption of the 1995 amendments; some were issued after the 1995 amendments were adopted. But even Legislative Fiscal Bureau reports not available to the Legislature prior to enactment of a statutory provision are official interpretations by a legislative agency that worked with the Legislature during the adoption of the statutory provisions in issue. Such post enactment legislative agency reports may therefore be of aid when determining legislative intent, although they may be less persuasive of reports issued prior to enactment.” [*Juneau v. Courthouse Employees*, 221 Wis. 2d 630, 648, 585 N.W.2d 587 (1998).]

Volume 2 of the LFB’s *Comparative Summary of Budget Provisions for the 1995-97 Wisconsin State Budget*, at page 947, provides a description of the provisions relating to use

value assessment of agricultural land. The most relevant portions of this document read as follows:

For 1997 assessments [apparently, the LFB assumed the recommendation of the FAC and rules promulgated by DOR would be prepared in time to affect the 1997 assessment], value agricultural land at its 1995 assessment minus a percentage of the difference between the property's 1995 assessment and its use value assessment. Set the percentage at 10% times the number of years the property has been assessed under this provision. Continue to value agricultural land under this provision until the assessment for 2008. Presumably, the assessment on agricultural land would equal its use value assessment if the adjustment under this provision would cause the property's assessment to fall below its use value. Agricultural land could be valued under this provision in 1996 if the council has made its recommendation and if DOR has promulgated administrative rules by the 1996 assessment date. Presumably, the phase-down provision would take precedence over the freeze provision in this case.

For assessments beginning in 2008, require local assessors to value agricultural land based on the income that is generated or could be generated by the land's rental for agricultural use. Presumably, this would occur sooner if the phase-down provision results in a value that would be lower than the use value.

Therefore, the LFB document interpreting s. 70.32 (2r), Stats., states that the only factor which might cause the phase-in provision of use value of agricultural land to end prior to 2008 is if the phase-in provision results in a value of agricultural land that is less than the property's use value. Nowhere in this document is there any indication that the statute might allow DOR, with or without a recommendation by the FAC, to terminate the phase-in provision.

A second source a court would likely turn in order to ascertain the intent of s. 70.32 (2r) if it found the statutory language ambiguous is *administrative rules* implementing use value taxation promulgated by the DOR. "The contemporaneous construction and official interpretation given a statute by those responsible for its administration may be used in ascertaining legislative intent." [*Wauwatosa v. Milwaukee County*, 22 Wis. 2d 184, 189, 125 N.W.2d 386 (1963).] The DOR promulgated s. Tax 18.08, Wis. Adm. Code, to implement the phase-in of use value assessment of agricultural land in 1998. This rule was promulgated in September of 1997 for assessments beginning January 1, 1998. Section Tax 18.08 (3), states that:

In 2008, and thereafter, the assessment of each parcel of agricultural land shall be its use value, as determined under s. Tax 18.07 (3) (b).

There is no indication in s. Tax 18.08 that the phase-in of use value assessment of agricultural land might be terminated by DOR prior to the year 2008 based upon a recommendation of the FAC. Although it might be argued that s. Tax 18.08, Wis. Adm. Code, does not provide that the use value assessment of agricultural land may be terminated prior to the year 2008 because the DOR would promulgate a new administrative rule to do so, the fact that no indication is made of this contingency, coupled with the LFB report described above, would be quite persuasive to a court in determining the intent of s. 70.32 (2r), Stats.

2. Form, Style and Placement in Administrative Code

a. Section Tax 18.05 (1) (e) and (f) are created by Clearinghouse Rule 00-053. Therefore, s. Tax 18.05 (1) (e) and (f) should be treated in a separate section of Clearinghouse Rule 00-053, which should state that: "Section Tax 18.05 (1) (e) and (f) are created to read:". In addition, the language in these two paragraphs should not be underscored. Also, the treatment clause of SECTION 1 should read: "Section Tax 18.05 (1) (a), (b) and (c) are amended to read:". [See s. 1.04, Manual.]

b. The references to "subpar." in s. Tax 18.05 (1) (d), (e) and (f) should be replaced with a reference to "par.". In s. Tax 18.05 (1) (f), the notation "Wis. stats." should be replaced by the notation "Stats." [See s. 1.07 (2), Manual.]

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB # _____
 INTRODUCTION # _____
 Admin. Rule # TAX 18.05 and 18.08

Subject

Full Implementation of Use-Value Assessment of Agricultural Land

Fiscal Effect

State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Local: No Local Government Costs

see text of fiscal note

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate:

Under ch. TAX 18, use-value assessment of agricultural land is phased-in over the period from 1995 to 2008. During the phase-in, the assessment of a parcel of agricultural land is changed in steps from its frozen 1995-1997 assessment to its use value. Full implementation of use value, that is, assessment based exclusively on the parcel's value in agricultural use, begins in 2008. In addition, under ch. TAX 18.05, "agricultural use" is defined by reference to the 1987 Standard Industrial Classification (SIC) Manual and includes land eligible for enrollment in specified federal agricultural programs.

Under the proposed rule, use value assessment is fully implemented beginning in 2000. The proposed rule amends the definition of agricultural use to update the 1987 SIC references to 1997 North American Industrial Classification System references. The proposed rule also updates the references to federal agricultural programs, includes land in comparable state agricultural programs, and provides that certain lands enrolled in those programs are in agricultural use.

Summary of Fiscal Effect. The fiscal effect of advancing use value assessment from January 1, 2008, to January 1, 2000, is a reduction in the taxable value of agricultural land and a consequent shift in property taxes from agricultural land to other classes of taxable property in each year from 2000 to 2007. In 2000, \$41 million is shifted to other taxable property and a total of \$164 million is shifted by 2007. Equalizing state aid distribution formulas -- shared revenues and school aids -- will reallocate aids away from taxing jurisdictions with little or no agricultural land to jurisdictions where agricultural land is relatively more important. In addition, state forestry taxes will decrease under the proposed rule in each year from 2000 to 2007. The decrease in 2000 will be \$380,000 and the total decrease will be about \$1.5 million.

The provisions updating the definition of "agricultural use" have a minimal fiscal effect.

(continued on page two)

Long-Range Fiscal Implications:

Agency/Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
Wisconsin Department of Revenue Blair P. Kruger, (608) 266-1310	Yeang-Eng Braun (608) 266-2700 <i>Yeang Eng Braun</i>	3/3/00

1999 average school tax rate would be about \$10.59 (\$2.8 bil. / \$264.4 bil.) per \$1,000 or \$0.07 per \$1,000 greater than under the current rule. Tax rate changes will vary among school districts, ranging from no change up to an increase of about \$0.70 per \$1,000. Technical college tax rates would increase by an average of about \$0.01 per \$1,000 under the proposed rule.

State Forestry Taxes. Assuming a \$1.9 billion decrease in total value, state forestry taxes in 2000 would decrease by about \$380,000 ($\$1.9 \text{ bil.} \times 0.0002$) under the proposed rule. State forestry taxes would decrease by a total of about \$1.5 million from 2000 to 2007.

Administrative Costs. Municipal assessment costs may decrease under the proposed rule since local assessors would not have to calculate the annual changes required under the phase in.

The proposed rule would require minor revisions to the *Wisconsin Property Assessment Manual*. The cost of the revisions would be absorbed.

CLEARINGHOUSE RULE NUMBER 00-053

SECTION 227.19 (2) AND (3), STATS., REPORT

Need for the Proposed Rule

The proposed rule is necessary to timely comply with the Farmland Advisory Council's recommendation of October 18, 1999 to implement full use value assessment of agricultural land, beginning with assessments as of January 1, 2000. In addition, the proposed rule provides owners of agricultural land with relief from property taxes at a time of distress in the farm economy.

The proposed rule also amends the definition of "agricultural use". (1) References to the 1987 Standard Industrial Classification Manual are replaced by references to the 1997 North American Industrial Classification System. (2) References to federal agricultural programs that constitute agricultural use are updated. (3) Land enrolled in specified state agricultural programs is defined as being in agricultural use if such land was in agricultural use at the time of enrollment.

Public Hearing

The Department held a public hearing on the proposed rule on April 11, 2000. Previously, on January 7, 2000, the Department had held a public hearing on the emergency rule implementing full use value assessment of agricultural land as of January 1, 2000. The difference between the proposed rule and the emergency rule is that the emergency rule only implemented full use value assessment; it did not make the above 3 changes to the definition of "agricultural use".

The proposed rule and the emergency rule generated a substantial amount of public comment, most of which was in support. Appendix 1 lists the persons that testified, registered, or submitted written comments in support of, or in opposition to, the proposed rule at the public hearing on April 11, 2000. Appendix 2 lists the persons that testified, registered, or submitted written comments in support of, or in opposition to, the emergency rule at the public hearing on January 7, 2000. In addition, transcripts of the public hearings on the rules are provided on the enclosed disk for your information. Copies of correspondence regarding the rules are available on request.

As a result of the public hearing, the proposed rule was revised to include land enrolled in the Conservation Contract Program (CCP) under 7 C.F.R. 1951, Subpt. S, Exh. H, if the land was in agricultural use at the time of enrollment. Under the CCP, a landowner may discharge up to one-third of his or her debt to the federal Farm Services Agency by placing land under a conservation contract. However, the landowner may not place so much land under contract that he or she would be unable to maintain a viable farming operation. The primary justification for including this program is that it directly promotes farming by requiring that, after enrolling a portion of his or her land in the program, the landowner must still be able to operate a viable farming operation on his or her land that is not enrolled in the program.

Legislative Council Staff Comments

The Legislative Council staff had 2 comments regarding the proposed rule. (1) The Department of Revenue does not have statutory authority to end the phase in of use value assessment of agricultural land and implement full use value assessment as of January 1, 2000. (2) The form, style and placement of the proposed rule in the Administrative Code require minor changes.

The Department disagrees with the Legislative Council staff legal analysis on the first point. However, the issue will be decided by a Dane County Circuit Court since a lawsuit has been filed challenging the Department's authority to implement full use value by emergency rule. On April 14, 2000, the Court denied a motion for a temporary injunction to suspend the emergency rule implementing full use value assessment, set a briefing schedule, and is expected to issue summary judgment by May 31, 2000.

The Department has revised the proposed rule in accordance with the Legislative Council staff's second point.

Regulatory Flexibility Analysis

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

APPENDIX 1

List of persons, including their affiliation or municipality, who testified or registered in support of, or in opposition to, the proposed rule at the public hearing on April 11, 2000 and persons who submitted comments on the proposed rule for entry into the public record.

The following persons testified in support of the proposed rule:

Blaska, Gregory	Dane County Farmers Union and Wisconsin Farmers Union
Bradley, Jerry	President, Dane County Farm Bureau
Brickner, Larry	President, Wisconsin National Farmers Organization
Cliff, Roger	Wisconsin Farm Bureau
Dummer, Mike	Wisconsin National Farmers Organization
Francisco, Gene	Division of Forestry Administrator, Department of Natural Resources
Gumz, Marcus	Fond du Lac County Farm Bureau
Halbur, Bernard	National Director, National Farmers Organization
Hamm, Don	Member, Farmland Advisory Council
Malchine, John	Farm Bureau
Porter, Howard	Agronomy Department, University of Wisconsin-Madison
Ramisch, Joshua	Juneau
Reichow, Armin	Wisconsin National Farmers Organization
Robertson, Remel	Merrill
Samuelson, Glenn	Secretary of Revenue and Chair, Farmland Advisory Council
Zeuske, Cate	

The following persons registered in support of the proposed rule:

Armitage, Don	Dane County Farm Bureau, Madison
Bartholomew, Carol	Waukesha County Farm Bureau, Big Bend
Bartholomew, Robert	Waukesha County Farm Bureau, Big Bend
Benedict, Delbert	Farm Bureau
Benson, Miles	Wisconsin Rapids
Burkes, Dennis	Johnson Creek
Butson, Jim	Grant County Farm Bureau, Platteville
Craig, Randal	Waukesha County Farm Bureau, Big Bend
Daniels, Carl	Kenosha County Farm Bureau, Union Grove
DeBeck, Harold	Farm Bureau, Muskego
Dexter, John	Farm Bureau, Racine
Ehrhart, Ken	Farm Bureau, Union Grove
Gunderson, David	Waterford
Habeck, Phyllis and Roy	Farm Bureau, Shawano
Hahn, Gene	Representative, Wisconsin State Assembly
Hanson, Donald	Union Grove

Appendix 1 (continued)

Hanson, Donna	Wisconsin Farm Bureau, Union Grove
Hanson, Jim	Union Grove
Holloway, Warren	Kenosha County Farm Bureau, Kenosha
Hying, Germaine	Wisconsin Farm Bureau, Muscoda
Hying, James	Wisconsin Farm Bureau, Muscoda
Jacobson, Beth	Racine County Farm Bureau, Franksville
Jacobson, Keith	Franksville
Jones, A Williams	Waukesha County Farm Bureau, Mukwonago
Karczewski, Mary	Farm Bureau, Kansasville
Kevek, John	Farm Bureau, Pleasant Prairie
Koetterhagen, Cletus	Farm Bureau, Burlington
Koetterhagen, Ione	Racine County Farm Bureau, Burlington
Kojin, Joseph	Racine County Farm Bureau, Waterford
Lacy, Paul	Farm Bureau, Fitchburg
Ludwig, Matthew	Bristol
Lui, Jerome	Farm Bureau, Racine
Malchine, Kevin	Waterford
Manske, John	Wisconsin Federation of Cooperatives, Madison
Maurer, Gerald	Wisconsin Farm Bureau, Madison
Moyer, James	Union Grove
Muhlenbeck, Betty	Farm Bureau, Kenosha
O'Brien, Patrick	Farm Bureau, Fitchburg
Olson, Mary	Shiocton
Pena, Alison	USDA, Natural Resource Conservation Service, Madison
Petersen, Ken	Franksville
Peterson, Collette	Farm Bureau, Franksville
Porter, George	
Porter, Judith	Waukesha County Farm Bureau, Mukwonago
Ranke, Harold	Racine County Farm Bureau, Waterford
Ranke, Norma	Racine County Farm Bureau, Waterford
Rankin, Gordon	Wisconsin Farm Bureau, Sussex
Roark, Eugene N	Wisconsin Woodland Owners Assn, Madison
Robert Bartholomew, Carol and	Farm Bureau, Big Bend
Schmitz, Donald	Fond du Lac County Farm Bureau, Fond du Lac
Scott, Gertrude	Wisconsin Farm Bureau, Caledonia
Scott, John	Racine County Farm Bureau, Caledonia
Sesto, Russell	Union Grove
Spittlemeister, Eileen	Farm Bureau, Shawano
Statz, Ron	National Farm Organization, Prairie du Sac
Strutt, Thomas	Iowa County Farm Bureau, Ridgeway
Teschendorf, Roland	Oak Creek
Vos, Art	Burlington
Vos, Donald	Farm Bureau, Burlington
Vos, Warren Holloway,	Farm Bureau, Union Grove
Weir, Russell J	Farm Bureau, Burlington

APPENDIX 1 (continued)

Welks, Loretta
Whitcomb, Jan

Racine County Farm Bureau, Union Grove
USDA, Natural Resource Conservation
Service, Madison

Williams, Ron

Farm Bureau, Waukesha

The following persons submitted written comments in support of the proposed rule:

Albinger, Kenneth P
Belling, Eugene
Festge, Pam

President, Ozaukee County Farm Bureau
President, Fond du Lac County Farm Bureau
State Committee Chair, Wisconsin USDA Farm
Service Agency

Rowley, Kenneth H
Abel, Marlin
Andrew, Roger
Arneson, John H
Back, Delores
Bagnall, John
Barrett, David W
Bartel, Christa
Bartel, Tim
Beguhl, Elaine
Behm, Walter W
Bennett, Beverly M
Berg, Jerold
Bettenhausen, Lloyd
Betzalt, Thelma J
Beyer, Clint
Beyer, Kenn and Diane
Bishop, Ross B
Bleskey, James and Charlotte
Boettcher, Herman and Patricia
Bork, Angie
Borner, Gordon
Bragger, Joe H
Brattset, Weenonah and Harold
Breitlow, Mary L
Brown, Brian and Yvonne
Brown, Wallace G
Bruckert, Theresa
Buchinger, Paul
Buening, Paul
Bula, Gary and Lynda
Butson, Jim
Buyarsk, Richard
Carrell, Charles J
Check, Leonard
Christ, Rudy
Chunat, Orlyn D

President, Walworth County Farm Bureau
Berlin
La Farge
Stoughton
Sheboygan
Sturgeon Bay
Luxemburg
Manawa
Manawa
Kansasville
Merrill
Geason
Cascade
Brodhead
Amery
Manawa
Manawa
Jackson
Wautoma
Bloomer
Fountain City
Beldenville
Independence
Jefferson
Algoma
Belleville
Darlington
West Bend
Hilbert
Avoca
Grand Marsh
Platteville
Green Bay
Cornell
Wauzeha
Independence
Prairie du Chien

Appendix 1 (continued)

Condon, Kevin	Oshkosh
Cook, Lawrence C	Fort Atkinson
Cooper, Maurice E and Geraldine F	De Forest
Daniels, Earl and Shirley	Union Grove
De Boer, Edgar	Emerald
Decker, David	Wautoma
Diehles, Kenneth	Janesville
Dorow, Randy	Hortonville
Earleywine, Steven	Brodhead
Edler, Craig	Browntown
Ehrhart, Darlene	Union Grove
Eisentraut, Wayne	Waupaca
Elverman, Charles	Burlington
Engel, Betty	New Holstein
Ergebretser, Barbara	Cecil
Evans, Voldan	Wisconsin Rapids
Fahey, Tammy A	Edgar
Featherstone, Marshall	Walworth
Fernholz, Lee Roy	Arcadia
Foeger, Cletus	Fountain City
Freer, Russell	Milltown
Freise, William	Melrose
Furseth, Dan and Cathy	Stoughton
Gagas, Gene	Rosholt
Gamache, Ron and Caroline	St Croix Falls
Gardner, Bob and Mary	Pittsville
Garvey, Pamela J	Centuria
Gierach, Kevin	West Bend
Giese, Ruben	Gresham
Gilbertson, Kevin J	Elk Mound
Grant, Jim and Mary	Almond
Gudex, Sam	Campbellsport
Gunderson, Brian	Waterford
Gunderson, David	Waterford
Haigh, William A	Eleva
Halbur, Bernard	Fond du Lac
Hanson, Harold W	Marshfield
Hanson, James	Stoughton
Harrison, Lynn E	Elk Mound
Hartman, Michael	Antigo
Hedsendorf, Melvin R	Jackson
Held, Charles and Paul	Slinger
Helmuth, Harold	Glen Flora
Henieck, Ruth	Franksville
Herbison, Joyce	Plum City
Hilliard, Roger	Wisconsin Dells
Hoffman, Richard C	Lancaster
Hoffmann, Eileen M	West Bend

Appendix 1 (continued)

Holl, George and Marion	Juneau
Holte, James A	Elk Mound
Holterman, Lloyd W and Daphne	Watertown
Isely, Jeff	Argyle
Isherwood, James R	Plover
Jaeger, Gerald	Campbellsport
Jeferson, Ben	Mineral Point
Jerrett, Larry	Lancaster
Johnson, Glen C	Haywood
Kaun, Gary	Hillpoint
Kesler, Robert R and Lucy	Menasha
Kinstetter, Elmer J	Kewaunee
Kleindl, Earl	Beaver Dam
Klieber, Bernie and Nancy	Whitewater
Koch, James A	Fort Atkinson
Kohlhejy, Elmer M	Eau Claire
Kohlhepp, Alvin	Eau Claire
Kohlwey, Otto	Grafton
Kohlwey, Shirley	Saukville
Kojns, Joseph M	Waterford
Kowalske, Elmer	Cedarburg
John H Knoch	Westfield
Kragness, Dennis	Colfax
Krause, Wayne and Marion	Berlin
Krautkramer, Paul	Marathon
Kruger, James R	Westfield
Ksiozl, Michael A	Fredonia
Kuepper, Paul and Jean	Menasha
Kugel, Chuck	Shawano
Kulke, Gerhardt	Lowell
Kvigue, Stephen A	Ferryville
Larson, Richard	Grantsburg
Limberg, Janet	Plymouth
Loberger, Harold	Oconto
Loberger, Ruth	Oconto
Loty, Herb	Richfield
Ludwig, Matthew P	Bristol
Lund, Donald J	Deerfield
Lundgren, Jack	Cushing
MacLean, David	Elkhorn
Makholm, Austin C	Gillet
Maly, Paul and Dee	Sun Prairie
Maney, Shawan	Cedarburg
Martin, Gleta D	Hayward
Maurer, Gerald H	Madison
McFarlin, Daniel J	Wisconsin Dells
Meffert, Jack	Waunakee
Meinhof, Walter	De Forest

Appendix 1 (continued)

Meyers, John M	Barneveld
Meyers, Nancy J	Barneveld
Mielke, Debbie	Marion
Miller, Dale B	Wonewoc
Mlazwa, Harvey	Luxemburg
Moe, Clark	Whitehall
Moeker, Keith and Rose	Hilbert
Monson, Gary	Gratiot
Moriejowski, Roy and Jane	Vesper
Moritz, Lloyd J and Barbara	West Bend
Moritz, Peter H	West Bend
Morris, John	Watertown
Morton, Donald J	De Pere
Mueller, Earl	Roberts
Myszka, Larry	Athens
Napientek, John T	Franklin
Natzke, Dan	Greenleaf
Ott, Lloyd	Wonewoc
Owens, Harold W	Fredonia
Pagel, Eric	New Holstein
Palewig, Bob	Glenwood City
Papcke, Charles and Elaine	Ekhorn
Pedretti, Donald V	Holmen
Pennings, Donald	Grand Chute
Peterson, Paul	Readstown
Peterson, Phil L	Oregon
Peterson, Randy	Wilson
Peterson, Walt and Cathy	Catawba
Pittman, Mel	Plum City
Porter, Dean and Susan	Bloomington
Porter, George J	Fennimore
Powell, Chad and Dawn	Norwalk
Preuninger, Roy and Lulenne	Fort Atkinson
Pubtney, Everett	Arlington
Quilling, Marshall	Menomonie
Raddatz, Wesley	Suamico
Rademacher, Brian and Keith	Cottage Grove
Radtke, Helen A	Mineral Point
Ramsden, Kenneth W	Richland Center
Rankin, Gordon and Mahalb	Sussex
Rehbein, Don	Mishicot
Retzlaff, Joan	Cedarburg
Riechers, Joseph W	Darlington
Riley, Thomas P	Amherst
Rippley, Charles	Cochrane
Roatz, Jerry and Vicki	Waterloo
Robers, Michael	Exeland
Roos, Richard	Amery

Appendix 1 (continued)

Roquette, Randy	Baldwin
Rupnow, Denis and Jeanette	Ixonia
Salter, Judy	Black Creek
Salter, Mike E	Black Creek
Schank, Willard	Independence
Schauf, Karen L	Barron
Schepp, Wayne A	Merrill
Scheunemann, Jeff P	Cedarburg
Schlewitz, Devin	Fall Creek
Schlough, Lawrence	Menomonee
Schmidt, Dennis C	Lancaster
Schmidt, Paul T	Bonduel
Schoesow, Harold	Mequon
Schweiner, Kevin and Deneen	Denmark
Schwittay, Ronald	Peshtigo
Seamans, Rodney M	La Valle
Sheahan, Jim	Salem
Shefelbine, Douglas and Gale	Holmen
Shepherd, Yvonne	Osseo
Sherman, Roger F	Twin Lakes
Siedschlag, Herman W Jr	Manitowoc
Smith, Barbara A	Rice Lake
Smith, Dennis	New London
Spittlemeister, Robert and Dolores	Egg Harbor
Staffanus, Norbert	Delavan
Staffel, Peter and Ann	Oconto Falls
Stangel, Dan	Kewaunee
Steege, Don	Chilton
Steglich, Mike	Turtle Lake
Steinbull, Donald J	Platteville
Steiner, Gary	Mondavi
Steiner, Ralph	Chilton
Stelter, Don and Helen	Montello
Stone, Rob	Ripon
Stoneman, William	Fitchburg
Strasser, Harold	Turtle Lake
Tanner, Gail E	Platteville
Tausche, John L	Green Bay
Tews, Carol J	Wausau
Tews, Thomas	Marion
Theis, Randy	Verona
Treichel, Milton	Greenleaf
Turba, Wilfrid	Elkhart Lake
Twardokus, Dale E	Mayville
Utecht, John	Marathon
Van Deurzen, Donald	De Pere
Vande Slunt, Martha	Brandon
Vander Heiden, Bernard	Kaukauna

Appendix 1 (continued)

Vogel, Muriel	Sturgeon Bay
Volkman, Lance	Black Creek
Wachlof, Ronald	Oshkosh
Wantock, Joe	Fountain City
Weden, Lyle	Wausau
Weizn, Leonard	Junction City
Weltzun, Gaylord	Arcadia
Wendt, Jerry	Stoughton
Wensel, Jeffrey R	Elena
Williams, Joan M	Hancock
Wiorlin, Arnve J	Saxon
Witter, Gene and Willie	Wausau
Wodoff, Clarence	Edgerton
Woller, Gene J	Merrill
Wollin, Sue S	Oregon
Woodrich, David and Joan	Walworth
Wytttenbach, Jon	Sauk City
Zajackowski, Mark	Milladore
Zehren, Ronald J	Luxemburg
Zimdars, Mike	Cedarburg
Zinck, Robert J	Arena

The following persons testified in opposition to the proposed rule:

Hastings, Jeff	County Conservationist, Vernon County Land and Water Conservation Department
Hewitt, Laura	Upper Midwest Conservation Director, Trout Unlimited
Knox, Karen	President, Southwest Wisconsin Technical College
Poppe, Todd J	Vice-President of Finance, Milwaukee Area Technical College
Rasch, Lee	President, Western Wisconsin Technical College
Read, Harry	Madison Audubon Society

The following persons submitted written comments in opposition to the proposed rule:

Executive Board	Wisconsin Association of Assessing Officers
Gabriel, Paul	Executive Director, Wisconsin Technical College District Boards Association
McCaulley, Jim	Iowa County Land Conservation Department
Rasch, Lee	President, Western Wisconsin Technical College
Read, Harry	Conservation Chair, Madison Audubon Society
Schultz, Henry J	Clerk, Town of Alma

APPENDIX 2

List of persons, including their affiliation or municipality, who testified or registered in support of, or in opposition to, the emergency rule at the public hearing on January 7, 2000 and persons who submitted comments on the emergency rule for entry into the public record.

The following persons testified in support of the emergency rule:

Alcorn, Lois	Farmer, Grant County
Arneson, Darlene	Farmer and member, Farmland Advisory Council
Bradley, Jerry	
Brown, Mary Brazeau	Cranberry grower
Cliff, Roger	Farm Bureau Federation
Coughlin, Victoria	Farmer and President-elect, Wisconsin Women for Agriculture
Derr, Jerry	Wisconsin Towns Association
Duerst, Thomas	Farmer, Verona
Ellickson, Earl	Farmer, Cambridge
Hauser, Dick	Beef farmer and member, Wisconsin Cattlemen's Association
Jones, Bruce	Member, Farmland Advisory Council and faculty, UW Department of Agricultural Economics
Klahn, Ruth	Farmer and clerk, Town of Oregon
Krogstad, Jane	Farmer and member, Sustainable Vernon, Town of Vernon, Waukesha County
Kuehn, Ron	Wisconsin Pork Producers Association, Wisconsin State Cranberry Growers Association, Wisconsin Potato and Vegetable Growers Association, and Wisconsin Grain Dealers Association
Lehman, Michael	Representative, Wisconsin State Assembly
Malchine, John	Farmer and member of Farmland Advisory Council and Wisconsin Department of Agriculture Board
Nass, Joyce	Farmer, Town of Emmet
Oleson, Bob	Farmer and member, Wisconsin Corn Growers Association
Ott, Al	Representative, Wisconsin State Assembly
Peterson, Phil	Farmer and member, Wisconsin Federation of Cooperatives
Richards, Howard	Farmer, Lodi
Scott Gunderson	Representative, Wisconsin State Assembly
Steeg, Don	Farmer, Town of Chilton
Theis, LaVerne	Farmer, Dane County
Tischendorf, Roland	
Zeuske, Cate	Secretary of Revenue and Chair, Farmland Advisory Council

Appendix 2 (continued)

Seefeldt, Connie and James
 Sherman, Roger, F
 Sklar, Richard P
 Sobotta, James J
 Soda, Kevin K
 Sorenson, Chris
 Stadler, Rudy and Marcy
 Stangel, Mrs Dan
 Stittleburg, Gordon
 Stittleburg, Jean
 Stoneman, William
 Strupp, Michael
 Suttie, William and Mary
 Theis, Randy
 Turba, Ken
 Van Deurzen, Donald
 Vorpapel, Kenneth
 Weber, Wendy
 Wex, Terry A
 Woodworth, Peggy
 Yost, Gaylord

Coleman
 Twin Lakes
 Hillpoint
 Arcadia
 Princeton
 Pine River
 Saukville
 Kewaunee
 La Valle
 La Valle
 Fitchburg
 Slinger
 Ettrick
 Verona
 Elkhart lake
 De Pere
 Mequon
 Colfax
 Grand Marsh
 Sparta
 River Hills

The following persons testified in opposition to the emergency rule:

Greco, Joe
 Huck, Edward J
 Lorier, Bob
 Miller, Michael R

President, Village of Menomonee Falls
 Wisconsin Alliance of Cities
 Wisconsin Association of Assessing Officers
 Mayor, City of West Bend

The following persons submitted written comments in opposition to the emergency rule:

Burke, Brian
 Chirko, Thomas and Dorothy
 Fisk, Paul F
 Huck, Edward J
 Walsh, Michael J

Senator, Wisconsin State Senate
 Cashton
 Mayor, City of Lodi
 Wisconsin Alliance of Cities
 Mayor, City of De Pere

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State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX 608-266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

May 8, 2000

The Honorable Fred Risser
President, State Senate
Room 220 South State Capitol
P.O. Box 7882
Madison, WI 53707-7882

The Honorable Scott Jensen
Speaker, State Assembly
Room 211 West State Capitol
P.O. Box 8952
Madison, WI 53708

Re: Clearinghouse Rule 00-053

Dear Senator Risser and Representative Jensen:

Pursuant to s. 227.19(2), Stats., this letter is notice that the proposed rule order relating to assessment of agricultural land is in final draft form. The notice of public hearing was published in the March 31, 2000 Wisconsin Administrative Register and the public hearing was held April 11, 2000.

Copies of the proposed rule order and the Report under s. 227.19(2) and (3), Stats., are enclosed. A summary of the proposed rule order follows:

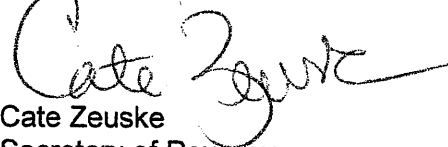
Summary of the Proposed Rule Order

Under the current rule, agricultural use is defined by reference to the 1987 Standard Industrial Classification (SIC) Manual and includes land eligible for enrollment in specified federal agricultural programs. The rule amends the definition of agricultural use to update the 1987 SIC references to 1997 North American Industrial Classification System references. The rule also updates the references to the federal agricultural programs and provides that land enrolled in those programs is in agricultural use. The rule also defines land enrolled in specified state agricultural programs as being in agricultural use if such lands were in agricultural use at the time of enrollment. The updated definition of agricultural use is effective for assessments as of January 1, 2001.

The Honorable Fred Risser
The Honorable Scott Jensen
May 8, 2000
Page 2

The rule provides that, beginning with the assessments as of January 1, 2000, the assessed value of each parcel of agricultural land is its use value.

Sincerely,

A handwritten signature in cursive script that reads "Cate Zeuske". The signature is written in black ink and is positioned above the printed name and title.

Cate Zeuske
Secretary of Revenue

CZ:BK:skr
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Enclosures

PROPOSED ORDER OF THE DEPARTMENT OF REVENUE

The Wisconsin Department of Revenue proposes an order to amend TAX 18.05 (1) (a), (b), and (d); to create TAX 18.05 (1) (e); and to repeal and recreate TAX 18.08, relating to assessment of agricultural land.

ANALYSIS BY THE WISCONSIN DEPARTMENT OF REVENUE

Statutory Authority: ss. 70.32 (2) (c) 1., 70.32 (2r) (b) and 227.11 (2) (a), Stats.

Statutes Interpreted: ss. 70.32 (2) (c) 1., 70.32 (2r) (b) and (c), Stats.

Under the current rule, agricultural use is defined by reference to the 1987 Standard Industrial Classification (SIC) Manual and includes land eligible for enrollment in specified federal agricultural programs. The rule amends the definition of agricultural use to update the 1987 SIC references to 1997 North American Industrial Classification System references. The rule also updates the references to the federal agricultural programs and provides that land enrolled in those programs is in agricultural use. The rule also defines land enrolled in specified state agricultural programs as being in agricultural use if such lands were in agricultural use at the time of enrollment. The updated definition of agricultural use is effective for assessments as of January 1, 2001.

The rule provides that, beginning with the assessments as of January 1, 2000, the assessed value of each parcel of agricultural land is its use value.

SECTION 1. Section TAX 18.05 (1) (a), (b) and (d) are amended to read:

TAX 18.05 Definitions. In this subchapter:

- (1) "Agricultural use" means any of the following:
 - (a) Activities included in ~~major group 01 — agricultural production crops, set forth in the standard industrial classification manual, 1987 edition, subsector 111 Crop Production, set forth in the North American Industry Classification System (NAICS), United States, 1997, published by the executive office of the president, U.S. office of management and budget.~~ "Agricultural use" does not include growing short rotation woody trees with a growing and harvesting cycle of 10 years or less for pulp or tree stock under NAICS industry 111421.
 - (b) Activities included in ~~major group 02 — agricultural production livestock and animal specialties, set forth in the standard industrial classification manual, 1987 edition, subsector 112 Animal Production, set forth in the North American Industry Classification System, United States, 1997, published by the executive office of the president, U.S. office of management and budget.~~

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Note: ~~Major group 01 — agricultural production crops and major group 02 — agricultural production livestock and animal specialties, set forth in the standard industrial classification manual, 1987 edition, Subsector 111 Crop Production and subsector 112 Animal Production, set forth in the North American Industry Classification System, United States, 1997, published by the executive office of the president, U.S. office of management and budget, are reproduced in full in the Wisconsin property assessment manual under s. 73.03(2a), Stats. In addition, copies are on file with the department, the secretary of state, and the revisor of statutes.~~

- (d) ~~Land eligible for enrollment~~ enrolled in any of the following federal agriculture programs: the conservation reserve program ~~1991-1995~~ under 7 C.F.R. 1410; the conservation reserve program 1986-1990 under 7 C.F.R. 704; ~~the feed grain program under 7 C.F.R. 1413;~~ the water bank program under 7 C.F.R. 752; the agricultural conservation program under 7 C.F.R. 701; ~~or the dairy price support program under 7 C.F.R. 1430 and 282~~ or, provided that the land was in agricultural use under par. (a), (b) or (c) at the time of enrollment, the environmental quality incentives program under 7 C.F.R. 1466 or the conservation contract program under 7 C.F.R. 1951, Subpt. S, Exh. H.

SECTION 2. Section TAX 18.05 (1) (e) is created to read:

- (e) Land that is subject to an easement under any of the following programs provided that the land was in agricultural use under par. (a), (b) or (c) at the time the easement was acquired: the stream bank protection program under s. 23.094, Stats.; the conservation reserve enhancement program under s. 93.70, Stats.; or the nonpoint source water pollution abatement program under s. 281.65, Stats.

SECTION 3. Section TAX 18.08 is repealed and recreated to read:

TAX 18.08 Assessment of agricultural land.

Beginning with the assessments as of January 1, 2000, the assessment of each parcel of agricultural land shall be its use-value, as determined under s. TAX 18.07(3)(b).

FINAL REGULATORY FLEXIBILITY ANALYSIS

This rule order is not expected to directly affect small business and, therefore, under s. 227.114(8)(b), Stats., a regulatory flexibility analysis is not required.

Approval of the use of standards by reference in s. TAX 18.05 has been approved by the Attorney General and the Revisor of Statutes.


EFFECTIVE DATES

Sections 1 and 2 shall first take effect for the assessments as of January 1, 2001.

Section 3 shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2) (intro.), Stats.

DEPARTMENT OF REVENUE

Dated: May 10, 2000

By: 
Secretary of Revenue

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WAYNE W. WOOD

State Representative

44th Assembly District

COMMITTEE ASSIGNMENTS

Member:

Rules

State Affairs

Ranking Minority Member:

Criminal Justice & Corrections

Ways & Means



**Wisconsin Legislature
Assembly**

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2429 Rockport Road
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(608) 752-5485

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104 North, State Capitol
P.O. Box 8953
Madison, WI 53708
(608) 266-7503

May 25, 2000

State Representative Michael Lehman
Chair, Assembly Committee on Ways and Means
Room 103 West – State Capitol
Madison, WI 53702

Dear Representative Lehman:

I am requesting that the Assembly Committee on Ways and Means hold a public hearing on CR 00-053, relating to the assessment of agricultural land.

There appears to be a question of the Department of Revenue's authority to end the process for implementing use value assessment of agricultural land.

I appreciate your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Wayne".

WAYNE W. WOOD
State Representative
44th Assembly District

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June 19, 2000

Rep. Wayne Wood
Room 104 North, State Capitol
Madison, WI 53708

Dear Rep. Wood:

I am replying to your request for the Ways and Means Committee to hold a public hearing on Clearinghouse Rule 00-053, relating to the assessment of agricultural land.

In your letter of request, you indicate that you are concerned with the Department's "authority to end the [phase-in] process for implementing use value assessment of agricultural land." This specific issue is the source of a lawsuit against the Department currently pending in the legal system. Because of the litigation, it is my feeling that it is unnecessary for the Ways and Means Committee to hold a hearing on the same issue. I would, however, encourage you to contact the Department to discuss your concerns. The Secretary's office has indicated they are willing to meet with you to discuss your concerns in this area.

If you have any other questions or concerns, please do not hesitate to contact me.

Respectfully,

MICHAEL "Mickey" LEHMAN
State Representative
58th Assembly District

ML:amn

WAYNE W. WOOD

State Representative

44th Assembly District

COMMITTEE ASSIGNMENTS

Member:

Rules

State Affairs

Ranking Minority Member:

Criminal Justice & Corrections

Ways & Means



**Wisconsin Legislature
Assembly**

June 21, 2000

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P.O. Box 8953

Madison, WI 53708

(608) 266-7503

State Representative Michael Lehman
Chair, Assembly Ways and Means Committee
Room 103 West – State Capitol
Madison, WI 53702

Dear Representative Lehman:

A handwritten signature in cursive script that reads "Michael".

I have received your letter regarding Clearinghouse Rule 00-053, relating to the assessment of agricultural land.

I am repeating my request for a hearing on this rule. Litigation in this case has not been assigned, and since this is a legislative issue and involves the authority of the Department of Revenue to promulgate rules, which the Legislature oversees, I feel it is appropriate for the committee to meet on this question. The Legislative Council, in reviewing this proposed rule, has indicated that the department does not have this authority and that makes it a legislative issue and appropriate for committee review.

If you would prefer that you and I meet first with the Secretary of the department and legislative council attorneys, I would be willing to do that.

I look forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Wayne".

WAYNE W. WOOD

State Representative

44th Assembly District