

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1815

Chapter 513, Laws of 2009

61st Legislature
2009 Regular Session

CURRENT USE VALUATION--OPEN SPACE LAND

EFFECTIVE DATE: 07/26/09

Passed by the House April 24, 2009
Yeas 93 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 22, 2009
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved May 15, 2009, 2:31 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1815** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 18, 2009

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1815

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By Representatives Sullivan, Orcutt, Hinkle, Simpson, Blake, Kristiansen, Haigh, Ericks, Van De Wege, Hope, Newhouse, Roach, Armstrong, Morrell, Takko, Campbell, McCune, and Rolfes

Read first time 01/29/09. Referred to Committee on Finance.

1 AN ACT Relating to current use valuation under the property tax
2 open space program; and amending RCW 84.34.020 and 84.34.108.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 84.34.020 and 2005 c 57 s 1 are each amended to read
5 as follows:

6 As used in this chapter, unless a different meaning is required by
7 the context:

8 (1) "Open space land" means (a) any land area so designated by an
9 official comprehensive land use plan adopted by any city or county and
10 zoned accordingly, or (b) any land area, the preservation of which in
11 its present use would (i) conserve and enhance natural or scenic
12 resources, or (ii) protect streams or water supply, or (iii) promote
13 conservation of soils, wetlands, beaches or tidal marshes, or (iv)
14 enhance the value to the public of abutting or neighboring parks,
15 forests, wildlife preserves, nature reservations or sanctuaries or
16 other open space, or (v) enhance recreation opportunities, or (vi)
17 preserve historic sites, or (vii) preserve visual quality along
18 highway, road, and street corridors or scenic vistas, or (viii) retain
19 in its natural state tracts of land not less than one acre situated in

1 an urban area and open to public use on such conditions as may be
2 reasonably required by the legislative body granting the open space
3 classification, or (c) any land meeting the definition of farm and
4 agricultural conservation land under subsection (8) of this section.
5 As a condition of granting open space classification, the legislative
6 body may not require public access on land classified under (b)(iii) of
7 this subsection for the purpose of promoting conservation of wetlands.

8 (2) "Farm and agricultural land" means:

9 (a) Any parcel of land that is twenty or more acres or multiple
10 parcels of land that are contiguous and total twenty or more acres:

11 (i) Devoted primarily to the production of livestock or
12 agricultural commodities for commercial purposes;

13 (ii) Enrolled in the federal conservation reserve program or its
14 successor administered by the United States department of agriculture;
15 or

16 (iii) Other similar commercial activities as may be established by
17 rule;

18 (b)(i) Any parcel of land that is five acres or more but less than
19 twenty acres devoted primarily to agricultural uses, which has produced
20 a gross income from agricultural uses equivalent to, as of January 1,
21 1993:

22 (A) One hundred dollars or more per acre per year for three of the
23 five calendar years preceding the date of application for
24 classification under this chapter for all parcels of land that are
25 classified under this subsection or all parcels of land for which an
26 application for classification under this subsection is made with the
27 granting authority prior to January 1, 1993; and

28 (B) On or after January 1, 1993, two hundred dollars or more per
29 acre per year for three of the five calendar years preceding the date
30 of application for classification under this chapter;

31 (ii) For the purposes of (b)(i) of this subsection, "gross income
32 from agricultural uses" includes, but is not limited to, the wholesale
33 value of agricultural products donated to nonprofit food banks or
34 feeding programs;

35 (c) Any parcel of land of less than five acres devoted primarily to
36 agricultural uses which has produced a gross income as of January 1,
37 1993, of:

1 (i) One thousand dollars or more per year for three of the five
2 calendar years preceding the date of application for classification
3 under this chapter for all parcels of land that are classified under
4 this subsection or all parcels of land for which an application for
5 classification under this subsection is made with the granting
6 authority prior to January 1, 1993; and

7 (ii) On or after January 1, 1993, fifteen hundred dollars or more
8 per year for three of the five calendar years preceding the date of
9 application for classification under this chapter.

10 Parcels of land described in (b)(i)(A) and (c)(i) of this subsection
11 shall, upon any transfer of the property excluding a transfer to a
12 surviving spouse, be subject to the limits of (b)(i)(B) and (c)(ii) of
13 this subsection;

14 (d) Any parcel of land that is five acres or more but less than
15 twenty acres devoted primarily to agricultural uses, which meet one of
16 the following criteria:

17 (i) Has produced a gross income from agricultural uses equivalent
18 to two hundred dollars or more per acre per year for three of the five
19 calendar years preceding the date of application for classification
20 under this chapter;

21 (ii) Has standing crops with an expectation of harvest within seven
22 years, except as provided in (d)(iii) of this subsection, and a
23 demonstrable investment in the production of those crops equivalent to
24 one hundred dollars or more per acre in the current or previous
25 calendar year. For the purposes of this subsection (2)(d)(ii),
26 "standing crop" means Christmas trees, vineyards, fruit trees, or other
27 perennial crops that: (A) Are planted using agricultural methods
28 normally used in the commercial production of that particular crop; and
29 (B) typically do not produce harvestable quantities in the initial
30 years after planting; or

31 (iii) Has a standing crop of short rotation hardwoods with an
32 expectation of harvest within fifteen years and a demonstrable
33 investment in the production of those crops equivalent to one hundred
34 dollars or more per acre in the current or previous calendar year;

35 (e) Any lands including incidental uses as are compatible with
36 agricultural purposes, including wetlands preservation, provided such
37 incidental use does not exceed twenty percent of the classified land
38 and the land on which appurtenances necessary to the production,

1 preparation, or sale of the agricultural products exist in conjunction
2 with the lands producing such products. Agricultural lands shall also
3 include any parcel of land of one to five acres, which is not
4 contiguous, but which otherwise constitutes an integral part of farming
5 operations being conducted on land qualifying under this section as
6 "farm and agricultural lands"; or

7 ~~((e))~~ (f) The land on which housing for employees and the
8 principal place of residence of the farm operator or owner of land
9 classified pursuant to (a) of this subsection is sited if: The housing
10 or residence is on or contiguous to the classified parcel; and the use
11 of the housing or the residence is integral to the use of the
12 classified land for agricultural purposes.

13 (3) "Timber land" means any parcel of land that is five or more
14 acres or multiple parcels of land that are contiguous and total five or
15 more acres which is or are devoted primarily to the growth and harvest
16 of timber for commercial purposes. Timber land means the land only and
17 does not include a residential homesite. The term includes land used
18 for incidental uses that are compatible with the growing and harvesting
19 of timber but no more than ten percent of the land may be used for such
20 incidental uses. It also includes the land on which appurtenances
21 necessary for the production, preparation, or sale of the timber
22 products exist in conjunction with land producing these products.

23 (4) "Current" or "currently" means as of the date on which property
24 is to be listed and valued by the assessor.

25 (5) "Owner" means the party or parties having the fee interest in
26 land, except that where land is subject to real estate contract "owner"
27 shall mean the contract vendee.

28 (6) "Contiguous" means land adjoining and touching other property
29 held by the same ownership. Land divided by a public road, but
30 otherwise an integral part of a farming operation, shall be considered
31 contiguous.

32 (7) "Granting authority" means the appropriate agency or official
33 who acts on an application for classification of land pursuant to this
34 chapter.

35 (8) "Farm and agricultural conservation land" means either:

36 (a) Land that was previously classified under subsection (2) of
37 this section, that no longer meets the criteria of subsection (2) of

1 this section, and that is reclassified under subsection (1) of this
2 section; or

3 (b) Land that is traditional farmland that is not classified under
4 chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a
5 use inconsistent with agricultural uses, and that has a high potential
6 for returning to commercial agriculture.

7 **Sec. 2.** RCW 84.34.108 and 2007 c 54 s 25 are each amended to read
8 as follows:

9 (1) When land has once been classified under this chapter, a
10 notation of the classification shall be made each year upon the
11 assessment and tax rolls and the land shall be valued pursuant to RCW
12 84.34.060 or 84.34.065 until removal of all or a portion of the
13 classification by the assessor upon occurrence of any of the following:

14 (a) Receipt of notice from the owner to remove all or a portion of
15 the classification;

16 (b) Sale or transfer to an ownership, except a transfer that
17 resulted from a default in loan payments made to or secured by a
18 governmental agency that intends to or is required by law or regulation
19 to resell the property for the same use as before, making all or a
20 portion of the land exempt from ad valorem taxation;

21 (c) Sale or transfer of all or a portion of the land to a new
22 owner, unless the new owner has signed a notice of classification
23 continuance, except transfer to an owner who is an heir or devisee of
24 a deceased owner shall not, by itself, result in removal of
25 classification. The notice of continuance shall be on a form prepared
26 by the department. If the notice of continuance is not signed by the
27 new owner and attached to the real estate excise tax affidavit, all
28 additional taxes calculated pursuant to subsection (4) of this section
29 shall become due and payable by the seller or transferor at time of
30 sale. The auditor shall not accept an instrument of conveyance
31 regarding classified land for filing or recording unless the new owner
32 has signed the notice of continuance or the additional tax has been
33 paid, as evidenced by the real estate excise tax stamp affixed thereto
34 by the treasurer. The seller, transferor, or new owner may appeal the
35 new assessed valuation calculated under subsection (4) of this section
36 to the county board of equalization in accordance with the provisions

1 of RCW 84.40.038. Jurisdiction is hereby conferred on the county board
2 of equalization to hear these appeals;

3 (d) Determination by the assessor, after giving the owner written
4 notice and an opportunity to be heard, that all or a portion of the
5 land no longer meets the criteria for classification under this
6 chapter. The criteria for classification pursuant to this chapter
7 continue to apply after classification has been granted.

8 The granting authority, upon request of an assessor, shall provide
9 reasonable assistance to the assessor in making a determination whether
10 the land continues to meet the qualifications of RCW 84.34.020 (1) or
11 (3). The assistance shall be provided within thirty days of receipt of
12 the request.

13 (2) Land may not be removed from classification because of:

14 (a) The creation, sale, or transfer of forestry riparian easements
15 under RCW 76.13.120; or

16 (b) The creation, sale, or transfer of a fee interest or a
17 conservation easement for the riparian open space program under RCW
18 76.09.040.

19 (3) Within thirty days after (~~such~~) the removal of all or a
20 portion of the land from current use classification under subsection
21 (1) of this section, the assessor shall notify the owner in writing,
22 setting forth the reasons for the removal. The seller, transferor, or
23 owner may appeal the removal to the county board of equalization in
24 accordance with the provisions of RCW 84.40.038. The removal notice
25 must explain the steps needed to appeal the removal decision, including
26 when a notice of appeal must be filed, where the forms may be obtained,
27 and how to contact the county board of equalization.

28 (4) Unless the removal is reversed on appeal, the assessor shall
29 revalue the affected land with reference to its true and fair value on
30 January 1st of the year of removal from classification. Both the
31 assessed valuation before and after the removal of classification shall
32 be listed and taxes shall be allocated according to that part of the
33 year to which each assessed valuation applies. Except as provided in
34 subsection (6) of this section, an additional tax, applicable interest,
35 and penalty shall be imposed which shall be due and payable to the
36 treasurer thirty days after the owner is notified of the amount of the
37 additional tax. As soon as possible, the assessor shall compute the
38 amount of additional tax, applicable interest, and penalty and the

1 treasurer shall mail notice to the owner of the amount thereof and the
2 date on which payment is due. The amount of the additional tax,
3 applicable interest, and penalty shall be determined as follows:

4 (a) The amount of additional tax shall be equal to the difference
5 between the property tax paid as "open space land," "farm and
6 agricultural land," or "timber land" and the amount of property tax
7 otherwise due and payable for the seven years last past had the land
8 not been so classified;

9 (b) The amount of applicable interest shall be equal to the
10 interest upon the amounts of the additional tax paid at the same
11 statutory rate charged on delinquent property taxes from the dates on
12 which the additional tax could have been paid without penalty if the
13 land had been assessed at a value without regard to this chapter;

14 (c) The amount of the penalty shall be as provided in RCW
15 84.34.080. The penalty shall not be imposed if the removal satisfies
16 the conditions of RCW 84.34.070.

17 (5) Additional tax, applicable interest, and penalty, shall become
18 a lien on the land which shall attach at the time the land is removed
19 from classification under this chapter and shall have priority to and
20 shall be fully paid and satisfied before any recognizance, mortgage,
21 judgment, debt, obligation or responsibility to or with which the land
22 may become charged or liable. This lien may be foreclosed upon
23 expiration of the same period after delinquency and in the same manner
24 provided by law for foreclosure of liens for delinquent real property
25 taxes as provided in RCW 84.64.050. Any additional tax unpaid on its
26 due date shall thereupon become delinquent. From the date of
27 delinquency until paid, interest shall be charged at the same rate
28 applied by law to delinquent ad valorem property taxes.

29 (6) The additional tax, applicable interest, and penalty specified
30 in subsection (4) of this section shall not be imposed if the removal
31 of classification pursuant to subsection (1) of this section resulted
32 solely from:

33 (a) Transfer to a government entity in exchange for other land
34 located within the state of Washington;

35 (b)(i) A taking through the exercise of the power of eminent
36 domain, or (ii) sale or transfer to an entity having the power of
37 eminent domain in anticipation of the exercise of such power, said

1 entity having manifested its intent in writing or by other official
2 action;

3 (c) A natural disaster such as a flood, windstorm, earthquake, or
4 other such calamity rather than by virtue of the act of the landowner
5 changing the use of the property;

6 (d) Official action by an agency of the state of Washington or by
7 the county or city within which the land is located which disallows the
8 present use of the land;

9 (e) Transfer of land to a church when the land would qualify for
10 exemption pursuant to RCW 84.36.020;

11 (f) Acquisition of property interests by state agencies or agencies
12 or organizations qualified under RCW 84.34.210 and 64.04.130 for the
13 purposes enumerated in those sections. At such time as these property
14 interests are not used for the purposes enumerated in RCW 84.34.210 and
15 64.04.130 the additional tax specified in subsection (4) of this
16 section shall be imposed;

17 (g) Removal of land classified as farm and agricultural land under
18 RCW 84.34.020(2)(~~(e)~~) (f);

19 (h) Removal of land from classification after enactment of a
20 statutory exemption that qualifies the land for exemption and receipt
21 of notice from the owner to remove the land from classification;

22 (i) The creation, sale, or transfer of forestry riparian easements
23 under RCW 76.13.120;

24 (j) The creation, sale, or transfer of a fee interest or a
25 conservation easement for the riparian open space program under RCW
26 76.09.040; or

27 (k) The sale or transfer of land within two years after the death
28 of the owner of at least a fifty percent interest in the land if the
29 land has been assessed and valued as classified forest land, designated
30 as forest land under chapter 84.33 RCW, or classified under this
31 chapter continuously since 1993. The date of death shown on a death
32 certificate is the date used for the purposes of this subsection
33 (6)(k).

Passed by the House April 24, 2009.
Passed by the Senate April 22, 2009.
Approved by the Governor May 15, 2009.
Filed in Office of Secretary of State May 18, 2009.