

**CHAPTER 15
FARMLAND ASSESSMENT ACT**

Authority

N.J.S.A. 54:4-23.21.

Source and Effective Date

R.2009 d.214, effective June 2, 2009.
See: 41 N.J.R. 722(a), 41 N.J.R. 2713(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 15, Farmland Assessment Act, expires on November 29, 2016. See: 48 N.J.R. 1430(a).

Chapter Historical Note

Chapter 15, Farmland Assessment Act, was adopted before September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 15, Farmland Assessment Act, was readopted as R.1983 d.355, effective August 12, 1983. See: 15 N.J.R. 1082(a), 15 N.J.R. 1487(b).

Pursuant to Executive Order No. 66(1978), Chapter 15, Farmland Assessment Act, was readopted as R.1988 d.408, effective July 29, 1988. See: 20 N.J.R. 1066(a), 20 N.J.R. 2319(a). Pursuant to Executive Order No. 66(1978), Chapter 15 expired on July 29, 1993.

Chapter 15, Farmland Assessment Act, was adopted as new rules by R.1993 d.481, effective October 4, 1993. See: 25 N.J.R. 2653(a), 25 N.J.R. 4604(b).

Pursuant to Executive Order No. 66(1978), Chapter 15, Farmland Assessment Act, was readopted as R.1998 d.421, effective July 21, 1998. See: 30 N.J.R. 1922(a), 30 N.J.R. 3066(b).

Chapter 15, Farmland Assessment Act, was readopted as R.2004 d.62, effective January 12, 2004. See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).

Chapter 15, Farmland Assessment Act, was readopted as R.2009 d.214, effective June 2, 2009. See: Source and Effective Date.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 15, Farmland Assessment Act, was scheduled to expire on June 2, 2016. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. DEFINITIONS

18:15-1.1 Words and phrases defined

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Act” or “The Act” means the Farmland Assessment Act of 1964, c.48, Laws of 1964, (N.J.S.A. 54:4-23.1 *et seq.*).

“Actively Devoted to Agricultural or Horticultural Use” refers specifically to the income and land area requirements necessary to qualify for farmland assessment, pursuant to N.J.S.A. 54:4-23.5. See also N.J.A.C. 18:15-6, Actively Devoted to Agricultural Use or Horticultural Use, for further guidelines.

“Agricultural use” means land that is devoted to the production for sale of plants and animals useful to man, including, but not limited to:

1. Forages and sod crops;
2. Grains and feed crops;
3. Dairy animals and dairy products;
4. Poultry and poultry products;
5. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, goats or aquatic organisms, and the breeding, boarding, raising, rehabilitating, training or grazing of any or all such animals, except that livestock shall not include dogs;
6. Bees and apiary products;

7. Fur animals;

8. Trees and forest products (see also N.J.A.C. 18:15-2.7 for additional conditions);

9. When devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal government; or

10. Biomass, solar, or wind energy generation, provided that the biomass, solar, or wind energy generation is consistent with the provisions of P.L. 2009, c. 213 (N.J.S.A. 4:1C-32.4 *et seq.*), as applicable, and the rules promulgated thereunder, except that the energy generated from such use shall not be considered an agricultural product, and, therefore, cannot be considered income towards the gross sales requirement.

“Approved forester” means a forester meeting standards and qualifications established by the New Jersey Department of Environmental Protection pursuant to N.J.S.A. 13:1L-1 *et seq.* and rules issued thereunder.

“Appurtenant woodland” means a wooded piece of property which is contiguous to, part of, or beneficial to a tract of land, which tract of land has a minimum area of at least five acres devoted to agricultural or horticultural uses other than the production for sale of trees and forest products, exclusive of Christmas trees, to which tract of land the woodland is supportive and subordinate.

“Aquaculture” means the propagation, rearing and harvesting for sale of aquatic organisms, in controlled or selected environments in which the farmer must actively intervene in the rearing process in order to effect, improve or increase production for the purpose of sale.

“Assessor” means the municipal tax assessor appointed pursuant to the provisions of N.J.S.A. 40A:9-1 *et seq.*, or the county assessor, deputy county assessor, and additional staff as established under P.L. 2009, c. 118 and N.J.A.C. 18:17A.

“Beneficial to a tract of land” means land which enhances the use of other land devoted to agricultural or horticultural production by providing benefits such as, but not limited to, windbreaks, watershed, buffers, soil erosion control, or other recognizable enhancements of the viability of the qualifying land.

“Biomass” means an agricultural crop, crop residue, or agricultural byproduct that is cultivated, harvested, or produced on the farm, or directly obtained from a farm where it was cultivated, harvested, or produced, and which can be used to generate energy in a sustainable manner.

“Change of use” means when land that is being assessed under the Act is subsequently used for something other than agricultural or horticultural purposes. See also N.J.A.C. 18:15-8, Change of Use. Cessation of farming may be considered a change of use. However, a *de minimis* change of

use is not necessarily a change of use if the dominant use remains agricultural or horticultural. Rotating crops or land use, or leaving land fallow for one year or less, may not be a change of use.

“Commissioner” means the Commissioner of the New Jersey Department of Environmental Protection or his representative.

“Conservation plan” means a site-specific plan that prescribes land treatment and related conservation and natural resources management measures that are deemed to be necessary, practical, and reasonable for the conservation, protection, and development of natural resources, the maintenance and enhancement of agricultural or horticultural productivity, and the control and prevention of non-point source pollution.

“Contiguous” means land that is bordering, touching, in actual physical contact with, adjoining, or abutting land immediately next to it, with no intervening land in between, except for a public thoroughfare, railroad right of way, or public waterway.

“Cover crop” is any annual, biennial, or perennial plant grown to manage soil fertility, soil quality, water, unwanted plants, and pests that limit crop production potential, on land in an agricultural or horticultural use.

“Crop rotation” is the practice of growing a series of dissimilar types of crops in the same area in sequential seasons for various benefits, such as to avoid the buildup of pathogens and pests that often occurs when one species is continuously cropped.

“Cropland harvested” means land with the highest use in agriculture. All land from which a crop was harvested in the current year falls into this category.

“Cropland pastured” means land that can be and often is used to produce crops, but its maximum income may not be realized in a particular year. Land that is fallow or in cover crops as part of a rotational program falls in this classification.

“Devoted to agricultural or horticultural use” refers not only to the land that produces agricultural and horticultural products for sale at wholesale or retail, but also to the land that is supportive and has a relationship to the agricultural and horticultural products produced for sale. See also N.J.A.C. 18:15-6, Actively Devoted to Agricultural Use or Horticultural Use, for further guidelines.

“Fallow land” means land kept free of growing plants during the growing season using cultivation or chemical control to eradicate or reduce weeds for future agricultural production.

“Farmland assessment” means valuation, assessment, and taxation under the Farmland Assessment Act of 1964, P.L.

1964, c. 48, N.J.S.A. 54:4-23.1 et seq., and P.L. 2009, c. 213, except that there is no income requirement for any portion of any property devoted to energy generation, and no income from any power or heat sold by the energy generation facility shall be eligible as income for farmland assessment purposes.

“Fees received for grazing” means only those fees which are actually paid in consideration for grazing and which reasonably reflect the value of the grazing provided. The income which would otherwise be imputed to the land used for grazing as established and determined by the State Farmland Evaluation Advisory Committee shall be prima facie evidence of those fees which reasonably reflect the value of the grazing provided.

“Horticultural use” means land that is devoted to the production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; nursery, floral, ornamental, and greenhouse products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal government; and includes biomass, solar, or wind energy generation, provided that the biomass, solar, or wind energy generation is consistent with the provisions of P.L. 2009, c. 213 (N.J.S.A. 4:1C-32.4 et seq.), as applicable, and the rules adopted thereunder, except that the energy generated from such use shall not be considered a horticultural product.

“Immediate family member” means a person’s spouse, child, parent, or sibling residing in the same household.

“Income imputed to land used for grazing” means values for the pasturing of livestock as established by the State Farmland Evaluation Advisory Committee.

“Land used for biomass, solar, or wind energy generation” means the land upon which the biomass, solar, or wind energy generation facilities, structures, and equipment are constructed, installed, and operated. In the case of biomass energy generation, “land used for biomass, solar, or wind energy generation” shall not mean the land upon which agricultural or horticultural products used as fuel in the biomass energy generation facility, structure, or equipment are grown.

“Non-appurtenant woodland” means woodland that is neither supported nor subordinate to other farmland and which can only qualify for farmland assessment on the basis of being in compliance with a woodland management plan filed with the Department of Environmental Protection. Non-appurtenant woodland is actively devoted to the production for sale of tree and forest products.

“Pasturing of livestock or poultry” means a land area used to support a group of grazing animals enclosed by fencing and devoted to the production of forage for harvest primarily by grazing. It may include a wooded area for shelter, have a number of paddocks, or may be rested for a specific time not

to exceed one year as part of a particular grazing management practice.

“Permanent pasture” means land that is not cultivated because its maximum economic potential is realized from grazing or as part of erosion control programs. Animals may or may not be part of the farm operation for land to be qualified in this category.

“Pre-tax year” means the calendar year immediately preceding the “tax year.”

“Preserved farmland” means land on which a development easement was conveyed to, or retained by, the State Agriculture Development Committee, a county agriculture development board, or a qualifying tax exempt nonprofit organization pursuant to the provisions of section 24 of P.L. 1983, c. 32 (N.J.S.A. 4:1C-31), section 5 of P.L. 1988, c. 4 (N.J.S.A. 4:1C-31.1), section 1 of P.L. 1989, c. 28 (N.J.S.A. 4:1C-38), section 1 of P.L. 1999, c. 180 (N.J.S.A. 4:1C-43.1), sections 37 through 40 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-37 through 13:8C-40), or any other State law enacted for farmland preservation purposes.

“Raising livestock” means the management, caring and feeding of livestock for the purpose of producing for sale as a farm product either the livestock themselves or products produced therefrom.

“Ratio of one-to-five acres, or portion thereof” means for each acre of land, or portion thereof, devoted to biomass, solar, or wind energy generation facilities, structures, and equipment, not exceeding 10 acres, there are at least another five contiguous acres devoted to agricultural or horticultural production as defined in the Farmland Assessment Act prior to being amended by P.L. 2009, c. 213. In other words, this ratio limits farmland qualification for land devoted to energy generation facilities to a ratio not to exceed one acre devoted to such facilities to five acres of land otherwise qualifying under traditional (that is, pre-P.L. 2009, c. 213) farmland assessment “apart from” that one acre. This is a ratio of 16.67 percent but for simplification purposes, the Division accepts a ratio rounded up to 17.00 percent.

“Recreation and conservation purposes” means the use of lands for beaches, biological or ecological study, boating, camping, fishing, forests, greenways, hunting, natural areas, parks, playgrounds, protecting historic properties, water reserves, watershed protection, wildlife preserves, active sports, or a similar use for either public outdoor recreation or conservation of natural resources, or both.

“Roll-back taxes” means the additional taxes imposed upon land after a change in use takes place.

“Seasonal agricultural labor housing” means dwelling units designed solely for lodging farm employees and their family members where such employees perform seasonal agricultural or horticultural labor on the contiguous land, five acres or more, qualifying for farmland assessment. Any housing

which is either occupied by the landowner, the landowner’s spouse, or their children, parents or siblings, or is not vacant annually for a minimum period of 90 continuous days during any period of 12 continuous months, shall not be deemed to be “seasonal agricultural labor housing.”

“Seasonal farm market” means a facility utilized for the primary purpose of selling predominantly agricultural or horticultural products, and which is annually closed to business during the off season for a period of not less than 90 continuous days.

“Single-use agricultural or horticultural facility” means silos, greenhouses, hoop houses, grain bins, manure handling equipment, and impoundments employed in farming operations and commonly used for either storage or growing, which are designed or constructed so as to be readily dismantled and shall also include, but not be limited to, temporary demountable plastic-covered framework made up of portable parts with no permanent understructures or related apparatus, commonly known as seed starting plastic greenhouses, and is of a type which can be marketed or sold separately from the farmland and buildings, but shall not include a structure that encloses a space within its walls used for housing, shelter, working, office, or sales space, whether or not removable.

“Supportive and subordinate wetlands” means a wetlands piece of property, which is beneficial to, or reasonably required for, the purpose of maintaining the agricultural or horticultural uses of a tract of land, which tract of land has a minimum area of at least five acres devoted to agricultural or horticultural uses.

“Supportive and subordinate woodland” means a wooded piece of property which is beneficial to or reasonably required for the purpose of maintaining the agricultural or horticultural uses of a tract of land, which tract of land has a minimum area of at least five acres devoted to agricultural or horticultural uses other than to the production for sale of trees and forest products, exclusive of Christmas trees.

“State Forester” means the chief forester or his or her designee, employed by the Department of Environmental Protection.

“Tax year” means the calendar year in which the local property tax is due and payable.

“Two megawatts of power,” as permitted on land that qualifies for farmland assessment, means an energy facility producing up to that amount of power under single ownership and operating as a single economic and functional unit.

“Unified title or single ownership” means common ownership by one distinct legal entity, of one or more contiguous parcels together.

“Wetlands” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration

sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

“Woodland data form” means a supplemental form required to be filed with the assessor and the commissioner by an owner of woodland as set forth in N.J.A.C. 18:15-2.7.

“Woodland management plan” means a plan prepared in accordance with criteria set forth in N.J.A.C. 18:15-2.10 and which is required to be filed with the assessor and the commissioner by an owner of woodland as set forth in N.J.A.C. 18:15-2.7.

Amended by R.1987 d.507, effective December 7, 1987 (operative January 1, 1988).

See: 19 N.J.R. 1538(a), 19 N.J.R. 1640(b), 19 N.J.R. 2304(a).

Added definitions.

Amended by R.1997 d.405, effective October 6, 1997.

See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

Added “Fees received for grazing”, “Immediate family member”, “Income imputed to land used for grazing”, “Raising livestock”, “Seasonal agricultural labor housing”, and “Seasonal farm marketing”; and amended “Agricultural use” and “Assessor”.

Amended by R.2004 d.62, effective March 1, 2004.

See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).

Amended “Agricultural use” and “Seasonal agricultural labor housing”; added “Aquaculture”, “Recreation and conservation purposes”, and “Wetlands”.

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Rewrote definitions “Actively Devoted to Agricultural or Horticultural Use”, “Assessor”, “Farmland assessment” and “Horticultural use”; added definitions “Biomass”, “Conservation plan”, “Contiguous”, “Cover crop”, “Crop rotation”, “Cropland harvested”, “Cropland pastured”, “Devoted to agricultural or horticultural use”, “Fallow land”, “Land used for biomass, solar, or wind energy generation”, “Non-appurtenant woodland”, “Pasturing of livestock or poultry”, “Permanent pasture”, “Preserved farmland”, “Ratio of one-to-five acres, or portion thereof”, “Single-use agricultural or horticultural facility”, “Supportive and subordinate wetlands”, “Two megawatts of power” and “Unified title or single ownership”; substituted definition “Change of use” for definition “Change in Use”, definition “Pre-tax year” for definition “Pre-tax Year”, definition “Roll-back taxes” for definition “Roll-back Taxes” and definition “Tax year” for definition “Tax Year”; rewrote definition “Change of use”; and in definition “Pre-tax year”, substituted “tax year.” for “tax year.”.

Statutory References

As to land deemed in agricultural use, see N.J.S.A. 54:4-23.3.

As to land deemed in horticultural use, see N.J.S.A. 54:4-23.4.

As to roll-back taxes, see N.J.S.A. 54:4-23.8; As to procedure for assessment, collection, payment, see N.J.S.A. 54:4-23.9.

Case Notes

Municipality’s claim of intentional or negligent misclassification against assessor was refuted. *Borough of Franklin Lakes v. Mutzberg*, 226 N.J.Super. 46, 543 A.2d 477 (A.D.1988).

Property used for growing trees qualified as farmland. *Borough of Franklin Lakes v. Mutzberg*, 226 N.J.Super. 46, 543 A.2d 477 (A.D.1988).

SUBCHAPTER 2. APPLICATION FOR FARMLAND ASSESSMENT

18:15-2.1 Persons required to file

In order that land in agricultural or horticultural use may be assessed under the act, the owner of such land must file an application form requesting such assessment with the assessor of the taxing district in which such land is situated on or before August 1 of the pre-tax year.

R.1971 d.138, effective August 12, 1971.

See: 3 N.J.R. 185(a), 3 N.J.R. 138(b).

Amended by R.1984 d.125, effective April 16, 1984.

See: 15 N.J.R. 2152(a), 16 N.J.R. 925(b).

Amended by R.1985 d.310, effective June 17, 1985.

See: 17 N.J.R. 903(a), 17 N.J.R. 1587(a).

Text “in” substituted for “is”.

Statutory References

As to application for form--assessment, see N.J.S.A. 54:4-23.6(c).

Case Notes

Motion for summary judgment in assessment appeal denied due to issue of fact concerning whether the taxpayer filed a farmland valuation application by the August 1 deadline for the tax year. *Hashomer Hatzair, Inc. v. East Windsor Tp.*, 1 N.J.Tax 115, 176 N.J.Super. 250, 422 A.2d 808 (Tax Ct.1980).

Taxpayer’s applications for farmland assessments were based on claim that property was used for agricultural purposes. *Interstate 78 Office Park, Ltd. v. Tewksbury Tp.*, 11 N.J.Tax 172 (1990).

Filing deadline of August 1 of the pretax year for farmland assessment is mandatory and may not be tolled. *Galloway Tp. v. Petkevics*, 2 N.J.Tax 85 (Tax Ct.1980).

18:15-2.2 Form FA-1 required

(a) Application for assessment under the Act may be made only upon completion of the form prescribed by the Director, identified as Form FA-1. Copies of the form may be obtained, upon request, from the assessor of each taxing district who is required to provide said form for use by applicants.

(b) The annual filing of an application reflects the extent of any changes in farming or the woodland management activity from year-to-year and any revisions to cropland, pasture, or woodland acreage or the number of livestock. It is the responsibility of the landowner to complete the application by following the instructions on the back of the FA-1 Form and/or WD-1 Form and activity map and to sign the application. An incomplete application is grounds for denial.

(c) The applicant, on request of the assessor, at any time, must furnish proof of all the prerequisites necessary to show the land is eligible for farmland assessment, such as: ownership, description, area, uses, and adequate sales and income or fees from the agricultural or horticultural use of the land.

(d) Approval or denial of the FA-1 Form is the responsibility of the tax assessor. Approval or denial of the WD-1 Form is the responsibility of the State Forester. The application must be filed on or before August 1 of the pre-tax year. Late applications will be denied. Land in a farmland preservation program still must meet the criteria and filing requirements of the Farmland Assessment Act for land to be taxed at its productivity value.

Amended by R.1984 d.125, effective April 16, 1984.
See: 15 N.J.R. 2152(a), 16 N.J.R. 925(b).
Amended by R.1985 d.310, effective June 17, 1985.
See: 17 N.J.R. 903(a), 17 N.J.R. 1587(a).

Text "said" substituted for "such".
Amended by R.2013 d.022, effective February 19, 2013.
See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Added designation (a); in (a), substituted "Act" for "act"; and added (b) through (d).

Statutory References

As to form for application, see N.J.S.A. 54:4-23.14.

18:15-2.3 Form FA-1, signature and verification

(a) The application, Form FA-1 is to be filed by the owner of the land at the time the application for farmland assessment is made. In the case of multiple ownership, (except corporate co-owners), one of the owners may sign on behalf of the other co-owners, and such signer will be presumed to have authority to sign on behalf of the other owners. In the case of a corporate owner or owners the full name of the corporation must be filled in, and accompanied by the signature and title of the corporate officer authorized to sign the application on its behalf.

(b) In the case where an application is filed for lands not previously qualified for farmland assessment, the owner shall also submit a map of land use classes and soil groups as described in the Report of the State Farmland Evaluation Advisory Committee published annually each October 1.

Amended by R.1984 d.125, effective April 16, 1984.
See: 15 N.J.R. 2152(a), 16 N.J.R. 925(b).
Amended by R.1985 d.310, effective June 17, 1985.
See: 17 N.J.R. 903(a), 17 N.J.R. 1587(a).

Form FA-1S deleted from section.
Amended by R.1997 d.405, effective October 6, 1997.
See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).
Added (b).

Statutory References

As to form for application, see N.J.S.A. 54:4-23.14.

18:15-2.4 Annual filing required

In order that land in horticultural or agricultural use can continue to be assessed as farmland, the owner thereof must annually, on or before August 1 of the pre-tax year, complete and file an application on Form FA-1 with the assessor of the taxing district where such land is situated.

R.1971 d.138, effective August 12, 1971.
See: 3 N.J.R. 185(a), 3 N.J.R. 138(b).

Amended by R.1979 d.87, effective March 8, 1979.
See: 11 N.J.R. 100(b), 11 N.J.R. 210(b).
Amended by R.1984 d.125, effective April 16, 1984.
See: 15 N.J.R. 2152(a), 16 N.J.R. 925(b).
Amended by R.1985 d.310, effective June 17, 1985.
See: 17 N.J.R. 903(a), 17 N.J.R. 1587(a).

Substantially amended.
Amended by R.1997 d.405, effective October 6, 1997.
See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

Amended revision date for Form FA-1.
Amended by R.2004 d.62, effective March 1, 2004.
See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).

Deleted the last two sentences.

Statutory References

As to time for application, see N.J.S.A. 54:4-23.6(c), 54:4-23.12, 54:4-23.13.

Case Notes

Assessment at full value not reviewable under statute. *Hovbilt, Inc. v. Township of Howell*, 138 N.J. 598, 651 A.2d 77 (1994).

Burden of proof rests with landowners applying for farmland assessment. *Hovbilt, Inc. v. Township of Howell*, 138 N.J. 598, 651 A.2d 77 (1994).

18:15-2.5 Extension of time for filing

(a) The owner of land in horticultural or agricultural use may file an application after August 1, but before December 1 of the pre-tax year if the taxing district in which the land is located completes a revaluation of all real property in time to be reflected in the assessments for the next succeeding tax year, but not in sufficient time to permit applications to be made prior to the deadlines established pursuant to N.J.S.A. 54:4-23.13a.

(b) The assessor may grant an extension of time for filing the application for farmland assessment which extension shall terminate no later than September 1 of the year immediately preceding the tax year, in any event where it shall appear to the satisfaction of the assessor that failure to file by August 1 was due to:

1. The illness of the owner, and a certificate of a physician stating that the owner was physically incapacitated and unable to file or before August 1 and the application is filed with the assessor; or
2. The death of the owner or an immediate member of the owner's family and a certified copy of the death certificate and the application is filed with the assessor by the individual legally responsible for the estate of the owner, or the owner, as the case may be.

i. An assessor shall not approve an extension of time to file an application for farmland assessment in cases where the death of the owner or a member of the owner's immediate family occurred prior to January 1 of the pretax year.

R.1971 d.138, effective August 12, 1971.
See: 13 N.J.R. 185(a), 3 N.J.R. 138(b).
Amended by R.1984 d.125, effective April 16, 1984.
See: 15 N.J.R. 2152(a), 16 N.J.R. 925(b).

Amended by R.1985 d.310, effective June 17, 1985.

See: 17 N.J.R. 903(a), 17 N.J.R. 1587(a).

"An" substituted for "the".

Amended by R.1997 d.405, effective October 6, 1997.

See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

In (a), amended date from December 31 to December 1 and inserted reference to reassessment; and added (b).

Amended by R.2004 d.62, effective March 1, 2004.

See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).

In (a), inserted " , but not in sufficient time to permit applications to be made prior to the deadlines established pursuant to N.J.S.A. 54:4-23.13a" at the end.

Statutory References

N.J.S.A. 54:4-23.13a.

18:15-2.6 Application forms; original and one copy

(a) The original of the FA-1 form submitted to the assessor shall be retained in the office of the assessor.

(b) One copy of each application shall be forwarded to the county tax administrator prior to January 1 of the tax year. The county tax administrator shall review the applications as he or she deems necessary and forward them to the Local Property Branch in district order no later than February 15 of the same tax year.

(c) Each copy of the application form shall, in the space reserved for official use, be signed and dated by the assessor and be marked "approved" or "disapproved".

R.1971 d.138, effective August 12, 1971.

See: 3 N.J.R. 185(a), 3 N.J.R. 138(b).

Amended by R.1984 d.125, effective April 16, 1984.

See: 15 N.J.R. 2152(a), 16 N.J.R. 925(b).

Amended by R.1985 d.310, effective June 17, 1985.

See: 17 N.J.R. 903(a), 17 N.J.R. 1587(a).

Substantially amended.

Amended by R.1997 d.405, effective October 6, 1997.

See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

In (b), changed from two copies to one and forwarding date from January 10 to January 1, substituted county tax administrator for Local Property and Public Utility Branch, and added administrator review provision.

Statutory References

N.J.S.A. 54:4-23.21.

18:15-2.7 Additional conditions to be fulfilled by an owner of woodland that is devoted exclusively to the production for sale of trees and forest products other than Christmas trees and that is not appurtenant woodland

(a) The owner of land that is devoted exclusively to the production for sale of trees and forest products other than Christmas trees and that is not appurtenant woodland shall annually submit to the assessor, in addition to a completed and timely filed application for farmland assessment (Form FA-1), the following accompanying information:

1. A copy of the current woodland management plan for the landowner's woodlands prepared in accordance with the criteria set forth at N.J.A.C. 18:15-2.10. Unless

the assessor requests such re-submission, re-submission of the current plan is not required if the plan was previously submitted to the assessor and the owner indicates on the WD-1 Form that there has been no change in the plan from when it was initially submitted or, if applicable, when it was most recently revised and re-submitted. However, any new plan or amended plan not yet on file with the assessor must be submitted.

2. A scaled map of the land showing the location of woodland activity and the soil group classes of the land; and

3. A completed woodland data form (Form WD-1), as prescribed by the Director of the Division of Taxation. The information to be provided on such form shall apply to the entirety of the pre-tax year and include the following:

i. A description of all woodland management activities and practices carried out or to be carried out;

ii. A statement as to the type and quantity of tree and forest products sold or to be sold;

iii. The amount of income received and an estimate of additional income anticipated to be received from the sale of trees and forest products;

iv. A certification in lieu of an oath signed by both the landowner and an approved forester stating that the land is woodland, actively devoted to agricultural use, that the activities and practices reported on the form are those specified for the pre-tax year in the filed woodland management plan, that they are being carried out in compliance with the plan, and that the information provided on the form is true and correct; and

v. A certification in lieu of an oath signed by the landowner stating that the income reported on the form as received or anticipated to be received from the sale of trees and forest products is valid and true and, if any activities and practices reported on the form have not been completed at the time of form submission, that they will be completed within the pre-tax year.

(b) The activities and practices listed on the WD-1 Form must be completed by the end of the calendar year.

(c) If the documents set forth in (a) above are not submitted annually to the assessor, the application shall be denied and such land shall be deemed not to be in agricultural use.

(d) The assessor shall not approve an application that includes woodland that is not appurtenant woodland until a woodland management plan has been prepared and approved by the State Forester and the owner has managed the woodland in accordance with the approved plan for at least the two successive years immediately preceding the tax year for which valuation, assessment, and taxation under the Farmland Assessment Act is requested.

New Rule, R.1987 d.507, effective December 7, 1987 (operative January 1, 1988).

See: 19 N.J.R. 1538(a), 19 N.J.R. 1640(b), 19 N.J.R. 2304(a).

Amended by R.2004 d.62, effective March 1, 2004.

See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).

In (a), rewrote 1; inserted a new (b); and recodified former (b) as (c).

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Section was "Additional conditions to be fulfilled by an owner of woodland which is devoted exclusively to the production for sale of trees and forest products other than Christmas trees or the owner of woodland which is not supportive and subordinate woodland". Rewrote the introductory paragraph of (a) and (a)1 and (a)3; in (b), inserted "activities and"; in (c), inserted "the application shall be denied and"; and added (d).

Case Notes

Determination by assessor in jurisdiction bordering township that property in that jurisdiction did not qualify for farmland assessment did not justify township's assessment of roll-back taxes at nonfarmland rates, where land in question remained in agricultural use. *Snyder v. Township of Sparta*, 16 N.J.Tax 321 (1997).

Woodland property did not qualify for farmland assessment; no income; no horticultural or agricultural activity. *Estell Manor City v. Stern*, 14 N.J.Tax 394 (1995).

18:15-2.8 Supportive and subordinate woodland or wetlands presumption

(a) A woodland or wetlands piece of property shall be presumed to be supportive and subordinate woodland or wetlands when its area is equal to or less than the area of the farmland property qualifying for agricultural or horticultural uses other than the production for sale of trees and forest products, exclusive of Christmas trees.

(b) An owner claiming farmland assessment for a woodland or wetlands piece of property exceeding the amount set forth in (a) above as presumed to be supportive and subordinate woodland or wetlands shall submit an explanation and additional proofs the assessor may require to support the claim that such woodland or wetlands is supportive and subordinate.

New Rule, R.1987 d.507, effective December 7, 1987 (operative January 1, 1988).

See: 19 N.J.R. 1538(a), 19 N.J.R. 1640(b), 19 N.J.R. 2304(a).

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Section was "Supportive and subordinate woodland presumption". In (a) and (b), substituted "woodland or wetlands" for "wooded", and inserted "or wetlands" following "subordinate woodland"; in (a), deleted "as described in the definition of supportive and subordinate woodland in N.J.A.C. 18:15-1.1" following the first occurrence of "property" and inserted "equal to or"; and in (b), inserted "or wetlands" following "woodland".

18:15-2.9 Filing of copies with commissioner

A woodland owner subject to the additional conditions set forth in N.J.A.C. 18:15-2.7 shall, at the time of filing an application for farmland assessment with the assessor, also submit copies of the application and accompanying information to the commissioner.

New Rule, R.1987 d.507, effective December 7, 1987 (operative January 1, 1988).

See: 19 N.J.R. 1538(a), 19 N.J.R. 1640(b), 19 N.J.R. 2304(a).

18:15-2.10 Criteria of a woodland management plan

(a) An owner of land subject to the additional conditions set forth in N.J.A.C. 18:15-2.7 shall submit a woodland management plan prepared in accordance with the following criteria:

1. A cover page for the plan shall be provided delineating the following:

- i. The owner's name and mailing address;
- ii. The municipality and county where the subject woodland is located;
- iii. The block(s) and lot(s) of the subject woodland;
- iv. The amount of acreage of the subject woodland;
- v. The name and address of the approved forester who prepared the plan, if not prepared by the owner;
- vi. The date the plan was prepared; and
- vii. The period of time the plan covers, and the starting and end date for plan implementation shall be specified.

(1) For a plan that is approved by the State Forester on or after February 19, 2013, the period of time a woodland management plan covers shall not exceed 10 years.

(2) For a plan that is approved by the State Forester prior to February 19, 2013, that has a duration that is longer than 10 years, but does not exceed 15 years, will remain in effect for its approved duration.

2. A clear and concise statement shall be provided of the owner's overall objectives in managing the woodland.

3. A description shall be provided of how the property boundaries are or will be marked and delineated.

4. A brief description of past activities that have had an effect on the woodland shall be provided including, but not limited to, wildfire, insect and disease outbreaks, timber sales, plantings, thinnings, and weedings.

5. A statement describing each defined forest stand shall be provided incorporating the following factors:

- i. The number of acres;
- ii. The species composition including overstory and understory;
- iii. The general condition and quality;
- iv. The structure including age classes, DBH classes, and crown classes;

- v. The overall site quality; and
- vi. The condition and species composition of advanced regeneration when applicable; and
- vii. The stocking levels, growth rates and volumes.

6. A description of the woodland owner's forest management goals for each forest stand shall be provided, together with specification of the activities and practices planned to be carried out; and an explanation of how, within the plan's time frame, the sequential implementation of these activities and practices will integrate and coordinate to meet the stated forest management goals and to provide for the sustainability of the forest. Additionally, for each stand, the plan shall include an implementation schedule that, under each forest management goal applicable to the stand, lists the activities and practices to be carried out each year toward the accomplishment of the goal. These activities and practices shall be meaningful and measurable and shall be designed to be carried out during the time period that the plan covers.

7. A statement shall be provided of average overall productivity capabilities of the woodland.

8. In addition to the map required pursuant to N.J.A.C. 18:15-2.7, a map of the property shall be provided that includes, but is not necessarily limited to, the following:

- i. The owner's name, address, and the date the map was prepared;
- ii. An arrow designating the north direction;
- iii. A scale not smaller than 1:1320 nor larger than 1:400;
- iv. A legend defining the symbols appearing on the map;
- v. The location of property lines;
- vi. An identification of forest stands that are keyed to the activities and practices to be implemented therein;
- vii. A delineation of physical features such as roads, streams, structures, etc.;
- viii. An identification of soil types (A separate map can be used for this purpose); and
- ix. A brief description or a map inset of the land for the purpose of identifying the location of the property in relation to the local area.

(b) An owner of land that includes a freshwater wetlands or is located in a flood hazard area who wants to utilize a plan to qualify for an exemption from the permit requirements of the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A or for a permit-by-rule under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, shall in addition to meeting the criteria set forth in (a) above, meet the additional plan requirements set forth in N.J.A.C. 7:7A or 7:13, as applicable.

New Rule, R.1987 d.507, effective December 7, 1987 (operative January 1, 1988).

See: 19 N.J.R. 1538(a), 19 N.J.R. 1640(b), 19 N.J.R. 2304(a).

Amended by R.2004 d.62, effective March 1, 2004.

See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).

In (a), substituted "incorporating" for "in some combination of" following "forest stand" in 5, inserted "and to provide for the sustainability of the forest" at the end of the first sentence and "and not more than 15 years" at the end of the second sentence in 6.

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Rewrote (a); and added (b).

Case Notes

Woodland management plan; qualification of woodland for farmland assessment. *Estell Manor City v. Stern*, 14 N.J. Tax 394 (1995).

18:15-2.11 Acknowledgment of receipt

(a) The commissioner, upon receipt of the application and accompanying information, shall acknowledge such receipt to both the applicant and the assessor on or before September 15 of the pre-tax year.

(b) The acknowledgment by the commissioner shall also indicate whether the application is sufficient or whether additional information must be submitted by the applicant.

(c) If additional information is requested, the applicant shall submit such information to the commissioner and the assessor within 14 days of the commissioner's request.

New Rule, R.1987 d.507, effective December 7, 1987 (operative January 1, 1988).

See: 19 N.J.R. 1538(a), 19 N.J.R. 1640(b), 19 N.J.R. 2304(a).

18:15-2.12 Notice of compliance or noncompliance by the commissioner

(a) On or before October 31 of the pre-tax year, the commissioner shall notify the assessor in writing of the results of his review stating whether the reporting requirements of N.J.A.C. 18:15-2.7 have been satisfied by the applicant.

(b) If the commissioner determines the applicant has not satisfied such requirements, he shall indicate the reasons for his finding of noncompliance.

(c) The assessor shall disapprove the application determined to be in noncompliance and transmit a notice of disallowance of claim to the landowner as provided under N.J.A.C. 18:15-3.6.

(d) If the commissioner determines the applicant has satisfied such requirements, he shall indicate the date of the last inspection of the land as prescribed under N.J.A.C. 18:15-2.13.

(e) The assessor, after receipt of a notice of compliance, shall approve or disapprove the application in accordance with his determination as to whether the property is otherwise qualified for farmland assessment.

(f) In the event that the commissioner does not give timely notice to the assessor of his findings of compliance or

noncompliance, the assessor may approve or disapprove the application as in the case of other applications not subject to the additional conditions as noted under N.J.A.C. 18:15-2.7.

New Rule, R.1987 d.507, effective December 7, 1987 (operative January 1, 1988).

See: 19 N.J.R. 1538(a), 19 N.J.R. 1640(b), 19 N.J.R. 2304(a).

18:15-2.13 On-site inspections required to be made by the Commissioner

(a) The Commissioner, in addition to reviewing each application, shall make an on-site inspection of the property to determine whether the land is in compliance with the filed woodland management plan.

(b) Such on-site inspection shall be made during one of the first three years following the initial application and submission of accompanying information required by an owner of woodland as set forth in N.J.A.C. 18:15-2.7, and thereafter at least once every three years.

(c) In the event the Commissioner determines the woodland is not in compliance, he or she shall transmit a notice of noncompliance to the assessor within 30 days stating the reasons for noncompliance.

New Rule, R.1987 d.507, effective December 7, 1987 (operative January 1, 1988).

See: 19 N.J.R. 1538(a), 19 N.J.R. 1640(b), 19 N.J.R. 2304(a).

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Section was "On-site inspections required to be made by the commissioner". In (a) and (c), substituted "Commissioner" for "commissioner"; and in (c), inserted "or she", and substituted "30" for "five".

18:15-2.14 (Reserved)

New Rule, R.1987 d.507, effective December 7, 1987 (operative January 1, 1988).

See: 19 N.J.R. 1538(a), 19 N.J.R. 1640(b), 19 N.J.R. 2304(a).

Repealed by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Section was "Land failing to meet conditions set forth in N.J.A.C. 18:15-2.7".

18:15-2.15 (Reserved)

Repealed by R.2004 d.62, effective March 1, 2004.

See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).

Section was "Transition rule initiating time for beginning of application or new conditions on woodland owners".

SUBCHAPTER 3. PROOF TO SUPPORT APPLICATION FOR FARMLAND ASSESSMENT

18:15-3.1 Two-year period devoted to agricultural or horticultural use required

(a) Land eligible for farmland assessment in addition to meeting the qualifications provided in N.J.A.C. 18:15-3.2 through 3.5 must have been actively devoted to agricultural or

horticultural use as set forth at N.J.A.C. 18:15-6 for at least two successive years immediately preceding the tax year for which such assessment is requested.

1. Example: Where application for farmland assessment is made for tax year 2010, the land must have been actively devoted to agricultural or horticultural use during the entire period of calendar years 2008 and 2009.

As amended, R.1979 d.87, effective March 8, 1979.

See: 11 N.J.R. 100(b), 11 N.J.R. 210(b).

Amended by R.1997 d.405, effective October 6, 1997.

See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

In (a)1, amended tax year and calendar years.

Amended by R.2004 d.62, effective March 1, 2004.

See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).

In (a), amended N.J.A.C. references in the introductory paragraph and amended tax and calendar years in 1.

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

In the introductory paragraph of (a), substituted "set forth at" for "defined in"; and in (a)1, substituted "tax year 2010" for "the tax year 2003" and "calendar years 2008 and 2009" for "the calendar years 2001 and 2002".

Statutory References

As to requisite period of devotion, see N.J.S.A. 54:4-23.6(a).

Case Notes

In an action by taxpayers, challenging denial of property tax exemption based on farmland assessment, summary judgment in favor of the town was proper where the farmland assessment plan was not written or filed more than two years prior, as required under N.J.S.A. 54:4-23.6, and where the land in question did not meet the definition of "actively devoted to agricultural or horticultural use for a full tax year," as defined in N.J.A.C. 18:15-3.1(a). *Alexandria Twp. v. Orban*, 21 N.J. Tax 298, 2004 N.J. Tax LEXIS 8 (Tax Ct. 2004).

Agricultural or horticultural use of land otherwise eligible for farmland assessment must be lawful, that is, a permitted use; forestry operation use of land not permitted under zoning ordinance does not qualify to constitute two calendar year minimum use period for farmland assessment eligibility. *Clearview Estates, Inc. v. Boro. of Mountain Lakes*, 188 N.J. Super. 99, 456 A.2d 111 (App.Div.1982).

Land qualified for farmland assessment for two years preceding tax year. *Mt. Hope Min. Co. v. Rockaway Tp.*, 8 N.J. Tax 570 (1986).

Taxpayer was entitled to farmland assessment on forestry land despite violation of tree removal ordinance. *Mt. Hope Min. Co. v. Rockaway Tp.*, 8 N.J. Tax 570 (1986).

18:15-3.2 Area of land devoted to agricultural or horticultural use

(a) Land actively devoted to agricultural or horticultural use, including fallow land and land in rotation, in order to be eligible for farmland assessment, must have a minimum area of five acres.

(b) In determining the area of such land, all the land under barns, sheds, seasonal farm markets selling predominantly agricultural products, seasonal agricultural labor housing, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities is included, but land under the farmhouse, and such additional land as may be actually used in connection with the farm-

house, including, but not limited to, land used for lawns, flower gardens, shrubs, swimming pools, tennis courts and for like purposes, is excluded in determining the total area.

(c) Where separate parcels of land in agricultural or horticultural use under a single ownership are located in the same taxing district, compliance with the five-acre minimum area eligibility requirement is deemed to have been met if the separate parcels are contiguous and the aggregate eligible area thereof is at least five acres. For the purpose of this Section, land under single ownership, separated by a public right of way, is deemed to be contiguous.

(d) Where contiguous land in agricultural or horticultural use in one ownership is located in more than one taxing district, compliance with the five-acre minimum area requirement is determined on the basis of the total eligible area of such land and not the area which is located in the particular taxing district.

(e) Where separate, noncontiguous parcels of land in agricultural or horticultural use, in a single ownership, are located in the same taxing district, a separate application for farmland assessment must be made with respect to each parcel. The area of the separate parcels may not be aggregated for the purpose of meeting the five-acre eligibility requirement.

Amended by R.1997 d.405, effective October 6, 1997.
See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

In (b), inserted "sheds ... seasonal agricultural labor housing."
Amended by R.2013 d.022, effective February 19, 2013.
See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

In (a), inserted "including fallow land and land in rotation,".

Statutory References

As to requisite area of land, see N.J.S.A. 54:4-23.6(b).

As to areas of land to be included in computation, see N.J.S.A. 54:4-11.

As to treatment of contiguous land in more than one taxing district, see N.J.S.A. 54:4-18.

Case Notes

Roll-back taxes are not triggered until the land is applied to a more intense use than that for which it received a farmland assessment; determination of ineligibility for farmland assessment. *Jackson Tp. v. Paolin*, 3 N.J.Tax 39, 181 N.J.Super. 293, 437 A.2d 344 (Tax Ct.1981).

Where two tracts of land were neither contiguous nor appurtenant to the tract entitled to farmland assessment, the two tracts were not reasonably required for the purpose of maintaining the farmland tract and agricultural use, and were therefore not entitled to farmland assessment. *Bass River Tp. v. Hogwallow, Inc.*, 1 N.J.Tax 612 (Tax Ct.1980).

18:15-3.3 Filing date

(a) The owner of land actively devoted to agricultural or horticultural use must submit the required application for farmland assessment to the assessor of the taxing district where such land is situated, on or before August 1 of the pre-tax year in order to be eligible for such assessment.

(b) Once an application is filed with the assessor for the tax year, it may not be withdrawn by the applicant after October 1 of the pre-tax year. (See N.J.A.C. 18:15-8.2, Change of use, pertaining to the power of the assessor and the county board of taxation to deny or nullify an application where a change in use occurs between August 1 and December 31 of the pre-tax year.)

1. If a change in use of the land occurs between August 1 and December 31 of the pre-tax year, either the assessor or the county board of taxation shall deny or nullify such application and, after examination and inquiry, shall determine the full and fair value of said land under the valuation standard applicable to other land in the taxing district and shall assess the same, according to such value.

i. If, notwithstanding such change of use, the land is valued, assessed, and taxed under the provisions of this subsection in the ensuing year, the assessor shall enter an assessment, as an added assessment against such land, in the "Added Assessment List" for the particular year involved in the manner prescribed in P.L. 1941, c. 397 (N.J.S.A. 54:4-63.1 et seq.). The amount of the added assessment shall be in an amount equal to the difference, if any, between the assessment imposed under the Act and the assessment that would have been imposed had the land been valued and assessed as other land in the taxing district.

ii. The enforcement and collection of additional taxes resulting from any additional assessments so imposed shall be as provided by P.L. 1941, c. 397 (N.J.S.A. 54:4-63.1 et seq.). The additional assessment imposed pursuant to P.L. 1964, c. 48, as amended, (N.J.S.A. 54:4-23.13) shall not affect the roll-back taxes, if any, under N.J.S.A. 54:4-23.8.

(c) If the application is filed by delivery through the mail or a commercial courier or messenger service, compliance with the time limit for filing shall be established if there is satisfactory evidence that the application was committed for delivery to the United States Postal Service or to the courier or messenger service within the time allowed for filing.

Amended by R.1983 d.574, effective December 19, 1983.
See: 15 N.J.R. 1459(b), 15 N.J.R. 2175(b).

Added (c).

Amended by R.2013 d.022, effective February 19, 2013.
See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Rewrote the introductory paragraph of (b); added (b)1; and deleted the footnote following (c).

Statutory References

As to time of application, see N.J.S.A. 54:4-23.13.

Case Notes

Notice to tax assessor of state's acquisition of property was effective upon receipt by township clerk. *State by Com'r of Transp. v. Pohatcong Tp.*, 9 N.J.Tax 528 (1988).

18:15-3.4 Representation as to use of land

(a) The application for farmland assessment must contain a representation that the land will continue to be actively devoted to agricultural or horticultural use from the date of the application to the end of the tax year for which application for assessment is made.

(b) The application shall be subject to an on-site inspection of the land at least once every three years by the assessor's office.

1. The required three year inspection cycle is a minimum requirement. In any year where the assessor is not assured that land for which the annual application for farmland assessment has been received is actively devoted to an agricultural or horticultural use, he or she shall perform as many on-site inspections as may be reasonably necessary to establish the eligibility status of the land for the purpose of approving or disapproving said form.

2. The municipality may impose a fee for an on-site inspection of not more than \$25.00, except that contiguous and non-contiguous parcels of land under the same ownership would be subject to a single fee.

Amended by R.1997 d.405, effective October 6, 1997.
See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

Added (b).

Amended by R.2013 d.022, effective February 19, 2013.
See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

In the introductory paragraph of (b), substituted "be subject to" for "include", and inserted "by the assessor's office."

18:15-3.5 Additional proof may be required by the assessor

(a) Each assessor may at any time require the submission of such additional proof as deemed necessary to establish the right of an applicant to farmland assessment.

(b) The applicant, on request of the assessor, shall furnish proof of all the prerequisites necessary to show the land is eligible for farmland assessment, such as:

1. Unified title or single ownership;
2. Description;
3. Area;
4. Agricultural and horticultural uses;
5. Substantiated evidence of gross sales of agricultural or horticultural products sufficient to meet the minimum requirements for qualification;
6. Fees received for boarding, rehabilitating, or training livestock; and
7. Proof of enrollment and payments in an approved soil conservation program from an agency of the Federal government.

(c) Each owner shall immediately inform the assessor when land being assessed under the Act is applied to a use other than agricultural or horticultural.

Amended by R.1997 d.405, effective October 6, 1997.

See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

Added (b)6.

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

In (a), substituted "deemed" for "he deems"; in the introductory paragraph of (b), substituted "shall" for "must"; rewrote (b)1, (b)4 and (b)5; in (b)6, substituted ";" and" for a period at the end; and added (b)7.

Case Notes

Roll-back taxes are not triggered until the land is applied to a more intense use than that for which it received a farmland assessment; determination of ineligibility for farmland assessment. *Jackson Tp. v. Paolin*, 3 N.J.Tax 39, 181 N.J.Super. 293, 437 A.2d 344 (Tax Ct.1981).

18:15-3.6 Notice of disallowance of claim

(a) Where an application for valuation of land under the Act has been filed by the landowner with the assessor of the taxing district in which the land is located, and such application is disallowed, the assessor shall on or before November 1 of the pre-tax year notify the landowner by regular mail of the disallowance of his application for farmland assessment.

(b) The notice of disallowance shall set forth the reason or reasons therefor, together with a statement notifying the landowner of his or her right to appeal such determination to the county board of taxation, or file a complaint directly with the Tax Court, if the assessed valuation of the property subject to the appeal exceeds \$1,000,000, on or before April 1, or 45 days from the date the bulk mailing of notification of assessment is completed in the taxing district, whichever is later. However, in a taxing district where a municipal-wide revaluation or municipal-wide reassessment has been implemented, a taxpayer or a taxing district may appeal on or before May 1 to the county board of taxation by filing a petition of appeal with the county board of taxation. If the assessed valuation of the property subject to the appeal exceeds \$1,000,000, a complaint may be filed directly with the State Tax Court.

(c) Any appeal of a denial of farmland assessment shall be governed by procedures provided for appeals in N.J.S.A. 54:3-21.

Amended by R.1997 d.405, effective October 6, 1997.

See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

In (b), changed appeal date from August 15 to April 1; and added (c).

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Rewrote (b).

Statutory References

N.J.S.A. 54:4-23.13B.

18:15-3.7 through 18:15-3.8 (Reserved)

SUBCHAPTER 4. VALUE OF LAND QUALIFYING FOR FARMLAND ASSESSMENT

18:15-4.1 Value defined

The term "value", when applied to land qualifying for farmland assessment, means the value such land has for agricultural or horticultural use, as determined in accordance with the provisions of the Act.

Statutory References

As to "value" of land, see N.J.S.A. 54:4-23.2.

18:15-4.2 Indicia of value to be used

In valuing land which qualifies for farmland assessment, only those indicia of value which such land has for agricultural or horticultural uses are considered by the assessor and not the prospective value which such land has for subdivision or other non-agricultural or horticultural purposes.

Statutory References

As to the indicia of value to be used, see N.J.S.A. 54:4-23.7.

18:15-4.3 Usable evidence

(a) In determining the value of land in agricultural or horticultural use, the assessor, in addition to the use of his personal knowledge, judgment and experience as to the value of such land, shall also consider all the available evidence regarding the agricultural and horticultural capabilities of such land derived from soil survey data at:

1. Rutgers—The State University;
2. The National Cooperative Soil Survey; and
3. The recommendations as to the value of such land in the area as made by any county or State-wide committee which may be established to give advice concerning the administration of the Act.

Statutory References

As to the criteria to be used in valuing land, see N.J.S.A. 54:4-23.7.

18:15-4.4 Farmhouse land not agricultural use

Land on which a farmhouse is located, together with such land area as may be devoted to lawns, flower gardens, shrubs, swimming pools, tennis courts and like purposes related to the use and enjoyment of the farmhouse, are not deemed to be in agricultural or horticultural use and therefor are valued, assessed and taxed by the same standards, methods and procedures as other taxable land in the taxing district.

Statutory References

As to exclusion of farmhouse land, see N.J.S.A. 54:4-23.11.

Case Notes

Taxpayer's log cabin and one-half acre lot found not actively devoted to agricultural or horticultural use as required for preferential tax treatment as farmland. *Warselle Land Corp. v. Tewksbury Tp.*, 3 N.J.Tax 565 (Tax Ct.1981).

18:15-4.5 Structures

(a) Structures located on land in agricultural or horticultural use such as a farmhouse or any other structure used in connection therewith is valued, assessed, and taxed by the same standards, methods, and procedures as other taxable structures in the taxing district; provided, however, that the term "structure" shall not include a single-use agricultural or horticultural facility, as is commonly used for either storage or growing of crops and which is designed or constructed to be readily dismantled and can be marketed separately from the land and the building, such as readily dismantled greenhouses, hoop houses, polyhouses, grain bins, silos, or manure handling equipment or impoundments; or a three-sided turn-out shed used to shelter livestock provided there is no permanent foundation or floor, is 250-square feet or less in area, and has no water, gas, oil, sewer, or electric connections; or garden-type utility shed that is 200-square feet or less, is 10 feet or less in height, has no water, gas, oil, sewer, or electric connections, has a floor system that is tied to the walls of the structure, and does not have a permanent foundation.

(b) In the valuation and assessment of farm structures, the assessor shall consider those indications of value which such structures have under the same standard of value applicable to all other real property. Assessors shall take into consideration the following criteria for the establishment of value:

1. Cost less depreciation: The cost approach is based on the premise that the cost new of a structure is the highest possible value. Costs may include, in addition to materials and labor, architect, engineering and permit fees, surveys, and site improvement costs. From this highest possible value is deducted accrued depreciation—both physical deterioration and functional and economic obsolescence;

2. Alteration to existing structures: The cost of alterations or modernization to an existing farm structure does not necessarily add to building value. Where major alterations or modernization definitely increases or adds to the value of the farm structure, the percentage appreciation is determined by estimating the probable increase in sales value or the increase in remaining economic life of the building;

3. Specialized nature of buildings use: Farm structures are designed and built for specific production uses within agriculture. Knowledge of building types, construction quality, useful life, and utilization is important in determining a value. For example, machinery sheds or livestock barns are generally of post frame construction, may be open on one side, and have a gravel or stone floor. Com-

parisons should be made with like structures, that is, a three sided livestock shed should be compared with other three sided livestock sheds;

4. **Depreciation:** The physical condition of agricultural buildings should be compared to the near-perfect condition of similar new buildings, based on detailed inspection of all components. A depreciation schedule for farm structures shall be used in the assessment of the physical condition of a building;

5. **Obsolescence:** This is loss in value due to internal or external deficiencies.

i. **Functional obsolescence** is a loss in value due to the instability of the structure to perform adequately the function it is used for. Functional obsolescence would result if a building has limited contribution to a farming operation by seeing technologically obsolete, such as a dairy barn with 30 tie-stall stanchions when the technological standard is for larger free-stall structures with milking parlors, or being totally unusable for the purpose for which it was built;

ii. **Economic obsolescence** of a structure with a specialized agricultural use is a loss in value as a result of impairment in utility and desirability caused by factors outside the property's boundaries. For example, commercial businesses dominating a former agricultural area leaves the remaining land under farm use uneconomical;

6. **Labor and materials:** Actual costs for labor and materials shall be considered in arriving at the value of a building. Most agricultural buildings constructed on farms are built using specialized farm building contractors or agricultural labor. For work done by farm employees, costs should be decreased 15 to 30 percent to reflect the proper wage rate and lower supervisory costs; and

7. **Municipal zoning:** Ordinances or codes may limit the use of a farm structure to agricultural purposes. When valuing a farm building, consideration shall be given to the permitted uses of the structure. The proximity of a farm structure to a farm dwelling shall also be taken into account since the valuation of both types of buildings may be adversely impacted.

Amended by R.1979 d.262, effective July 5, 1979.

See: 11 N.J.R. 304(b), 11 N.J.R. 415(b).

Amended by R.1997 d.405, effective October 6, 1997.

See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

Added (b).

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Rewrote (a).

Statutory References

As to valuation, taxation and assessment of structures, see N.J.S.A. 54:4-23.12 as amended by P.L. 1970, c.70.

18:15-4.6 through 18:15-4.8 (Reserved)

SUBCHAPTER 5. TAXABLE VALUE OR ASSESSED VALUE OF FARMLAND

18:15-5.1 Taxable value defined

The taxable or assessed value of land qualifying for farmland assessment shall be such percentage of its value in agricultural or horticultural use, determined under the Act, as corresponds to the percentage of true value established by the county board of taxation for the assessment of real property generally.

Example:

Where the established percentage level for the assessment of general real property in the taxing district is 50 per cent, land qualifying for farmland assessment having a value of \$5,000 in agricultural or horticultural use will have a taxable value (assessed value) of \$2,500.

18:15-5.2 Land not qualifying for farmland assessment

Land which does not qualify for farmland assessment is valued and assessed in the same manner as other real property in the taxing district.

18:15-5.3 Recordation of taxable value

(a) The taxable value of land which qualifies for farmland assessment is to be recorded on the assessor's tax list and duplicate in the same manner as that of other taxable lands in the taxing district.

(b) Where a portion of a parcel of land is assessed under the Act and another portion of said parcel is assessed in the same manner as other general real property, each portion is to be shown on the tax list and duplicate on a separate line.

Statutory References

As to tax and duplicate, see N.J.S.A. 54:4-23:19.

Case Notes

Under N.J.S.A. 54:4-23.16 and N.J.A.C. 18:15-5.3(b), a conveyance is not required in order to effect a split off or separation of non-farmed land from farmland for purposes of tax assessment. *Township of Wantage v. Rivlin Corp.*, 23 N.J. Tax 441, 2007 N.J. Tax LEXIS 6 (Tax Ct. 2007).

18:15-5.4 through 18:15-5.6 (Reserved)

SUBCHAPTER 6. ACTIVELY DEVOTED TO AGRICULTURAL USE OR HORTICULTURAL USE

18:15-6.1 Actively devoted to agricultural or horticultural use defined

(a) Land, five acres in area, shall be deemed to be actively devoted to agricultural use when it is used for any of the purposes described in N.J.A.C. 18:15-1.1 and 6.2 and:

1. When the amount of the gross sales of agricultural or horticultural products produced thereon, any payments received under a soil conservation program, fees received for breeding, raising or grazing any livestock, income imputed to land used for grazing in the amount determined by the State Farmland Evaluation Advisory Committee created pursuant to N.J.S.A. 54:4-23.20, and fees received for boarding, rehabilitating or training any livestock where the land under the boarding, rehabilitating or training facilities is contiguous to land which otherwise qualifies for farmland assessment, have averaged at least \$500.00 per year on the first five acres, \$5.00 per acre per year on any additional acres of farmland other than woodland and wetland, and \$0.50 per acre per year on any additional acres constituting woodland and wetland during the two-year period immediately preceding the tax year in issue; or

2. There is clear evidence of anticipated yearly gross sales, payments and fees amounting to at least \$500.00 per year on the first five acres, \$5.00 per acre per year on any additional acres of farmland other than woodland and wetland and \$0.50 per acre per year on any additional acres constituting woodland and wetland within a reasonable period of time.

(b) The amount of the gross sales, fees, payments, or income imputed to land used for grazing, or payments may be from one or a combination of sources included in (a)1 above, except fees for boarding, rehabilitating, or training livestock shall only be included, and the land deemed to be actively devoted to an agricultural use, where such use occurs on land which is contiguous to land under the same ownership, which otherwise qualifies for farmland assessment.

1. Examples are as follows:

i. Example (1): On a 10-acre parcel of land, six acres are devoted to growing crops and generate annual gross sales of \$650.00. The remaining four acres are used for boarding horses and generate annual boarding fees of \$8,500. Since the land used for boarding horses is contiguous to land five acres or more otherwise qualifying for farmland assessment, the fees from boarding may be included to meet the minimum gross income requirements and qualify the entire 10-acre parcel.

ii. Example (2): On a 10-acre parcel of land, 3.5 acres are devoted to growing crops and generate annual gross sales of \$450.00. The remaining 6.5 acres are used for boarding horses and generate annual boarding fees of \$10,500. None of the 6.5 acres is used for grazing horses. The land contiguous to the land used for boarding horses does not otherwise qualify for farmland assessment, both because it is not at least five acres in area and because it does not meet the minimum \$500.00 income requirement for the first five acres. Therefore, the fees from boarding may not be included to meet the minimum gross income requirements, and the entire 10-acre parcel is ineligible for qualification.

iii. Example (3): A 10-acre parcel of land is managed under a soil conservation program of the United States Department of Agriculture and receives an annual payment of \$750.00. Since the payment meets the income requirement of \$525.00 (\$500.00 for the first five acres + \$5.00 for each acre above five), the entire 10 acres are eligible for farmland assessment.

iv. Example (4): On an 8.5-acre parcel of land, .5 acres is used with the house, and three acres are devoted to boarding and training horses, which produces fees of \$3,200. The remaining five acres are utilized for grazing the boarded horses at an imputed value of \$120.00. Income imputed to grazing is determined to be \$600.00. Since the five acres used for grazing does have an imputed value for such use of at least \$500.00, it is eligible for farmland assessment. The three-acre portion used for boarding and training is also eligible because it is contiguous to land that otherwise qualifies for farmland assessment.

v. Example (5): Three horses and a pony are kept by an owner on his land for pleasure riding. The animals pasture on 14 acres, which have an imputed grazing value of \$1,624. The imputed grazing value in this county is \$116.00 per acre. Although the imputed grazing value exceeds the income requirements for qualification, the land nevertheless would be ineligible for farmland assessment since the livestock are not raised for sale, the livestock do not produce products for sale, and the grazing is not connected with breeding, raising, boarding, rehabilitating, or training activities.

vi. Example (6): On a 10-acre parcel of land, one acre is used for residential dwelling, three acres are devoted to hay production, four acres are fenced pasture for boarded horses, .5 acres is for the boarding facility, and 1.5 acres is appurtenant woodland. One hundred twenty-five bales of hay with a value of \$3.00 per bale generating \$375.00 in value are produced annually and fed to the boarded horses. Income imputed to land for grazing of \$111.00 per acre times four acres equals \$444.00. As seven acres of land producing \$819.00 in income is adjacent to the boarding facility, nine acres qualifies for farmland assessment.

vii. Example (7): On a seven-acre parcel, five acres are used by a farmer who plants soybeans in June for harvest in November for sale under contract the following July. Two acres are in permanent pasture for erosion control. The landowner needs to verify to the municipal assessor clear evidence of anticipated sales. The landowner upon request from the assessor provides a signed statement that the anticipated yield will be 30 bushels per acre at a contract price of \$7.00 per bushel with a total value of production of \$1,050 on the five acres. Since the land qualified for farmland assessment the two previous years and a minimum of five acres was in agricultural use with clear evidence of anticipated

sales in excess of the \$510.00 needed to qualify, the seven acres will meet the qualification criteria for farmland assessment.

viii. Example (8): On a six-acre parcel, one-half acre is used as a residence, five acres are fenced for pasturing three boarded horses and one-half acre is used as equine facilities. Upon request from the municipal assessor for proof of agricultural or horticultural production for sale, the landowner provides the names of the owners of the horses and uses the imputed grazing values of \$115.00 per acre as provided in the Report of the State Farmland Evaluation Advisory Committee. Since a minimum of five acres of pasture being utilized by three boarded horses has an imputed grazing value of \$575.00, the agricultural income criteria for farmland assessment have been met.

ix. Example (9): A 20-acre parcel is enrolled under the United States Department of Agriculture's Conservation Reserve Program (CRP) and receives an annual rental from the Farm Service Agency of \$900.00 per year. A requirement of the program is maintaining the land through annual mowing. The landowner in completing the FA-1 application form, which shows the cropland as pastured, but land enrolled in a Federal government program must be categorized as cropland harvested. This 20-acre parcel meets the acreage and sales criteria of \$575.00 for farmland assessment.

x. Example (10): A 15-acre parcel is primarily used to grow evergreens for sale as Christmas trees. Eight acres have been planted with evergreens in various stages of growth and harvest. An additional three acres are in cover crop for anticipated planting in the future. The balance of the parcel is appurtenant woodland. The grower practices clear-cutting rotation of Christmas trees as opposed to inter-planting trees after harvest. Using seven-by-seven foot spacing, 888 trees will fit on an acre of land. Harvest will take place starting the seventh year after planting. Proper production practices during the years leading up to harvest will provide clear evidence of anticipated sales. The requirement of a minimum of \$500.00 in sales is cumulative and needs to be a minimum of \$5,000 achieved for the seventh through 10th years to meet the gross income requirement for farmland assessment.

xi. Example (11): Three goats, 20 chickens and a horse are being kept on a six-acre parcel. One-half acre is used with the residence. The parcel is fenced with five and one-half acres being reported as permanent pasture on the application for farmland assessment. Sales were not documented in the previous year. The municipal assessor determined that due to an insufficient number of livestock and poultry used for agricultural production and the lack of proof of sales of agricultural commodities produced from the land, the application for farmland assessment was denied.

(c) In cases where the income requirements for farmland assessment have not been met due to an injury, illness or death of the person responsible for performing the activities which produce the income necessary to meet the income eligibility requirements, the assessor shall, upon request by the owner of the land, exempt the owner from the income requirements.

1. In the case of injury or illness, the owner's request shall be accompanied by a certificate of a physician which shall include a statement that the person was physically incapacitated, the particular reason causing the incapacitation, and the period of time of the incapacitation.

2. In the case of death, the owner's request shall be accompanied by a certified copy of the death certificate.

3. The assessor may only grant an exception once for a particular illness, injury, or death.

(d) Land used for biomass, solar, or wind energy generation shall be considered land in agricultural or horticultural use and may be eligible for valuation, assessment, and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.), provided that:

1. The property where the energy generation facility is located is part of an operating farm that will continue to operate as a farm in the tax year for which farmland assessment is being applied;

2. The construction, installation, and operation of the energy generation facility on the land under the facility for which farmland assessment is sought, have received all approvals that may be required by law, where the interconnection is legally permissible, and where the energy generation facility and underlying farmland meet all other requisites for farmland assessment;

3. In the prior tax year, the acreage used for the biomass, solar, or wind energy generation facilities, structures, and equipment was valued, assessed, and taxed as land in agricultural or horticultural use;

4. The power or heat generated by the biomass, solar, or wind energy generation facilities, structures, and equipment is used to provide, either directly or indirectly but not necessarily exclusively, power or heat to the farm or agricultural or horticultural operations supporting the viability of the farm;

5. The owner or operator of the property on which the biomass, solar, or wind energy generation facilities, structures, and equipment has or will be constructed and used, has a conservation plan approved by the soil conservation district, with provisions for compliance with this paragraph where applicable, to account for the aesthetic, impervious coverage, and environmental impacts of the construction, installation, and operation of the biomass, solar, or wind energy generation facilities, structures,

and equipment, including, but not necessarily limited to, water recapture and filtration;

6. Where solar energy generation facilities, structures, and equipment are installed, the property under the solar panels is used to the greatest extent practicable for the farming of shade crops or other plants capable of being grown under such conditions, or for pasture for grazing;

7. The amount of acreage devoted to energy generation facilities meets, but does not exceed, a ratio of one-to-five acres or portion thereof. In other words, for each "unit" of land devoted to energy generation, there are at least another five "units" of land devoted to agricultural and/or horticultural operations. The following graph illustrates the ratio in terms of sample acreages:

Total Acres	*Maximum acres in Solar/Wind/Biomass	Minimum acres in Agriculture/Horticulture
5.25	0.25	5.00
5.60	0.60	5.00
6.00	1.00	5.00
7.00	1.19	5.81
8.00	1.36	6.64
9.00	1.53	7.47
10.00	1.70	8.30
15.00	2.55	12.45
25.00	4.25	20.75
50.00	8.50	41.50
59.00	10.00	49.00
60.00	10.00	50.00
100.00	10.00	90.00

*Ratio to calculate assessments: 1 part renewable energy to 5 parts of land devoted to agricultural or horticultural operations = 1÷6 or .167 rounded to .17.

Must have greater than 5 acres to invest in renewable energy sources

8. Biomass, solar, or wind energy generation facilities, structures, and equipment are constructed or installed on no more than 10 acres of the farmland for which the owner of the property is applying for valuation, assessment, and taxation pursuant to P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 et seq.), and if power is being generated, no more than two megawatts of power are generated on the 10 acres or less:

i. Example (1): A landowner devotes 60 acres to agricultural or horticultural production that qualifies for farmland assessment. He converts 10 of those acres for use as a solar energy facility, which generates no more than two megawatts of power. The landowner is entitled to have all 60 acres receive farmland assessment.

ii. Example (2): A landowner devotes 120 acres to agricultural or horticultural production which qualifies for farmland assessment. He converts 20 of those acres

for use as a solar energy facility. Because the landowner is entitled to have only 10 of the acres used for a solar energy facility under farmland assessment, he no longer qualifies for this assessment on the 20 acres that have been converted to the solar energy facility and these 20 acres are subject to roll-back taxes. The landowner, however, continues to qualify for farmland assessment on the remaining 100 acres.

iii. Example (3): A landowner devotes 60 acres to agricultural or horticultural production that qualifies for farmland assessment. He converts 10 of those acres for use as a solar energy facility that generates three megawatts power. None of the 10 acres qualifies for farmland assessment. Only the remaining 50 acres that is in agricultural or horticultural production qualifies for farmland assessment because the two megawatt power limit is exceeded;

9. For biomass energy generation, the owner of the property has obtained approval from the New Jersey Department of Agriculture pursuant to section 5 of P.L. 2009, c. 213 (N.J.S.A. 4:1C-32.5);

10. If the energy generation facility is located in the Pinelands region, the construction, installation, and operation of the facility complies with the Comprehensive Management Plan;

11. If the land is permanently preserved under the State Farmland Preservation Program, the landowner must provide documentation that the project was approved by the State Agriculture Development Committee; and

12. No generated energy from any source shall be considered an agricultural or horticultural product and no income from any power or heat sold from the biomass, solar, or wind energy generation may be considered income for eligibility for valuation, assessment, and taxation of land pursuant to the Act, and, notwithstanding the provisions of the Act, or any rule promulgated pursuant thereto, to the contrary, there shall be no income requirement for property valued, assessed, and taxed pursuant to (d)2 through 9 above.

Amended by R.1973 d.295, effective October 17, 1973.

See: 5 N.J.R. 318(a), 5 N.J.R. 393(b).

Amended by R.1979 d.87, effective March 8, 1979.

See: 11 N.J.R. 100(b), 11 N.J.R. 210(b).

Amended by R.1997 d.405, effective October 6, 1997.

See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

In (a)1, amended to incorporate fees and income and inserted reference to wetland; in (a)2, incorporated fees and inserted reference to wetland; and added (b) and (c).

Amended by R.2004 d.62, effective March 1, 2004.

See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).

In (b)1, inserted the third sentence in ii, inserted "at an imputed value of \$99.00" at the end of the second sentence and substituted "\$495.00" for "\$300.00" in iv, substituted "\$1,442" for "\$725.00" at the end of the second sentence and added the third sentence in v, added vi.

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

In (b)1i and (b)1iii, substituted "10-acre" for "10 acre" throughout; in (b)1iii, inserted "for the first five acres"; rewrote (b)1iv; in (b)1v, inserted a comma following "14 acres" and "rehabilitating", and

substituted "\$1,624" for "\$1,442" and "\$116.00" for "\$103.00"; in (b)lvi, substituted "\$111.00" for "\$100.00", "\$444.00" for "\$400.00", and "\$819.00" for "\$775.00"; and added (b)lvii through (b)lxi and (d).

Case Notes

Property used for growing trees qualified as farmland. Borough of Franklin Lakes v. Mutzberg, 226 N.J.Super. 46, 543 A.2d 477 (A.D.1988).

Agricultural or horticultural use of land otherwise eligible for farmland assessment must be lawful, that is, a permitted use; forestry operation use of land not permitted under zoning ordinance does not qualify to constitute two calendar year minimum use period for farmland assessment eligibility. Clearview Estates, Inc. v. Boro. of Mountain Lakes, 188 N.J.Super. 99, 456 A.2d 111 (App.Div.1982).

18:15-6.2 Devoted to agricultural or horticultural use defined

(a) "Devoted to agricultural or horticultural use" means:

1. Land under and used with barns, sheds, packing houses, farm storage facilities, seasonal farm markets selling predominantly agricultural products, seasonal agricultural labor housing, silos, cribs, and like structures when used in direct support of the producing crops for sale;

2. Land that consists of lakes, ponds, streams, stream buffer areas, hedgerows, wetlands, and/or irrigation ponds that are supportive and subordinate or reasonably required for the purpose of maintaining agricultural or horticultural uses of a tract of land, which tract of land has a minimum area of at least five acres devoted to agricultural or horticultural uses other than to the production for sale of trees and forest products;

3. Land on which crops are produced, harvested, and sold, either at retail or wholesale;

4. Land on which cover crops are grown as part of a regular crop rotation program;

5. Land on which poultry are housed or ranged, but if ranged, the land must be enclosed by a fence sufficient to retain such animals;

6. Land on which crops are grown for on-farm use, but not including land that is used to produce crops only for personal consumption;

7. Land kept fallow during a growing season using cultivation or chemical control to eradicate or reduce weeds for future agricultural or horticultural production;

8. Land on which farm animals may be maintained, pastured, or ranged whose products or the animals themselves are produced for market, either retail or wholesale;

9. Land enrolled in a soil conservation program administered by an agency of the Federal government that meets the annual maintenance requirements for future agricultural or horticultural production or an equivalent program such as the Conservation Reserve or Wetlands Reserve Program;

10. Land on which trees and forest products are produced for sale within a reasonable period of time and such land is managed in compliance with a written woodland management plan approved by the State Forester;

11. Land on which livestock is boarded, raised, pastured, rehabilitated, trained, or grazed, and enclosed by a fence sufficient to retain such animals that are themselves or their products sold, except that "livestock" shall not include dogs;

12. Land that is used for boarding, rehabilitating, or training livestock for a fee (not including acres pastured) where the livestock is owned by a party or parties other than the property owner(s), and the land is contiguous to five or more acres that otherwise qualify for valuation, assessment, and taxation under the Act;

13. Land that is supportive and subordinate woodland or wetlands and that is contiguous to, part of, or beneficial to land that is cropland harvested, cropland pastured, or permanent pasture;

14. Land that has limited farming or grazing potential, is managed in an erosion-control program, and is supportive and subordinate or reasonably required for agricultural or horticultural production of land that has a minimum of five acres classified as cropland harvested, cropland pastured, or permanent pasture;

15. Greenhouses or poultry or livestock facilities in which animals or their products are sold; or

16. Land used for biomass, solar, or wind energy generation shall be considered land actively devoted to agricultural or horticultural use as long as it meets the qualifications set forth in N.J.A.C. 18:15-6.1(d), except that the energy generated from such use shall not be considered an agricultural or horticultural product.

Amended by R.1997 d.405, effective October 6, 1997.

See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

Added (a)7 and 8.

Amended by R.2004 d.62, effective March 1, 2004.

See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).

In (a), deleted 6 and recodified former 7 and 8 as 6 and 7; added a new 8.

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Rewrote the section.

Statutory References

As to which land is deemed in agricultural use, see N.J.S.A. 54:4-23.3.

As to which land is deemed in horticultural use, see N.J.S.A. 54:4-23.4.

Case Notes

City erred in determining that greenhouses owned by a farm did not qualify for a farmland assessment pursuant to N.J.S.A. 54:4-23.12 because persons were allowed into the greenhouses to select plants; based on the definition of "agricultural use" under N.J.S.A. 54:4-23.3, greenhouses could not be disqualified merely because some sales-related activities occurred inside the structures. Twp. of Monroe v. Gasko, 182 N.J. 613, 868 A.2d 1022, 2005 N.J. LEXIS 190 (2005).

Farmland assessment denied due to failure to prove production of minimum gross income; three tracts contiguous to farm which had never been functionally part of farm, which were not integrated with the farm in any documentary manner and upon which independent commercial operations had been undertaken held not to qualify for farmland assessment. *Wiesenfeld v. Tp. of South Brunswick*, 166 N.J.Super 90, 398 A.2d 1342 (App.Div.1979).

Farmland assessment upheld; Farmland Assessment Act did not exceed its enabling constitutional amendment by allowing forestland to be entitled to farmland assessment; owner's intended use of eligible land is not to be considered in determining eligibility; assessment of land at highest farmland valuation held erroneous as without supporting method of valuation in evidence. *Urban Farms, Inc. v. Tp. of Wayne, Passaic Cty.*, 159 N.J.Super. 61, 386 A.2d 1357 (App.Div.1978).

Woodlands and reservoirs contiguous to taxpayer's cranberry bogs held reasonably required for purpose of maintaining land in agricultural use; adoption of lowest assessment rate by trial judge without explanation held totally arbitrary and requiring remand. *Bunker Hill Cranberry Co. v. Tp. of Jackson*, 144 N.J.Super. 230, 365 A.2d 204 (App.Div.1976), certification denied, 73 N.J. 59, 372 A.2d 324 (1977).

Tract principally dedicated to agricultural use and meeting statutory area and gross sales requirements held entitled to farmland assessment in its entirety rather than only that portion of tract actually being farmed. *Tp. of Andover v. Kymer*, 140 N.J.Super. 399, 356 A.2d 418 (App.Div.1976).

Farmland Assessment Act required that for a parcel to qualify for farmland assessment as a woodlot, the written and approved woodland management plan required by the statute must be filed on or before January 1, two full years prior to the year for which farmland assessment is sought. *Alexandria Tp. v. Orban*, 21 N.J.Tax 298.

Amendments to property tax exemption statute requiring written woodland management plan for farmland assessment of woodlands were intended to provide a reasonable means of eliminating the widespread practice of indiscriminate cutting of woodlands to meet the earned income requirements of farmland assessment and to close tax loophole utilized by speculators and land developers. *Alexandria Tp. v. Orban*, 21 N.J.Tax 298.

Taxpayer was not entitled to farmland assessment for appurtenant parcel of land where farmland and parcel were separate tax line items and had distinct characteristics and purposes. *Wyer v. Middleton Tp.*, 16 N.J.Tax 544 (1997).

Land used for grazing horses for fee did not qualify for farmland assessment. *Dowd v. Howell Tp.*, 15 N.J.Tax 82 (1995).

Woodland, wet areas and other acreage having a marginal value for agricultural or horticultural use may also be given a farmland assessment, as long as the acreage is part of, appurtenant to, or reasonably required for the purpose of maintaining the land actually devoted to farm use, particularly where it has been part of the farm for a number of years. *Boro. of Califon v. Stonegate Properties, Inc.*, 2 N.J.Tax 153 (Tax Ct.1981).

Where two tracts of land were neither contiguous nor appurtenant to the tract entitled to farmland assessment, the two tracts were not reasonably required for the purpose of maintaining the farmland tract and agricultural use, and were therefore not entitled to farmland assessment. *Bass River Tp. v. Hogwallow, Inc.*, 1 N.J.Tax 612 (Tax Ct.1980).

Land is devoted to an agricultural use if it is "devoted to woodland appurtenant to land in agricultural or horticultural use and reasonably required for the purpose of maintaining the land in such use"; additional woodland, uncultivated, unused and unneeded for production primary function cannot be added on to bring taxpayer within the statutory five-acre requirement for farmland assessment. *Mason v. Tp. of Wyckoff*, 1 N.J.Tax 433 (Tax Ct.1980).

Taxpayer who cultivated and sold yews and azaleas on approximately one acre of his property failed to establish that appurtenant woodland was reasonably required for the purpose of maintaining the horticultural use of the land devoted to azaleas and yews; therefore, the taxpayer did not meet the 5-acre minimum requirement for a farmland assessment. *Kugler v. Wall*, 1 N.J. Tax 10, 1980 N.J. Tax LEXIS 77 (Tax Ct. 1980).

18:15-6.3 Evidence of anticipated yearly gross sales, fees or payments

(a) An applicant must submit proof that from the present use and the nature and characteristics of the land and from the productivity plans of the owner or occupant thereof, it can be demonstrated that the income requirements as specified in N.J.A.C. 18:15-6.1 are met. Included in the minimum gross sales to qualify the farm should be crops grown for the on-farm use at the retail sales value which the farmer would have to pay if purchased in the open market, but not included would be products grown for on-farm personal consumption.

(b) The formula for computing the minimum gross sales to qualify a farm is illustrated by the following example:

EXAMPLE:

A farm contains 105 acres of which 75 acres is farmland and 30 acres is woodland and the gross sales is \$900.00. Gross sales required would be as follows:

Acreage and Type	Gross Sales
First 5 acres of farmland	\$500.00
70 acres of farmland	350.00 (\$5.00 per acre for all acres in excess of 5 acres)
30 acres of woodland	15.00 (\$.50 per acre on all acres in excess of 5 acres)
Total Gross Sales required	\$865.00 (Minimum requirement according to example)

Since the farm has gross sales of \$900.00 and only \$865.00 is the minimum requirement, then this farm would qualify under the Act as to gross sales.

Amended by R.1973 d.295, effective October 17, 1973.
See: 5 N.J.R. 318(a), 5 N.J.R. 393(b).
Amended by R.1997 d.405, effective October 6, 1997.
See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

Case Notes

Crops grown for on-farm use; value in determining average gross annual sales. *Cheyenne Corp. v. Township of Byram*, 14 N.J.Tax 167 (A.D.1993).

18:15-6.4 Failure to meet additional gross sales income requirements on acreage—roll-back

(a) Land previously qualified as actively devoted to agricultural or horticultural use under the Act but failing to meet the additional requirement on acreage above five acres shall not be subject to the roll-back tax because of such disqualification, but shall be treated as land for which an annual application has not been submitted.

(b) Land that is farmed but is insufficient in acreage or income, should be denied for farmland assessment, and shall not be subject to the roll-back tax because of this disquali-

fication, but shall be treated as land for which an annual application has not been submitted.

Amended by R.1973 d.295, effective October 17, 1973.

See: 5 N.J.R. 318(a), 5 N.J.R. 393(b).

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Section was "Failure to meet additional gross sales requirement on acreage — rollback". Added designation (a); and added (b).

18:15-6.5 through 18:15-6.6 (Reserved)

SUBCHAPTER 7. ROLL-BACK TAXES

18:15-7.1 When applicable

When land which is in agricultural or horticultural use and is being assessed under the Act is applied to a use other than agricultural or horticultural, it is subject to additional taxes, hereinafter referred to as "roll-back taxes".

Statutory References

As to when roll-back taxes become applicable, see N.J.S.A. 54:4-23.8.

Case Notes

Reformation of title insurance policy for Farmland Assessment Act liability exception; buyer held liable for roll-back taxes due to change in use of property. *Paz v. DeSimone*, 139 N.J.Super. 102, 352 A.2d 609 (Ch.Div.1976).

18:15-7.2 Liability attaches on land use change

(a) The liability for roll-back taxes attaches to the land at the time a change in the use of the land occurs, but not when a change in ownership takes place if the new owner continues to devote the land to agricultural or horticultural use in conformity with the requirements of the Act.

(b) Land acquired by the State, a local government unit, a qualifying tax-exempt nonprofit organization, or the Palisades Interstate Park Commission for recreation and conservation purposes shall not be subject to roll-back taxes. As used in this section, "acquired," "local government unit," "qualifying tax-exempt nonprofit organization" and "recreation and conservation purposes" mean the same as those terms are defined pursuant to section 3 of The Garden State Preservation Trust Act, P.L. 1999, c.152 (N.J.S.A. 13:8C-3) and as amended by P.L. 2001, c.312 (N.J.S.A. 13:8C-29).

Amended by R.2004 d.62, effective March 1, 2004.

See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).

Identified existing text as (a); added (b).

Statutory References

As to when liability for roll-back taxes occurs, see N.J.S.A. 54:4-23.8.

Case Notes

Parcels obtained by Department of Environmental Protection for public water supply, recreation and conservation purposes were not exempt from roll-back taxes; roll-back taxes do not automatically apply

upon a change of ownership, absent change in use. *Dep't of Environmental Protection v. Franklin Tp.*, 3 N.J.Tax 105, 181 N.J.Super. 309, 437 A.2d 353 (Tax Ct.1981), affirmed 5 N.J.Tax 476 (App.Div.1983).

Reformation of title insurance policy for Farmland Assessment Act liability exception; buyer held liable for roll-back taxes due to change in use of property. *Paz v. DeSimone*, 139 N.J.Super. 102, 352 A.2d 609 (Ch.Div.1976).

18:15-7.3 Amount; computation

(a) In determining the amount of roll-back taxes chargeable on land that has undergone a change in use, the assessor is required for each of the roll-back tax years involved to ascertain:

1. The full and fair value, that is, true market value, of such land under the valuation standard applicable to other taxable land in the taxing district;
2. The amount of the land assessment for the particular tax year by multiplying such full and fair value by the common level percentage, also known as the Director's Ratio, as determined by the county board of taxation in accordance with section 3 of P.L. 1960, c. 51 (N.J.S.A. 54:4-2.27);
3. The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under (a)2 above; and
4. The amount of the roll-back tax for that year by multiplying the amount of the additional assessment determined under (a)3 above by the general property tax rate of the taxing district applicable for that tax year.

R.1971 d.138, eff. August 12, 1971.

See: 3 N.J.R. 185(a), 3 N.J.R. 138(b).

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

In the introductory paragraph of (a), substituted "that" for "which"; in (a)1, inserted ", that is, true market value,"; rewrote (a)2; in (a)3, substituted "(a)2 above" for "paragraph 2 of this subsection"; and in (a)4, substituted "(a)3 above" for "paragraph 3 of this subsection".

Statutory References

As to computation of roll-back taxes, see N.J.S.A. 54:4-23.8.

Case Notes

Reformation of title insurance policy for Farmland Assessment Act liability exception; buyer held liable for roll-back taxes due to change in use of property. *Paz v. Desimone*, 139 N.J.Super. 102, 352 A.2d 609 (Ch.Div.1976).

18:15-7.4 Tax years applicable

(a) Roll-back taxes are applied to land for the tax year in which the change in the use of the land occurs and for such of the two tax years immediately preceding such year assessed under the Act.

(b) Examples are as follows:

1. Example (1): A parcel of land qualifies for farmland assessment for the tax years 2008, 2009, and 2010. A change of use occurs in June 2010. The land is subject to roll-back taxes for the tax years 2008, 2009, and 2010.

2. Example (2): A parcel of land was assessed generally for the tax year 2008, and qualified for farmland assessment in the tax years 2009 and 2010. A change in use occurs in June 2010. The land is subject to roll-back taxes for the tax years 2009 and 2010, but not subject to roll-back taxes for the tax year 2008, inasmuch as the land was not assessed under the Act for such tax year.

Amended by R.1979 d.87, effective March 8, 1979.
See: 11 N.J.R. 100(b), 11 N.J.R. 210(b).
Amended by R.1997 d.405, effective October 6, 1997.
See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

In (b)1 and 2, changed applicable years.
Amended by R.2004 d.62, effective March 1, 2004.
See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).

In (b), amended the tax years throughout.
Amended by R.2013 d.022, effective February 19, 2013.
See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

In (b)1, substituted "2008, 2009, and 2010" for "2001, 2002, and 2003" twice, and substituted the second occurrence of "2010" for the second occurrence of "2003"; and in (b)2, substituted "2008" for "2001" twice, "2009 and 2010" for "2002 and 2003" twice, and the second occurrence of "2010" for the second occurrence of "2003".

Statutory References

As to the years which are subject to roll-back taxes, see N.J.S.A. 54:4-23.8.

Case Notes

Parcels obtained by Department of Environmental Protection for public water supply, recreation and conservation purposes were not exempt from roll-back taxes; roll-back taxes do not automatically apply upon a change of ownership, absent change in use. Dep't of Environmental Protection v. Franklin Tp., 3 N.J.Tax 105, 181 N.J.Super. 309, 437 A.2d 353 (Tax Ct.1981), affirmed 5 N.J.Tax 476 (App.Div.1983).

18:15-7.5 Change in use when land not assessed under the Act

(a) If a change in use of the land occurs in a tax year when the land was not assessed and taxed under the Act, then such land becomes subject to roll-back taxes for such of the two tax years immediately preceding in which the land was assessed under the Act.

1. Example: A parcel of land was assessed under the Act for the tax years 2008 and 2009, but not for 2010. A change in use occurs in June 2010. The land is subject to roll-back taxes for the tax years 2008 and 2009, but is not subject to roll-back taxes for 2010, inasmuch as the land was not assessed under the Act for such tax year.

Amended by R.1979 d.87, effective March 8, 1979.
See: 11 N.J.R. 100(b), 11 N.J.R. 210(b).
Amended by R.1997 d.405, effective October 6, 1997.
See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

In (a)1, changed applicable years.
Amended by R.2004 d.62, effective March 1, 2004.
See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).
Amended the tax years throughout.

Amended by R.2013 d.022, effective February 19, 2013.
See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

In (a)1, substituted the first occurrence of "2008 and 2009" for "2001 and 2002", and the first and second occurrence of "2010" for the first and second occurrence of "2003", "2008 and 2009," for "2001, 2002", and "2010," for the third occurrence of "2003".

Statutory References

As to liability which changes following a change in use when the land is not assessed under the Act, see N.J.S.A. 54:4-23.8.

Case Notes

Land acquired by state was subject to rollback taxes for portion of year prior to acquisition. State by Com'r of Transp. v. Pohatcong Tp., 9 N.J.Tax 528 (1988).

18:15-7.6 Procedure for assessment, collection, apportionment, and payment of roll-back taxes

The assessment, collection, apportionment, and payment of the roll-back taxes imposed by the Act is governed by the procedures set forth in N.J.S.A. 54:4-23.8 and 23.9 and the provisions of N.J.S.A. 54:4-63.12 through 63.30 for the assessment and taxation of omitted property.

Amended by R.2013 d.022, effective February 19, 2013.
See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Section was "Procedure for assessment, collection, apportionment and payment over of roll-back taxes". Rewrote the section.

Statutory References

As to procedures for assessment, collection, apportionment and payment over of roll-back taxes, see N.J.S.A. 54:4-23.9.

Case Notes

Reformation of title insurance policy for Farmland Assessment Act liability exception; buyer held liable for roll-back taxes due to change in use of property. Paz v. DeSimone, 139 N.J.Super. 102, 352 A.2d 609 (Ch.Div.1976).

18:15-7.7 Due date

(a) The due date for payment of roll-back taxes is governed by N.J.S.A. 54:4-63.20 dealing with the assessment and taxation of omitted property.

(b) Roll-back taxes are payable on November 1 following the rendering of the judgment of assessment by the county board of taxation, provided such judgment is rendered before October 1 of that year.

(c) If such judgment is rendered subsequent to October 1 and before December 31, such taxes are payable on November 1 of the following year.

Statutory References

As to due date for payment of roll-back taxes, see N.J.S.A. 54:4-23.9.

18:15-7.8 Lien date

Roll-back taxes become a lien upon the land from January 1 of the year in which the judgment of the county board is rendered.

Statutory References

As to roll-back taxes becoming a lien, see N.J.S.A. 54:4-23.9 and 54:4-63.12 *et seq.*

18:15-7.9 Review of judgment of county board of taxation

(a) The right of a taxing district, owner or other interested party to review any judgment of the county board of taxation affecting roll-back taxes is governed by the procedures provided for the assessment and taxation of omitted property (N.J.S.A. 54:4-63.23).

(b) Any judgment may be reviewed by the Tax Court of New Jersey on appeal taken and prosecuted in the same manner as other appeals to said Court.

(c) The notice of appeal is required to be filed with said Tax Court within 45 days of the service of the judgment of the county board of taxation.

Amended by R.1997 d.405, effective October 6, 1997.

See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).

In (b) and (c), substituted references to Tax Court for references to Division of Tax Appeals; and in (c), amended filing date.

Statutory References

As to review of decisions of county board of taxations, see N.J.S.A. 54:4-23.9.

18:15-7.10 Tax years when procedures applicable

(a) The procedures for the assessment, collection, apportionment and payment over of the roll-back taxes, the attachment of the lien for such taxes, and the right of a taxing district, owner or other interested party to review any judgment of the county board of taxation affecting such roll-back taxes, apply to each tax year for which roll-back taxes may be imposed, notwithstanding the limitation, prescribed in the Omitted Assessment Law, (N.J.S.A. 54:4-63.23) respecting the periods for which omitted assessments may be imposed.

(b) Although the Omitted Assessment Law provides for the taxation of omitted property with respect to any year and the next succeeding year, the procedures in the Omitted Property Tax Law are applicable, for the purposes of the Farmland Assessment Act of 1964, for the tax year in which a change in use takes place and in such of the two tax years, immediately preceding in which the land was valued, assessed and taxed under said Act.

Statutory References

As to procedures for the assessment, collection, apportionment and payment due to the roll-back taxes, see N.J.S.A. 54:4-23.9.

18:15-7.11 through 18:15-7.14 (Reserved)**SUBCHAPTER 8. CHANGE OF USE****18:15-8.1 Effect**

(a) When land that is being assessed under the Act is applied to a use other than agricultural or horticultural, it becomes subject to roll-back taxes. (See N.J.A.C. 18:15-7, Roll-Back Taxes, for procedure imposing roll-back taxes. See N.J.A.C. 18:15-12, Eminent Domain, respecting the applicability of roll-back taxes in case of eminent domain.)

(b) Notwithstanding the provisions of any law, rule, or regulation to the contrary, land which is valued, assessed, and taxed under the provisions of P.L. 1964, c. 48 (N.J.S.A. 54:4-23.1 *et seq.*) and is acquired by the State, a local government unit, a qualifying tax exempt nonprofit organization, or the Palisades Interstate Park Commission for recreation and conservation purposes shall not be subject to roll-back taxes.

1. As used in this subsection, "acquired," "local government unit," "qualifying tax exempt nonprofit organization," and "recreation and conservation purposes" mean the same as those terms are defined pursuant to section 3 of P.L. 1999, c. 152 (N.J.S.A. 13:8C-3), Garden State Preservation Trust Act.

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Added designation (a); rewrote (a); and added (b).

Statutory References

As to details appearing on assessors list, see N.J.S.A. 54:4-23.19.

18:15-8.2 Change of use between certain dates

(a) If a change in the use of land occurs between August 1 and December 31 of the pre-tax year, and an application is then pending for assessment under the Act for the ensuing tax year, either the assessor or the county board of taxation, as the case may be, shall deny or nullify such application and, after examination and inquiry, determine the full and fair value of said land under the valuation standard applicable to other land in the taxing district and assess the same according to such value.

1. Example: An application is filed with the assessor on or before August 1, 2009 for farmland assessment for the tax year 2010. On November 15, 2009, a change in use of the land takes place. The assessor, knowing of the change of use, will deny the application and value and assess the land for the tax year 2010 in the same manner as other real property in the taxing district. If the assessor is unaware of such change before he files his assessment list and duplicate on January 10 following, then the county board of taxation, if it has knowledge of the change before the tax roll becomes final, will revoke the application and assess the land in the same manner as other real property in the taxing district.

(b) If, notwithstanding such change of use, the land is assessed under the Act in the ensuing tax year, then the assessor is required to enter an assessment, as an added assessment against such land, in the "Added Assessment List" for the particular tax year involved in the manner prescribed in the Added Assessment Law, N.J.S.A. 54:4-63.2 et seq.

(c) The added assessment is to be in an amount equal to the difference, if any, between the assessment imposed under the Act and the assessment that would have been imposed had the land been valued and assessed as other land in the taxing district. This added assessment is applicable to the full tax year and not subject to proration.

1. Example: A change in use takes place on November 15, 2009 but is not discovered by the assessor or the county board of taxation until June 1, 2010. In that event, the assessor will enter an added assessment against land on the Added Assessment List for 2010, in accordance with (b) above. In addition, he shall impose roll-back taxes using the regular, not the alternative omitted procedure, for such of the tax years 2009, 2008, and 2007, in which the land was assessed under the Act.

R.1971 d.138, effective August 12, 1971.
 See: 3 N.J.R. 185(a), 3 N.J.R. 138(b).
 Amended by R.1979 d.87, effective March 8, 1979.
 See: 11 N.J.R. 100(b), 11 N.J.R. 210(b).
 Amended by R.1997 d.405, effective October 6, 1997.
 See: 29 N.J.R. 2803(a), 29 N.J.R. 4335(a).
 In (a)1 and (c)1, changed applicable years.
 Amended by R.2004 d.62, effective March 1, 2004.
 See: 35 N.J.R. 4044(b), 36 N.J.R. 1226(a).
 Amended the tax years throughout.
 Amended by R.2013 d.022, effective February 19, 2013.
 See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

In the introductory paragraph of (a), substituted "August" for "October"; in (a)1, inserted "Example:," and substituted "2009" for the first occurrence of "2002", "2010" for "2003" twice, and "2009," for the second occurrence of "2002"; in the introductory paragraph of (c), substituted "that" for "which" and "proration" for "probation"; and re-wrote (c)1.

Statutory References

As to treatment of land which undergoes a change in use between October 1 and December 1, see N.J.S.A. 54:4-23.13.

18:15-8.3 Effect of additional assessment on roll-back taxes

The imposition of an additional assessment for the tax year, under N.J.S.A. 54:4-23.13 of the Act by reason of a change in use between October 1 and December 31 of the pre-tax year, does not affect the imposition of the roll-back taxes, if any, under the roll-back provisions set forth in N.J.S.A. 54:4-23.8 of the Act.

Statutory References

As to the effect of an additional assessment on roll-back taxes, see N.J.S.A. 54:4-23.13.

18:15-8.4 through 18:15-8.5 (Reserved)

SUBCHAPTER 9. EQUALIZATION—STATE SCHOOL AID AND COUNTY APPORTIONMENT PURPOSES

18:15-9.1 Apportionment valuation of land; classification; assessment ratio

(a) The Director, in equalizing the value of land assessed and taxed under the Act for the purposes of state school aid, and each county board of taxation in equalizing the value of such land for the purpose of determining the "apportionment valuation" under N.J.S.A. 54:4-49, shall determine the true value of such land on the basis of its agricultural or horticultural use.

(b) In the sales-ratio analysis for such purposes, the assessed value of farm property is to be divided into two categories, namely, farmland assessed under the Act and farmland assessed as other real property in the taxing district.

(c) A separate assessment ratio is then to be determined for each classification, except that the assessment ratio determined for the classification "Residential" is also applied to the classification "Farmland Assessed Under the Act".

(d) The true value for each classification, the true value of all property in the district, and the average assessment ratio for the district, is to be determined in accordance with the established sales-ratio procedures.

Statutory References

As to determination of true value of land for purpose of state school aid and apportionment valuation, see N.J.S.A. 54:4-23.10.

Case Notes

Sale of commercial property used as trucking company depot held a nonusable deed transaction concerning the sale of commercial property including indeterminable items, plus property excluded from the Division assessment practices study. *Union Tp. v. Director, Division of Taxation*, 1 N.J.Tax 15, 176 N.J.Super. 239, 422 A.2d 803 (Tax Ct.1980).

18:15-9.2 through 18:15-9.3 (Reserved)

SUBCHAPTER 10. CONTINUANCE OF FARMLAND ASSESSMENT

18:15-10.1 Continuous agricultural use for farmland assessment

(a) In order that land continue to be valued, assessed and taxed as farmland it must continue to be devoted to agricultural or horticultural use and comply with the other requirements of the Act.

(b) The continuance of title to the land in the same owner has no effect on the treatment such land is accorded under the Act.

(c) Liability for roll-back taxes does not accrue when a change in ownership takes place if the new owner continues to devote the land to agricultural or horticultural use, under the conditions prescribed in the Act.

Statutory References

As to continuance of farmland valuation, assessment and taxation, see N.J.S.A. 54:4-23.15.

Case Notes

Roll-back tax liability found where appurtenant parcel formerly farmland assessed was split up and conveyed to a third party for use unrelated to agriculture or horticulture, demonstrating it was no longer needed to support unsold portion of farm. *Hinck v. Wall Tp.*, 3 N.J.Tax 96 (Tax Ct.1981).

18:15-10.2 through 18:15-10.3 (Reserved)

SUBCHAPTER 11. SEPARATION OR SPLIT-OFF

18:15-11.1 Liability for roll-back taxes on land split-off

The separation or split-off of a part of any land which is being assessed under the Act, either by conveyance or other action of the owner, for a use other than agricultural or horticultural, subjects the land so separated to liability for the roll-back taxes applicable.

Statutory References

As to treatment of a separation or split-off, see N.J.S.A. 54:4-23.16.

Case Notes

Roll-back tax liability found where appurtenant parcel formerly farmland assessed was split up and conveyed to a third party for use unrelated to agriculture or horticulture, demonstrating it was no longer needed to support unsold portion of farm. *Hinck v. Wall Tp.*, 3 N.J.Tax 96 (Tax Ct.1981).

18:15-11.2 Land still meeting requirements of Act

The Act does not impair the right of the remaining land to continue to be assessed under the Act, provided it still meets the five acre minimum area requirement and other conditions of the Act as may be applicable.¹

¹ See Section 12.1 (Eminent domain) of this Chapter for the effect of a change of use resulting from the taking of land under Eminent Domain.

18:15-11.3 through 18:15-11.4 (Reserved)

SUBCHAPTER 12. EMINENT DOMAIN

18:15-12.1 Effect of roll-back taxes on eminent domain and condemnation

The taking of land that is being valued, assessed, and taxed under the Act by right of eminent domain is not exempt from the imposition of roll-back taxes. (Section 3 of P.L. 1970, c. 243.)

R.1971 d.138, effective August 12, 1971.

See: 3 N.J.R. 185(a), 3 N.J.R. 138(b).

Amended by R.2013 d.022, effective February 19, 2013.

See: 44 N.J.R. 2289(b), 45 N.J.R. 352(a).

Substituted "that" for "which", "not" for "no longer", and "c. 243" for "c.243", inserted a comma following "assessed", and deleted "approved October 28, 1970" following "243".

18:15-12.2 through 18:15-12.3 (Reserved)

SUBCHAPTER 13. CONTIGUOUS LAND IN MORE THAN ONE TAXING DISTRICT

18:15-13.1 Determination of minimum area requirement

Where contiguous land in agricultural or horticultural use in one ownership is located in more than one taxing district, compliance with the five acre minimum area requirement is determined on the basis of the total area of such land and not merely the area of the part which is located in the particular taxing district.

Example:

An application for farmland assessment covers 15 contiguous acres of land in agricultural use in one ownership; three acres are in taxing district "A", the remaining 12 acres are in taxing district "B". The three acres in taxing district "A" are deemed to meet the five-acre minimum area requirement, since it is the aggregate contiguous area, in one ownership, that determines area eligibility in such case, and not merely the area of the portion located in the individual taxing district. (See Section 3.2(c) (Contiguous land) of this Chapter).

Statutory References

As to the treatment of contiguous land in one ownership in more than one taxing district, see N.J.S.A. 54:4-23.18.

Case Notes

Single legal ownership for land within one taxing district not required for eligibility for farmland assessment. *Shein v. North Brunswick Tp.*, 9 N.J.Tax 1 (1986).

18:15-13.2 through 18:15-13.3 (Reserved)

SUBCHAPTER 14. STATE FARMLAND EVALUATION COMMITTEE

18:15-14.1 Creation

Under the Act, a State Farmland Evaluation Committee is created, the members of which are the Secretary of Agriculture; the Dean of the College of Agriculture, Rutgers—The State University; and the Director of the Division of Taxation.

Statutory References

As to creation of State Farmland Evaluation Advisory Committee, see N.J.S.A. 54:4-23.20.

18:15-14.2 Meetings and duties

The Committee meets from time to time on the call of the Secretary of Agriculture and annually determines and publishes a range of values for each of the several classifications of lands in agricultural and horticultural use in the various areas of the State.

Statutory References

As to meetings and duties of State Farmland Evaluation Advisory Committee, see N.J.S.A. 54:4-23.20.

18:15-14.3 Objectives

The primary objective of the Committee is the determination of the ranges in fair value of such land based upon its productive capabilities when devoted to agricultural or horticultural uses.

Statutory References

As to objective of State Farmland Evaluation Advisory Committee, see N.J.S.A. 54:4-23.20.

18:15-14.4 Considerations in determining value

(a) In making annual determinations of value, the Committee considers available evidence of agricultural and horticultural capability derived from the soil survey data at Rutgers—The State University, the National Cooperative Soil Survey, and such other evidence of value of land devoted exclusively to agricultural or horticultural uses as it may in its judgment deem pertinent.

(b) On or before October 1 of each year, the Committee makes these ranges of fair value available to the assessing authority in each of the taxing districts in which land in agricultural or horticultural use is located.

Statutory References

As to considerations in determining value, as N.J.S.A. 54:4-23.20.

18:15-14.5 Effect of assessor

While values recommended by this Committee for the various classifications of land in agricultural or horticultural use in the various areas of the State are not binding upon the assessor, he is required by Section 7 of the Act to "... consider available evidence of agricultural and horticultural capability derived from the soil survey data at Rutgers—The State University, the National Cooperative Soil Survey and the recommendations of value of such land as made by any county or state-wide committee which may be established to assist the assessor . . ." in determining the value of such land for assessment purposes under the Act.

Statutory References

As to the requirements that the State Farmland Evaluation Advisory Committee shall make their determination of the ranges of value available to the assessors, see N.J.S.A. 54:4-23.20.

18:15-14.6 Development of agricultural or horticultural use values by assessors

(a) The Director recommends that an assessor utilize the valuation standards established by the State Farmland Evaluation Advisory Committee in valuing farmland qualified property in accordance with N.J.S.A. 54:4-23.7.

(b) In the event an assessor plans not to utilize the valuation standards established by the State Farmland Evaluation Advisory Committee in valuing qualified farmland, the assessor shall submit such alternate standards to the Director by November 1 of the pretax year, indicating his reasons for not following the Advisory Committee's recommendations. The assessor shall further submit a detailed explanation as to the procedure and valuation standards to be applied in valuing qualified farmland.

(c) After review of such information, the Director shall inform the assessor and the respective county board of taxation by December 10 of the pretax year as to the propriety of utilizing the alternate standard. If the Director advises against utilization of the alternate standard and the assessor, nevertheless, chooses to rely on such standard for establishing qualified farmland assessments, he shall give written notice to the Director and the county board of taxation no later than December 31 of the pretax year.

(d) The county board of taxation, after its review as provided under N.J.S.A. 54:4-46, shall direct the assessor to make such changes it deems necessary to accomplish qualified farmland assessments in accordance with the Farmland Assessment Act of 1964.

New Rule, R.1987 d.237, effective June 1, 1987.
See: 19 N.J.R. 447(b), 19 N.J.R. 987(b).

Case Notes

Township assessor's failure, when valuing floricultural greenhouse operations, to follow regulations recommending that assessors use valuation standards established by Advisory Committee created by the Farmland Assessment Act, and requiring notifications by assessors if they elect not to use such standards, rendered assessor's valuations invalid; regulations were valid and enforceable as they did not impose requirements beyond the scope and purposes of Act and served important function of promoting uniform assessment of farmland throughout the state. *Van Vugt v. Pequannock Township*, 20 N.J.Tax 129.

Even if township assessor had followed procedures contained in regulations on valuing farmland property, assessor's valuations of floricultural greenhouse operations were invalid, as assessor's valuation methodology did not establish value of subject properties as required by Farmland Assessment Act; assessor applied income methodology and used income and expenses from one greenhouse operator, assumed rest of operators' properties would reflect same results, valuation did not reflect the productive capability of operators' lands but rather was a function of the market value of crops planted and management skill of the farmer, and per acre price determined by assessor was more than forty-five times higher than highest per acre value under valuation methodology established by the Act. *Van Vugt v. Pequannock Township*, 20 N.J.Tax 129.