

MINNESOTA • REVENUE

Assessment and Classification Practices Report

Property Used for Horse Breeding and Horse Boarding Activities

A report submitted to the Minnesota State Legislature pursuant to Minnesota Laws 2009, Chapter 88, Article 2, Section 47, Subdivision 1

Property Tax Division
Minnesota Department of Revenue
January 29, 2010

Per Minnesota Statute 3.197, any report to the Legislature must contain, at the beginning of the report, the cost of preparing the report, including any costs incurred by another agency or another level of government.

This report cost \$23,000.

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January 29, 2010

To the members of the Legislature of the State of Minnesota:

I am pleased to present to you this report on assessment and classification practices for real property used for horse breeding and horse boarding activities within the State of Minnesota undertaken by the Department of Revenue, in consultation with the Department of Agriculture, in response to Minnesota Laws 2009, Chapter 88, Article 2, section 47, subdivision 1.

This report provides a summary of classification practices of property used for horse breeding and horse boarding activities within the State of Minnesota as well as recommendations to improve the uniformity of classifications of these types of properties.

Sincerely,

Ward Einess
Commissioner

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Introduction and Legislative Charge

This report was developed in accordance with Minnesota Laws 2009, Chapter 88, Article 2, Section 47, subdivision 1. In 2009, partially in response to taxpayer concerns, the Legislature required the Department of Revenue to analyze existing assessment and classification practices of property used for horse breeding and horse boarding activities and to issue a report in an effort to provide recommendations for achieving greater quality and uniformity where appropriate. Specifically, the legislative charge states that:

“In order to provide for the uniform assessment and classification for property tax purposes of real property used for horse breeding and horse boarding activities, the commissioner of revenue, in consultation with the commissioner of agriculture, shall study the treatment of such properties under current law. The commissioner must report by February 1, 2010, to the chairs and ranking minority member so the taxes committees of the senate and house of representatives, summarizing the current treatment and making recommendations for needed or useful law changes.”

The Department of Revenue, after consulting with the Minnesota Department of Agriculture (MDA) and the Minnesota Association of Assessing Officers (MAAO), interprets the legislative intent for this report as to provide the Legislature with information on current law, current assessment and classification practices, and any necessary recommendations for administrative or legislative changes to bring about more statewide uniformity in the treatment of properties used for horse breeding and boarding activities.

In preparation for issuing this report, the department formed a working group composed of Department of Revenue staff members, MDA staff members, and several members of MAAO. The members of the working group included:

- Duane Ebbighausen, Beltrami County Assessor
- Marci Moreland, Carlton County Assessor
- Keith Kern, Deputy Carver County Assessor
- Bill Effertz, Assistant Hennepin County Assessor
- Gordon Folkman, Director, Property Tax Division, Department of Revenue
- John Hagen, Assistant Director, Property Tax Division, Department of Revenue
- Lloyd McCormick, Appraisal Supervisor, Property Tax Division, Department of Revenue
- Stephanie Nyhus, Principal Appraiser, Property Tax Division, Department of Revenue
- Lance Staricha, Attorney, Legal Services Division, Department of Revenue
- Larry Mastbaum, Editor, Communications Division, Department of Revenue
- Doug Spanier, Policy Analyst, Ag Marketing Services Division, Department of Agriculture

The working group met six times from September 2009 to January 2010. During these meetings, it was determined that the Department of Revenue would conduct two surveys. The first was a survey of counties through the Minnesota Association of Assessing Officers. That survey was conducted in October 2009. The results indicated there are uniformity issues in the classification of properties used for the breeding and boarding of horses across the state. The results are discussed later in the report, with full results located in the Appendix of the report.

It also was determined that the department would survey several other states regarding their treatment of properties used for equine operations. Of the six states surveyed, four states (Iowa, Kansas, North Dakota, and Wisconsin) would classify properties used for commercial horse boarding as commercial property. The other two states (Nebraska and South Dakota) surveyed would generally classify the property as agricultural property but only if the property met certain other qualifications. These results are discussed later in the report, with the full results summarized in the Appendix.

The working group met with the following stakeholders in order to gain additional background knowledge of the equine industry in Minnesota:

- Allison Eklund, Minnesota Horse Council
- Mark Ward, Minnesota Horse Council
- Tom Tweeten, Minnesota Horse Council
- Krishona Martinson, University of Minnesota
- Jay Thesing, Minnesota Thoroughbred Association
- Thom Pederson, Minnesota Farmer's Union
- Randy Weidner, MN Quarter Horse Racing Association
- Chris Radatz, Minnesota Farm Bureau
- Dan Ramberg, Horse Boarder/Taxpayer
- David Dayon, Horse Breeder/Taxpayer
- Bob & Anita Janssen , Horse Trainers/Taxpayers

On January 12, 2010, the working group met with the stakeholders for the last time to discuss the recommendations for the Legislature. The members of the working group and the stakeholders have been invited to provide written comments for inclusion in the report. Any comments received have been reprinted in the Appendix.

Executive Summary

The legislative charge of the working group was to analyze existing assessment and classification practices of property used for horse breeding and horse boarding activities and to issue a report in an effort to provide recommendations for achieving greater quality and uniformity where appropriate. The key findings and recommendations are summarized below:

1. **Land used to pasture and board horses that are used for personal/recreational use is not being put to an agricultural use** – Currently, the Department of Revenue does not consider this to be an agricultural use of the land because there is no agricultural product being produced for sale.

Recommendation – The working group recommends that this policy continue going forward. Current law is very clear in that it requires at least 10 contiguous acres be used to produce an agricultural product for sale. Feeding and/or raising one's own horses is not agricultural production for property tax purposes according to current law.

2. **Pasture land/hay ground used with commercial boarding** – In the past, the department has interpreted the current statute to mean that pasture land/hay ground used solely in conjunction with a commercial boarding operation should not be considered to be agricultural production. Under this interpretation, this type of pasturing was considered to be different from cases where the pasture was used to produce a product or animal for sale such as beef cattle, dairy cattle, sheep, etc.

Recommendation – The working group recommends that going forward, pasture land/hay ground that is used for the purpose of feeding horses that are commercially boarded onsite should receive the agricultural classification as long as: 1) that feed is provided as part of the boarding package for a fee, and 2) all other qualifications for agricultural use are being met. The portion of a property used for commercial horse boarding does not qualify for the agricultural classification until there are at least 10 contiguous acres used for the production of an agricultural product. Once this 10-acre standard is met, the commercial boarding can be considered to be an agricultural use since it is being done in conjunction with the raising or cultivation of an agricultural product (the hay being sold as part of the boarding). This is an administrative recommendation and would not require legislative action.

3. **Property used for other equine activities** – Significant discussion was held regarding the proper classification of properties used for such things as trail riding, training, horse shows, rodeos, riding lessons, youth camps, racing, etc. Many of the stakeholders believe such properties should receive the agricultural classification. However, the working group does not believe that current law allows such properties to be classified as agricultural.

Recommendation – If the Legislature wishes to grant the preferential tax treatment of the agricultural classification to properties used for such equine activities, the statute should be changed to specify which activities qualify as agricultural use. This would help eliminate any potential ambiguity for assessors and enhance assessment uniformity.

4. **Guidelines** – Currently, the department does not have clear guidelines for assessors to use when classifying properties used for horse activities.

Recommendation – Upon completion of the legislative session, the Department of Revenue will issue clear guidelines to assessors regarding the classification of properties used for horse activities. These guidelines will incorporate any changes to administrative or legislative policies during the session; they will also be discussed in upcoming education offerings for assessors.

Current Law

In Minnesota, all property is classified according to its use on the annual assessment date of January 2. For property tax purposes, there are five basic classifications of property and numerous sub-classifications of property. Each has its own classification rate. These classifications are outlined in Minnesota Statutes, section 273.13. The current definition of agricultural property – found in section 273.13, subdivision 23 – states in part that:

*“(b) Class 2a **agricultural land** consists of parcels of property, or portions thereof, that are agricultural land and buildings...*

*(e) **Agricultural land** as used in this section means **contiguous acreage of ten acres or more**, used during the preceding year for **agricultural purposes**...*

*‘**Agricultural purposes**’ as used in this section means the raising, cultivation, drying, or storage of **agricultural products for sale**,...*

Real estate of less than ten acres, which is exclusively or intensively used for raising or cultivating agricultural products, shall be considered as agricultural land...

*The term ‘**agricultural products**’ as used in this subdivision includes **production for sale of**:*

*(1) **livestock**, dairy animals, dairy products, poultry and poultry products, fur-bearing animals, horticultural and nursery stock, fruit of all kinds, vegetables, forage, grains, bees, and apiary products by the owner;*

(2) fish bred for sale and consumption if the fish breeding occurs on land zoned for agricultural use;

*(3) **the commercial boarding of horses if the boarding is done in conjunction with raising or cultivating agricultural products as defined in clause (1)**;*

*(4) **property which is owned and operated by nonprofit organizations used for equestrian activities, excluding racing**;*

(5) game birds and waterfowl bred and raised for use on a shooting preserve licensed under section 97A.115;

(6) insects primarily bred to be used as food for animals;

(7) trees, grown for sale as a crop, including short rotation woody crops, and not sold for timber, lumber, wood, or wood products; and

(8) maple syrup taken from trees grown by a person licensed by the Minnesota Department of Agriculture under chapter 28A as a food processor...” [Emphasis added].

(Note: highlighted terms are significant for horse activity classification.)

Past Court Cases

In situations where the statute is unclear, the Department of Revenue often looks to past court cases for guidance in making administrative interpretations. When doing so, the department cannot depend on a single case where the decision is made based solely on the facts presented in that case. Therefore, the department must look at a variety of cases in order to identify general guidelines. This has been the case with the classification of properties used for horses and related activities.

Although court cases specifically involving horses are relatively rare, the courts have distinguished between maintaining several horses for personal/recreational use, horse boarding and training, and breeding and raising horses for sale consistently with regards to granting the agricultural classification.

There were several key observations noted in past Minnesota Tax Court cases involving horses and numbers of animals and the agricultural classification. They include:

- The court does not consider a family's maintenance of several horses for personal recreational use as sufficient agricultural use to qualify under the statute. *Hallgren v. Carver* # 17606 (1982).
- This court has repeatedly held that maintaining several horses, or maintaining a few animals such as a dozen rabbits, a half-dozen sheep (as a hobby) ... does not qualify property for agricultural classification. *Losinski v. Winona* # C8-87-1071 (1988).
- Horses held solely for breeding and/or resale is similar to raising other livestock. *Ramberg v. Washington* # C5-90-2078 (1991); *Cassman v. Kanabec* # C0-96-51 (1996); *Schneider v. Dakota* # 95660 (1984); *Mowry v. Kanabec* # C5-04-299 (2005).
- Boarding and training horses... is not an agricultural pursuit because there is no agricultural product produced and sold. *Schneider*; *Mowry*; *Ramberg*.
- Simply boarding one's horses or those of another is not adequate to confer agricultural classification. *Schneider*.
- Petitioners had made significant investment in barns, machinery, and fenced all pasture to use all available acreage for horse operation. ... In addition a significant profit motive was required in order to justify classifying a property as agricultural. *Hallgren*.

Key Provisions in Current Law

Several key provisions noted in current law should be noted. They are:

1. **Agricultural land refers to 10 contiguous acres of land used to produce agricultural products in the year that precedes the assessment date.** This means that in the year preceding the assessment date, at least 10 contiguous acres must be used to produce agricultural products for sale before the property can be considered classified as 2a agricultural land, unless there is an exclusive or intensive use as defined in statute.

“Contiguous” is defined by the dictionary provided by *www.law.com* as “connected or ‘next to,’ usually meaning adjoining pieces of real estate.” In rare circumstances, reasonable justification may warrant classifying smaller non-contiguous land masses as class 2a land if the total amount of agricultural land on the entire parcel is at least 10 acres. To justify the classification in these cases, assessors must use common sense and professional judgment in considering such factors as:

- Overall size of property (number of acres)
- Number of acres used agriculturally in relation to overall acres
- Crop being raised and sold on the agricultural acres
- Composition of agriculturally used acres (contiguous or non-contiguous)
 - Sizes of the non-contiguous portions used agriculturally or in other ways
 - The locations of the agriculturally used acreage (distance, accessibility, etc.)
 - If the configuration of the agriculturally used acreage lends itself to agricultural production
 - The use(s) of the land separating the non-contiguous agriculturally used acreage

Parcel lines or separate legal property descriptions do not break up the contiguity of land masses used for agricultural purposes as long as the parcels are under the same ownership. In addition, land that is deemed by the assessor as “impractical to separate” (i.e. ditches, waterways, etc.) also does not break up the contiguity of a land mass.

2. **Agricultural products must be produced for sale.** Production for one’s own consumption (or for consumption by a neighbor, relative, etc.) is not sufficient to warrant classifying a property as agricultural property.
3. **Boarding horses that are owned by other people is a commercial activity as specified in statute unless done in conjunction with raising or cultivating an agricultural product** that is listed in Minnesota Statutes, section 273.13, subdivision 23, paragraph (e), clause (1). The Department of Revenue’s understanding is that if commercial boarding of horses is done in conjunction with the raising or cultivating of agricultural products that are listed in clause (1), the property would not be split-classified as part commercial and part agricultural. Rather, the department would recommend that the entire property receive the agricultural classification, assuming that there are no other uses of the property.
4. **Horses are not necessarily viewed by assessors as a conventional form of livestock** in that they are not usually raised to produce food or other products for human consumption similar to those produced by beef cattle, dairy cattle, pigs, sheep, etc. Horses were historically used on the farm as part of the agricultural process. However, horses have evolved into more of a hobby or personal riding animal over time, as machinery has assumed an ever-larger role in agriculture.

These issues are not unique to property used for equine activities. It can be difficult for assessors and the department to classify properties of 11 acres to 20 acres. This is especially true within the metropolitan area, where there is a strong market for hobby farms or “rural residential” property with at least 10 acres for horses, a small hay field or pasture, vegetable or fruit production, etc. Classifying a property as agricultural instead of residential confers a large corresponding property tax benefit (0.5% vs. 1.0% classification rate), so the motivation can be very high for landowners to convince the assessor that the property is being used agriculturally.

In addition, agricultural classification is often the first step to qualifying for the even more lucrative tax benefits of Green Acres. In these types of situations, it can be very difficult for assessors to differentiate between hobby uses of the land and legitimate agricultural production due to the time required to perform detailed investigations and evaluations for each property owner. As we have seen in the past few months following the changes made to Green Acres in 2008 and 2009, once the agricultural classification and Green Acres have been granted, it is incredibly difficult to remove the classification without major repercussions and taxpayer unease.

5. **Training facilities, trail riding facilities, horse leasing facilities, and properties involving racehorses are not identified as agricultural uses of the land in current property tax law.** If the Legislature intends for such properties to receive preferential property tax treatment, then Minnesota Statutes section 273.13, subdivision 23, should be amended to specify that these activities qualify for the agricultural classification.

Past Letters Issued by the Department of Revenue

The Department of Revenue has not issued specific guidelines regarding the classification of properties with equine uses in the past. However, some of the issues have been addressed in department responses to a small number of letters from assessors or taxpayers that raised horse-related questions. Most often, horses have been located on farms with other agricultural operations such that the equine activities were not a deciding factor since the other operations allowed the assessor to classify the property as agricultural.

The department has been consistent in its interpretation that breeding and raising horses for sale may be agricultural activities if 10 contiguous acres are used for production and if significant breeding is taking place on the property. Commercial boarding may be agricultural (and not be split-classified as commercial property) if it is done in conjunction with other agricultural pursuits as consistent with current law. At least 10 acres must be in production of an agricultural product for sale before any agricultural consideration is given to property used for breeding or boarding of horses.

There were several key observations noted in past department letters. These include:

- Horses raised for personal/recreational use are not considered an agricultural product because there is no product being produced for sale.
- Giving riding lessons, horse leasing, and training are commercial activities. There is no agricultural product being produced for sale.
- Breeding and selling horses may be considered agricultural activities if the property owner has been able to provide a Schedule F or other proof of agricultural income. This is consistent with current law in that there must be an agricultural product for sale.

Department's Interpretation of Current Law

As stated above, the Department of Revenue has never issued formal guidelines to assessors regarding the proper classification of property used for horse breeding and horse boarding activities. In fact, until quite recently we did not realize there was a problem and believed that current law was quite clear on this issue. Furthermore, we believed that most horses were located on farms where other agricultural activities were taking place, thus allowing the assessors to base their classification decisions solely on the merits of the other activities rather than equine operations.

If the department had issued guidelines in the past, those guidelines would have looked like those hypothetical guidelines we have listed in the Appendix of this report. These hypothetical guidelines were drafted for illustrative purposes only to facilitate discussions for this report with members of the working group and stakeholders.

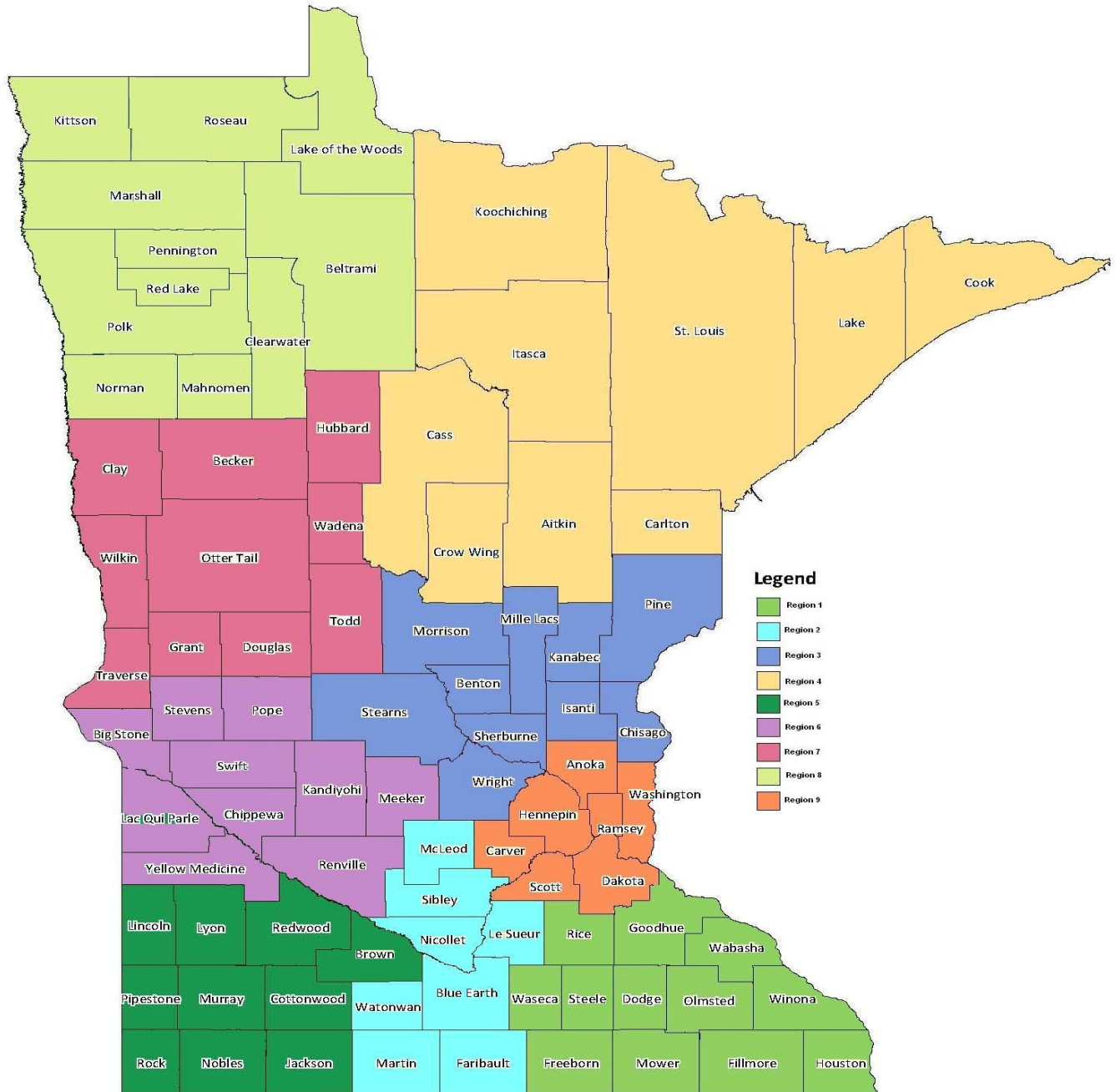
For the purposes of these guidelines, it is helpful to envision five broad types of equine activities:

1. **Personal/Recreational Use** – where a few horses are kept for the owner's personal use;
2. **Breeding/Raising** – may be considered agricultural if significant operation is done for sale;
3. **Training Horses/Leasing Horses for Trail Rides** – likely a commercial activity;
4. **Equestrian Facility Owned by Nonprofit (excluding racing)** – agricultural if it meets requirements in law; or
5. **Commercial Boarding** – caring for someone else's horses or renting your property to be used by another person to care for someone else's horses for a fee. This activity is, by definition, a commercial activity unless it is done in conjunction with another agricultural activity.

Assessors' Current Practices

As part of this report, the working group conducted a survey of all counties on properties used for horse activities. The survey was conducted through MAAO and the results were reported to the department by MAAO region. The map below shows the MAAO regions. In all, 73 of the state's 87 counties (84%) responded to the survey. The full summary of the survey results can be found in the Appendix of this report.

MAAO Region Map



2009 | Minnesota Department of Revenue

The first portion of the county survey focused on trying to determine the number of properties where at least a portion is used for each of the following activities and where those properties are located by region.

The activities included:

1. Personal riding and recreation by the owner of the property;
2. Commercial boarding of horses (charging a fee to board and care for horses owned by others);
3. Breeding; and
4. Training/showing (cutting, racing, etc.).

The results were somewhat ambiguous with a number of counties reporting that it was impossible to determine the number of properties that were used for these particular activities. This is to be expected since many of the counties do not keep such detailed records that would allow them to easily extract this information from their property record systems. In addition, horses may simply be part of a larger agricultural operation, particularly in outstate areas. Therefore, the property would likely be classified as an agricultural property because of the other operation and the presence of horses did not affect the assessor's classification of the property one way or the other.

The second portion of the survey posed a series of hypothetical classification scenarios to assessors and asked how they would classify the property in each of the scenarios. The scenarios began with a simple situation and variables were added with each question to add complexity. The variables included overall size of property, number of productive agricultural acres, production of hay for sale to others, and number of animals (horses). Based on the answers, it is clear that with each added variable, assessors have greater difficulty achieving uniformity in classification of property across the regions and across the state. It is clear that assessors need more direction in classifying properties used for such purposes. Following the issuance of this report and at the conclusion of the legislative session, the department intends to issue a bulletin to assessors to offer additional guidance on the proper classification of properties used for breeding/raising and commercial boarding of horses.

Classification Practices in Other States

As part of this report, the Department of Revenue conducted a survey regarding the treatment of property used for equine activities in Iowa, Kansas, Nebraska, North Dakota, South Dakota, and Wisconsin. The full survey results can be found in the Appendix of this report.

Breeding and raising horses for sale would generally be classified as an agricultural use in all the states surveyed except North Dakota, where commercial is the “default” classification. According to Marcy Dickerson of the North Dakota Department of Revenue, land used for riding and pleasure horses, breeding, and boarding would all be classified as commercial property.

The state of Wisconsin grants the agricultural classification to property used for horse breeding if the owners are primarily engaged in the sale and production of horses, the operation has a Premise ID (Wisconsin’s livestock premises registration identification system) number, and it has the appropriate registrations required by the Wisconsin Department of Agriculture Trade and Consumer Protection.

Commercial boarding operations would most likely be classified as commercial property in Iowa, Kansas, North Dakota, and Wisconsin. In Nebraska, generally, if a property is used for feeding, breeding and raising agricultural products, it is classified as agricultural property. However, according to Nebraska’s Department of Revenue, some counties do have commercial horse boarding operations classified as commercial property.

Unique among the states surveyed, South Dakota statute requires that a property meet two of three criteria to be considered agricultural property:

1. One-third of the total gross family income must be from the farm;
2. The farm must produce food, forage, or fiber (of which horses are not); or
3. The property must be at least 20 acres in size (with a county option to require a minimum of up to 160 acres).

Commercial horse boarding located on a property that meets at least two of the above criteria would be classified as agricultural, rather than split-classified.

Definition of Commercial Boarding

It became evident during this process that there is a lack of a commonly-shared understanding for the term “commercial boarding of horses.” This term appears to mean different things to industry representatives, assessors, and the Department of Revenue. Industry representatives state that boarding is simply a part of the process of raising a horse, similar to backgrounding¹ beef cattle, and that all animals are boarded at some point. The department and assessors indicate that statute specifies that horse boarding is a commercial use unless it is done in conjunction with the production of an agricultural product for sale.

While there is no specific statutory definition, our research revealed several possible types of boarding for horses. These include:

1. **Full Board** – includes all necessities for the horse plus a stall with full turn-out. Typically, owners do not need to visit their horses under this type of arrangement. This may also include lessons, arena and equipment use, but owners may have to pay extra for specialized feeds, veterinary treatments, etc.
2. **Partial Board** – in this case, someone pays a portion of the board to the owner of a horse (or to the stable owner) in exchange for part-time or occasional use of that horse. Typically, a written agreement stipulates a certain number of days per month or hours per week the horse is available for use, who is responsible for veterinary care, and equipment use and responsibility.
3. **Pasture Board** – the horse lives outside year-round with food, water, and possibly an exterior shelter.
4. **Self-care Board** – generally provide “facilities only” for horse owners, who provide their own feed, bedding, stall cleaning, veterinary care, turn-out, etc.

Fees for each of the types of boarding can vary widely from a few dollars per day to several hundred dollars per month depending on the facilities provided and the services included in the contracts.

¹ The United States Department of Agriculture’s Economic Research Service defines backgrounding as the preparation of young cattle for a feedlot, getting them accustomed to new facilities and feeds.

Stakeholder Concerns

After the Department of Revenue released its interpretation of current law, stakeholders were invited to respond and share their concerns with the working group. Below is a summary of stakeholder concerns, along with the department's responses.

1. **Several stakeholders expressed concern that the department is not taking the economic impact of the equine industry into consideration as a part of this study.**

Response: While the department appreciates the impact of the equine industry on Minnesota's economy, that particular concern was not raised in the legislation mandating this report. Accordingly, the department focused specifically on the property tax treatment of horse breeding and/or boarding properties under current law, along with recommendations for potential administrative or statutory changes.

2. **Several stakeholders expressed concern that the department and assessors have characterized horses as pets or defined keeping horses as a recreational/hobby pursuit.**

Response: The department recognizes that horses may represent more than just a recreational/hobby pursuit for property tax purposes – provided the property where they are kept meets the definition of agricultural property provided under statute. Current law generally requires that at least 10 acres of land must be used to produce an agricultural product for sale to receive the agricultural classification. Keeping horses for recreational purposes is not considered an agricultural use because there is not an agricultural product being produced for sale. Breeding or maintaining a few horses (or other animals) as a hobby or for personal use does not qualify a property for the agricultural classification. The department's position, upheld by the courts in several cases, is that the production must be significant to qualify as an agricultural use.

With respect to defining "significant" production, the department has resisted imposing animal unit requirements for several reasons. It removes professional judgment from the equation. No longer would assessors be able to judge how the overall property is used. There will always be someone who will fall one animal short of a given animal unit requirement. Such a bright-line test always produces winners and losers. It invites cheaters and roving herds. It is impossible to count all animals on all properties in a county on a single day (in this case, the annual assessment date of January 2). It could potentially be punitive if disease (such as Bovine TB or Avian Flu) were to unexpectedly reduce the numbers of a herd or flock.

3. **The Minnesota Horse Council believes the department's interpretation of commercial horse boarding is incorrect.**

Response: The department's interpretation is based on current law, which states that "the commercial boarding of horses" is an agricultural product "if the boarding is done in conjunction with raising or cultivating agricultural products as defined in clause (1) [of Minnesota Statutes, Section 273.13, subdivision 23, paragraph (e)]." Commercially boarding horses, or boarding other people's horses for a fee, would normally be considered a commercial use of the property. However, a horse boarding property may qualify for the agricultural classification if the boarding is accompanied by the production for sale of agricultural products as defined in clause (1). According to current law, a horse boarding property that also meets the agricultural production standards would be classified as

agricultural property. If it does not meet the statute's production requirement, it would be classified as commercial, or may be split-classed if there are other uses on the property.

4. **The Minnesota Horse Council believes current statute is “convoluted and confusing” and the “list of eight categories of ‘agricultural products for sale’ in Subd. 23(i) is not coherent.”**

Response: The department maintains that the statute defining “agricultural products for sale” is clear. Commercial boarding of horses is an agricultural activity only if it is done in conjunction with raising or cultivating agricultural products as defined in clause (1) of Minnesota Statutes, section 273.13, subdivision 23, paragraph (e). The only aspect of the definition that appears to be open to administrative interpretation is whether pasture used to facilitate the boarding (i.e. by producing hay to feed the horses being boarded) can be considered as part of the agricultural production requirement. The department's past position has been that such production did not qualify as an agricultural use since there was no sale taking place that would satisfy the agricultural production requirements. However, as part of this study we are re-evaluating that position, as noted in our recommendations.

5. **The Minnesota Horse Council concedes that under past case law that it is true that “riding instruction, horse training, and other educational services are not agricultural products for sale. However, they are critically important to many if not all horse breeding and boarding businesses. Therefore, the statewide standards should explain that riding instruction, horse instruction, horse training, and other educational services will not disqualify a property that otherwise qualifies as agricultural under 273.13 subd. 23(i)(1) or (3).”**

Response: The department recognizes the financial importance of these services to some horse operations. However, current law does not make this distinction for property tax purposes. Whether or not the law should be changed is a public policy determination that must be made by the Legislature.

6. **The Minnesota Horse Council believes that leasing horses should also count as a sale. “Just as leases of new automobiles are counted as sales, the leasing of horses also is a sale. Leasing is simply a ‘slow sale’ or a series of sales over the useful life of a horse. Either way the horse is sold for value. Leasing is widespread in the cattle and swine industries and is a universally accepted business model in agriculture; likewise it should be recognized as a significant sector of the horse sales industry.”**

Response: The department's interpretation of current law is that leasing a horse to ride would be similar to leasing a personal watercraft, snowmobile, or other similar recreational items. The department has not been asked to study the economic segments of either the cattle or the swine industry. However, leased cattle and swine are eventually sold for food production, satisfying the requirement under current law that an agricultural product be produced for sale. This may be a case where horses are slightly different than “traditional livestock” in that they are not produced for food. Whether or not the law should be changed so that horse leasing qualifies as agricultural production is a public policy determination that must be made by the Legislature.

7. **The Minnesota Horse Council would like the department to remind assessors that local zoning ordinances and conditional use permit standards do not affect property classification under Minnesota Statutes 273.13, since they are different laws with different standards and sources of authority.**

Response: Assessors are trained and understand that, under Minnesota Statutes 273.13, property is classified based on its use on the annual assessment date of January 2. The department is in agreement that specific zoning and conditional use permits should not *necessarily* be a determining factor in classifying property. However, at times, assessors may have to rely on conditional use permits as indicators of use for classification purposes when they have been unable to gain interior access to a structure. For example, if a residential property has a conditional use permit for a hair salon, but the assessor has been unable to gain access to the property, the assessor may classify a portion of the property as commercial; the conditional use permit offers a reasonable indication that the owner is operating a hair salon in a portion of the property.

The only instance where zoning is mentioned in the classification of property is in section 273.13, subdivision 33, which states in part that:

[Except for rural vacant land or managed forest land] *“real property that is not improved with a structure and for which there is no identifiable current use must be classified according to its highest and best use permitted under the local zoning ordinance. If the ordinance permits more than one use, the land must be classified according to the highest and best use permitted under the ordinance. If no such ordinance exists, the assessor shall consider the most likely potential use of the unimproved land based upon the use made of surrounding land or land in proximity to the unimproved land.”*

In the department’s view, it would be incorrect to tell assessors they should never consider zoning or conditional use permits. Assessors should always consider zoning or conditional use permits but must also exercise sound professional judgment, since the zoning/permits may not be applicable in all situations for property tax purposes. The department will offer assessors additional guidance on the proper consideration of these tools.

Recommendations

After careful consideration, the Department of Revenue makes the following recommendations:

1. **The personal/recreational use of horses is not an agricultural use for property tax purposes.** Current law requires that at least 10 contiguous acres be used for the production for sale of an agricultural product in order for a property to be classified as agricultural land for property tax purposes. Simply having a few horses to ride for pleasure purposes does not meet that standard. In addition, any pasture they feed on would not be considered to be productive agricultural land because, again, there is not a product being produced for sale. Rather, the product being raised is being used to feed the owner's personal animals, which are not, in turn, being sold.
2. **The production of pasture land for use with the commercial boarding of horses will be considered to be agricultural production going forward.** Even if the only agricultural production taking place on a property is the pasture being used by the horses that are being boarded or hay land that is being cut and used to feed horses being boarded, the property will qualify for the agricultural classification so long as all other qualifications are being met (at least 10 acres of pasture or hay ground). It should be noted that the portion of the property used for commercial boarding does not qualify for the agricultural classification until there are at least 10 acres used for the production of an agricultural product.

Once the 10-acre agricultural production standard is met independently of the commercial boarding, then the commercial boarding can be considered to be agricultural product since it is being done in conjunction with the raising or cultivation of agricultural products. We believe this change can be accomplished administratively via clear guidelines to assessors and would not require legislative action.

3. **Minnesota Statutes section 273.13 should be changed if the Legislature desires to extend the definition of agricultural use to additional equine activities.** Current law does not allow properties used for activities such as trail riding, training, horse shows, rodeos, riding lessons, youth camps, racing, etc., to qualify as agricultural property. If the Legislature desires to extend the preferential treatment of the agricultural classification to properties used for such equine activities, the statute should be changed and such activities specified so as to eliminate any potential ambiguity for assessors and to enhance assessment uniformity.
4. **The department will issue clear guidelines for the classification of properties with equine activities.** Once the 2010 legislative session has ended, the department will issue guidelines for assessors. The new guidelines will incorporate any necessary legislative changes or administrative policy updates concerning properties used for horse activities. They will also be discussed in upcoming educational offerings for assessors.

Conclusion

Uniformity in the classification of property used for breeding and boarding of horses can be largely improved by two things: specifically counting pasture/hay ground used to feed commercially boarded horses on the same property toward agricultural production requirements, and the issuance of clear guidelines for assessors to use in classifying properties used for equine purposes. Going beyond these administrative changes would require specific legislative direction to provide public policy guidance.

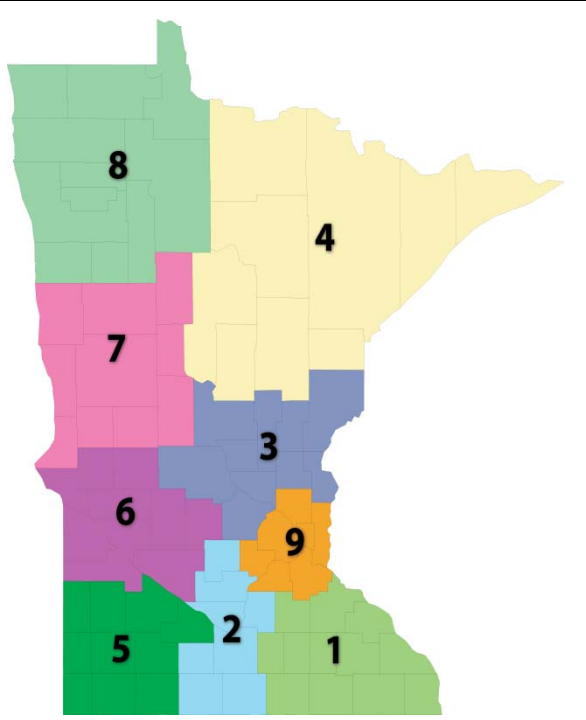
Appendix

Hypothetical Past Administrative Guidelines *

* **As stated in the body of this report, these hypothetical past administrative guidelines are for illustrative purposes only based on current law and past court decisions and not taking the outcomes of this study into consideration.** Once the 2010 legislative session is completed, the Department of Revenue will issue guidelines based on the recommendations set forth in this report, updated to reflect any 2010 statutory changes and will differ from those listed below.

1. At least 10 contiguous acres must be devoted to agricultural production (not including the rare exceptions for exclusive or intensive use).
2. An agricultural product must be produced FOR SALE. Use of a product for one's own use or for use by a neighbor, relative, etc. is not considered to be "for sale."
3. Ten acres or more of pasture used to provide feed for horses that are being used by the owner for their own personal/recreational use DOES NOT qualify the property for the agricultural classification – there is not an agricultural product being produced for sale.
4. Ten acres or more of pasture being used to provide feed for horses that are being commercially boarded does not qualify the property for the agricultural classification because there is not an agricultural product being produced for sale.
5. Land used to produce horses bred or raised for sale should qualify for the agricultural classification. However, breeding/selling 1-2 horses is not likely enough to qualify a property for the agricultural class (neither is selling 1-2 cows, 1-2 sheep, etc.) Assessors must use good judgment to differentiate between hobby and business enterprises in the absence of strict animal unit measurements. Assessors may want to ask for additional information such as receipts of sale, Schedule F, etc.
6. Ten acres or more of pasture being used to provide feed for horses that are being bred/raised for sale DOES qualify for the agricultural classification since there is a product being sold (the horses). The assessor must determine if there is significant production taking place (enough animal units being sold each year) to warrant the agricultural classification.
7. Horses used for personal or recreational use DO NOT allow a property to qualify for the agricultural classification. (There are no agricultural products being produced for sale in this situation.)
8. If a property is used for both breeding for sale and commercial boarding, the assessor would not split class the property as ag/commercial. Rather, it would be classified as all agricultural assuming there is no other use of the property (e.g. tack shop which would require a commercial classification).
9. Any tack shops, riding lessons, horse leasing, conference/event centers, or other clearly commercial portions of a property must continue to receive the commercial classification.

Survey Results – Assessors’ Current Practices (properties used for horse activities, October 2010)

<i>MAAO Regions by County (survey response rates)</i>									
	Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7	Region 8	Region 9
	Rice Goodhue Wabasha Waseca Steele Dodge Olmsted Winona Freeborn Mower Fillmore Houston	McLeod Sibley Nicollet LeSueur Blue Earth Watonwan Martin Faribault	Morrison Stearns Wright Sherburne Benton Mille Lacs Kanabec Isanti Chisago Pine	Koochiching Itasca Cass Crow Wing Aitkin Carlton St. Louis Lake Cook	Rock Nobles Jackson Pipestone Murray Cottonwood Lincoln Lyon Redwood Brown	Big Stone Stevens Pope Kandiyohi Meeker Renville Chippewa Yellow Medicine Swift LacQui Parle	Traverse Grant Douglas Todd Wadena Hubbard Otter Tail Becker Clay Wilkin	Kittson Roseau Lake of the Woods Marshall Beltrami Clearwater Pennington Red Lake Polk Norman Mahnommen	Hennepin Ramsey Dakota Carver Scott Washington Anoka
	<i>(10 of 12 counties responded)</i>	<i>(7 of 8 counties responded)</i>	<i>(4 of 10 counties responded)</i>	<i>(7 of 9 counties responded)</i>	<i>(8 of 10 counties responded)</i>	<i>(10 of 10 counties responded)</i>	<i>(9 of 10 counties responded)</i>	<i>(11 of 11 counties responded)</i>	<i>(7 of 7 counties responded)</i>

Estimate number of properties where at least a portion of the property is used for the following horse activities:		Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7	Region 8	Region 9
Personal riding and recreation by the owner	< 100	3	3	1	2	6	9	3	7	3
	100 - 200	3	2	1		1		1	3	
	200 - 500	3	1	1	2					1
	Over 500									1
	Impossible to Determine	1	1	1	3	1	1	5	1	2
Commercial boarding of horses (owner charges a fee for boarding and caring for horses owned by others)	0 - 5	4	4	2	4	7	10	6	8	2
	6 - 10	4	2	1	1			1	1	
	11 - 20		1		2					1
	21 - 30	1		1						1
	31 - 40									1
	41 +									1
	Impossible to Determine	1				1		2	2	1
Property used for the breeding of horses	0 - 5	4	5	3	3	6	10	2	7	2
	6 - 10	3	2						1	
	11 - 20				2					3
	21 - 30									
	31 - 40									
	41+	1								1
	Impossible to Determine	2		1	2	2		7	3	1
Property used for training/showing horses (cutting, racing, etc.)	0 - 5	4	5	3	4	6	10	5	10	2
	6 - 10	3	2		2					
	11 - 20	2		1						1
	21 - 30									1
	31 - 40									
	41+									2
	Impossible to Determine	1			1	2		2	1	1

In your county, how would you classify the following types of properties?		Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7	Region 8	Region 9
A 5-acre property with a house, garage, small barn, small pasture, and 3 of the owner's horses grazing the pasture.	Residential **	10	7	4	8	8	10	9	11	7
	Agricultural	---	---	---	---	---	---	---	---	---
A 10-acre property with a house, garage, small barn, small pasture, and 3 of the owner's horses grazing the pasture	Residential **	10	7	4	8	8	10	9	11	7
	Agricultural	---	---	---	---	---	---	---	---	---
A 12-acre property with a house, garage, 10 acre pasture, small barn, and 3 of the owner's horses grazing the pasture.	Residential **	8	5	4	8	1	8	8	11	7
	Residential/Ag	2	---	---	---	---	---	---	---	---
	Agricultural	---	2	---	---	5	1	---	---	---
	Res OR Ag	---	---	---	---	---	1	---	---	---
	Res/RVL	---	---	---	---	---	---	1	---	---
A 15-acre property with a house and garage, 10 acre pasture, and 3 of the owner's horses grazing the pasture in addition to several horses that are being commercially-boarded at the boarding facility located onsite.	Residential	2	3	2	2	3	1	2	9	4
	Residential/Ag	3	---	---	---	---	---	---	---	---
	Residential/Comm	5	2	2	4	1	7	6	2	2
	Agricultural	---	2	---	2	2	1	---	---	1
	Ag/Commercial	---	---	---	---	2	---	---	---	---
	Res OR Ag	---	---	---	---	---	1	---	---	---
	Res/RVL/Commercial	---	---	---	---	---	---	1	---	---
A 15-acre property with a house and garage, 10 acres hay sold to local farmers, 3 of the owner's horses grazing the pasture in addition to several horses that are being commercially-boarded at the boarding facility located onsite.	Residential	1	---	---	---	---	---	---	1	---
	Residential/Ag	2	---	---	---	---	---	---	---	3
	Agricultural	3	5	4	4	4	2	5	8	2
	Ag/Commercial	3	1	---	3	3	2	4	1	---
	Res/Commercial	---	1	---	1	1	5	---	---	---
	Res OR Ag	---	---	---	---	---	1	---	---	---
	Res/Ag/Comm	---	---	---	---	---	---	---	---	2

How would you classify? (continued)		Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7	Region 8	Region 9
A 20-acre property with a house and garage, the property owner grows 10 acres of hay that is used to feed 3 horses that are commercially-boarded onsite.	Residential	1	3	1	---	---	1	---	3	---
	Residential/Ag	2	---	---	---	---	---	---	---	3
	Agricultural	3	3	1	3	6	1	2	6	2
	Res/Commercial	2	---	2	3	1	2	---	---	1
	Res/RVL	---	---	---	2	---	---	1	1	---
	Ag/Commercial	---	1	---	---	1	5	6	---	---
	Res/Ag/Comm	---	---	---	---	---	---	---	---	1
	Res/Comm/RVL	---	---	---	---	---	---	---	1	---
	Res OR Ag	---	---	---	---	---	1	---	---	---
	Need more info	1	---	---	---	---	---	---	---	---
A 20-acre property with a house and garage, the property owner grows 10 acres of hay that is used to feed 15 horses that are commercially-boarded onsite.	Residential	2	2	---	---	---	1	---	2	---
	Residential/Ag	1	---	---	---	---	---	---	---	3
	Agricultural	3	2	1	3	3	1	1	6	2
	Res/Commercial	2	1	---	4	1	2	3	1	1
	Res/Ag/Comm	1	---	---	---	---	---	---	---	1
	Ag/Comm	1	2	---	---	4	5	5	---	---
	Res/Comm/RVL	---	---	2	---	---	---	---	1	---
	Res/RVL	---	---	1	1	---	---	---	1	---
Res OR Ag	---	---	---	---	---	1	---	---	---	
A 20-acre property with a house and garage, the property owner grows 10 acres of hay that is produced for sale to others. In addition, the property owner commercially-boards 3 horses on site.	Residential	1	---	---	---	---	---	---	1	---
	Agricultural	5	5	3	4	6	2	4	9	2
	Residential/Ag	2	---	---	---	---	---	---	---	4
	Res/Comm	---	---	---	1	1	2	---	---	---
	Res/RVL	---	---	---	1	---	---	---	---	---
	Ag/Comm	2	2	1	2	1	5	5	1	---
	Res/Ag/Comm	---	---	---	---	---	---	---	---	1
	Res OR Ag	---	---	---	---	---	1	---	---	---
A 20-acre property with a house and garage, the property owner grows 10 acres of hay that is produced for sale to others. In addition, the property owner commercially-boards 15 horses on site.	Residential	1	---	---	---	---	---	---	---	---
	Residential/Ag	1	---	---	---	---	---	---	---	4
	Agricultural	5	2	3	3	3	2	3	9	3
	Ag/Comm	2	3	1	4	4	5	4	---	---
	Res/Comm	---	---	---	1	1	2	---	2	---
	Res/Ag/Comm	1	1	---	---	---	---	---	---	---
	Commercial	---	1	---	---	---	---	---	---	---
Res OR Ag	---	---	---	---	---	1	---	---	---	

In the previous scenarios what factor most heavily influenced your decisions? Please rank in order of importance with 1 being most important and 4 being least important.		Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7	Region 8	Region 9
	Size of overall property	4-#1 2-#2 4-#3 0-#4	1-#1 0-#2 4-#3 1-#4		2-#1 2-#2 1-#3 2-#4	3-#1 2-#2 2-#3 0-#4	4-#1 4-#2 1-#3 1-#4	1-#1 0-#2 5-#3 3-#4	1-#1 8-#2 2-#3 0-#4	1.86
	Number of productive acres (2a)	8-#1 2-#2 0-#3 0-#4	5-#1 2-#2 0-#3 2-#4		4-#1 2-#2 0-#3 0-#4	7-#1 1-#2 0-#3 0-#4	7-#1 2-#2 0-#3 1-#4	5-#1 4-#2 0-#3 0-#4	10-#1 1-#2 0-#3 0-#4	1.43
	Production of hay for sale to others	0-#1 5-#2 5-#3 0-#4	0-#1 5-#2 1-#3 1-#4		5-#1 1-#2 1-#3 0-#4	0-#1 1-#2 4-#3 1-#4	1-#1 2-#2 7-#3 0-#4	3-#1 5-#2 1-#3 0-#4	0-#1 2-#2 9-#3 0-#4	2.43
	Number of animals (horses)	1-#1 1-#2 1-#3 6-#4	1-#1 1-#2 1-#3 3-#4		0-#1 0-#2 5-#3 2-#4	0-#1 4-#2 1-#3 3-#4	1-#1 0-#2 5-#3 4-#4	0-#1 1-#2 3-#3 5-#4	0-#1 0-#2 0-#3 11-#4	2.57
In your county, how would you classify the following types of properties?		Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7	Region 8	Region 9
A 20-acre property with a house. In addition, there are 31, 10x12 stalls used for horse boarding, indoor and outdoor riding arenas, leasing and sales area, space for corporate/business seminars, equine-assisted psychotherapy (treatment of psychological and relational issues, etc.). There are no other identified uses of the property.	Residential	1	---	---	---	---	---	---	3	---
	Res/Commercial**	9	6	4	5	6	8	9	6	5
	Commercial	---	1	---	1	1	---	---	1	---
	Ag/Commercial	---	---	---	1	1	---	---	---	1
	Res/Comm/RVL	---	---	---	---	---	---	---	1	---
	Res/Ag/Comm	---	---	---	---	---	---	---	---	1
	N/A	---	---	---	---	---	2	---	---	---
A 20-acre property used for boarding and training horses. It has indoor box stalls, an indoor arena, outdoor arena, as well as a tack/apparel shop. There are no other identified uses of the property.	Residential	1	1	---	---	---	---	---	---	---
	Commercial**	9	5	3	5	7	8	2	11	4
	Res/Comm	---	1	---	1	---	---	1	---	---
	Comm/RVL	---	---	1	---	---	---	5	---	2
	Ag/Commercial	---	---	---	1	1	---	---	---	---
	Res/Ag/Comm	---	---	---	---	---	---	---	---	1
	N/A	---	---	---	---	---	2	---	---	---

How would you classify? (continued)	Region 1	Region 2	Region 3	Region 4	Region 5	Region 6	Region 7	Region8	Region 9
A 35-acre property with a house and garage, a 15-acre pasture, a commercial-boarding facility that also holds 3 of the owner’s horses. The owners occasionally use their 3 show horses for breeding purposes.	Residential	1	1	---	---	1	---	---	---
	Res/RVL	---	---	---	---	---	---	2	---
	Residential/Ag	1	---	---	---	---	---	---	3
	Agricultural	2	2	1	3	2	1	---	4
	Ag/Comm	2	---	---	---	2	3	2	1
	Res/Commercial	4	4	3	5	1	4	---	3
	Res/Ag/Commercial	---	---	---	---	2	---	---	1
	Res/Comm/RVL	---	---	---	---	---	---	6	1
N/A	---	---	---	---	---	2	---	---	
A 35-acre property with a house and garage, a 15-acre pasture, a commercial-boarding facility that also provides breeding services for numerous clients. The property owner is able to produce a Schedule F that shows that horse breeding is the primary source of income from the property and includes both stud fees and insemination fees.	Residential	1	---	---	---	1	---	---	---
	Res/RVL	---	---	---	---	---	---	1	---
	Residential/Ag	2	---	---	---	---	---	---	1
	Agricultural	2	4	1	2	---	---	1	5
	Ag/Commercial	3	---	2	1	5	8	4	1
	Res/Commercial	1	3	---	4	1	---	---	3
	Res/Comm/RVL	---	---	1	1	---	---	3	---
	Res/Ag/Commercial	---	---	---	---	1	---	---	1
	To be determined	1	---	---	---	---	---	---	---
	Not sure	---	---	---	---	---	---	---	1
N/A	---	---	---	---	---	2	---	---	

Survey Results – Classification Practices in Other States (land used for horse boarding or breeding)

	Iowa	Kansas	Nebraska	North Dakota	South Dakota	Wisconsin
Is your Agricultural land assessed on ad valorem basis or some other basis?	Other	Other	Both - Most property is assessed at its EMV. Ag land is assessed at 75% of EMV and there is a "special value" for property located close to Lincoln and Omaha where development values are increasing. The "special value" is 75% of the ag value.	Other	Other	Other
If 'Other', what basis?	Ag land is assessed based on a productivity index.	Ag land is valued based on the inherent capabilities of the soil (soil ratings from NRCS) and they adjust for the average yield in the county. They also add for irrigation.	See above	Ag land is based on productivity. NDSU calculates and average per acre value by county for tillable and non-tillable. Assessors then apply that average value per acre by township and equalize it. This method was enacted in 2007 and will be mandatory for 2010 assessment. Assessors do have the discretion to use "modifiers" for topography, etc. but the modifiers must be approved by the state.	For 2010, pay 2011, ag land will be assessed based on productivity.	Ag land is valued on productivity. Wisconsin DOR gives assessors the values based on productivity.
Are horses considered to be an agricultural product in your state for property tax purposes?	Not necessarily for property tax. Breeding for sale and raising race horses for sale are agricultural uses. Statute is not specific and the courts have not been specific.	Not necessarily. Breeding for sale would be an ag activity. Zoe is only aware of one quarterhorse breeder in Miami County, which is south of Kansas City. Boarding other people's horses would not be ag. Horses are a gray area in Kansas and it is up to each county appraiser to classify the property. There is not alot of equine activity in Kansas.	Yes	No - there is nothing in statute, nothing has gone to court. Commercial is their "default" classification. Riding and pleasure horses have generally been treated as commercial.	No they are not livestock	Horses can be considered ag if they are part of a breeding operation and the facilities are mainly if not exclusively used for the production of horses for sale.
Are there a minimum number of acres in production required for a property to be considered to be a farm or agricultural property?	No.	No.	No - it is based on primary use which is up to the assessor	Generally 10 acres. May be less if the taxpayer can refute the presumption that 10 acres are necessary	No - to be ag property, statute requires they meet 2 out of 3 required criteria. 1/3 of total gross family income from the farm; produce food, forage or fiber (of which horses are not); or have a minimum of 20 acres (county has an option to require a minimum of up to 160 acres).	If they do not have a farm # and a Schedule F for farm reporting or if the property is not in corn or beans they typically do not receive ag use. With this said, owners have appealed this and at least one was found to have ag use eligibility determination made in circuit court for 2 acres of pumpkins. It was somewhat irrelevant since the value was subsequently attached to the residence. There is not a minimum; however it is implied at something around 20-40 acres depending on the crop being grown. Each is handled on a case-by-case basis. Predominant use typically drives the acre minimum issue.
How are commercial horse boarding operations classified - as agricultural property or as something else? If something else, what?	Commercial	Commercial	Generally, if the property is used for feeding, breeding and raising ag products, it is classed as ag. However, some counties do have boarding operations classed as commercial	Likely commercial	Commercial unless the property meets 2 of the 3 criteria above. Once property meets criteria for ag property, then it is ag no matter what (not split classed)	Commercial
How are horse breeding operations classified - as agricultural property or as something else? If something else, what?	Agricultural	Agricultural	Agricultural	Likely commercial	Commercial unless the property meets 2 of the 3 criteria above. Once property meets criteria for ag property, then it is ag no matter what (not split classed)	Horse breeding receives ag use if they are primarily engaged in the sale and production of horses, the operation has a Premise ID and registrations required by WI Dept. of Ag Trade and Consumer Protection.

Final Comments – Minnesota Association of Assessing Officers

January 21, 2010

Commissioner Ward Einess
Minnesota Department of Revenue
600 North Robert Street
St Paul, MN 55101

Re: *Assessment and Classification Practices Report*
Property Used for Horse Breeding and Horse Activities

Dear Commissioner Einess:

On behalf of the Minnesota Association of Assessing Officers, we would like to thank you for the invitation to be a participant in this work group. We also appreciate the opportunity to provide input into the resulting report. It is our opinion, that the report accurately depicts the content of those discussions and that it represents a cooperative effort between each of the participating parties.

The primary interest of MAAO is to provide practical and professional input that leads to effective administration and uniform assessments practices across all property types in the State of Minnesota.

We agree with the findings and recommendations contained within the report and believe that they will lead to more uniform assessment practices with regard to horse breeding and horse activities across all assessment jurisdictions in the State.

Sincerely,

William G. Effertz
President MAAO

Final Comments – Minnesota Department of Agriculture

January 15, 2010

Commissioner Ward Einess
Minnesota Department of Revenue
600 North Robert Street
St. Paul, MN 55101

Dear Commissioner Einess:

The Department of Agriculture was pleased to participate in the task force meetings and has reviewed this report. We agree that the recommendations and findings will lead to uniform assessment and classification for property taxes of real property used for horse breeding and horse boarding activities.

The horse industry in Minnesota has shown significant increases in economic activity and value over the past decade. The direct feed value utilization annually by the horse industry is significant, bringing \$35.6 million* in additional value to Minnesota produced forages and concentrates. Horse breeding and training facilities also contribute to rural economic development and have a significant entertainment value in certain parts of Minnesota.

Discussions with horse breeders and stakeholders continues to reiterate the need for clear guidelines and the development of educational outreach that will assist the Department of Revenue and county assessors in achieving uniform property tax treatment of the state's horse operations.

Finally, the Minnesota Department of Agriculture believes that a definition making it clear that horses are livestock is needed in statute. As proposed last year, Chapter 17 includes similar language referencing other important segments of agriculture. Having such a definition may not have tax consequences as discussed in this report, but it will help clarify assumptions often made about Minnesota's horse industry.

Sincerely,



Gene Hugoson
Commissioner

**Economic Value of Horses in Minnesota – Brian Buhr, University of Minnesota Department of Applied Economics – January 2004. Estimates cited in American Horse Council, Economic Impact of Horses in the United States.*

Final Comments – Minnesota Horse Council

Comments on MDOR Second Draft of Report on Taxation of Equine Property

January 15, 2010

Compiled and Submitted by the Minnesota Horse Council

Contributors:

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Allison Eklund, Government Relations Attorney, Minnesota Horse Council

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Daniel E. Ramberg, Owner of Woodloch Stables in Hugo, MN and Stakeholder

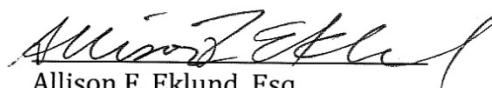
Members of the Minnesota Stable Owners Association and Individual Stable Owners throughout Minnesota

1. The final Report should be clear in differentiating MDOR's past treatment of equine property compared with proposed future changes in statewide Guidelines to Assessors. Currently the Summary of Hypothetical Administrative Guidelines on page 16 of the report is confusingly titled. "MDOR's Past Interpretation of Section 273.13 Subd. 23 and Applicable Caselaw" would help distinguish it from proposed new Guidelines.
2. Past Court Cases on page 5 omit the *Holt* case (*Holt v. County of Chisago*, No. C5-04-559 (Minn. Tax 2005) which holds that tilled, tillable, and unusable wild land can be added together to meet the 10 acre minimum for agricultural classification. In *Holt*, the Court found that a 12.4 acre parcel including 4 ½ acres of tilled land, plus 3 acres of land that could be tilled or used as hay land, plus four acres of unusable wild land, qualified the parcel for agricultural classification. *Holt* is consistent with 2009 changes to Section 273.13 Subd. 23(b) which now *mandates* that "Class 2a agricultural land consists of parcels of property, or portions thereof, that are agricultural land and buildings. ... Class 2a property **must** also include any property that would otherwise be classified as 2 but is interspersed with class 2a property, including but not limited to sloughs, wooded wind shelters, acreage abutting ditches, ravines, rock piles, land subject to a setback requirement, and other similar land that is unlikely to be able to be sold separately from the rest of the property."
3. In its definition of commercial horse boarding on page 10 of the report, MDOR properly describes the breadth of variation in possible types of boarding: full board, partial board, pasture board, and self-care board. All of these arrangements involve, by definition, the feeding of horses. It is noted, however, that the definition of "partial board" in which a person pays a portion of the board to the owner of a horse or to the stable owner in exchange for the use of that horse, encompasses just about every imaginable financial arrangement for the use of horses—including leasing and riding lessons, which MDOR otherwise characterizes as commercial activities. MDOR has stated that characterization of these activities as potentially consistent with agricultural classification is an issue for the legislature rather than statewide guidelines. It is noted here that in the absence of any such legislation, equine

business property owners are likely to characterize all payments for the use of horses as payments for “partial board” rather than services, and such characterization would be lawfully consistent with agricultural classification available to horse boarding property under current law if the property also is used for “raising or cultivating an agricultural product” under Section 273.13 Subd. 23(i)(3).

4. MDOR affirms in the report that it will change its position on whether pasture can qualify a horse boarding property for agricultural classification under Section 273.13 Subd. 23(i)(3). In the past, MDOR has stated that pasture must be mechanically harvested and sold to third parties to qualify as an agricultural product raised for sale and has disqualified pasture fed to horses by grazing. In the future, MDOR will recommend that pasture used for grazing horses be considered an agricultural product for sale to boarders, but only if the property contains 10 acres of pasture or more. Currently the statute contains no such 10 acre minimum but only requires that an agricultural product be raised or cultivated on the property. Here it is pointed out that property owners with diverse or variable topography used for horses’ turnout may find themselves at odds with assessors who decline to classify acreage with both trees or slough and seeded pasture, for example, as sufficient to qualify as “raising an agricultural product for sale.” Left to the discretion of assessors under current law, this scenario is likely to arise with frequency and may result in a continued increase in the number of appeals.
5. MDOR’s response to the Minnesota Horse Council’s earlier comment that leasing should be considered a “sale” of horses, in paragraph 6 of page 12 of the report, inappropriately analogizes horses to watercraft, snowmobiles, and other inanimate recreational items. MDOR recognizes that horses are livestock, and livestock of all types are routinely subject to lease agreements during their useful life. The only distinction of horses compared with other livestock is that they are used by people to perform work rather than to produce products. Therefore, in addition to noting that horse leasing is the same as “partial board” as described above, it continues to be asserted by stakeholders that leasing horses is an agricultural sale under Section 273.13 Subd. 23(i)(1).

Respectfully submitted on January 15, 2010 by:


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ADDENDUM TO REPORT

Following the completion of this report, the Department of Revenue reviewed the recent decision of the Minnesota Tax Court in the case *Sommerdorf vs. County of Sherburne*, (File # 71-CV-08-752, January 21, 2010). Since the report had already been completed when the decision was issued, there are no comments on the decision within the report. However, since the case encompassed several issues that were discussed in the report, we feel several items are worth noting in this addendum.

1. This case involved the 2007 assessment which was before agricultural land was separated into class 2a productive agricultural land and 2b rural vacant land effective for the 2009 assessment. In 2006 Minnesota Statutes, section 273.13, subdivision 23, paragraph (c) read in part that “*Agricultural land as used in this section means contiguous acreage of ten acres or more, used during the preceding year for agricultural purposes. ‘Agricultural purposes’ as used in this section means the raising or cultivation of agricultural products... Contiguous acreage on the same parcel, or contiguous acreage on an immediately adjacent parcel under the same ownership, [emphasis added] may also qualify as agricultural land, but only if it is pasture, timber, waste, unusable wild land, or land included in state or federal farm programs.*”

The property appealed to the tax court was held by three separate ownership entities. Ordinarily this comingling of different ownerships would limit potential classifications. However, according to the Sherburne County Assessor’s Office, following the 2007 assessment, the ownerships were consolidated into a single ownership which eliminated this issue going forward for future assessments.

2. The court determined that the pasture on parcel #3 qualified as 2a agricultural land, therefore allowing the commercial horse boarding on parcel #1 to be classified as agricultural because it is being done in conjunction with the production of agricultural products. This determination mirrors a change in administrative policy that was agreed to at the conclusion of this horse study. Previously, the department recommended that pasture that was used only as part of a horse boarding operation did not qualify as agricultural production because there was not a product being produced for sale. Following the 2010 legislative session, new guidelines will be issued to assessors outlining this change in administrative policy. This new policy is in conformance with the decision on the pastureland issued by the Court in the Sommerdorf case.
3. The Court’s decision that harvesting wood and riding trails meet the requirements for the agricultural classification is not consistent with how we have been administering property classifications. It is our opinion that in 2007, harvesting firewood would have been a timber activity (class 2b trees grown for timber, lumber, wood or wood products), not an agricultural product (trees grown for sale as a crop, e.g. Christmas trees, etc.).

In the report, we have asked for additional clarification on the classification of property used for riding trails, arenas, riding instruction, etc. from the Legislature.