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David N. Harper, Director

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MEMORANDUM

TO: Kansas County Appraisers

FROM: David Harper, Director

DATE: May 15, 2013

SUBJECT: Classification of Non-Productive Land within a Single Agricultural Operation

Subject

The issue to be addressed in this memorandum is when, if ever, should the county appraiser use a mixed use classification to account for non-productive land within a contiguous agricultural tract?

Conclusion

In general, a contiguous tract of land, which may contain multiple parcels involved in a single agricultural operating unit, devoted to the production of plants, animals or horticultural products, should not be subjected to a mixed use classification to account for non-productive areas on the tract. Mixed use classification for agricultural parcels should be limited in application to occurrences where areas of land used primarily for recreational, commercial or residential purposes are clearly identifiable. Non-productive and non-use are used synonymously in this memorandum in reference to areas within the boundaries of an agricultural operation which may be undeveloped, idle or serve conservation purposes only as of January 1 of the appropriate tax year.

Discussion

“Land devoted to agricultural use” is defined in K.S.A. 2012 Supp. 79-1476 as follows:

[L]and, regardless of whether it is located in the unincorporated area of the county or within the corporate limits of a city, which is devoted to the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes, other than that land established as a controlled shooting area pursuant to K.S.A. 32-943, and amendments thereto, which shall be deemed to be land devoted to agricultural use, suburban residential acreages, rural home sites or farm home sites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition.

Land devoted to agricultural use frequently contains non-productive areas on the tract. Non-productive areas are often characterized by trees, streams and inaccessibility, and the like, but these conditions often serve a valuable purpose by controlling runoff, soil erosion and absorbing carbon emissions to address but a few such benefits. The Kansas Supreme Court has stated that “soil conservation measures are generally understood to be an integral part of the cultivation of the soil in current farming practices.” In re Tax Application of *Lietz Constr. Co.*, 273 Kan. 890, 906, 47 P.3d 1275 (2002). Thus, it is recognized that some plants may only serve a conservation purpose such as to control runoff and erosion. Generally, these acreages should be considered land devoted to agricultural use. The uses described in this paragraph often serve the principal use of the property – the production of the plants and animals listed in K.S.A. 2012 Supp. 79-1476 – and should not be separately classified.

Real property used for mixed purposes is addressed in Appraisal Directive #99-038 which states in part

where “uses are so intermingled as to defy classifying identifiable, physical portions of the property, then the property should be classified based upon its predominate use.”

“If specific portions of the real property cannot be identified as being used for specific purposes, then the real property should be classified based upon its predominate use.”

“Property such as agricultural land, which has seasonal uses typical to the trade that do not necessarily take place on January 1st or on a 12-month basis, shall be classified annually based upon the overall use during the prior year or operating period.”

Based on the foregoing, all land within the boundaries of a single agricultural operating unit is to be classified as land devoted to agricultural use unless clearly defined areas within those boundaries are primarily used for recreational, commercial or residential purposes. The presumption is that the non-productive areas of an operating unit, devoted to the production of crops and animals is also land devoted to agricultural use. Such presumption may be overcome only by establishing that such land contains areas actively and routinely used for recreational, commercial or residential purposes.

The non-use of a portion of a commercial building does not lead to a mixed use classification, even though the non-used area can be clearly identified. Rather the classification is based on the devoted and primary use of the property. The same theory should be applied to land devoted to agricultural use. Non-use of portions of a parcel, or of contiguous parcels, devoted to agricultural use does not in and of itself warrant a split classification for the agricultural use parcel. It is recognized that there will be situations where areas on a contiguous agricultural tract are clearly intended to be non-agricultural. Land clearly and primarily used for recreational or residential purposes should not be classified as land devoted to agricultural use. A mixed use classification may be used where the intended non-agricultural use is manifest. For example, the landowner purposefully sets aside areas within an agricultural tract for hunting, fishing, etc. on a scale that is more than incidental. However, incidental, non-commercial hunting and fishing on an agricultural tract is not a basis for reclassification. It is not the intent of this memorandum to prevent the landowner, the tenant or their guests from occasionally hunting and fishing on an agricultural tract.