

July 23, 2009

## 2009 Legislative Updates – Current Use Program and Designated Forest Land

The following bills are effective beginning July 26, 2009:

### **ESSHB 1208 – RCW 84.34.037 and RCW 84.34.041 – Public Hearing Procedures**

Although this bill affects several aspects of property tax administration, only the impact on the Current Use Program is discussed in this Property Tax Special Notice.

**Question:** What are the effects of ESSHB 1208?

**Answer:** This bill allows the county legislative authority and the city legislative authority to participate in a public hearing through teleconference or by meeting separately during the approval process of an application for classification for open space land or timber land located in an incorporated area. If each legislative body meets separately, both bodies must confirm that they have approved the application in its entirety.

**Question:** What if one of the legislative bodies modifies the application?

**Answer:** Both legislative bodies must approve the entire application without modification or they must approve the application with identical modifications.

### **SSHB 1484 – RCW 84.33.140, 84.33.145, and 84.34.108 – Removals from Current Use and Designated Forest Land**

**Question:** What are the effects of SSHB 1484?

**Answer:** (1) This bill allows land classified under chapter 84.34 RCW and chapter 84.33 RCW to be removed without the imposition of additional tax or compensating tax, respectively, if the removal resulted from the creation, sale, or transfer of a conservation easement under RCW 76.09.040. The conservation easement must be for private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species. Land removed as a result of the creation, sale, or transfer of a fee interest for the riparian open space program will now be subject to additional and compensating tax.

(2) This bill also expands the existing exception from compensating tax for forest land removed from designation for conservation purposes. Currently, when land is removed from designation for conservation purposes because of a transfer of property interests to a governmental entity, nonprofit nature conservancy corporation, or nonprofit historic preservation corporation, compensating tax is not due if the land is located in King County. This exception to compensating tax is now expanded to counties with a population of more than 600,000 that is Pierce and Snohomish Counties.

**Question:** If designated forest land is to be removed because of a sale or transfer of fee title to one of the entities listed above for conservation purposes, must the purpose of the sale or transfer be exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan or approved for state natural resources conservation area purposes?

**Answer:** If the sale or transfer of fee title occurs in a county other than King, Pierce, and Snohomish, then the purpose of the sale or transfer must be exclusively for the protection and conservation of lands recommended for state natural area preserve purposes by the natural heritage council and natural heritage plan or approved for state natural resources conservation area purposes in order for the removal to be exempt from compensating tax. Regardless of which county

the forest land is located; all donations of fee title, development rights, or the right to harvest timber, to the above entities for the purposes of conservation are exempt from compensating tax.

**SHB 1733 - RCW 84.34.020, 84.34.108, and 84.33.140 – Land used for Equestrian-Related Activities and Exceptions to Additional Tax and Compensating Tax**

**Question:** What are the effects of SHB 1733?

**Answer:** (1) This bill provides that any land used primarily for equestrian activities such as stabling, training, riding, clinics, schooling, shows, or grazing for feed are eligible for current use valuation as farm and agricultural land. Land must also meet the minimum income requirements as outlined in RCW 84.34.020(2)(b) and (c).

(2) The bill also provides that land being removed from either current use classification or forest land designation is not subject to additional tax or compensating tax, respectively, if the land was classified or designated in error, through no fault of the owner. However, if an independent basis exists for removing the land, such as failing to meet the minimum income requirements or not using the land to grow and harvest timber, the removal would be subject to the additional tax or compensating tax.

**Question:** What method should the assessor use to value land used for equine-related activities?

**Answer:** According to RCW 84.34.065, the current use value of farm and agricultural land is determined by the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years, capitalized at indicative rates. This applies to land that is used for equine-related activities as well. The assessor may calculate this value using various methods. For example, the assessor could calculate the current use value based on net cash rental of similar properties, capitalization of income from typical crops, a soil capability analysis, or the average per acre value of farm and agricultural land in the county.

**Question:** If someone owns horses and boards them on their land, is the land eligible for the farm and agricultural land classification?

**Answer:** No. In order to qualify for classification, the horses must be used for a commercial purpose. Simply owning horses and boarding them on the land for personal use is not a commercial purpose. However, if the owner uses their horses for a commercial purpose, such as riding lessons, the land would qualify for the farm and agricultural land classification.

**Question:** Does the exception to additional tax or compensating tax apply to land being removed from classification or designation if a Notice of Continuance was approved in error by the assessor?

**Answer:** Yes. All land presently classified as current use or designated as forest land can be removed without the imposition of additional tax or compensating tax if the original application for classification, the application for reclassification, or the notice of continuance was approved in error, through no fault of the owner.

**EHB 1815 - RCW 84.34.020 and RCW 84.34.108 – Standing Crops and Removal Notices**

**Question:** What are the effects of EHB 1815?

**Answer:** (1) This bill expands the definition of "farm and agricultural land" to include any parcel of land that is five acres or greater, but less than 20 acres that:

- Has a standing crop with an expected harvest within seven years. Landowners must show an expenditure in the production of the crop of \$100 or more per acre for the current or previous calendar year; or
- Has a standing crop of short rotation hardwoods with an expectation of harvest within 15 years. Landowners must show an expenditure in the production of the crop of \$100 or more per acre for the current or previous calendar year.

In addition to the expanded definition, the law continues to allow land that produces a gross income from agricultural purposes of \$200 or more per acre per year for three of the five calendar years preceding the date of application to qualify for the farm and agricultural land classification. If land was admitted to this classification prior to January 1, 1993, the land must produce a gross income from agricultural purposes of \$100 or more per year for three of the five calendar years preceding the date of application.

(2) The bill also requires county assessors to provide information regarding the process to appeal the county assessor's decision to remove property from the current use program. The removal notice must explain the steps needed to appeal the removal decision, including when a notice of appeal must be filed, where the forms may be obtained, and how to contact the county board of equalization.

**Question:** What is a standing crop?

**Answer:** A standing crop is defined as Christmas trees, vineyards, fruit trees, or other perennial crops that are planted by agricultural methods normally used in commercial production of that particular crop and typically do not produce harvestable quantities of that crop in the initial years after planting.

**Question:** If classified farm and agricultural land is five acres or greater but less than 20 acres and is used to grow standing crops, what requirements must be met for continuing eligibility?

**Answer:** For continuing eligibility, the owner must show either an expenditure in the production of the standing crop of \$100 or more per acre for the current or previous year, or at least \$200 of gross income per acre per year for three of the past five years. If land was classified as farm and agricultural land prior to January 1, 1993, the owner must show either an expenditure in the production of the standing crop of \$100 or more per acre for the current or previous year or at least \$100 of gross income per acre per year for three of the past five years.

**Question:** Does the new expenditure requirement only apply to new applications submitted on or after July 26, 2009?

**Answer:** No. Land currently classified as farm and agricultural land that is five acres or greater but less than 20 acres and being used for growing standing crops could also continue to qualify by meeting either the expenditure or gross income requirements. However, if land is not currently classified as farm and agricultural land, then the new expenditure requirements for standing crops will apply to new applications for classification or reclassification submitted on or after July 26, 2009.

**Question:** Who will revise the removal forms so they comply with the additional appeal information requirements?

**Answer:** The Department of Revenue will revise all forms provided on our website. However, because the appeal information will be different for each county, the assessor should revise the removal form used in his or her office to ensure it reflects current law, including any changes made by recent legislation.

### **SSB 5401 - RCW 84.33.140 and RCW 84.34.108 – Removals from Current Use and Designated Forest Land**

**Question:** What are the effects of SSB 5401?

**Answer:** This bill, which is similar to SSB 1484, allows land classified under chapter 84.34 RCW and designated under chapter 84.33 RCW to be removed without the imposition of additional tax or compensating tax, respectively, if the removal resulted from the creation, sale, or transfer of a conservation easement under RCW 76.09.040. The conservation easement must be for private forest lands within unconfined channel migration zones or containing critical habitat for threatened or endangered species. Land removed as a result of the creation, sale, or transfer of a fee interest for the riparian open space program will now be subject to additional and compensating tax.

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If you have any questions or need additional information, please contact Leslie Mullin at (360) 570-5865 or [LeslieMu@dor.wa.gov](mailto:LeslieMu@dor.wa.gov).