

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 96-079

### 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 October 1994.]**

### 1. Statutory Authority

a. Section Tax 18.05 (2) (a), which contains one element of the definition “capitalization rate,” appears to be contrary to the statutory requirements for establishing capitalization rates. SECTION 9148 (1x) of 1995 Wisconsin Act 27 requires that the Department of Revenue (DOR) promulgate rules that provide a capitalization rate based on the federal land bank’s five-year average capitalization rate and also requires that the rules provide a method for calculating capitalization rates for each municipality by adding to the five-year average of federal land bank short-term adjustable rate mortgages for this state’s agricultural marketplace the municipality’s net property tax rate for the previous year. In addition, s. 73.03 (49) (dg), Stats., provides that the farmland advisory council shall “calculate” the federal land bank’s five-year average capitalization rate. Section Tax 18.05 (2) provides that capitalization rates shall be the sum of the current year’s average annual effective interest rate for all new federal land bank loans for the St. Paul Farm Credit District, calculated by the Internal Revenue Service under s. 2032A (e) (7) (A) (ii) of the Internal Revenue Code and the prior year’s average net tax rate in that municipality. This definition of capitalization rate appears contrary to the statutory requirements in the following ways. First, the statutes require the farmland advisory council to calculate the federal land bank’s five-year average capitalization rate while the rule delegates this function to the U.S. Internal Revenue Service. Second, the statutory language requires that capitalization rates be computed using the five-year average of federal land bank “short-term adjustable rate mortgages for this state’s agricultural marketplace.” However, under s. Tax 18.05 (2) (a), the capitalization rate would not be determined using a five-year average or short-term adjustable rate mortgages. In addition, under s. Tax 18.05 (2) (a), the capitalization rate would be determined using the interest rate for federal land bank loans for the St. Paul Farm Credit

District, which includes the States of Michigan, Minnesota, North Dakota and Wisconsin. It could be argued that the four-state area is significantly broader than Wisconsin's "agricultural marketplace." The department should explain the rationale for adopting the procedure in s. Tax 18.05 (2) (a) and should attempt to explain why it believes there is statutory authority for this procedure.

b. Section Tax 18.07 (1) appears to be contrary to s. 73.03 (49) (dg), Stats. The statutory language requires the farmland advisory council to calculate the per acre values of agricultural land based on estimated income generated from rental for agricultural use. Section Tax 18.07 (1) requires the department to compute these values, using procedures recommended by the farmland advisory council. The department should explain why there is statutory authority for s. Tax 18.07 (1). SECTION 9148 (1x) of 1987 Wisconsin Act 27 requires DOR to promulgate rules that designate categories of agricultural land based upon agricultural use, soil productivity and location. Chapter Tax 18 does not appear to use soil productivity as a factor in categorizing agricultural lands. In addition, SECTION 9148 (1x) requires that the rules include guidelines to be used by property tax assessors to distinguish, particularly with respect to small acreage parcels, land devoted primarily to agricultural use from land devoted primarily to residential, recreational or commercial use. Chapter Tax 18 does not appear to contain these guidelines. The department should explain why these statutory requirements are not included in ch. Tax 18.

## **2. Form, Style and Placement in Administrative Code**

a. In ss. Tax 18.01 and 18.02 (intro.), the amendment should read "~~chapter~~ subchapter."

b. In s. Tax 18.04, the phrase "of revenue" can be deleted since the term "department" is defined in s. Tax 18.05 (4). Also, the phrase "Agricultural or Other" should be replaced by the phrase "as agricultural or other."

c. Section Tax 18.05 (1) refers to the standard industrial classification manual. The department should ensure that the requirements of s. 227.21, Stats., have been met. Also, given the introduction to sub. (1), each paragraph may conclude with a period.

d. The citations to the Code of Federal Regulations in s. Tax 18.05 (1) (e) are drafted improperly. For example, the citation to 7 C.F.R. 14, Part 1410 should be redrafted to cite 7 C.F.R. 1410. [See s. 1.07 (3) (b), Manual.]

e. In s. Tax 18.05 (3) and (4), all of the material following the word "means" should be in lowercase.

f. In s. Tax 18.05 (8), the second sentence should be rewritten to read: "'Rental income' includes the amount of property tax paid by a tenant."

g. In s. Tax 18.06 (1), it is suggested that the phrase "he/she" be replaced with the phrase "he or she." [See s. 1.01 (9), Manual.]

h. In s. Tax 18.06 (2), the paragraphs should conclude with periods.

i. In s. Tax 18.07 (2) and (3), the citations to "(1)" and "(2)" should be replaced with citations to "sub. (1)" and "sub. (2)." [See the examples in s. 1.07 (2), Manual.]

j. In s. Tax 18.08 (1) (b), the word “paragraph” should be replaced with the word “subchapter.” Also, in pars. (c) and (d), the notation “par.” should be inserted before each cross-reference.

k. In s. Tax 18.08 (2), the notation “s.” should be inserted before the cross-reference.

l. Section Tax 18.09 should be rewritten to read: “An assessor shall assess property classified as other according to s. 70.32 (1), Stats.”

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

Section Tax 18.05 (1) (e) is unnecessarily vague. The paragraph should be redrafted to specifically list all federal agricultural programs with respect to which a participant will be considered to have his or her land in an agricultural use. In addition, the department should consider redrafting the paragraph to explicitly require that specific parcels of land be entered in a federal agricultural program in order for the land to be classified as agricultural.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. It is suggested that the department list in the *Wisconsin Property Assessment Manual* the activities listed in the standard industrial classification manual that qualify as an agricultural use under s. Tax 18.05 (1) (a) and (b). This will help property assessors who may not have access to the *Standard Industrial Classification Manual*.

b. Section Tax 18.05 (2) (b) would be more clear if it were redrafted to refer to the average net tax rate for the property tax levy of the year prior to the year of the assessment.

c. Section Tax 18.05 (7) would be more clear if redrafted in a manner similar to the following: “‘Parcel of agricultural land’ means land contained within a single legal description that is devoted primarily to agricultural use.”

d. In s. Tax 18.06 (1), it is suggested that the word “is” be placed before the word “necessary.”

e. In s. Tax 18.06 (2), it is suggested that the phrase “of property” be placed after the word “description” and that the word “includes” be substituted for the word “contains.” In addition, because s. Tax 18.05 (5) (d) specifies that fish farming is an agricultural use, perhaps s. Tax 18.06 (2) should list fish farming as a category of agricultural use because such property would not appear to fall within the categories of either cropland or pasture.

f. In s. Tax 18.07 (1), in which year should the department begin to determine the rental income per acre by category of agricultural use for each municipality?

g. In s. Tax 18.08 (1) (a), how is the formula affected if property that was not classified as agricultural in 1996 is so classified in later years?