

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**Terry C. Anderson**  
Director  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## **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.]**

#### **1. 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 phrase-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.]