WISCONSIN LEGISLATIVE COUNCIL

*IssueBrief*

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# Wisconsin's Agricultural Use Tax Exemption

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The importance of agriculture in Wisconsin shows itself not just on our state's license plates, but also in our state's Constitution – specifically, Article VIII, Section 1, which allows agricultural land to be taxed differently than other types of land. This issue brief summarizes key concepts relating to the classification of agricultural land for property tax assessment purposes and gives an overview of recent Wisconsin Supreme Court decisions that further refine these concepts.

## KEY CONCEPTS RELATING TO AGRICULTURAL LAND USE CLASSIFICATION

The Wisconsin Constitution generally requires that property taxes be uniform, meaning that property is either fully taxed or entirely exempt, and properties subject to taxation are taxed based on a property's market value.[1] However, land "devoted primarily to agricultural use" is exempt from market value taxation, and is instead taxed according to the rental value of the property for agricultural use.[2]

Though "agricultural use" and "agricultural land" are statutorily defined terms, the Wisconsin Department of Revenue (DOR)'s administrative rules and the 2022 Wisconsin Property Assessment Manual (WPAM) provide guidelines that local property assessors use to determine whether properties fit these definitions.[3] The guidelines incorporate judicial interpretations regarding the classification of agricultural land, including several recent Wisconsin Supreme Court decisions.

## RECENT WISCONSIN SUPREME COURT DECISIONS

### Business Purpose Not Required

Land is not required to have a business purpose to be classified as "agricultural." In *State ex rel. Peter Ogden Family Trust of 2008 v. Bd. of Review*, 2019 WI 25, the Wisconsin Supreme Court held that a local Board of Review (BOR) wrongly upheld a "residential" property tax classification based on the incorrect belief that a business purpose was required for land to be classified as "agricultural" for property tax purposes. The property assessor classified the land as "residential" because he "could not substantiate whether [the Ogdens] were doing [any agricultural activities] for actual agricultural economic benefit." The landowner appealed the property tax assessment of two lots, arguing that they were primarily used to harvest apples and hay for food and fiber, and to grow Christmas trees. As evidence, the landowner introduced photographs and documents, demonstrated the outputs of his land, and called as a witness a local farmer with whom he worked. The Court ruled in his favor, holding that the BOR had wrongly upheld the assessor's "residential" classification because "no statute, administrative rule, or case law" supported the position that an economic benefit was required. Specifically, the Court held – based on the evidence presented at the BOR hearing – that the landowner conclusively showed that the two lots were primarily devoted to agricultural use.

### Minimal Agricultural Use Not Sufficient

In general, just because a property's sole productive purpose, however small, could be described as agricultural, this does not necessarily mean that the property should be classified as "agricultural" for property tax assessment purposes. In *State ex rel. Nudo Holdings, LLC v. Board of Review*, 2022 WI 17, the Wisconsin Supreme Court determined that the BOR properly looked for more than some minimal agricultural use in evaluating whether the property was devoted primarily to agricultural use. The property owner argued that, during the property tax assessment timeframe, he had done a "bit of tilling"; cut out trails to access walnut and pine trees (described as "Christmas trees") that grew randomly across the property; harvested the walnuts with his wife and gave them away; and maintained permits and licenses to cut timber and raise chickens without any signs of such activity during the assessment

timeframe.[4] After considering whether the land was sufficiently "devoted primarily to agricultural use" to be classified as agricultural, the Court concluded it was not. First, the Court concluded that an agricultural classification is only proper if property is chiefly given over to agricultural use, as defined in DOR's administrative rules and the WPAM.[5] Second, the Court determined that the land did not display telltale signs of being chiefly given over to agricultural use. For example, there were no "physical marks —'furrows, crops, fencing or livestock'— on the land," nor did the land "bear witness to its use in the prior production season, in whatever form that evidence is demonstrated." Third, despite a license to do so, the property owner did not keep chickens on the property. And finally, the walnut harvesting was insufficient to qualify as the land's primary use because it did not meet walnut industry standards.

## Residential Classification Factors May Inform Agricultural Classification

Property in Wisconsin should be classified as "residential" when it is a "parcel or part of a parcel of untilled land…[un]suitable for the production of row crops, on which a dwelling or other form of human abode is located and which is not otherwise classified." [s. 70.32 (2) (c) 3., Stats.] In *Thoma v. Village of Slinger*, 2018 WI 45, the Wisconsin Supreme Court underscored the importance of several questions from the WPAM used by assessors to determine whether vacant land should be classified as "residential": (1) "Are the actions of the owner(s) consistent with an intent for residential use?"; (2) "Is the size of the parcel typical of residential or developing residential parcels in the area?"; (3) "Is the parcel zoned residential or is residential zoning likely to be allowed?"; (4) "Is the parcel located in a residential plat, subdivision, CSM, or near other residential development?";[6] (5) "Does the parcel's topography or physical features allow for residential use?"; (6) "Is the parcel located in an urban or rapidly changing to urban area, as contrasted with a location distant from much residential activity?"; and (7) "Are there any other factors affecting the parcel which would indicate residential use is reasonably likely or imminent?" Although the Court only used them to illustrate how assessors classify property as "residential," these questions can be instructive to property owners interested in whether their property may be classified as "agricultural."[7]

## Zoning, Injunctions, and Ordinances: Not Decisive Factors

The classification of real property in Wisconsin is based on the actual **use** of the property and not zoning, injunctions, or ordinances.[8] In *Thoma*, the Court agreed with both parties in their conclusion – based on s. 70.32 (2) (a), Stats. – that a property zoned as residential and subject to an injunction against agricultural use did not determine the property's tax assessment classification. However, the Court noted that although zoning, injunctions, and ordinances cannot be decisive factors for tax assessment purposes, these factors may be offered as evidence of how a property is supposed to be used.

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[1] Wis. Const. art. VIII, s. 1; ss. 70.01 and 70.32 (1), Stats.

[2] s. 70.32 (2) (c) 1g. and (2r), Stats.

[3] See s. 70.32 (1), Stats. ("Real property shall be valued by the assessor in the manner specified in the [WPAM] …"). Specifically, DOR defines "agricultural use" to mean: "[a]ctivities included in subsector 111 Crop Production, set forth in the North American Industry Classification System (NAICS)." [s. Tax 18.05 (1), Wis. Adm. Code.] The NAICS explains that "[i]ndustries in the crop production subsector grow crops mainly for food and fiber," and the "production process is typically completed when the raw product or commodity grown reaches the 'farm gate' for market." It further describes "Crop Production" "establishments" "as farms, orchards, groves, greenhouses, and nurseries, primarily engaged in growing crops, plants, vines, or trees and their seeds." [WPAM, ch. 11, App. A-13.] Furthermore, s. Tax 18.05 (1) (b) to (d), Wis. Adm. Code, also defines "agricultural use" to mean activities relating to "subsector 112 Animal Production," "[g]rowing Christmas trees or ginseng," and "[l]and without improvements subject to a federal or state easement … ."

[4] *State ex rel. Nudo Holdings*, 2022 WI 17 at ¶¶ 4-6, 8. The relevant timeframe for property tax assessment in Wisconsin occurs by the end of January 1 of each year. [s. 70.10, Stats.]

[5] More specifically, DOR's rules define "primarily devoted to agricultural use" to mean, in part, land that is in agricultural use during the production season. The rules further specify that land devoted primarily to agricultural use shall typically bear physical evidence such as furrows, crops, fending, or livestock, that is appropriate to the production season. [See ss. Tax 18.05 (4) and 18.06 (1), Wis. Adm. Code.]

[6] "CSM" means "certified survey map," and – under s. 236.34 (1) (am), Stats. – limits the number of parcels that can be grouped together and recorded in each county office of the Register of Deeds. The maximum number of parcels is set at four, unless a locality enacts an ordinance or adopts a resolution changing that maximum under s. 236.34 (1) (ar), Stats. See *Wisconsin Platting Manual* for more information on the permitted uses of CSMs.

[7] *Thoma*, 2018 WI 45 at ¶ 1.

[8] *Id.*