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 15, 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 $XX,000.

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January 15, 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 (DOR), after consulting with the Minnesota Department of Agriculture (MDA) and the Minnesota Association of Assessing Officers (MAAO), believes the legislative intent for this report is 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 that was composed of Department of Revenue staff members, Department of Agriculture 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/Publications, Communications Division, Department of Revenue
- Doug Spanier, Policy Analyst, Ag Marketing Services Division, Department of Agriculture

This working group met several times over a number of months. During the series of meetings, it was determined that a survey of counties would be conducted by the Department of Revenue via the Minnesota Association of Assessing Officers. That survey was conduction in October 2009. The results are discussed later in the report and the full results are summarized in the Appendix. In addition, it was determined that the department would survey several surrounding states regarding their treatment of properties used to for equine operations. Those results are also discussed later in the report and the results are summarized in the Appendix.

In addition, the working group met with the following stakeholders in order to gain additional background knowledge of the equine industry:

- 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 finalize the recommendations for the report to the legislature. This report is the result of a cooperative effort between the Minnesota Department of Revenue's Property Tax Division, the Minnesota Department of Agriculture, and the Minnesota Association of Assessing Officers. 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 at the end of the report.

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 does not consider this to be an agricultural use of the land because there is no agricultural product being produced on it for sale.

   Recommendation – The working group recommends that this policy continues going forward. Current law is very clear in that it requires that at least 10 contiguous acres be used to produce an agricultural product for sale. Simply feeding/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 Property Tax Division has stated that pasture land/hay ground that was used solely in conjunction with a commercial boarding operation was not considered to be agricultural production because, in our view, this kind of pasturing was different than where the pasture was used to produce a product or animal for sale.

   Recommendation – The working group recommends that going forward, pasture land/hay ground that is produced for the purpose of feeding horses that are commercially boarded onsite and that feed is provided as part of the boarding package for a fee, the property will qualify for the agricultural classification so long as all other qualifications are being met (at least 10 contiguous acres of pasture or hay ground, etc.). The portion of the property used for the commercial 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 the 10 acre standard is met, then the commercial boarding can be considered to be an agricultural product since it is being done in conjunction with the raising or cultivation of agricultural products. 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 be classified as agricultural properties. The working group believes that current law does not allow such properties to be classified as agricultural.

   Recommendation – If it is the intent of the Legislature to grant properties used for such equine activities the preferential treatment of the agricultural classification, the statute should be changed and such activities specified so as to 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 will issue clear guidelines to assessors regarding changes to administrative or legislative policies on the classification or properties used for horse activities. These guidelines will also be discussed in upcoming education offerings for assessors.

Current law

In Minnesota, all property is classified according to its use on the assessment date of January 2. For property tax purposes, there are five basic classifications of property and numerous sub-classifications of property, each with their own classification rate. These classifications outlined in Minnesota Statutes, section 273.13. The current definition of agricultural property is found in subdivision 23 of this section. It 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

Although court cases specifically involving horses are few and far between, 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 of agricultural classification.

There were several key observations noted in past court cases noted 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 vs. Carver, 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 vs. Winona, 1988)**
- Horses held solely for breeding and/or resale is similar to raising other livestock. **(Ramberg vs. Washington, 1990, Cassman vs. Kanabec, 1996, Schneider vs. Dakota, 1984, Mowry vs. Kanabec, 2005)**
- Boarding and training horses… is not an agricultural pursuit because there is no agricultural product produced and sold. **(Schneider vs. Dakota, 1984, 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. **(Hallgren).** In addition a significant profit motive was required in order to justify classifying a property as agricultural **(Hallgren)**

Key Observations in Current Law

There are several key observations noted in current law. They are:

1. Agricultural land refers to ten contiguous acres of land used to produce agricultural products in the year preceding the year of the assessment. This means that in the year preceding the assessment date, at least ten contiguous acres must be used to produce agricultural products before the property can be considered by the assessor to be class 2a agricultural land, unless there is an exclusive or intensive use.

   The Department is on record stating that "contiguous" is defined by the dictionary provided by law.com as "connected or 'next to,' usually meaning adjoining pieces of real estate." However, in some rare circumstances, reasonable justification may warrant classifying smaller land masses as class 2a land if the agricultural land on the parcel totals at least 10 acres. To justify the classification in these cases, the assessor must use common sense and professional judgment in considering such factors as:
   - Overall size (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 non-productively
     - The locations of the agriculturally used acreage (distance, accessibility, etc.)

- Whether the configuration of the agriculturally used acreage land themselves to agricultural production
- The use of the land separating the non-contiguous agriculturally-used acreage

Parcel lines or separate legal descriptions do not break up the contiguity of land masses used for agricultural purposes as long as the parcels are in 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. Simply producing products for one's own consumption or a neighbor or relative's consumption, 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. However, this use may be classified as an agricultural use if it is done in conjunction with raising or cultivating another agricultural product that is listed in Minnesota Statutes, section 273.13, subdivision 23, paragraph (e), clause (1). The department's understanding is that if commercial boarding of horses is done in conjunction with the raising or cultivating of other 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 be classified as agricultural property, assuming that there are no other uses of the property.

4. Horses are not necessarily identified as a traditional form of livestock in that they are not raised to produce products used by humans similar to those produced by beef cattle, dairy cattle, pigs, sheep, etc. Horses were traditionally used on the farm as part of the agricultural process. However, over time, with the evolution of machinery, horses became less efficient as work animals and evolved into more of a hobby or personal riding animal.

   Such hobby uses are not unique to property used for equine activities. Assessors and the department are having difficulty classifying smaller properties (11-20 acres) particularly within the metro area where there is a strong market for hobby farms/"rural residential" property with at least 10 acres for horses or a small hay field/pasture, vegetable/fruit production, etc. The corresponding property tax benefit (.5% vs. 1.0% classification rate) is huge if the property is classified as agricultural property vs. residential property so the motivation can be very high for the owner of the property to convince the assessor that the property is used agriculturally. This is often the first step to qualifying for the even more lucrative benefits of Green Acres. In these types of situations, it is very difficult for assessors to differentiate between hobby uses and legitimate agricultural production due to the time required to perform detailed and individualized investigations and evaluations for each different 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 desires to give preferential property tax treatment to properties used for these types of activities, the Minnesota Statutes section 273.13, subdivision 23 should be amended to specify that such activities qualify for the agricultural classification.

Past Letters Issued by the Department

The Department of Revenue has not issue specific guidelines regarding the classification of properties used for raising horses. However, we have answered a few letters where horses were the subject of questions asked by the assessor or taxpayer. Most often horses have been located on farms with other agricultural operations and the horses do not enter into the assessor's classification determination. Rather, the other activities taking place on the farm allow the assessor to classify the property and quite often, those activities are agricultural in nature and the horses have not factored into the assessor's decision making.

However, over the years, the department has been consistent in our interpretation that breeding and raising horses for sale may be agricultural activities if ten contiguous acres are used for production and 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 ten 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 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, riding, and training are commercial activities. There is no agricultural product being produced for sale.
- Breeding and selling horses may be considered agricultural activities. We have understood breeding to be agricultural production 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.

Guidelines Pursuant to Current Law and Department's Current Interpretation of Current Law

As stated above, the department has never issued formal guidelines to assessors regarding the proper classification of property used for horse breeding and horse boarding activities because until recently, quite honestly, we were unaware, that there was a problem. As stated previously, we believe 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 assessor to base their classification decisions solely on the merits of the other activities without necessarily having to consider the horses.

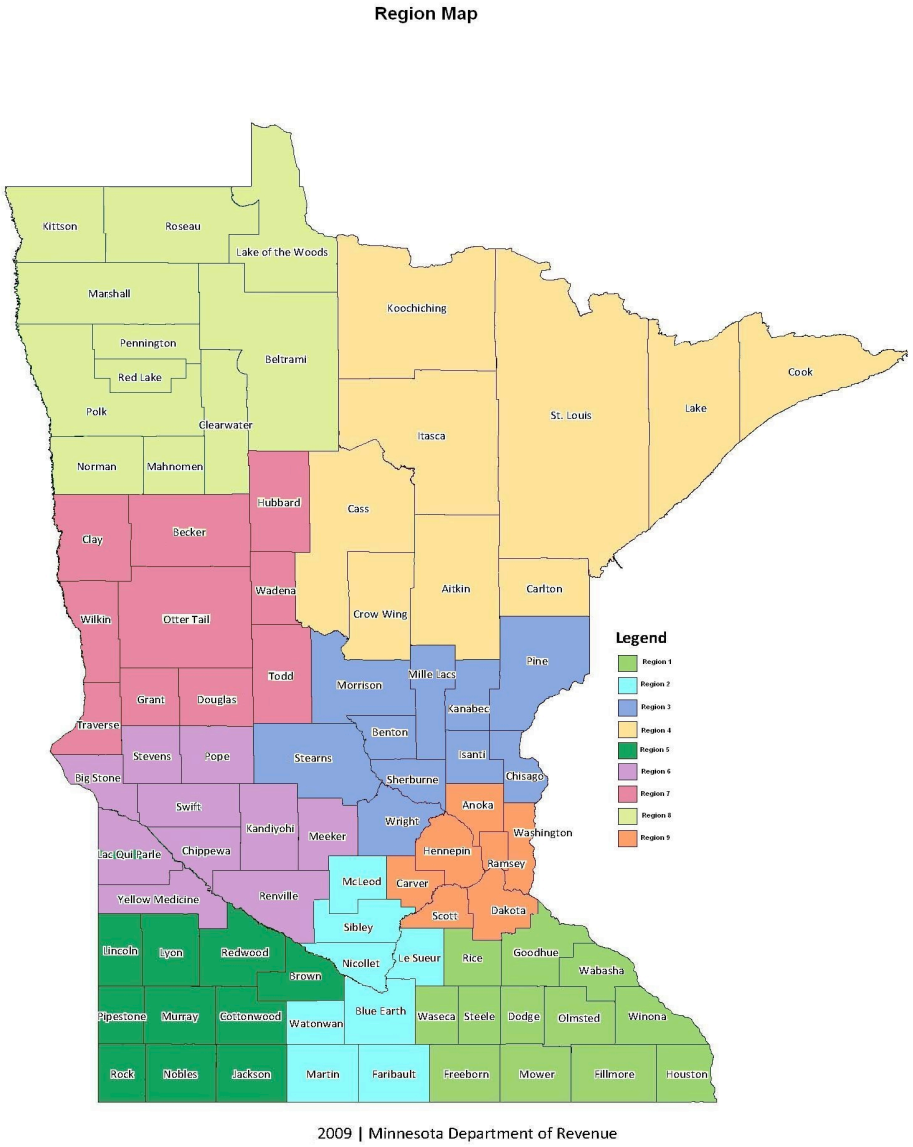
If the department had issued guidelines in the past, those guidelines would have looked like those listed in the Appendix of this report, prior to any discussions that took place for this report with the working group and the stakeholders. For the purposes of these guidelines, it is helpful to think of equine activities separated into five types:

a. **Personal/recreational use of horses** - holding a few horses for owner's personal use;
b. **Breeding/Raising** – may be considered agricultural if significant operation is done for sale; or
c. **Training Horses/Leasing Horses for Trail Rides –** likely a commercial activity; or
d. **Equestrian Facility owned by nonprofit (excluding racing)** – agricultural if it meets requirements in law; or

e. 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 ag activity.

Survey of 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 those regions. In all, 73 of the 87 counties (84%) responded to the survey. The full summary of the survey results can be found in the Appendix of this report.



The first portion of the 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 (owner charges a fee for boarding and caring for horses owned by others);
3. Breeding; and
4. Training/showing (cutting, racing, etc.).

As expected, 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, particularly in outstate areas, horses may simply be part of a larger agricultural operation. 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 acres, production of have 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 clear 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.

Survey of Other States' Classification Practices

As part of this report, the department conducted a survey of several surrounding states regarding their treatment of property used for equine activities. The department surveyed the states of Iowa, Kansas, Nebraska, North Dakota, South Dakota, and Wisconsin. A full summary of the survey results can be found in the Appendix of this report.

Generally, according to those surveyed, with the exception of North Dakota, breeding and raising horses for sale would be classified as an agricultural use. In North Dakota, the commercial classification 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.

Of the states surveyed, commercial boarding operations would most likely be classified as commercial property. In Nebraska, generally, if a property is used for feeding, breeding and raising ag 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.

In 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 (the county has an option to require a minimum of up to 160 acres).

Once the property meets the criteria for agricultural property, then the property would be classified as agricultural property. In such cases, any commercial horse boarding located on the property would be classified as agricultural property once 2 of the 3 criteria were met.

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. Industry representatives state that boarding is simply a part of the process of raising a horse, similar to backgrounding [1] beef cattle, and that all animals are boarded at some point while the department and assessors indicate that statute specifies that commercial boarding indicates that the boarding is being done as a commercial business and should be treated differently unless it is being conducted in conjunction with the production of an agricultural product as stated in statute. In such cases, the property would not be split classed as ag-commercial. Rather, it would be classed as agricultural property, assuming there is no other use.

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 be 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 use of that horse. This may be for a certain number of days per month or hours per week, depending on the agreement. In addition the agreement will determine who is responsible for veterinary care as well as 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 these arrangements provide facilities only and the owner must provide the rest including 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 Comments on Initial Guidelines

After the department released the draft of the initial guidelines, we invited the stakeholders to provide comments. Below is a summary of the comments provided as well as the departments 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 horse industry on Minnesota's economy, that type of study was not part of the legislative charge for this report. Early in the process, the scope of this report was limited to that which was clearly defined in the session law mandating the study. As such, the department has focused on studying the treatment of properties used for horse breeding and boarding activities under current law for property tax purposes only and we are making recommendations for any needed administrative or law 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. Simply 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 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 which would normally be considered to be a commercial use of the property. However, a horse boarding property that qualifies for the agricultural classification by producing enough agricultural products as defined in clause (1) to qualify for the agricultural classification on its own should be classified as such. 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 definition for production of agricultural products, 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 open to administrative interpretation is whether pasture used as part of the boarding (i.e. to feed the horses being boarded) can be considered as part of the agricultural production requirement. The department's past position has been that the products produced as part of the boarding process (i.e. hay) were not part of the agricultural production taking place on the farm because they were not being sold and thus could not be used to satisfy the agricultural production requirements. However, as part of this study we have begun to re-evaluate that position.

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: While the department recognizes the importance of these services to some horse operations, this 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 item. 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. In any case, it appears that a law change would be required for horse leasing to qualify as agricultural production.

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 property is classified based on its use on the assessment date. We agree that specific zoning and conditional use permits should not necessarily be a determining factor in classifying property. However, in the past, assessors have been known to use conditional use permits as indicators of use 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 based on the conditional use permit under the assumption 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."*

To tell assessors they should never consider zoning or conditional use permits would be incorrect. They should consider them in certain situations. However, the department will offer assessors additional guidance on the proper consideration of these tools.

Department Recommendations

After careful consideration, the department 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 owners 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. This means that even if the only agricultural production taking place on a property is the pasture being used by the horses that are being boarded on the property or hay land that is being cut and used for feed for horses being boarded on the property, 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. The legislature should consider whether they would like to give preferential treatment to properties used for such equine activities as trail riding, training, horse shows, rodeos, riding lessons, youth camps, racing, etc. where there is little if any productive agricultural activity taking place on the property. If so, it is suggested that such activities be specified in law as being eligible for a reduced classification rate.

4. The department will issue clear guidelines to assessors following the legislative session regarding any changes to administrative or legislative policies on the classification of properties used for horse activities. These will also be discussed in upcoming educational offerings for assessors.

Conclusion

In conclusion, the department believes the uniformity in the classification of property used for breeding and boarding of horses can largely be improved by two things: specifically including pasture/hay ground cut and used to feed horses being commercially boarded in a property to qualify as agricultural property and the issuance of clear guidelines for assessors to use in classifying properties used for equine purposes. Beyond these administrative changes, the department believes that specific legislative direction is needed to provide public policy direction.

Appendix

Summary of Hypothetical Administrative Guidelines, if Issued, Based on Interpretation of Current Law and Past Court Decisions

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 ag 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.