

Frequently Asked Questions About Virginia's Use Value Assessment Program

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Introduction

Virginia law allows for localities adopting a program of special assessments for agriculture, horticulture, forestry, and/or open space lands for their land to be taxed based on the value of the land in one of these four uses (use value) instead of its market value. This document provides answers to questions frequently asked by landowners, taxpayers, state and local governments, and nongovernmental agencies about how the use value assessment program is established by localities and administered. Detailed explanations and current use values can be found by accessing the website <http://usevalue.agecon.vt.edu/>.

Basic FAQs

Q What does use value taxation mean?

A Use value taxation means the land portion of eligible real estate is valued and taxed in accordance with the class of use for which it is eligible rather than being valued and taxed only in accordance with its fair market value.

Q How do fair market value and use value differ?

A **Fair market value** is the price property will bring when offered for sale by a person who desires but is not obligated to sell and purchased by a person who is under no necessity to own it.

Use value is the value of a tract of real estate based on its current income-producing use, e.g., agricultural or forestry use. The use value is based on the capitalized net earnings (estimated) for the tract. These earnings are assumed to be paid into the future, and these earnings are derived from cash rents paid for use of the property or net income earned from the property.

The FAQs are organized around seven general categories:

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Fair market value and use value are the same when the real estate at issue has no alternative use, that is, its value is higher in the existing open market than the use that qualifies the real estate for use value taxation.

Q Why and when was use value taxation established in Virginia?

A The legislation has been seen as a way to preserve this land with the belief that long-term public benefits are derived from its preservation. The Virginia General Assembly adopted legislation in 1971 (Code of Virginia, Title § 58.1-3229 through § 58.1-3244) that authorized use value taxation with the stated purposes of:

- Encouraging the preservation and proper use of such real estate to assure a readily available source of agricultural, horticultural, and forest products and open spaces within reach of concentrations of population.
- Conserving natural resources in forms that will prevent erosion and protecting adequate and safe water supplies.
- Preserving scenic natural beauty and open spaces.
- Promoting proper land-use planning and the orderly development of real estate for the accommodation of an expanding population.
- Promoting a balanced economy and ameliorating pressures that force conversion of such real estate to more intensive uses that are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest, or open space purposes.

The law passed by Virginia’s General Assembly did not actually establish use value taxation. Instead, it gave jurisdictions the power to adopt use value taxation legislation while dictating the four different land classifications eligible for use value taxation — agriculture, horticulture, forest, and open space.

Q Does the constitution of the commonwealth permit use value taxation?

A Yes. In Article X, Section 2, the constitution grants the General Assembly authority to enact legislation authorizing use value taxation.

The General Assembly may define and classify real estate devoted to agricultural, horticultural, forestal, or open space uses and may by general law authorize any county, city, town, or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified, provided the General Assembly shall first determine that classification of such real estate for such purpose is in the public interest for the preservation or conservation of real estate for such uses.

Q To what does use value taxation apply?

A Such taxation applies (a) only to classes of land that are named in the state constitution; (b) only when the jurisdiction within which the land at issue lies has, as required by the state constitution, adopted the necessary enabling ordinance and authorized such taxation for one or more of such classes of land; (c) only after the owner of land at issue has voluntarily filed the required application form; and (d) only after the local assessing official determines the land qualifies for such taxation and approves the application.

Q What is the difference between agricultural and forestal districts and use value taxation?

A A locality can have both programs, one of the two, or neither. As it relates to property taxes, an agricultural and/or forestal district program and a use value taxation program accomplish the same outcome — assessing qualifying land based on the value in use rather than the fair market value. The difference lies in the configuration.

The Agricultural and Forestal Districts Act allows mostly contiguous tracts of land to be combined to form a large agricultural or forestal district consisting of multiple landowners. The district can then be added to with the approval of an advisory committee established to manage the districts within a locality. These districts are authorized for a period of four to 10 years, negotiated between the landowners and the locality. Whereas use value taxation applies to the individual landowner, districts deal with multiple landowners at once. Districts also provide additional incentives for participation.

Eligibility FAQs

Q Does a tract of real estate have to contain a minimum acreage before it can qualify for use value taxation?

A Yes, § 58.1-3233(2) establishes minimum acreages.

- Five acres for agricultural or horticultural use consists of a minimum of five acres, except that for real estate used for agricultural purposes, for purposes of engaging in aquaculture as defined in § 3.2-2600, or for purposes of raising specialty crops as defined by local ordinance, the governing body may by ordinance prescribe that these uses consist of a minimum acreage of less than five acres.
- Twenty acres for forest use.
- Five acres for open space use **except in the following circumstances**, where the governing body may by ordinance prescribe that land devoted to open space uses consist of a minimum of one-quarter of an acre:
 - Real estate adjacent to a scenic river, a scenic highway, a Virginia byway, or public property in the Virginia Outdoors Plan.
 - Any real estate in any city, county, or town having a density of population greater than 5,000 per square mile.
 - Any real estate in any county operating under the urban county executive form of government.
 - The unincorporated Town of Yorktown, chartered in 1691.

These minimum acreages always apply to acreage that is exclusive of any lot or equivalent thereof on which a main residence is located.

Q Are there exceptions to the minimum acreage requirements for real estate?

A Yes in reference to open space, agricultural, and horticultural, but no regarding forestry land use classifications. Minimum acreage can be less than five acres if agricultural and horticultural land is used for, agricultural or specialty crops, or aquaculture, as defined by local ordinance. For open space.

... real estate adjacent to a scenic river, a scenic highway, a Virginia Byway, or public property in the Virginia Outdoors Plan or for any real estate

in any city, county or town having a density of population greater than 5,000 per square mile, for any real estate in any county operating under the urban county executive form of government, or the unincorporated Town of Yorktown chartered in 1691, the governing body may by ordinance prescribe that land devoted to open-space uses consist of a minimum of one quarter of an acre. (§ 58.1-3233(2))

Q Can separate parcels of real estate be added together to meet the minimum acreage requirements?

A Yes, if the parcels are contiguous, share common ownership, and are not subject to the locality's subdivision ordinance. (§ 58.1-3233(2))

Q What is the Statement of Prior Use and Production?

A According to the Standards for Classification, "real estate sought to be qualified must have been devoted, for at least five consecutive years previous" to a qualifying use.

Q Are there exceptions to Prior Use and Production?

- A Yes. According to the Standards for Classification:
- A "tract may qualify without a five-year history of agricultural or horticultural use only if the change expands or replaces production enterprises existing on other tracts of real estate owned by the applicant."
 - "If a tract of real estate is converted from a qualifying use (forestry or open space) to agricultural or horticultural production, the tract may qualify without the five-year history" requirement.
 - If a tract of real estate previously qualified for the program is taken out of use due to government action, the "tract ... shall be considered productive for that period of time."
 - "Crops that require more than two years." If the crop to be produced on the tract takes two years or longer to be commercially feasible, the five-year history may be waived. For example, Christmas tree farms or apple orchards could qualify for this waiver. (2VAC5-20-20(C))

Q Does income enter into determining whether a tract of agricultural or horticultural real estate qualifies for use value taxation?

A It depends. According to the Standards for Classification, each locality with a use value ordinance **may** consider income when determining eligibility of real estate. Virginia law does not require a locality to consider income in deciding whether a tract of land qualifies, but it does give the locality the power to do so.

Q Does the existing zoning enter into determining whether a tract of real estate qualifies for use value taxation?

A Yes and no. Yes for certain jurisdictions (Albemarle, Arlington, Augusta, James City, Loudoun, and Rockingham counties) because they “may exclude land lying in planned development, industrial or commercial zoning districts” and land “changed to allow a more intensive nonagricultural use at the request of the owner or his agent.”

For remaining localities, an attorney general’s opinion issued on Dec. 19, 1975, states “the use of the land rather than its zoning classification is the basis for qualification for land-use taxation.” (§ 58.1-3237.1)

Q Can a change in zoning affect the eligibility of a tract of real estate for use value taxation?

A Yes and no. Yes, when — at the request of an owner or an owner’s agent — the zoning of eligible real estate is changed to a **more intensive** use. If such rezoning occurs, the eligibility for use value taxation of the tract at issue is automatically cancelled. Additionally, the landowner is liable for roll-back taxes at the time that the rezoning occurs, not at the time of the change in use. (§ 58.1-3237 D)

No, when — at the request of an owner or an owner’s agent — the zoning of eligible real estate is changed to a **less intensive** use; that is, it is “down zoned.” The no answer also applies when — without the request of the owner — any change in zoning would be made by the local governing body.

Q If a landowner decides to shift from one qualifying use to another qualifying use, does the landowner have to reapply? If so, would it affect the landowner’s eligibility for use value taxation?

A Yes. According to state code, “An application shall be submitted whenever the use or acreage of such land previously approved changes.” (§ 58.1-3234) As long as the landowner is switching to another qualifying use, eligibility would not be affected.

Q If a parcel has been in land use previously as either real estate devoted to agriculture or real estate devoted to horticulture but has been out for a period of time, does the requirement for demonstrating at least a five-year production history still apply if the landowner would like to reapply to the program?

A Yes. The parcel will be required to demonstrate both previous uses and current uses consistent with the Standards for Classification for real estate as devoted to agricultural use and horticultural use.

Q Does switching to producing crops for nonconsumptive use — such as for biofuel production — affect the eligibility of land for use value taxation?

A No. The classification of an agricultural or horticultural product as consumptive or nonconsumptive does not affect the eligibility of land for the program. State code only requires that the products be “useful to man.” (§ 58.1-3230)

Q Can subdividing a property affect its eligibility for use value taxation?

A Yes and no. The parcels are still eligible for the program if the subdivision of property results in parcels of land that still meet the minimum acreage and use requirements and are not subject to local subdivision ordinances. However, subdividing a property **will** affect its eligibility if the resulting parcels fail to meet the minimum acreage requirements. (§ 58.1-3241)

Q What are the consequences of delinquent taxes as they pertain to a landowner’s eligibility for use value taxation?

A Real estate will be removed from the program until delinquent taxes are paid. However, the real estate in question is not subject to roll-back taxes. (§ 58.1-3235)

Q What actions can a landowner take if he/she thinks the use value has been set too high?

A According to § 58.1-3350, any person aggrieved by any assessment may apply for relief to the board of equalization created under Article 14 (§ 58.1-3370 et seq.) of this chapter.

Also, stated in an attorney general opinion dated July 10, 1987, the landowner may appeal to the local board of equalization. According to § 58.1-3350, any person aggrieved by any assessment may apply for relief to the board of equalization created under Article 14 (§ 58.1-3370 et seq.) of this chapter.

Standards FAQs

Q Does all land that appears to be in agriculture, horticulture, forestry, and open space automatically qualify for use value taxation?

A No. Such taxation applies to all real estate that meets uniform Standards for Classification that have been developed and prescribed in accordance with the law. If all standards are met, the landowner must apply to the local government and the locality must have adopted a use value ordinance. (§ 58.1-3230-31)

Q What are Standards for Classification?

A Virginia Code § 58.1-3230. Special classifications of real estate established and defined.

“**Real estate devoted to agricultural use**” shall mean real estate devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), or devoted to and meet-

ing the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Prior, discontinued use of property shall not be considered in determining its current use. Real estate upon which recreational activities are conducted for a profit or otherwise shall be considered real estate devoted to agricultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

“**Real estate devoted to horticultural use**” shall mean real estate devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; and nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), or real estate devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Prior, discontinued use of property shall not be considered in determining its current use. Real estate upon which recreational activities are conducted for profit or otherwise shall be considered real estate devoted to horticultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

“**Real estate devoted to forest use**” shall mean land, including the standing timber and trees thereon, devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240 and in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). Prior, discontinued use of property shall not be considered in determining its current use. Real estate upon which recreational activities are conducted for profit, or otherwise, shall still be considered real estate devoted to forest use as long as the recreational activities conducted on such

real estate do not change the character of the real estate so that it no longer constitutes a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240.

“Real estate devoted to open-space use” shall mean real estate used as, or preserved for, (i) park or recreational purposes, including public or private golf courses, (ii) conservation of land or other natural resources, (iii) floodways, (iv) wetlands as defined in § 58.1-3666, (v) riparian buffers as defined in § 58.1-3666, (vi) historic or scenic purposes, or (vii) assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land-use plan under uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240 and in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and the local ordinance.

(Code 1950, § 58-769.5; 1971, Ex. Sess., c. 172; 1973, c. 209; 1984, cc. 675, 739, 750; 1987, c. 550; 1988, c. 695; 1989, cc. 648, 656; 1996, c. 573; 1998, c. 516; 2006, c. 817; 2009, c. 800; 2012, c. 653)

Q How were the standards established?

A These standards were established by the responsible officials after completing public hearings as required by law. The initial hearing was conducted at four Virginia locations in June 1973. Each standard has been amended and readopted in accordance with the law several times since the first hearing.

Q Who prescribes the uniform Standards for Classification?

A The law (§ 58.1-3230) assigns the responsibility for prescribing applicable standards.

- The commissioner of the Department of Agricultural and Consumer Services is responsible for real estate in agricultural and horticultural use.
- The director of the Department of Forestry is responsible for real estate in forest use.
- The director of the Department of Conservation and Recreation is responsible for real estate in open space use.

Q Why was it necessary for the General Assembly to specify the classes of real estate that qualify for use value taxation?

A This was required by the state constitution, which states, “All taxes shall be levied and collected under general laws and shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.” (Article X, Section 1)

All real estate is a single “class of subjects,” and only one valuation method may be employed uniformly when real estate is a single class of subjects. Before taxation of agricultural real estate (and the other authorized classes) in accordance with use value could become effective, it was necessary for the people of the commonwealth to grant the General Assembly, through their constitution, the authority to define and establish as a “class of subjects” each class of real estate to which use value taxation could apply. This authority was granted when the revised constitution became effective in 1971. (Article X, Section 1)

Q Can real estate located under facilities or structures on the property be included in use value taxation?

A It depends. According to state code, “In determining the total area of real estate actively devoted to agricultural, horticultural, forest or open space use there shall be included the area of all real estate under barns, sheds, silos, cribs, greenhouses, public recreation facilities and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities.” (§ 58.1-3236)

This does not, however, authorize the inclusion of the structures themselves in the tax program. They are still subject to fair market value tax assessment. Also, any real estate under structures that aren’t related to the property’s special use must be assessed at fair market value.

Q Do bees qualify in the agricultural classification?

A Yes. According to 2VAC5-20-20 of the “Standards for Classification of Real Estate Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law,” real estate devoted to “bees and apiary products” can be con-

sidered a qualifying use. There is no specific production standard in terms of yield per acre, hives per acre, or animal units per acre governing bees and apiary products. The locality, however, may wish to consider 2VAC5-20-40(A)(4) under the standards, which allows the commissioner of the revenue or the local assessing officer to require that the applicant certify, among other things, “gross sales averaging more than \$1,000 annually over the previous three years.”

Q Does aquaculture qualify as an agricultural use?

A Yes. According to 2VAC5-20-20 of the “Standards for Classification of Real Estate Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law,” real estate devoted to aquaculture can be considered a qualifying use. The real estate sought to be qualified must have been devoted to this use for the past five years and must currently be used for this purpose. Livestock, dairy, poultry, or aquaculture production shall be primarily for commercial sale of livestock, dairy, poultry, and aquaculture products.

The locality may consider 2VAC5-20-40(A) under the standards, which allows the commissioner of the revenue or the local assessing officer to require that the applicant certify, among other things:

1. The assigned USDA/Farm Service Agency farm number and evidence of participating in a federal farm program;
2. Federal tax forms (1040F) Farm Expenses and Income, (4835) Farm Rental Income and Expenses, or (1040E) Cash Rent for Agricultural Land;
3. A Conservation Farm Management Plan prepared by a professional; or
4. Gross sales averaging more than \$1,000 annually over the previous three years.

Q Do horse farms qualify for the use value assessment program?

A Yes. According to 2VAC5-20-20 of the “Standards for Classification of Real Estate Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law,” real estate devoted to

“livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grazing of any or all such animals” can be considered a qualifying use. The real estate sought to be qualified must have been devoted to this use for the past five years and must currently be used for this purpose.

“Livestock, dairy, poultry, or aquaculture production must be primarily for the commercial sale of livestock, dairy, poultry, and aquaculture products. Livestock, dairy, and poultry shall have a minimum of 12 animal unit-months of commercial livestock or poultry per five acres of open land in the previous year.” (2VAC5-20-30) In addition, the locality may consider 2VAC5-20-40(A) under the standards, which allows the commissioner of the revenue or the local assessing officer to require that the applicant certify, among other things:

1. The assigned USDA/Farm Service Agency farm number and evidence of participating in a federal farm program;
2. Federal tax forms (1040F) Farm Expenses and Income, (4835) Farm Rental Income and Expenses, or (1040E) Cash Rent for Agricultural Land;
3. A Conservation Farm Management Plan prepared by a professional; or
4. Gross sales averaging more than \$1,000 annually over the previous three years.

Q Can water bodies qualify for use under all four categories of use?

A Virginia Code § 58.1-3236(B). Valuation of real estate under ordinance.

In determining the total area of real estate actively devoted to agricultural, horticultural, forest or open space use there shall be included the area of all real estate under barns, sheds, silos, cribs, greenhouses, public recreation facilities and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities; but real estate under, and such additional real estate as may be actually used in connection with, the farmhouse or home or any other structure not related to such special use, shall be excluded in determining such total area.

Note: The parcel of land still needs to meet the minimum standards for agricultural, horticultural, forest, or open space.

Application FAQs

Q Does a landowner whose land may qualify for use value taxation have to file an application for such taxation?

A Yes and no. Yes, an ordinance authorizing use value taxation does not automatically apply such taxation to the qualifying tract and the owner must file an application that must be approved by the local assessing official before use value taxation can become effective on his tract. Filing is a voluntary action. (§ 58.1-3234)

No, because a landowner may also elect not to file an application and therefore, choose to pay taxes due on the basis of fair market value.

Q Why would a jurisdiction charge a fee for each application filed for use value taxation?

A Day-to-day administration of the use value taxation program can lead to additional costs to ensure timely and accurate implementation and maintenance. Included among such costs are these:

- Adding personnel.
- Handling the initial application and, as required by ordinance, the annual revalidation, and any fees collected.
- Determining whether or not the tract of real estate at issue meets the criteria for eligibility.
- Determining the acreage that each eligible tract has in each of the several soil conservation service land capability classifications.
- Recording in the Land Book the two valuations appropriate to each eligible tract, that is, the fair market value and the use value.
- Extending the taxes applicable to each valuation.
- Carrying out other administrative duties, including collecting any roll-back taxes and interest payable arising from use value taxation. These costs are borne by the general public when no fee is paid by individuals who file an application and

who become the beneficiaries of use value taxation when the application is approved.

Q How would the fee for filing an application be calculated?

A Local government is responsible for establishing all filing fees. Many local governments have implemented both an application fee and a per acre fee. For example, a \$15 application fee for each parcel entered into the program up to 100 acres and \$0.15 for each acre over 100 acres. Thus, to enter a 300-acre parcel, the owner would pay a \$15 application fee for 100 acres plus \$30 for the additional 200 acres ($\$0.15 \times 200$) for a total of \$45.

Fees are collected at the time an application is filed and generally are not based on a condition of application approval.

Q What documents can be requested of the landowner for application and revalidation for use value taxation?

A Along with an application (§ 58.1-3234), 2VAC5-20-40 states:

The commissioner of revenue or the local assessing officer may require the applicant to document what the applicant must certify pursuant to 2VAC5-20-30. The commissioner of revenue or local assessing officer may find one of the following documents useful in making his determination:

1. The assigned USDA/Farm Service Agency farm number and evidence of participating in a federal farm program;
2. Federal tax forms (1040F) Farm Expenses and Income, (4835) Farm Rental Income and Expenses, or (1040E) Cash Rent for Agricultural Land;
3. A Conservation Farm Management Plan prepared by a professional; or
4. Gross sales averaging more than \$1,000 annually over the previous three years.

Owners should check with their localities for more information on specific requirements.

Q Why is a farm or forest plan needed to qualify?

A These are documents that local governments can request or owners can supply to demonstrate that a parcel of land meets the minimum standard for agricultural, horticultural, or forest use. (§ 58.1-3240 and § 58.1-3233)

Roll-back Taxes FAQs

Q Why do I have to pay roll-back taxes?

A Land becomes subject both to possible roll-back taxes and penalties when there is a change to a non-qualifying use or change in acreage. This is determined and enforced by the local government. Only the real estate that no longer qualifies is subject to roll-back assessment. Owners should check with their local governments before making any changes to a parcel to ensure continued eligibility of the enrolled parcel. (§ 58.1-3237 (A))

Q How are roll-back taxes calculated?

A The law states that “in localities which have not adopted a sliding scale, the roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years including simple interest on such roll-back taxes at a rate set by the governing body, no greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916 for each of the tax years.” (§ 58.1-3237(B)) “In localities which have adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax from the effective date of the written agreement including simple interest on such roll-back taxes at a rate set by the governing body, which shall not be greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916, for each of the tax years.” A locality may also charge a penalty for certain situations provided in the locality’s use value ordinance. (§ 58.1-3237(C))

Q What is meant by deferred tax?

A The difference between the annual taxes owed based on fair market value and the annual taxes due and payable based on use value is the deferred tax.

Q How is the deferred tax determined?

A To determine the deferred tax, subtract the tax based on use value from the tax based on fair market value.

Here is an example that illustrates how the deferred tax is determined. This example assumes the jurisdiction has had a reassessment in accordance with the 100 percent valuation and assessment requirement enacted by the General Assembly during the session held in 1975.

Assume a 100-acre tract of eligible real estate composed of land only, with no residence or other taxable real estate on it.

Also assume that,

\$600 = average assessed value per acre at fair market value

\$200 = average of assessed value per acre based on use value

\$1 = tax rate per \$100 of assessed value

Given these conditions,

\$6 = tax owed per acre at fair market value

\$2 = tax due and payable per acre with use value

Multiply both the \$6 fair market value tax per acre and the \$2 tax use value per acre rates by 100 (the 100 acres owned). Then subtract the tax owed on the basis of use value from the tax owed on the basis of fair market value.

\$600 = tax owed on the basis of fair market value

– \$200 = (less) tax due and payable on the basis of use value

\$400 = deferred tax on the 100-acre tract

Q Can penalties be charged in addition to deferred taxes?

A If an owner of a parcel has made a material misstatement to gain eligibility to the land-use taxation program, yes, penalties can be added to deferred taxes.

Virginia Code § 58.1-3238. Failure to report change in use; misstatements in applications.

Any person failing to report properly any change in use of property for which an application for

use value taxation had been filed shall be liable for all such taxes, in such amount and at such times as if he had complied herewith and assessments had been properly made, and he shall be liable for such penalties and interest thereon as may be provided by ordinance. Any person making a material misstatement of fact in any such application shall be liable for all such 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. If such material misstatement was made with the intent to defraud the locality, he shall be further assessed with an additional penalty of 100 percent of such unpaid taxes.

Q Why are two valuations of each qualifying tract of real estate recorded in the Land Book?

A This is because the law requires that the Land Book show the fair market value and the use value of each tract of real estate for which an application for use value taxation has been filed, approved, and put into effect. This procedure enables the details of taxation of each qualifying tract to be an appropriate part of the public record, including showing the taxes paid and deferred. (§ 58.1-3301D)

Q How can I avoid paying roll-back taxes? Are there exceptions?

A A landowner can avoid liability for roll-back taxes if he withdraws his land from the program for five years before he changes the use of the land to a nonqualifying use. If the landowner pays fair market value taxes for five years before changing the use of the land, the landowner will not owe roll-back taxes.

Municipal FAQs

Q Are localities required to adopt a use value taxation plan?

A This is addressed in the state constitution, which specifies that no such deferral or relief shall be granted within the territorial limits of any county, city, town or regional government except by ordinance adopted by the governing body thereof. (Article X, Section 1)

Thus, adoption of use value taxation is a voluntary action on the part of each jurisdiction — county, city, or town.

Q What has to be done before use value taxation can be applied within a jurisdiction?

A The local governing body must do four things:

1. It must have adopted a land-use plan prior to adopting the ordinance.
2. It must hold a public hearing concerning the enabling ordinance proposed to authorize use value taxation.
3. It must adopt the necessary enabling ordinance.
4. It must adopt the necessary ordinance no later than June 30 of the year prior to the beginning of the first tax year in which use value taxation will be in effect. (§ 58.1-3231)

Q What qualifies as a land-use plan?

A In general, land-use plans adopted to meet this requirement have been made and officially adopted in accordance with Article 4, Chapter 11, Title 15.1, Section 446, of the Code of Virginia, as amended.

Q Is a zoning ordinance required as part of the required land-use plan?

A No. Neither a zoning ordinance nor any other land-use regulation is required as a condition of adopting an ordinance authorizing use value taxation.

Q Has a model use value ordinance been prepared?

A In the past, a model ordinance was developed for localities to use. The most recent revision of the SLEAC manual can be found at <http://usevalue.agecon.vt.edu/> and includes actual local ordinances from two localities.

Q May a local governing body prepare its own use value taxation ordinance?

A Yes. Almost every jurisdiction adopting such ordinance has prepared its own ordinance. By preparing its own, a jurisdiction may exercise several options when authorizing the ordinance.

Q What options does a jurisdiction have when preparing its use value taxation ordinance?

A At least 10 options may be exercised. Thus, a jurisdiction:

1. May adopt use value taxation for any combination of the four classifications of authorized real estate.
2. May establish a fee to be collected on each application filed for use value taxation.
3. May establish a penalty that is in addition to the law-prescribed penalty for failure to report that the use of a tract of real estate has been changed from a qualifying to a nonqualifying use that the acreage in the tract to which such taxation applies has changed.
4. May require the landowner to provide information, such as photographs, schedules, records, or drawings needed to support the application and provide data on the various acreage of different soil conservation service land capability classifications.
5. May permit the landowner, on payment of a late fee, to file an application after the regular filing deadline of 60 days before the first day of the tax year in which use value taxation is to become effective.
6. May require the owner of a qualifying tract to revalidate annually any previously approved application.
7. May provide for a late filing of the annual revalidation on payment of a late fee.
8. May order a general reassessment of real estate within the jurisdiction the year following adoption of use value taxation.
9. May establish that real estate devoted to agricultural and horticultural uses consist of a minimum acreage of less than five acres if used for purposes of engaging in aquaculture as defined in § 3.2-2600, or raising agricultural or specialty crops as defined by local ordinance.
10. May prescribe a minimum acreage greater than 5 acres for real estate devoted to open space use.

Q What factors could encourage a local governing body to extend use value taxation to some combination of the qualifying classes of land but *not all four* of the authorized classes?

A Such factors might include:

- The proportion of eligible land in a locality.
- The form and distribution of ownership of the acreage is at issue.
- The potential impact on the local tax base.
- The expected impact on taxation of nonqualifying property.
- The expressed views of local citizens.

Q Why would a jurisdiction direct a general assessment of real estate within its jurisdiction in the year following adoption of an ordinance authorizing use value taxation?

A This action could be taken to assure the jurisdiction:

- That all real estate had a current fair market evaluation.
- That reasonable uniformity exists among the valuation of all classes and tracts of real estate.
- That accuracy of taxation was improved among the primary groups paying real estate taxes. There are two such groups: (1) owners of eligible real estate being taxed in accordance with use value and (2) owners of all other real estate.

A general reassessment before use value becomes effective would be expected to correct major inaccuracies in valuation existing within or between these two groups.

Q Could land still qualify for use value taxation without a local ordinance?

A Yes, but only if the land is part of an agricultural or forestal district (follow this link to the Virginia General Assembly website for more information on agricultural and forestal districts) or if there is a recorded conservation easement on the parcel.

Q Can a locality increase the minimum acreage requirements for all classifications of land use?

A Yes and no. While a locality can increase the minimum acreage requirements for open space classifications of land, it **cannot** do so for agricultural (except for aquaculture), horticultural, or forestry classifications. (§ 58.1-3233)

Q Can a locality impose roll-back taxes if a change in ownership of real estate in the program occurs?

A No, not as long as certain conditions are met. According to state code, “liability to the roll-back taxes shall not attach when a change in ownership of the title takes place if the new owner does not rezone the real estate to a more intensive use and continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance.” (§ 58.1-3237(D))

Q Are local assessors required to use the values published by the State Land Evaluation Advisory Council (SLEAC)?

A No. Local government only has to **consider** SLEAC published values. (§ 58.1-3236) Local assessors may choose to place higher or lower values based on their use of “personal knowledge, judgment, and experience.”

Q What is a sliding scale ordinance?

A A sliding scale ordinance requires that “the special assessment and taxation [of land] be established on a sliding scale which establishes a lower assessment for property held for longer periods of time within the classes of real estate set forth in § 58.1-3230.” (§ 58.1-3231)

Basically, the locality and the landowner enter into a written agreement that establishes a time period that the property must be in a qualifying use. According to the code, the time period cannot exceed 20 years. (§ 58.1-3234) In exchange for the agreement, landowners can defer a portion of their use value taxes for the agreement period, with the amount deferred dependent on the length of the agreement. Localities do not have to adopt this type of ordinance, but the Code of Virginia does provide this option for all jurisdictions. Roll-back taxes on land under a sliding scale ordinance are calculated from the time of the agreement, unlike a normal ordinance that uses a five-year history of deferred taxes to determine the amount of roll-back taxes owed. (§ 58.1-3237)

SLEAC FAQs

Q What are some possible causes of a sharp increase/decrease in SLEAC estimates from year to year?

A SLEAC estimates can vary from year to year due to a variety of factors. Changing composite farms, housing and paper demand, prices of inputs, Olympic averaging, and regionwide weather events such as droughts can cause a sharp increase or decrease in SLEAC estimates from one year to the next. Please visit the SLEAC use value website at <http://usevalue.agecon.vt.edu/> for more information regarding factors that affect SLEAC estimates.

Q What is Olympic averaging?

A Olympic averaging is a statistical technique used to smooth out variability in a data set. The highest and lowest values are removed and the remaining values are averaged. In determining net farm income, net farm budgets for the past seven years are used in a moving seven-year Olympic average. This means that the highest and lowest net farm budgets are dropped from the past seven years and the remaining five are averaged to give the net farm budget. For more information on Olympic averaging, please visit the SLEAC use value website at <http://usevalue.agecon.vt.edu/> and look through the most up-to-date procedures manual.

Q What is a composite farm and how is it created?

A Due to the heterogeneous nature of Virginia farming, a composite (or typical) farm must be created for each jurisdiction participating in the use value assessment program.

Jurisdiction-level data is obtained from the most recent Census of Agriculture. To calculate the composite farm acreage, acreage for each crop is divided by the total number of farms in a jurisdiction. If the resulting value is greater than 1, the crop is included in the jurisdiction’s composite farm. For more information on composite farms, please visit the SLEAC use value website at <http://usevalue.agecon.vt.edu/> and look through the most up-to-date procedures manual.

Q Why do SLEAC estimates vary between geographically similar jurisdictions?

A Jurisdictions with similar soil index values may still have different SLEAC estimates due to differences in the composite farm for each of the jurisdictions and participation in farm programs and crop insurance. For more information on this topic, please visit the SLEAC use value website at <http://usevalue.agecon.vt.edu/> and look through the most up-to-date procedures manual.