

Special Valuation of Agricultural or Horticultural Land

Overview

Owners of agricultural or horticultural land may apply for special valuation to offset the impact of urban development or other non-agricultural influences. Special valuation provides for a taxable value based on 75% of the actual value of land for agricultural or horticultural purposes or uses only.

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Terms

Actual Value. Actual value is the market value of real property in the ordinary course of trade. It is the most probable price, expressed in terms of money that a property will bring if offered for sale in the open market. The sale is between a willing buyer and a willing seller, both of whom know the uses the property is adapted for, and for which it is capable of being used.

Agricultural or Horticultural Land. Agricultural or horticultural land is a parcel of land that is primarily used for agricultural or horticultural purposes. This includes wasteland lying within, or adjacent to, the agricultural or horticultural land if there is common ownership or management with other agricultural or horticultural land.

Agricultural or Horticultural Purposes. Agricultural or horticultural purposes means land used for the commercial production of any plant or animal product in a raw or unprocessed state via agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes also include:

- ❖ Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act, except when the parcel (or portion of it) is being used for purposes other than agricultural or horticultural; or
- ❖ Land enrolled in a federal or state program in which payments are received for removing the land from agricultural or horticultural production.

Parcel. Parcel means a tract of contiguous land under the same ownership and in the same tax district and section. Parcel can also mean an improvement on leased land (IOLL); or several lots in the same block, subdivision, and tax district owned by the same person; or two or more vacant lots in the same subdivision and the same tax district owned by the same person and are held for sale or resale, if the owner has elected to have the lots treated as one parcel through annual application with the county assessor by December 31. A parcel cannot contain more than one section.

Special Valuation. Special valuation is the actual value of the land if the land were available only for agricultural or horticultural purposes or uses without regard to any other purpose or use for which the land may be used. Special valuation may also be referred to as the “uninfluenced value.”

Special Valuation

Special valuation allows:

- ❖ The taxable value for property assessment purposes to be based solely on 75% of the actual value of land for agricultural or horticultural purposes or uses only; and
- ❖ Property owners to continue to engage in agriculture or horticulture as a livelihood without being forced to discontinue agricultural or horticultural use resulting from an excessive tax burden created by the non-agricultural potentials for their land.

Example 1. An agricultural parcel of land has an actual value of \$15,000 per acre with non-agricultural influences, and an actual value of \$3,000 per acre without the non-agricultural influences.

An 80 acre parcel of agricultural land with non-agricultural influences would be assessed at $80 \times \$15,000 = \$1,200,000$ as its actual value. Agricultural land is assessed at 75% of its actual value. Therefore, this parcel of land assessed at 75% of its actual value would be $\$1,200,000 \times 0.75 = \mathbf{\$900,000}$.

If this parcel of the land qualifies for special valuation, without the non-agricultural influences, the actual value would be $80 \times \$3,000 = \$240,000$ and would be assessed at 75% of special valuation, or at $\$240,000 \times 0.75 = \mathbf{\$180,000}$.

To qualify for special valuation, the land must be agricultural or horticultural land and located outside the corporate boundaries of any sanitary and improvement district (SID), city, or village. Land located within the corporate boundaries of a city or village may be eligible for special valuation if: the land is subject to a conservation or preservation easement and the governing body of the city or village approves the agreement creating the easement; the land is subject to air installation compatible use zone regulations; or the land is within a flood plain.

When filing a [Special Valuation Application, Form 456](#), with the county assessor, if the agricultural or horticultural land is five contiguous acres or less, the owner or lessee of the land must provide an IRS [Schedule F](#) (Profit or Loss From Farming) documenting a profit or loss from farming for two out of the last three years.

Special Valuation Application Process

The property owner must file a Form 456, and if applicable, an IRS Schedule F, with the county assessor on or before June 30 of the first year in which the special valuation is requested. Form 456 is available on the Property Assessment Division’s website, and at the county assessor’s office.

Any Form 456s filed with the county assessor after June 30 will be considered an application for the next year.

The Form 456 must be filed on behalf of the applicant seeking special valuation on the land and must be signed by one of the following:

- ❖ The owner/applicant;
- ❖ A lessee leasing agricultural or horticultural land that is owned by the State of Nebraska or a governmental subdivision;

- ❖ Any person with a power of attorney on behalf of the applicant; or
- ❖ The guardian or conservator of the applicant or the executor or administrator of an applicant's estate.

On or before July 15, the county assessor must review the Form 456s that were filed. On or before July 22, the county assessor will send a notice of approval or denial to the applicant. An approved application remains in effect until the agricultural or horticultural land becomes disqualified for special valuation.

Protest of Denial of a Special Valuation Application

A county assessor may deny a filed Form 456 for any of the following reasons:

- ❖ It is not signed by an authorized person;
- ❖ The land is not agricultural or horticultural land; and
- ❖ The land is inside the corporate boundaries of a SID, city, or village, and is not subject to a conservation or preservation easement, is not subject to air installation compatible use zone regulations, or is not within a flood plain; or
- ❖ If the parcel consists of five contiguous acres or less, failure to provide an IRS Schedule F (Profit or Loss From Farming) documenting a profit or loss from farming for two out of the last three years.

[Neb. Rev. Stat. § 77-1344\(3\)](#) states in relevant part: . . . The eligibility of land for the special valuation . . . shall be determined each year as of January 1. If the land so qualified becomes disqualified on or before December 31 of that year, it shall continue to receive the special valuation until January 1 of the year following.

Applicants may file a written protest with the county board of equalization (CBOE) within 30 days after the mailing of the denial of special valuation. Protests must be filed with the county clerk and contain a written statement of why the application should not have been denied. The CBOE must hear and decide the protest within 30 days of the filing of the protest.

Within seven days of the CBOE decision, the county clerk must mail a written notice of the CBOE decision to the applicant. If the protest is denied, the notice must state the reason for the denial.

If an applicant is not satisfied with the CBOE decision, an appeal may be filed with the Tax Equalization and Review Commission (Commission, also known as TERC) within 30 days of the CBOE decision.

Special Valuation Assessment

Once approved for special valuation, the county assessor will value the land at 75% of its actual value, without regard to the value the land has for non-agricultural purposes or uses.

The county assessor may use sales of similar uninfluenced agricultural or horticultural land to determine the uninfluenced value. The county assessor may also capitalize the net cash rent to determine the value of the property based on the earnings of the parcel from agricultural or horticultural use only.

The county assessor's analysis may determine that the special valuation and the actual valuation of the land are the same value. This occurs when, in the county assessor's judgment, agricultural or horticultural use is the highest and best use of the land, which will generate the highest net return to the property over a period of time. When agricultural or horticultural use is the highest and best use of the land, the Form 456 will be approved, but the land will continue to be valued similarly to other agricultural land in the area.

On or before June 1, the county assessor must send a notice of valuation change by first class mail to the owner of record (as of May 20). The notice of valuation change will be sent to every parcel of real property that has increased or decreased in value from the previous year.

If failure to send the notice of valuation change prevented the owner or applicant from timely filing a protest or appeal, the owner (or person responsible for paying the property taxes) has the right to petition the Commission. A petition must be filed on or before December 31 of the year the notice should have been sent to determine the special valuation.

Protest of Special Valuation Assessment

Property owners (or applicants, if different from the owner) who are not satisfied with the assessed value of their property may file a protest with the county clerk on or before June 30 of the current year. When June 30 falls on a Saturday, Sunday, or legal holiday, the protest will be considered timely filed on the next business day. If a protest is not timely filed, it will automatically be dismissed.

Protest of Special Valuation Assessment in the Year of Application. On or before July 15 in the year of application, the county assessor must approve or deny the filed Form 456. On or before July 22, the county assessor must issue a notice of approval or denial. If approved by the county assessor, a valuation change notice must be sent to the owner by the CBOE on or before July 22. If the property owner does not agree with the special valuation, a written protest may be filed with the county clerk within 30 days of the date the notice was mailed. The CBOE must hear and make a determination on the protest within 30 days of the date the protest was filed with the county clerk. Within seven days of the CBOE decision, the county clerk must mail notice of the CBOE decision to the protester.

The protest must be signed by the protester, contain a description of the property, and a written statement of the reasons why the requested change in valuation should be made. Failure to state the reasons for the protest, or failure to provide a description of the property, will be cause for dismissal of the protest by the CBOE.

In the years following the year the Form 456 was filed, on or after June 1 and on or before July 25, the CBOE reviews and makes a determination on the filed valuation protests. The CBOE in a county with a population of more than 100,000 inhabitants may adopt a resolution to extend the hearing date for the current year to August 10. The resolution must be adopted by the CBOE before July 25. When July 25 or August 10 falls on a Saturday, Sunday, or legal holiday, the CBOE must meet on the previous business day. The CBOE may appoint referees to hear the protests, but the CBOE makes the final determination. Hearings cannot be held before a single commissioner or supervisor. If the CBOE determines that the property under appeal is undervalued, then the CBOE may raise the taxable value without giving the property owner any notice of valuation change.

The county clerk must notify the property owner of the action taken by the CBOE on or before August 2, or on or before August 18 in a county that has adopted a resolution to extend the deadline for hearing protests. The notice must state that a report of the CBOE decision is available in the county assessor's office and a copy of the report may be used to complete an appeal to the Commission.

Disqualification Criteria

Agricultural or horticultural land receiving special valuation will be disqualified from special valuation when any of the following occur:

- ❖ Written notice is provided by the applicant, or the applicant's agent, guardian, conservator, executor of the applicant's estate, or successor in interest, to the county assessor to remove the special valuation;
- ❖ The land within the corporate boundaries is annexed by any SID, city, or village, except for land in a conservation and preservation easement, land subject to air installation compatible use zone regulations, and land within a flood plain;
- ❖ The land no longer qualifies as agricultural or horticultural land; or
- ❖ The land consists of five contiguous acres or less, and an IRS Schedule F (Profit or Loss From Farming) documenting profit or loss from farming for two out of the last three years was not provided.

The county assessor must send a written notice of the determination to the applicant or owner within 15 days after his or her determination, including the reason for the disqualification. A protest of the county assessor's determination may be filed with the CBOE within 30 days after the mailing of the notice. The CBOE must affirm or deny the protest within 30 days after the filing of the protest, and the county clerk must, within seven days after the CBOE final decision, mail a written notification of the CBOE decision to the protester. The decision of the CBOE may be appealed to the Commission within 30 days after the date of the decision.

The agricultural or horticultural land will remain assessed at 75% of special valuation for the year it is disqualified. Disqualification of agricultural or horticultural land will not result in additional taxes for that year. The agricultural or horticultural land will be assessed at its actual value in the following year.

Resource List:

- ❖ [Form 456, Special Value Application](#)
- ❖ [Real Property Valuation Protest Information Guide](#)
- ❖ [Nebraska Administrative Code 350, Chapter 11 – Agricultural or Horticultural Land Special Valuation Regulations, Nebraska Department of Revenue](#)
- ❖ [Nebraska Administrative Code 350, Chapter 14 – Agricultural Land and Horticultural Land Assessment Regulations, Nebraska Department of Revenue](#)
- ❖ [Nebraska Revised Statutes, Chapter 77 Revenue and Taxation; PDF](#)

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