

VOLUME NO. 35**Opinion No. 29**

TAXATION — Agricultural land; TAXATION — Realty, agricultural land. Sections 84-401, 84-429.12, 84-437.1, 84-437.2, 84-437.9, R.C.M. 1947.

HELD: 1. All owners of agricultural land must submit an application by October 1 to have such land taxed as agricultural.

2. Land separated or split-off from agricultural land and no longer used for agricultural purposes is subject to a roll-back tax.

September 27, 1973

Mr. Charles R. Meyer, Administrator
Centralized Services
Department of Agriculture
Capitol Annex Building
Helena, Montana 59601

Dear Mr. Meyer:

You have requested my opinion concerning the provisions of Senate Bill No. 72, known as the "Green Belt Act", regarding taxation of agricultural land. Your questions are restated as follows:

1. Must all owners of agricultural land make application to the county assessor to show agricultural use, or must only those owners of agricultural land bordering urban areas make such application?
2. How does section 84-437.9, R.C.M. 1947, concerning the "roll-back tax" provisions, operate?

Section 84-401, Revised Codes of Montana, 1947, provides in part:

All taxable property must be assessed at its full cash value except the assessment of agricultural lands shall be based upon the productive capacity of the lands when valued for agricultural purposes and shall be so valued unless a different use is demonstrated.

Section 84-429.12, R.C.M. 1947, provides in part:

It is hereby made the duty of the state department of revenue to implement the provisions of this act by providing:

All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

Section 84-437.2, R.C.M. 1947, sets forth the eligibility requirements of land for valuation as agricultural, and provides:

Land which is actively devoted to agricultural use shall be eligible for valuation, assessment and taxation as herein provided each year it meets the following qualification:

- (1) It is being actively devoted to agriculture;
- (2) The area of such land is not less than five (5) contiguous acres when measured in accordance with the provisions of section 8 [84-437.6], when the gross value of grazing and field crops produced thereon together with any payments received under a crop-land retirement program totals at least one thousand (\$1,000) per year; or
- (3) It agriculturally produces the equivalent of fifteen per cent (15%) or more of the owners annual gross income; and
- (4) (a) Application by the owner of the land for valuation hereunder is submitted on or before October 1 of the year immediately preceding the tax year to the county assessor in which such land is situated on the form prescribed by the state department of revenue. The county assessor shall continue to accept applications filed within sixty (60) days after October 1 upon payment of a late filing fee in the amount of twenty-five dollars (\$25), which shall be paid to the county treasurer.

(b) The county assessor shall have all applications filed under subsection (a) recorded by the county recorder. Whenever land which is or has been in agricultural use and is or has been valued, assessed and taxed under the provisions of this act is applied to a use other than agricultural, the owner shall notify the county assessor and the county assessor shall cause the following statement to be recorded by the county recorder: "On the _____ day of _____, 19_____, this land became subject to the roll-back tax imposed by section 6 [84-437.4]."

(c) Whenever the owner of land which has been in agricultural use and has been valued, assessed and taxed under the provisions of this act does not file an application as provided in subsection (a), then the department of revenue or its agent shall revalue the land as nonagricultural land.

Section 84-437.1, R.C.M. 1947, provides:

Since the market value of many farm properties is based upon speculative purchases which do not reflect the productive capability of farms, it is the legislative intent that bona fide farm properties shall be classified and assessed at a value that is exclusive of values attributed to urban influence or speculative purposes.

This code section indicates an intent on the part of the legislature to retain the agricultural nature of lands within the state of Montana for taxation purposes. The procedure for maintaining such land as agricultural for tax purposes is set forth in section 84-437.2, supra. Section 84-437.2(4) (a) requires that an application for agricultural valuation be submitted by the owner of the land on or before October first of the year immediately preceding the tax year for maintaining an agricultural assessment. The statutes regarding eligibility for valuation as agricultural use for taxation purposes contain no limitations as to location of the property relative to urban areas, rather the statutes contemplate that such applications must be made on a state-wide basis. Thus, all owners of agricultural land must make application to their county assessor before October first of the year immediately preceding the tax year, to have agricultural land classified as such for tax purposes. Section 84-437.2, supra, does provide a sixty-day grace period after October first for submitting such an application upon payment of a late filing fee of \$25.

You have requested an explanation of section 11 of Senate Bill 72, which is codified as section 84-437.9, R.C.M. 1947. This section provides:

Separation or split-off of a part of the land which is being valued, assessed and taxed under this act, either by conveyance or other actions of the owner of such land, for use other than agricultural, shall subject the lands so separated to liability for the roll-back tax applicable thereto, but shall not impair the right of the remaining land to continuance of valuation, assessment and taxation hereunder, provided it meets the minimum requirements of this act.

Very simply stated, this provision means that if land no longer is used for agricultural purposes, then it shall be taxed at its "best and highest value" use. Section 84-429.12, supra. If, for example, an owner of agricultural land takes a portion thereof and subdivides the same for sale as residential property, then such land is no longer considered agricultural in nature and will be taxed as a subdivision rather than as agricultural property. Such a change in the use of land will only subject that portion which is changed to a nonagricultural use to the increased taxes based on best and highest value use. Upon change to a nonagricultural use, the land is subject to a roll-back tax, and the method of computation of such tax is set forth in section 84-437.4, R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

1. All owners of agricultural land in the state, to be eligible for valuation, assessment and taxation of their land as agricultural, must submit

by October first an application for such valuation with the county assessor of the appropriate county.

2. Land valued, assessed and taxed as agricultural which is separated or split-off from other land and no longer used for agricultural purposes is subject to a roll-back tax as provided by section 84-437.4, R.C.M. 1947.

Very truly yours,

ROBERT L. WOODAHL
Attorney General