Chapter 848 of the Codified Ordinances of Loudoun County

CHAPTER 848

Agricultural, Horticultural, Forest, Open Space or Newly Annexed Real Estate Tax

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CROSS REFERENCES

Special assessments for; authority of counties - see Constitution of Va., Art. X, Section 2; Code of Va. §§ 58.1-3200 et seq.
Commissioner of the Revenue - see ADM. Ch. 222
Treasurer - see ADM. Ch. 224
Payment of taxes by credit card - see ADM. 224.01
Agricultural and Forestal District Advisory Committee - see ADM. Ch. 274
Personal property and real estate tax - see B. R. & T. Ch. 860
Exemption for farm animals, certain grains, agricultural products, etc. - see B. R. & T. 860.06
Exemptions and refunds generally - see B.R. & T. Ch. 864, Ch. 868, Ch. 872

848.01 LEVY OF TAX.

The County finds that the preservation of real estate devoted to agricultural, horticultural, forest and open space uses within its boundaries is in the public interest and, having heretofore adopted a land use plan, hereby ordains that such real estate shall be taxed in accordance with the provisions of Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia of 1950, as amended, and of this chapter.
(Ord. 89-11. Passed 9-19-89.)

848.02 APPLICATION FOR TAXATION.

(a) The owner of any real estate meeting the criteria set forth in Sections 58.1-3230, 58.1-3231 and 58.1-3233(2) of the Code of Virginia of 1950, as amended, and the criteria set forth in Section 848.035, may, on or before November 1 of each year, apply to the County Assessor for the classification, assessment and taxation of such property for the next succeeding tax year on the basis of its use, under the procedures set forth in Section 58.1-3236 of the Code of Virginia of 1950, as amended. However, any land lying in planned development, industrial or commercial zoning districts established prior to January 1, 1980, shall be excluded from assessment and taxation under the provisions of this chapter. Such application shall be on forms provided by the State Department of Taxation and supplied by the County Assessor and shall include such additional schedules, photographs and drawings as may be required by the County Assessor.
(Ord. 93-09. Passed 9-1-93; Ord. 01-07. Passed 11-19-01.)

(b) A separate application shall be filed for each use for which qualification is sought.

(c) An application fee as set forth in Section 848.09 shall be charged for each application.

(d) An application may be filed after the specified annual filing deadline of November 1, but not later than December 5, upon payment of the application fee as set forth in Section 848.09 and a late filing fee of thirty dollars ($30.00) per parcel.

(e) The Assessor may accept applications filed after the late filing deadline of December 5, provided such applications are filed not later than the first day of March immediately following such late filing deadline, upon payment of the application fee as set forth in Section 848.09, the late filing fee as set forth above, and an extension fee of thirty dollars ($30.00) per parcel.
(Ord. 89-11. Passed 9-19-89; Ord. 01-07. Passed 11-19-01.)

848.03 DETERMINATION OF PROPERTY VALUE; CRITERIA FOR FOREST OR OPEN SPACE USE.

Promptly upon receipt of any application, the County Assessor shall determine whether the subject property meets the criteria for taxation hereunder. If the Assessor determines that the subject property does meet such criteria, he shall determine the value of such property for its qualifying use as well as its fair market value.

In determining whether or not the subject property meets the criteria for taxation hereunder, the Assessor may request an opinion from the Director of the Department of Conservation and Historic Resources, the State Forester or the Commissioner of Agriculture and Consumer Services. Upon the refusal of the Director, the State Forester or the Commissioner to issue an opinion, or in the event of an unfavorable opinion which does not comport with standards set forth by the Director, the State Forester or the Commissioner, the party aggrieved may seek relief from any court of record wherein the real estate in question is located. If the court finds in favor of the aggrieved party, it may issue an order which shall serve in lieu of an opinion for the purposes of this chapter.
(Ord. 89-11. Passed 9-19-89; Ord. 01-07. Passed 11-19-01.)

848.032 CRITERIA FOR AGRICULTURAL OR HORTICULTURAL USE QUALIFICATION.

(a) To determine whether or not a property meets the criteria for use value taxation on the basis of agricultural or horticultural use, the Assessor shall apply the uniform standards prescribed by the Commissioner of Agriculture and Consumer Services pursuant to Section 9-6.14:1 of the Code of Virginia of 1950, as amended. If the Uniform Standards prescribed by the Commissioner of Agriculture or the Manual of the State Land Evaluation Advisory Council ("SLEAC") require real estate to have been used for a particular purpose for a minimum length of time before qualifying as real estate devoted to agricultural use or horticultural use, the Assessor may waive such prior use requirements for real estate devoted to the production of agricultural and horticultural crops that require more than two years from initial planting until commercially feasible harvesting, provided all of the other production requirements set forth by the SLEAC are met.

(b) In determining whether or not the subject property meets the criteria for taxation hereunder, the Assessor may request an opinion from the Commissioner of Agriculture and Consumer Services.

(c) For the purposes of this chapter, the term "commercially feasible harvesting" shall mean that a crop produced is generally readily available for commercial sale.
(Ord. 01-07. Passed 11-19-01.)

848.035 CRITERIA FOR OPEN SPACE USE QUALIFICATION.

(a) To qualify for the open space classification, a property shall meet all of the criteria listed in either paragraph (a)(1), (2), (3) or (4) hereof:

(1) Historic resource protection. The property must be at least five acres in size, excluding homesite; be listed as an historic property or a contributing property in an historic district on the Virginia Landmarks Register or the National Register of Historic Places; and be subject to a perpetual scenic, historic or open space easement or a seven to ten year recorded commitment with the County.

(2) Scenic resource protection. The property must be at least five acres in size, excluding homesite; be contiguous to (as defined by the Code of Virginia of 1950, as amended) a scenic by-way, with at least 300 feet of frontage on the scenic by-way, or to a scenic river, or be adjacent to a public property listed in the approved State Comprehensive Outdoor Recreation Plan (also known as the Virginia Outdoors Plan); and be subject to a perpetual scenic, historic or open space easement or a seven to ten- year recorded commitment with the County.

(3) Protection of farmland for future agricultural use. The property must be at least twenty acres in size, excluding homesite, and must be located in a rural area as defined by the County Comprehensive Plan; the owner must file and implement a land management plan approved by the Soil and Water Conservation District, agreeing to mow the property at least twice a year, to control noxious weeds and to

use other applicable best management practices; and the property must be subject to a minimum ten-year open space recorded commitment with the County. This contract may only be amended, renegotiated or terminated in the event that the landowner proposes to return to active agricultural activity that may qualify for the Use Value Assessment Program under the agricultural, forestal or horticultural category, provided, however, that such agricultural and horticultural qualification requires a five year production history.

(4) Achievement of comprehensive planning and community development goals. The property must be at least five acres in size, excluding homesite, and be protected by a permanent open space or scenic easement or be located in an Agricultural or Forestal District. Rural village and rural hamlet conservancy lots protected by permanent open space easements may qualify when they are at least five acres in size, excluding homesite.

(b) Any recorded commitment with the County as of September 1, 1993, shall be recognized for the remaining term of such commitment as satisfying the requirements that the property be in an Agricultural or Forestal District, subject to a perpetual easement, or subject to a seven to ten-year recorded commitment, provided, however, that the property must meet all other criteria established by this section.
(Ord. 93-09. Passed 9-1-93; Ord. 02-10. Passed 5-20-02.)

848.036 SLIDING SCALE DEFERRAL FOR PROPERTY HELD FOR LONGER PERIODS IN QUALIFYING USE.

(a) Any property otherwise qualifying for use value taxation under Article 4, Chapter 32, Title 58.1 of the Code of Virginia, as amended, and this section, may qualify for additional deferral of taxes upon a recorded commitment to keep the property in its qualifying use for a term of years. The portion of additional taxes deferred shall be in accordance with the following scale:

(1) In the event of a commitment to hold the property in its qualifying use for more than ten years, but not exceeding twenty years, ninety-nine percent of the use value taxes otherwise assessed may be deferred for the term of the commitment.

(2) In the event of a commitment to hold the property in its qualifying use for more than five years, but not exceeding ten years, fifty percent of the use value taxes otherwise assessed may be deferred for the term of the commitment.

(b) To qualify for the additional deferral, the property owner must execute a written agreement which sets forth the property subject to the restriction, the nature of the restriction and the period of time that the property shall remain restricted to its qualifying use. The written agreement shall be in a form approved by the County Attorney, executed by the County and recorded in the land records. The County Administrator, the Director of Financial Services, or his or her designee, is delegated all necessary authority to prepare and execute agreements on behalf of the County.

(c) For any property entering into a written agreement and receiving deferral under the terms of this section, any roll back taxes shall be calculated in accordance with Section 58.13237(C) of the Code of Virginia, as amended. All other provisions of Article 4, Chapter 32, Title 58.1, of the Code of Virginia, as amended, and this chapter, not inconsistent with this section, shall apply.

(d) This section is in addition to the use value tax deferral program established under the other provisions of this chapter. Subject to the calculation of roll back taxes pursuant to Section 58.1-3237(B) of the Code of Virginia, as amended, landowners may participate in the use value tax deferral program subject to the other provisions of this chapter without the requirement of entering into a written agreement.

(e) The provisions of this section shall be implemented beginning with the tax year 2001 for property owners applying on or before December 5, 2000.
(Ord. 99-19. Passed 12-15-99; Ord. 00-11. Passed 11-6-00; Ord. 01-07. Passed 11-19-01.)

848.04 LAND BOOK; TAX FOR SUCCEEDING YEAR.

The use value and fair market value of any qualifying property shall be placed on the land book before delivery to the County Treasurer, and the tax for the next succeeding tax year shall be extended from the use value.
(Ord. Unno. Passed 9-29-72; Ord. Unno. Passed 10-16-73; Ord. Unno. Passed 10-17-77; Ord. Unno. Passed 1-22-80.)

848.045 ZONING CHANGES.

When the zoning of any property taxed under this chapter is changed to allow a more intensive nonagricultural use at the request of the owner or his or her agent, such property shall not be eligible for assessment and taxation under this chapter. This shall not apply, however, to property which is zoned agricultural and is subsequently rezoned to a more intensive use which is complementary to agricultural use, provided such property continues to be owned by the same owner who owned the property prior to rezoning and such owner continues to operate the agricultural activity on the property.
(Ord. 87-07. Passed 6-15-87.)

848.05 ROLL-BACK TAX FOR ZONING CHANGES.

There is hereby imposed a roll-back tax in such amount as may be determined under Section 58.1-3237 of the Code of Virginia of 1950, as amended, including interest at a rate of five-sixths of one percent per month, or fraction thereof, upon any property whose use changes to a nonqualifying use, or upon any property which is rezoned at the request of the owner or his or her agent to allow any use more intensive than the use for which such property qualifies for special assessment.
(Ord. 87-07. Passed 6-15-87.)

848.055 SUBDIVISION ROLL-BACK TAXES.

(a) For any tract presently valued, assessed and taxed under the provisions of this chapter, the separation or split-off of lots or parcels from the tract by conveyance, recordation of a subdivision plat, partition or any other means shall subject such lots to liability for roll-back taxes which shall be assessed and paid in accordance with Section 848.06. However, no such lot resulting from a subdivision shall be subject to roll-back taxes if.

(1) The owner so subdividing the tract to create such lots attests that such lots shall be used for one or more of the purposes or uses (agricultural, horticultural, forestal or open-space) set forth in Section 58.1-3230 of the Code of Virginia, as amended, ("Qualifying Purpose(s) or Use(s)"), provided that such subdivision and attestation satisfy the following requirements:

A. The subdivision shall be accomplished by the recordation of a plat approved by the County or, if provided by law, approved by order of a court of competent jurisdiction.

B. Such plat shall contain a statement subscribed and sworn to by all owners of the tract stating: "The lots resulting from this subdivision shall be used for one or more of the purposes set forth in Section 58.1-3230 of the Code of Virginia of 1950, as amended"; or

C. Within sixty day after the date of recordation of such plat, there shall be filed with the Assessor an affidavit, on a form to be provided by the Assessor, subscribed and sworn to by all owners of the tract and referencing the correct tax map and parcel number(s) of the tract, which:

1. States that the tract is being subdivided;
2. Specifies the particular qualifying purpose(s) or uses) for which the lots resulting from the subdivision shall be used; and
3. Acknowledges that the failure of any owner of any such lot to put such lot to such qualifying purpose(s) or use(s) and to continue such purpose or use for a period of one year after the recordation of such subdivision plat shall raise a presumption that such lot was not intended for such purpose or use and shall subject such lot to liability for roll-back taxes as of the date of recordation of such subdivision plat.

The attestation requirements set forth in this paragraph (a)(1)C. shall be deemed satisfied for any lot resulting from the recordation of a subdivision which subjects each lot in such subdivision to a permanent open space conservation easement to preclude further subdivision and which satisfies all other requirements of the Loudoun County Zoning Code for a low- density development, as set forth in Section 5-701, a Rural Hamlet Conservancy Lot, as set forth in Section 5-702, or a Rural Village Conservancy or Satellite Conservancy Lot, as set forth in Section 4-1200; and

(2) States that such lot meets the minimum acreage and use requirements for the qualifying purpose(s) or use(s), as set forth in Section 58.1-3233 of the Code of Virginia of 1950, as amended, and this chapter.

(b) The provisions of this section shall apply retroactively to all lots which, prior to the adoption of this section, have been removed from the Land Use Program by the ~~Tax~~ Assessor and/or subjected to liability for roll-back taxes, where such removal and/or subjection to liability was based solely upon the separation or split-off of such lots, provided, however, that the owners who separated or split-off such lots, or the owners of any such lots, shall, no later than May 31, 1994, file an affidavit with the Assessor in accordance with paragraph (a)(1)C. hereof. For any lot against which such roll-back taxes have been imposed, such taxes shall be abated, as to the taxes, penalties and interest, upon the timely receipt of such attestation.
(Ord. 94-01. Passed 1-19-94; Ord. 01-07. Passed 11-19-01.)

848.06 PAYMENT OF ROLL-BACK TAX; MISSTATEMENTS OF FACT; PENALTY FOR DELINQUENCY.

(a) The owner of any real estate liable for roll-back taxes shall report to the Assessor, on forms to be prescribed, any rezoning or change in the use of such property to a nonqualifying use within sixty days following such rezoning or change in use. The Assessor shall forthwith determine and assess the roll-back tax in accordance with Section 58.1-3237 of the Code of Virginia, as amended, and the owner of the property at the time the rezoning or change to a nonqualifying use occurs shall pay such amount to the County Treasurer within thirty days of the assessment. If such owner fails to pay the amount due within thirty days of the assessment, the County Treasurer shall impose a penalty and interest on the amount of the roll-back tax, including interest for prior years. Such penalty and interest shall be imposed in accordance with Sections 58.1-3915 and 58.1-3916 of the Code of Virginia, as amended.
(Ord. 89-11. Passed 9-19-89; Ord. 01-07. Passed 11-19-01.)

(b) Any person making a material misstatement of fact in any application filed pursuant hereto shall be liable for all taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon, and he shall be further assessed with an additional penalty of 100 percent of such unpaid taxes.
(Ord. 87-07. Passed 6-15-87.)

848.07 APPLICATION OF STATE LAW.

The provisions of Title 58.1 of the Code of Virginia of 1950, as amended, applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder mutatis mutandis, including, without limitation, provisions relating to tax liens and the correction of erroneous assessments. For such purposes, the roll-back taxes shall be considered to be deferred real estate taxes.
(Ord. 87-07. Passed 6-15-87.)

848.08 EFFECTIVE DATE.

(a) Except as provided in subsection (b) hereof, this chapter shall be effective for all tax years beginning on January 1, 1973.
(Ord. Unno. Passed 9-29-72; Ord. Unno. Passed 10-16-73; Ord. Unno. Passed 10-17-779 Ord. Unno. Passed 1-22-80.)

(b) The 1987 amendments to this chapter shall be effective on and after July 1, 1987. The 1989 amendments to this chapter shall be effective on and after October 1, 1989.
(Ord. 89-11. Passed 9-19-89.)

(c) The 2001 amendments to this chapter shall be effective on and after December 1, 2001.
(Ord. 01-07. Passed 11-19-01.)

848.09 APPLICATION FEE; RENEWALS.

(a) All applications under this chapter shall be accompanied by an application fee, payable to the County Treasurer, of sixty dollars ($60.00) or sixty cents ($0.60) per acre per parcel or major part thereof for each acre sought to be classified, assessed and taxed under this chapter, whichever is greater. However, no application fee may be required when a change in acreage occurs solely as a result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for taxation on the basis of use assessment.

(b) Every sixth year from the date of the original application, the property owner must file a renewal application on forms supplied by the Assessor, accompanied by a fee of sixty dollars ($60.00) or sixty cents ($0.60) per acre per parcel, whichever is greater.

(c) The filing deadlines for renewal applications shall be the same as that provided for applications under Section 848.02.
(Ord. 99-13. Passed 10-6-99; Ord. 07-07. Passed 11-19-01.)

848.99 PENALTY.

(EDITOR'S NOTE: See Section 202.99 for general Code penalty if no specific penalty is provided.)