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COMMISSIONER

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March 29, 2006

Senator Pamela P. Resor  
The State House, Room 410  
Boston, MA 02133

Re: Classified Farm and Recreational Lands  
Our File No. 2006-78

Dear Senator Resor:

This is in reply to your questions about the qualification of certain lands for classification as agricultural or horticultural land under G.L. c. 61A or recreational land under G.L. c. 61B. Classification under those chapters provides preferential tax treatment to land owners by exempting the qualifying land from local taxation at its fair cash valuation and substituting a reduced "use value" assessment instead.

Your first question relates to the qualification requirements under G.L. c. 61A. You wish to know:

1. If feed or forage from pastures or hayfields is grown on at least five acres of land and then used to feed boarded horses on the same land, does that crop or pasture land qualify as land devoted to agricultural or horticultural use under Chapter 61A, assuming the sales value of this feed or forage can be documented to meet the minimum revenue requirements? What documentation should be provided to assessors?

We do not believe the land in question would qualify for classification as agricultural or horticultural land for purposes of obtaining the preferential property tax treatment under G.L. c. 61A.

An essential prerequisite to classification is that the land be used for an "agricultural" or "horticultural" use. Those uses are defined in G.L. c. 61A, §§1 and 3, respectively, which provide, in relevant part:

Land shall be deemed to be in agricultural use when primarily and directly used in raising animals, including, but not limited to, ... horses ..., for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived therefrom for market. (Emphasis added).

Land shall be deemed to be in horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, . . . , for the purpose of selling such products in the regular course of business; . . . , or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products and preparing them for market. (Emphasis added).

In addition, G.L. c. 61A §3 requires certain minimum sales from farm products as follows:

Land not less than five acres in area shall be deemed to be actively devoted to agricultural or horticultural uses when the gross sales of agricultural, horticultural or agricultural and horticultural products resulting from such uses . . . total not less than five hundred dollars per year. (Emphasis added).

If the land is more than five acres, the minimum amount is increased by per acre rates depending on the type of land.

Finally, G.L. c. 61A §4 requires active farm use for a period of time as follows:

For general property tax purposes, the value of land, not less than five acres in area, which is actively devoted to agricultural, horticultural, or agricultural and horticultural uses during the tax year in issue and has been so devoted for at least the two immediately preceding tax years, shall . . . , be that value which such land has for agricultural or horticultural purposes. (Emphasis added).

In our opinion, these provisions demonstrate a clear intent to promote and conserve active, productive farmland. They plainly require the raising of animals or cultivation of crops for the express purpose of selling them or products derived from them in the regular course of business, thereby generating sufficient sales receipts to meet the established annual gross sales requirements. In this scenario, there is no sale transaction in the regular course of business, nor is there an established or documented receipt of a dollar amount for purposes of satisfying the annual gross sales requirement. To the extent that there is no identified and reported regular sale of a farm product, we do not see how the land can qualify as actively devoted to agricultural or horticultural purposes.

Your second question relates to land used for boarding of horses or horseback riding activities.

2. Is land used for the facilities of a boarding or riding stable (including barns, riding rings, arenas and similar facilities) eligible as a customary and necessary related use of land under Chapter 61A, assuming that an equal or greater acreage is actively devoted to the production of feed or forage for sale or utilization at said facility?

In this scenario, the land is used primarily to keep, board or ride horses, and includes barns, areas for riding rings, arenas and other similar facilities. It is not clear precisely what the term "facility" means, but it seems to refer to areas ranging from an outdoor, fenced paddock to a corrugated steel arena for equestrian events. In any event, no information is provided to indicate that the horses are bred or kept

for sale at maturity in the regular course of business, as would be the case for a typical farm product, or that the land areas are used in a manner that is necessary or related to raising horses and preparing them or a product derived from them for market. Likewise, we do not see how the keeping or riding of the horses is a necessary related use to raising a horticultural product and preparing it for market. Therefore, we do not see a basis for land used primarily for boarding or riding to qualify under G.L. c. 61A. Importantly, however, we think that paddocks, riding rings and other outdoor areas used primarily for horseback riding would likely fit within the distinct provisions of G.L. c. 61B, which allows for the classification of recreational land used for "horseback riding" and provides for preferential tax assessments at no more than 25 percent of fair cash value.

The third question presented is as follows:

3. Is land used for the facilities of a boarding or riding stable (including barns, riding rings, arenas and similar facilities) eligible for inclusion as land under Chapter 61B?

As we indicated in our response to Question 2., we believe that outdoor areas used primarily for horseback riding, *e.g.*, paddocks, riding rings, trails and open lands, would generally qualify for G.L. c. 61B classification, provided the acreage, access and other statutory requirements are satisfied. If the activities take place inside a building or other constructed facility, however, we do not believe the underlying land area qualifies. In our opinion, an intent to promote the conservation and preservation of natural, undeveloped land is clearly manifest in the statutory definitions of recreational use that encompass land of an open or landscaped condition and land areas that may also be used for certain outdoor activities. More specifically, the statute limits classification to land where a qualifying recreational activity does not "materially interfere with the environmental benefits which are derived from said land." G.L. c. 61B §1. We have consistently taken the position that development, such as buildings or other structures, is not consistent with protecting the "environmental" benefits derived from the land upon which they sit.

I hope this information proves helpful.

Sincerely,

  
Alan LeBovidge  
Commissioner of Revenue

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