TENNESSEE COMPTROLLER OF THE TREASURY

JUSTIN P. WILSON
Comptroller

JASON E. MUMPOWER
Chief of Staff

BULLETIN NUMBER 2018-03

TO: Assessors of Property

FROM: Stephanie Maxwell, General Counsel

DATE: July 24, 2018

RE: **SPLIT USE PROPERTIES**

We have received many questions on the assessment of properties used for multiple purposes. In light of recent statutory changes regarding the definition of farm property and the adoption of rules regarding the multiple-use subclassification of properties, we offer this Bulletin to assist assessors.

Recent Statutory Change

On May 11, 2017, Public Chapter 351 became effective. This chapter amended Tennessee Code Annotated § 67-5-501(3) by deleting the word "agriculture" and substituting instead the phrase "agriculture as defined in §§ 1-3-105(2) and 43-1-113". The current relevant statutory definitions of farm property and agriculture are listed below:

- Tenn. Code Ann. § 67-5-501(3) now defines "farm property" as including

> all real property that is used, or held for use, in agriculture as defined in §§ 1-3-105 and 43-1-113, including, but not limited to, growing crops, pastures, orchards, nurseries, plants, trees, timber, raising livestock or poultry, or the production of raw dairy products, and acreage used for recreational purposes by clubs, including golf course playing hole improvements;

- Tenn. Code Ann. § 1-3-105(a)(2)(A) defines "agriculture" as

> (i) The land, buildings and machinery used in the commercial production of farm products and nursery stock; (ii) The activity carried on in connection with the commercial production of farm products and nursery stock; (iii) Recreational and educational activities on land used for

> the commercial production of farm products and nursery stock; and
> (iv) Entertainment activities conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities occur on land used for the commercial production of farm products and nursery stock.

Tenn. Code Ann. § 1-3-105(a)(2)(B) continues:

> As used in this definition of agriculture, the term "farm products" means forage and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; forestry products; fish and other aquatic animals used for food; bees; equine; and all other plants and animals that produce food, feed, fiber or fur.

Tenn. Code Ann. § 1-3-105(a)(2)(C) continues:

> As used in this definition of agriculture, the term "nursery stock" means all trees, shrubs, or other plants, or parts of such trees, shrubs or other plants, grown or kept for, or capable of, propagation, distribution or sale on a commercial basis."

- T.C.A. § 43-1-113(b)(1) defines "agriculture" as

> (A) The land, buildings and machinery used in the commercial production of farm products and nursery stock;
> (B) The activity carried on in connection with the commercial production of farm products and nursery stock;
> (C) Recreational and educational activities on land used for the commercial production of farm products and nursery stock; and.
> (D) Entertainment activities conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities occur on land used for the commercial production of farm products and nursery stock.

Tenn. Code Ann. § 43-1-113(b)(2) continues:

> As used in this definition of agriculture, the term "farm products" means forage and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; forestry products; fish and other aquatic animals used for food; bees; equine; and all other plants and animals that produce food, feed, fiber or fur.

Tenn. Code Ann. § 43-1-113(b)(3) continues:

> As used in this definition of agriculture, the term "nursery stock" means all trees, shrubs, or other plants, or parts of trees, shrubs or other plants, grown or kept for, or capable of, propagation, distribution or sale on a commercial basis.

Adoption of Rules

On November 21, 2017, the Rules of the State Board of Equalization ("SBOE") regarding Multiple-Use Subclassification became effective. The rules apply to those situations where a parcel of real property is used for more than one purpose and it is necessary to assign different subclassifications and assessment percentages to each use. The rules are available on the Secretary of State's website at http://publications.tnsosfiles.com/rules/0600/0600-12.20171121.pdf .

When a parcel of real property is used for multiple purposes resulting in different subclassifications and assessment percentages, it will be necessary to evaluate how any tangible personal property assets should be allocated among those subclassifications and assessment percentages. (Note that for any tangible personal property accounts allocated to farm or residential use, those assets are deemed to have no value per Tenn. Code Ann. § 67-5-901(a)(3)(A), so creating an account specifically for them is unnecessary.) Otherwise, Tenn. Code Ann. § 67-5-901(a) requires tangible personal property be subclassified according to its use. In most cases, the tangible personal property is used for a purpose consistent with the use of the real property where the tangible personal property is located. One important exception to this general rule occurs when the asset is moveable such as a vehicle. As discussed in SBOE Rule 0600-05-.09(2), the physical location of the property may be of nominal importance in determining the taxable location or situs of tangible personal property that changes location from time to time.

Analysis of farm properties with multiple uses

In light of the statutory changes to the definition of farm property and the new rules regarding multiple-use subclassification, the proper classification of a farm property used for multiple purposes will be a ***fact-intensive analysis***. Below are some points for the assessor to consider as he or she engages in that analysis:

- Is the farm engaged in the "commercial production of farm products?"

  - SBOE Rule 0600-12-.04(3)(e) & (f) and Tenn. Code Ann. §§ 1-3-105(a)(2)(A) and 43-1-113(b)(1) consistently reference the "commercial production of farm products" when defining the term "agriculture" or providing examples of when multiple-use subclassification is appropriate. Hence, the threshold inquiry when dealing with subclassification and split classes is seemingly whether the farm in question is engaged in the "commercial production of farm products."

  - Assuming the farm is engaged in the commercial production of farm products, the next inquiry is presumably whether the property in question is used for:

    - recreational or educational activities;
    - retail sales of products produced on the farm, but only if a majority of the products sold are produced on the farm; or
    - entertainment activities conducted in conjunction with, but secondary to, the commercial production of farm products or nursery stock.

- Look at the facts to distinguish "recreational" from "entertainment" activities.

  - SBOE Rule 0600-12-.04(3)(f) provides the below example of when multiple-use subclassification is appropriate:

    > Portions of farms with commercial activities unrelated to production of farm products or livestock, except commercial activities constituting "agriculture" as defined by law. Improvements and structures on, and land that is part of, a farm engaged in the commercial production of farm products or nursery stock that are used for "agriculture" may be classified as farm property, provided the land improvement or structure in question is used for one or more of the following: (1) *recreational or educational activities*; (2) retail sales of products produced on the farm, but only if a majority of the products sold are produced on the farm; or (3) entertainment activities conducted in conjunction with, but secondary to, the commercial production of farm products or nursery stock. Commercial subclassification of those portions of a farm used for events unrelated to agriculture shall be limited to the actual land and structures dedicated to the unrelated uses. [Emphasis supplied]

  - The statutory definitions of "agriculture" include "recreational and educational activities on land used for the commercial production of farm products and nursery stock" and "entertainment activities conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities

occur on land used for the commercial production of farm products and nursery stock" Tenn. Code Ann. §§ 1-3-105(a)(2)(A)(iii) and (iv) and §§ 43-1-113(b)(1)(C) and (D).

- The language regarding "entertainment activities" as opposed to "recreational and educational activities" is somewhat different. Recreational and educational activities do not appear to have to be secondary to the commercial production of farm products in order to meet the definition of agriculture, but entertainment activities conducted in conjunction with the commercial production of farm products appear to have to be secondary to that production in order to meet the definition of agriculture.

- **Physically identical properties may properly be treated differently.**

  - For example, at one vineyard, 51% of the wine sold at retail is produced on the farm. At the other vineyard, 49% of the wine sold at retail is produced on the farm. The portion of the first farm devoted to retail sales would presumably be subclassified as "farm property." In contrast, the retail portion of the second vineyard used for retail sales would presumably be subclassified as "commercial property."

As appeals regarding these issues get decided, we may get more guidance from administrative and court rulings concerning the appropriate interpretation of these statutes and rules. Please feel free to reach out to our office with any questions.