

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2004-8
HOUSE BILL 1465**

**AN ACT TO ALLOW FARMLAND OWNED BY A FAMILY BUSINESS TO KEEP
ITS PRESENT-USE VALUE TAX STATUS WHEN LEASED FOR FARM USE.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.2 reads as rewritten:

"§ 105-277.2. Agricultural, horticultural, and forestland – Definitions.

The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

- (1) **Agricultural land.** – Land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program. If the agricultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent agricultural land, protect water quality of adjacent agricultural land, or serve as buffers for adjacent livestock or poultry operations.
- (1a) **Business entity.** – A corporation, a general partnership, a limited partnership, or a limited liability company.
- (2) **Forestland.** – Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit must be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a sound management program.
- (3) **Horticultural land.** – Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit must be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program. If the horticultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not

required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent horticultural land or protect water quality of adjacent horticultural land.

- (4) Individually owned. – Owned by one of the following:
- a. A natural person. For the purpose of this section, a natural person who is an income beneficiary of a trust that owns land may elect to treat the person's beneficial share of the land as owned by that person. If the person's beneficial interest is not an identifiable share of land but can be established as a proportional interest in the trust income, the person's beneficial share of land is a percentage of the land owned by the trust that corresponds to the beneficiary's proportional interest in the trust income. For the purpose of this section, a natural person who is a member of a business entity, other than a corporation, that owns land may elect to treat the person's share of the land as owned by that person. The person's share is a percentage of the land owned by the business entity that corresponds to the person's percentage of ownership in the entity.
 - b. A business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose members are all natural persons who meet one or more of the following conditions: conditions listed in this sub-subdivision. For the purpose of this sub-subdivision, the terms 'having as its principal business' and 'actively engaged in the business of the entity' include the leasing of the land for one of the activities described in subdivisions (1), (2), and (3) only if all members of the business entity are relatives.
 1. The member is actively engaged in the business of the entity.
 2. The member is a relative of a member who is actively engaged in the business of the entity.
 3. The member is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity.
 - c. A trust that was created by a natural person who transferred the land to the trust and each of whose beneficiaries who is currently entitled to receive income or principal meets one of the following conditions:
 1. Is the creator of the trust or the creator's relative.
 2. Is a second trust whose beneficiaries who are currently entitled to receive income or principal are all either the creator of the first trust or the creator's relatives.
 - d. A testamentary trust that meets all of the following conditions:
 1. It was created by a natural person who transferred to the trust land that qualified in that person's hands for classification under G.S. 105-277.3.
 2. At the time of the creator's death, the creator had no relatives as defined in this section as of the date of death.
 3. The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes as defined in G.S. 105-278.3(d).

- e. Tenants in common, if each tenant is either a natural person or a business entity described in sub-subdivision b. of this subdivision. Tenants in common may elect to treat their individual shares as owned by them individually in accordance with G.S. 105-302(c)(9). The ownership requirements of G.S. 105-277.3(b) apply to each tenant in common who is a natural person, and the ownership requirements of G.S. 105-277.3(b1) apply to each tenant in common who is a business entity.
- (4a) Member. – A shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.
- (5) Present-use value. – The value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income and assuming an average level of management. A rate of nine percent (9%) shall be used to capitalize the expected net income of forestland. The capitalization rate for agricultural land and horticultural land is to be determined by the Use-Value Advisory Board as provided in G.S. 105-277.7.
- (5a) Relative. – Any of the following:
 - a. A spouse or the spouse's lineal ancestor or descendant.
 - b. A lineal ancestor or a lineal descendant.
 - c. A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.
 - d. An aunt or an uncle.
 - e. A spouse of a person listed in paragraphs a. through d.
For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term "spouse" includes a surviving spouse.
- (6) Sound management program. – A program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement.
- (7) Unit. – One or more tracts of agricultural land, horticultural land, or forestland. Multiple tracts must be under the same ownership. If the multiple tracts are located within different counties, they must be within 50 miles of a tract qualifying under G.S. 105-277.3(a) and share one of the following characteristics:
 - a. Type of classification.
 - b. Use of the same equipment or labor force."

SECTION 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2004.
In the General Assembly read three times and ratified this the 9th day of June, 2004.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:28 a.m. this 17th day of June, 2004