



# **HJ 22 AGRICULTURAL PROPERTY TAXATION STUDY FINAL REPORT**

September 2018

Revenue and Transportation Interim Committee

Megan Moore, Research Analyst

**FINAL REPORT TO THE 66<sup>TH</sup> MONTANA LEGISLATURE**

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**This report is a summary of the work of the Revenue and Transportation Interim Committee**

specific to the Revenue and Transportation Interim Committee's 2017-2018 agricultural property taxation study as outlined in the Revenue and Transportation Interim Committee's 2017-2018 work plan and House Joint Resolution 22 (2017). Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the Revenue and Transportation Interim Committee in reaching its conclusions. To review additional information, including audio minutes and exhibits, visit the Revenue and Transportation Interim Committee website: [www.leg.mt.gov/rtic](http://www.leg.mt.gov/rtic).

**A full report**, including links to the documents referenced in this printed report is available at the Revenue and Transportation Interim Committee website: [www.leg.mt.gov/rtic](http://www.leg.mt.gov/rtic).



# TABLE OF CONTENTS

Background.....	1
Findings and Recommendations .....	1
Overview of Agricultural Land Valuation.....	1
Agricultural Classification in Selected States .....	2
Small Parcel Owner Panel Discussion.....	9
History of Agricultural Classification .....	9
Land Under a Residence on Agricultural Property .....	21
Eligibility Based on Income Per Acre.....	22
Orchard and Vineyard Owners’ Proposals.....	22
Possible Bill Drafts .....	23
Bill Drafts Considered by Committee .....	24
Conclusion .....	27

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# AGRICULTURAL PROPERTY TAXATION

## BACKGROUND

[House Joint Resolution 22](#) called for a study of agricultural property valuation and ranked fifth of 20 studies in the poll of legislative study resolutions.

The 2015-2016 Revenue and Transportation Interim Committee considered agricultural property taxation issues towards the end of that interim and [introduced four bills](#) to the 2017 legislative session. However, the committee received little feedback on the bills from interested parties and the sponsors withdrew three of the four bills without a hearing; the fourth bill did not pass the Legislature.

The main area of interest for this study of agricultural property valuation is the taxation of smaller parcels of property. Montana law automatically grants agricultural classification and valuation based on productive capacity for parcels of 160 acres or larger that are not devoted to residential, commercial, or industrial use. Owners of parcels of less than 160 acres must apply for agricultural classification, and to qualify the property must be used for agricultural purposes and annually produce at least \$1,500 in gross income.

During the 2015-2016 interim, the Department of Revenue [alerted the committee](#) to some possible unintended consequences after three State Tax Appeal Board rulings invalidated administrative rules related to agricultural classification. Affected rules included one that required a minimum of 1 acre to qualify for agricultural valuation and another that allowed a taxpayer to provisionally qualify for agricultural classification even if the income requirement was not met as long as the taxpayer had 100 fruit trees or 120 vines.

Because agricultural property is valued based on productive capacity, there is a considerable difference in the taxes due on parcels that qualify for agricultural classification and those valued at market value. There was also discussion about whether the \$1,500 income requirement, set in 1985, is too low and whether the income requirement should be a per acre requirement.

## FINDINGS AND RECOMMENDATIONS

The committee did not make findings or recommendations but did request two committee bills: one to revise the cost deduction for irrigated land and the other to provide for provisional agricultural classification for certain property with trees or vines and to simplify section 15-7-202, MCA. See the [Bill Drafts Considered by Committee](#) section for additional details.

## OVERVIEW OF AGRICULTURAL LAND VALUATION

The Department of Revenue provided the committee with a [slideshow overview](#) of eligibility requirements for agricultural property classification and information on how agricultural property is valued and a [memorandum](#) to help start the discussion of the issues surrounding agricultural property classification and valuation.

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# AGRICULTURAL PROPERTY TAXATION

## AGRICULTURAL CLASSIFICATION IN SELECTED STATES

This section provides an overview of eligibility for agricultural property classification in surrounding states. Montana and its neighbors value agricultural property differently than other classes of property. The property value is based on the land's productivity value rather than on its market value, generally resulting in a lower property value and lower property taxes.

This report provides an overview of how Montana and neighboring states define "agricultural" for property classification purposes, whether eligibility for agricultural classification varies based on the size of the parcel, and whether there are income requirements for agricultural classification. The table below compares Montana's practices with those in surrounding states. Sections following the table offer additional details about each state.



# AGRICULTURAL PROPERTY TAXATION

## Summary of Agricultural Classification Requirements for Montana and Surrounding States

State	Definition of “Agricultural”	Acreage Requirements	Income Requirements	Other
Montana	The term “agricultural” refers to: <ul style="list-style-type: none"> <li>• the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and</li> <li>• the raising of domestic animals and wildlife in domestication or a captive environment.</li> </ul>	<ul style="list-style-type: none"> <li>• 160 acres or more under one ownership and not used for residential, commercial, or industrial use (no application required)</li> <li>• Less than 160 acres under one ownership actively devoted to agricultural use if the land is used primarily for raising and marketing agricultural products (requires application)</li> </ul>	Owners of parcels less than 160 acres must market \$1,500 or more in annual gross income	Nonqualified agricultural property: 20-160 acres under one ownership that is not eligible for agricultural classification, not devoted to commercial or industrial purposes, taxed at 15.12% (seven times the agricultural rate)
Idaho	Land is “actively devoted to agriculture” if: <ul style="list-style-type: none"> <li>• Used to produce field crops including, but not limited to, grains, feed crops, fruits and vegetables;</li> <li>• Used to produce nursery stock</li> <li>• Used by the owner for the grazing of livestock to be sold as part of a for-profit enterprise, or leased by the owner to a bona fide lessee for grazing purposes; or</li> <li>• The land is in a cropland retirement or rotation program</li> </ul>	<ul style="list-style-type: none"> <li>• More than 5 contiguous acres; or</li> <li>• 5 contiguous acres or less and has been actively devoted to agriculture during the last three growing seasons</li> </ul>	5 acres or less must: <ul style="list-style-type: none"> <li>• produce agriculturally for sale or home consumption the equivalent of 15% or more of the owner’s or lessee’s annual gross income; or</li> <li>• produce agriculturally gross revenues in the preceding year of \$1,000 or more.</li> </ul>	Land may not be classified as agricultural if it is part of a platted subdivision with prohibitions on use for agricultural purposes

# AGRICULTURAL PROPERTY TAXATION

State	Definition of “Agricultural”	Acreage Requirements	Income Requirements	Other
North Dakota	<ul style="list-style-type: none"> <li>• Platted or unplatted lands used for raising agricultural crops or grazing farm animals until put to a use other than raising agricultural crops or grazing farm animals.</li> <li>• Property platted on or after March 30, 1981, is not agricultural property if certain conditions exist (see detail).</li> <li>• Includes land on which a greenhouse or other building is located if the land is used for a nursery or other purpose associated with the operation of the greenhouse.</li> </ul>	<p>For property platted on or after March 30, 1981, one factor that may affect agricultural classification is whether the parcel is less than 10 acres and not contiguous to agricultural property.</p>	<p>None</p>	<p>Agricultural lands, whether within the corporate limits of a city or not, which were platted and assessed as agricultural property prior to March 30, 1981, must be assessed as agricultural property for ad valorem property tax purposes until put to another use.</p>
South Dakota	<p>Land is agricultural land if it meets the income requirement or acreage requirement and:</p> <ul style="list-style-type: none"> <li>• its principal use is devoted to the raising and harvesting of crops or timber or fruit trees, the rearing, feeding, and management of farm livestock, poultry, fish, or nursery stock, the production of bees and apiary products, or horticulture, all for intended profit; or</li> <li>• it is woodland, wasteland, and pasture land, but only if the land is held and operated in conjunction with agricultural real estate as defined and it is under the same ownership.</li> </ul>	<ul style="list-style-type: none"> <li>• Land consists of not less than 20 acres of unplatted land or is part of a management unit of not less than 80 acres of unplatted land.</li> <li>• Same acreage requirements for platted land in an unincorporated area, except land platted as a subdivision.</li> <li>• County commissioners may increase minimum acre requirement up to 160 acres.</li> </ul>	<ul style="list-style-type: none"> <li>• Gross income derived from the pursuit of agriculture from the land in 3 of the last 5 years is at least 10% of the taxable valuation of the bare land assessed as agricultural property excluding improvements; or</li> <li>• At least \$2,500 of owner’s annual gross income is derived from pursuit of agriculture</li> </ul>	

# AGRICULTURAL PROPERTY TAXATION

State	Definition of “Agricultural”	Acreage Requirements	Income Requirements	Other
Washington	No specific definition of agricultural use, the definition section provides for acreage and income requirements	20 acres or more or multiple contiguous parcels that total 20 or more acres devoted primarily to the production of livestock or agricultural commodities for commercial purposes or are enrolled in the federal conservation reserve program or its successor	5 acres or more and less than 20 acres, devoted primarily to agricultural uses, and: <ul style="list-style-type: none"> <li>• produced gross income from agricultural use equivalent to \$200 or more per acre per year for 3 of the 5 preceding years; or</li> <li>• standing crops with expectation of harvest within 7 years, \$100 investment per acre.</li> </ul> Less than 5 acres devoted primarily to agricultural use: \$1,500 or more for 3 of the 5 preceding years	<ul style="list-style-type: none"> <li>• Agricultural classification required for 10 years unless withdrawn, certain withdrawals subject to claw back tax</li> <li>• Income requirements are \$100 and \$1,000 for land classified before January 1, 1993;</li> <li>• Income includes the value of products donated to nonprofit food banks or feeding programs</li> </ul>
Wyoming	Land must be under one operation and be used and employed for an agricultural purpose. “Agricultural purpose” means the following land uses when conducted consistent with the land’s capability to produce or when supporting the land's capability to produce: <ul style="list-style-type: none"> <li>• cultivation of the soil for production of crops;</li> <li>• production of timber products or grasses for forage;</li> <li>• rearing, feeding, grazing, or management of livestock; or</li> <li>• land used for a farmstead structure.</li> </ul>	May not be part of a platted subdivision, except for a parcel of 35 acres or more that otherwise qualifies as agricultural land.	<ul style="list-style-type: none"> <li>• If land is not leased, the owner of the land must have derived annual gross revenues of not less than \$500 from the marketing of agricultural products.</li> <li>• If the land is leased land the lessee must have derived annual gross revenues of not less than \$1,000 from the marketing of agricultural products.</li> </ul>	The land must be used or employed primarily in an agricultural operation consistent with the land’s size, location and capability to produce as defined by department rules and the mapping and agricultural manual published by the department.

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# AGRICULTURAL PROPERTY TAXATION

## Montana

Large parcels of property that are 160 acres or more, under one ownership, and not used for residential, commercial, or industrial purposes automatically qualify as agricultural property. Parcels of less than 160 acres are also eligible for agricultural classification, upon application, if the land is used primarily for raising and marketing agricultural products and markets \$1,500 or more in annual gross income.<sup>1</sup> “Agricultural” refers to the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes and the raising of domestic animals and wildlife in domestication or a captive environment.<sup>2</sup>

In addition, Montana law provides for a category of land known as nonqualified agricultural property for parcels of 20 acres or more and less than 160 acres under one ownership that are not eligible for agricultural classification. The property may not be devoted to commercial or industrial purposes. The tax rate for the property is seven times the agricultural property tax rate, or 15.12 percent.<sup>3</sup>

## Surrounding States

The committee chose to focus the review of other states’ agricultural classification practices on the states bordering Montana: Idaho, North Dakota, South Dakota, and Wyoming. Information on Washington was requested later in the interim.

## Idaho

Idaho exempts the speculative portion of the value of agricultural land for land actively devoted to agriculture, which includes production of field crops or nursery stock, use for grazing of livestock, and enrollment in a cropland retirement or rotation program.

In Idaho the number of acres below which agricultural classification requires additional criteria is 5 contiguous acres, considerably less than in Montana state law. Parcels that are 5 contiguous acres or larger are not required to meet income requirements. Parcels of 5 contiguous acres or less must have been actively devoted to agriculture during the last 3 growing seasons and must produce agriculturally:

- for sale or home consumption the equivalent of 15 percent or more of the owner’s or lessee’s annual gross income; or
- gross revenues in the preceding year of \$1,000 or more.<sup>4</sup>

Washington also has a requirement based on years in agricultural production for certain size parcels and South Dakota law allows two different ways to qualify, one of which includes a showing of agricultural income over multiple years.

An administrative rule requires annual certification of income.<sup>5</sup>

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<sup>1</sup> Section [15-7-201](#), Montana Code Annotated.

<sup>2</sup> Section [15-1-101](#), Montana Code Annotated.

<sup>3</sup> Section [15-6-133](#), Montana Code Annotated.

<sup>4</sup> Idaho Statutes, [Section 63-604](#).

<sup>5</sup> IDAPA [35.01.03.645.03.c](#).

# AGRICULTURAL PROPERTY TAXATION

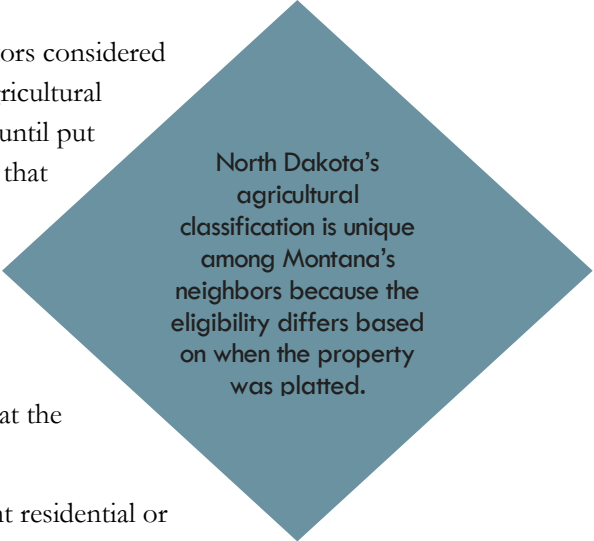
Additional requested research did not indicate a minimum parcel size requirement or provisions specific to agricultural land used for fruit trees or vines.

## North Dakota

North Dakota's agricultural classification is unique among Montana's neighbors because the eligibility differs based on when the property was platted.

There is no minimum acreage requirement but acreage is one of seven factors considered for property platted after 1981. Agricultural land platted and assessed as agricultural property before March 31, 1981, must be assessed as agricultural property until put to another use.<sup>6</sup> The definition of agricultural property, however, provides that property platted on or after March 30, 1981, is not agricultural property if any four of the following conditions are met:

- “(1) The land is platted by the owner.
- (2) Public improvements, including sewer, water, or streets, are in place.
- (3) Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
- (4) Property is zoned other than agricultural.
- (5) Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
- (6) The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
- (7) The property sells for more than four times the county average true and full agricultural value.”<sup>7</sup>



North Dakota's agricultural classification is unique among Montana's neighbors because the eligibility differs based on when the property was platted.

In addition, North Dakota is the only state among the five states that does not have an income requirement.

## South Dakota

For agricultural classification in South Dakota, property must meet either an acreage threshold or an income requirement.

To qualify for agricultural classification, unplatted land must consist of 20 acres or more or be part of a management unit<sup>8</sup> that is 80 acres or more. The same acreage requirements apply for platted land in an unincorporated area, excluding land platted as a subdivision. However, county commissioners may increase the minimum acre requirement up to a maximum of 160 acres.

There are two different income requirements that allow for agricultural classification. The first includes a time test: gross income from three of the last 5 years must be at least 10 percent of the taxable valuation of the bare land assessed as agricultural property excluding improvements. The gross income from the land includes both the landlord's and the tenant's

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<sup>6</sup> Section [57-02-27](#), North Dakota Century Code.

<sup>7</sup> Section [57-02-01](#), North Dakota Century Code.

<sup>8</sup> A management unit is any parcel of land, whether adjoining or not, under common ownership located within this state and managed and operated as a unit for one or more of the principal uses listed in this section. No parcel of land within a management unit may be more than 20 air miles from the nearest other parcel within the management unit.

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# AGRICULTURAL PROPERTY TAXATION

income if there is a crop share or cash rent agreement. Another way to meet the income requirement is by producing at least \$2,500 in annual gross income.<sup>9</sup>

## Washington

The state of Washington values farm and agricultural land based on current use of the property and does not consider potential uses of the property.<sup>10</sup> Farm and agricultural land is defined in three general categories:

- Parcels of 20 acres or more or multiple contiguous parcels that total 20 or more acres and that are devoted primarily to the production of livestock or agricultural commodities for commercial purposes or are enrolled in the federal conservation reserve program or its successor;
- Parcels of 5 acres or more and less than 20 acres, devoted primarily to agricultural uses, and:
  - produced gross income from agricultural use equivalent to \$200<sup>11</sup> or more per acre per year for 3 of the 5 calendar years preceding the date of application for all parcels of land that are classified as agricultural, including the value of products donated to nonprofit food banks or feeding programs; or
  - has standing crops with an expectation of harvest within 7 years and a demonstrable investment in the production of those crops equivalent to \$100 or more per acre in the current or previous calendar year. Standing crops include Christmas trees, vineyards, fruit trees, or other perennial crops that are planted using agricultural methods normally used in the commercial production of that particular crop and typically do not produce harvestable quantities in the initial years after planting, and short rotation hardwoods with an expectation of harvest within 15 years.
- Parcels of less than 5 acres, devoted primarily to agricultural use, and that produced a gross income of \$1,500<sup>12</sup> or more for 3 of the 5 calendar years preceding the date of application for all parcels classified as agricultural.<sup>13</sup>

Washington law requires an application to the county assessor for farm and agricultural classification<sup>14</sup> and the city or county legislative authority may require a processing fee that covers processing costs of the application.<sup>15</sup>

Once farm and agricultural classification is granted, the land must be classified as such for at least 10 years from the date of classification unless withdrawn from classification.<sup>16</sup> The land is considered to be withdrawn from classification upon request of the owner, upon sale of the property if the new owner does not sign a notice of classification continuance, or upon determination by the assessor that the land no longer meets the criteria for agricultural classification.<sup>17</sup>

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<sup>9</sup> Section [10-6-31.3](#), South Dakota Codified Laws.

<sup>10</sup> RCW 84.34.060. Washington also has a definition for open space land that is subject to its own classification rules and is valued based on a public benefit rating system.

<sup>11</sup> Requirement is \$100 or more for land classified before January 1, 1993.

<sup>12</sup> Requirement is \$1,000 or more for land classified before January 1, 1993.

<sup>13</sup> RCW 84.34.020.

<sup>14</sup> RCW 84.34.030.

<sup>15</sup> WAC 458-30-220.

<sup>16</sup> RCW 84.34.070.

<sup>17</sup> RCW 84.34.108.

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# AGRICULTURAL PROPERTY TAXATION

Land withdrawn from classification is revalued as of January 1 of the year of removal from classification, and taxes are assessed based on when the classification was withdrawn. Additional tax, interest, and penalties are also assessed as follows:

- The additional tax is the difference between the property taxes paid on farm and agricultural land and the property taxes that would have been payable for the previous 7 years if the land had not been classified as farm and agricultural land.
- The interest is the statutory rate charged on delinquent property taxes applied to the additional taxes owed.
- The penalty is 20 percent of the additional taxes plus interest.

The additional tax, interest, and penalty do not apply in certain situations such as land exchanges, land taken by eminent domain, land subject to a natural disaster, and other circumstances.<sup>18</sup>

## Wyoming

To qualify for agricultural classification, land in Wyoming must be used or employed primarily in an agricultural operation consistent with the land's size, location and capability to produce as defined by department rules and the mapping and agricultural manual published by the department.<sup>19</sup>

Like in North Dakota, there is no general acreage requirement in Wyoming for land to be classified as agricultural property. However, if land is part of a platted subdivision, the parcel must be at least 35 acres and otherwise meet the definition of agricultural purpose.

The income requirement in Wyoming applies to parcels of any size and differs from other states because the amount of required revenue varies based on whether the land is leased. If land is not leased, the owner must have derived annual gross revenues of not less than \$500 from the marketing of agricultural products. If the land is leased, the lessee must have derived annual gross revenues of not less than \$1,000 from the marketing of agricultural products.

## SMALL PARCEL OWNER PANEL DISCUSSION

As a part of identifying issues and focusing the study, the committee heard from a panel of owners of small agricultural parcels from the Bitterroot Valley, Polson, and the Helena Valley. The panelists' [comments](#) indicated general support for current income and acreage requirements, though [concerns were raised](#) about agricultural eligibility for orchard and vineyard owners whose trees and vines do not produce income immediately.

## HISTORY OF AGRICULTURAL CLASSIFICATION

This section provides an overview of major actions related to the classification and valuation of agricultural property for tax purposes. The table below provides a summary of which legislation affected various aspects of agricultural classification and valuation

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<sup>18</sup>RCW 84.34.108 and RCW 84.34.080.

<sup>19</sup> Sections [39-13-101](#) and [39-13-103](#), Wyoming Statutes Annotated.

# AGRICULTURAL PROPERTY TAXATION

Year, Legislation	Definition of Agricultural	Eligible Uses	Acreage Requirement	Income Requirement	Improvements and Land Under Improvements	Application Requirements	Other	Additional Detail
<a href="#">1973, Ch. 512</a>		✓	✓	✓	✓	✓	✓	Rollback tax
<a href="#">1974, Ch. 56</a>		✓				✓		Requires agricultural classification in recent years
<a href="#">1975, Ch. 457</a>		✓	✓	✓			✓	Not eligible if subdivided and restrictions prohibit agricultural use; hobby farms not eligible
<a href="#">1979, Ch. 39</a>	✓							
<a href="#">1979, Ch. 608</a>		✓						Eligibility for land used to raise animals in confined areas
<a href="#">1979, Ch. 693</a>		✓						Eligibility for land used for growing timber
<a href="#">1985, Ch. 570</a>	✓							
<a href="#">1985, Ch. 681</a>		✓					✓	Land used for growing timber moved to new class of property
<a href="#">1985, Ch. 699</a>		✓	✓	✓	✓		✓	Agricultural improvements and 1 acre beneath improvements taxed at 80% of class four property and valued at market value



# AGRICULTURAL PROPERTY TAXATION

Year, Legislation	Definition of Agricultural	Eligible Uses	Acreage Requirement	Income Requirement	Improvements and Land Under Improvements	Application Requirements	Other	Additional Detail
<a href="#">1986, Ch. 35</a>		✓	✓				✓	New class for “nonproductive real property” of less than 20 acres
<a href="#">1991, Ch. 590</a>		✓					✓	Ineligible if subdivided land has restrictions prohibiting agricultural use
<a href="#">1991, Ch. 705</a>	✓	✓	✓		✓		✓	Agricultural eligibility for sod, ornamental, nursery, and horticultural crops
<a href="#">1993, Ch. 267</a>					✓			Moves agricultural improvements and 1 acre beneath to class four
<a href="#">1993, Ch. 627</a>		✓	✓			✓	✓	Creates nonqualified agricultural property designation
<a href="#">1995, Ch. 474</a>		✓	✓					Repeals special eligibility for sod, ornamental, nursery, and horticultural crops
<a href="#">1995, Ch. 485</a>					✓			1 acre beneath agricultural improvements classified as agricultural
<a href="#">2003, Ch. 577</a>	✓							Adds biological control insects
<a href="#">2005, Ch. 376</a>		✓						
<a href="#">2005, Ch. 543</a>		✓						Eligibility for parcels that are part of family farming entity
<a href="#">2007, Ch. 478</a>		✓		✓			✓	Grazing land eligibility
<a href="#">2007, Ch. 510</a>		✓						Eligibility for parcels reduced for public use
<a href="#">2015, Ch. 9</a>		✓						

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# AGRICULTURAL PROPERTY TAXATION

## Legislation by Year of Enactment

The summary of legislation provided below mostly traces the history of section [15-7-202, MCA](#), which provides for eligibility of land for valuation as agricultural. Changes to other sections of law that relate to the definition of “agricultural,” the valuation of agricultural improvements or land under agricultural improvements, and provisions for nonqualified agricultural land are also discussed.

### 1973

#### Chapter 512

- Enactment of agricultural classification based on productive capacity.
- Legislative intent that property be “assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.”
- No definition of “agricultural.”
- Land actively devoted to agricultural use eligible for valuation, assessment, and taxation each year it meets the following qualifications:
  - It is being actively devoted to agriculture;
  - The area is not less than 5 contiguous acres and the gross value of grazing, field crops, and payments received under a cropland retirement program totals at least \$1,000 per year; or
  - The land agriculturally produces the equivalent of 15% or more of the owner’s annual gross income.
- Requires annual application.
- Land under a farm house is not eligible for agricultural valuation.
- Agricultural land subject to rollback tax upon change in use. Tax is retroactive for up to 4 years before change in use.



The Legislature first passed legislation providing for agricultural classification based on productive capacity in 1973.

### 1974

#### Chapter 56

- Eligibility for agricultural classification changed to provide that land must meet “any of the following qualifications:”
  - It is being actively devoted to agriculture or has been historically devoted to agricultural use and was assessed as agricultural land in tax years 1971, 1972, and 1973, and it continues to be used to produce crops, to be used for grazing, or is in a cropland retirement program;
  - The area is not less than 5 contiguous acres and the gross value of grazing or field crops for sale or home consumption and payments received under a cropland retirement program totals at least \$1,000 per year; or
  - The land agriculturally produces for sale or home consumption the equivalent of 15% or more of the owner’s annual gross income.
- Removes from statute language requiring application.

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# AGRICULTURAL PROPERTY TAXATION

## 1975

### Chapter 457

- Eligibility for agricultural classification again revised to provide that land is actively devoted to agricultural use if it meets either of the following requirements:
  - Area is not less than 5 contiguous acres and has been actively devoted to agriculture during the last growing season and continues to be actively devoted to agricultural use as demonstrated by use to produce field crops, use for grazing, or the land being in a cropland retirement program (removes \$1,000 income requirement); or
  - The land agriculturally produces for sale or home consumption the equivalent of 15% or more of the owner's annual gross income regardless of the number of contiguous acres of ownership.
- Land not eligible for agricultural classification if it is subdivided with restrictions that prohibit use for agricultural purposes.
- Grazing by a horse or other animal kept as a hobby is not considered a bona fide agricultural operation.

## 1979

### Chapter 39

First definition of “agricultural” for tax purposes: “refers to the raising of livestock, swine, poultry, field crops, fruit, and other animal and vegetable matter for food or fiber.”

### Chapter 608

Adds third type of agricultural classification eligibility (without acreage or income requirements) for land used to raise animals in confined areas for the production of food or fiber, including but not limited to livestock, feedlots, dairies, fish hatcheries, and poultry farms.

### Chapter 693

Adds land used for growing timber to eligibility for agricultural classification.

## 1985

### Chapter 570

Adds “bees, and other species of domestic animals and wildlife in domestication or a captive environment” to the definition of “agricultural.”

### Chapter 681

Moves land used for growing timber from class three to a new class of property.

### Chapter 699

- Contiguous or noncontiguous parcels under one ownership that are actively devoted to agricultural use are eligible for agricultural valuation if the owner markets at least \$1,500 in annual gross income or would have if not for production failure or marketing delay for economic advantage.
  - Removes 5 contiguous acres requirement;
  - Reinstates an income requirement (\$1,000 income requirement repealed in 1975);
  - Removes eligibility for land in cropland retirement program;

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# AGRICULTURAL PROPERTY TAXATION

- Removes eligibility language related to raising animals in confined areas (relies instead on definition of “agricultural”);
- Removes eligibility for land that agriculturally produces for sale or home consumption the equivalent of 15 percent of the owners’ annual gross income.
- New class for improvements on agricultural land and 1 acre of real property beneath agricultural improvements. Both are taxed at 80 percent of the class four (residential and commercial property) taxable percentage and the 1 acre is valued at market value.

## 1986

### Chapter 35

- Reintroduces acreage requirements:
  - No agricultural use requirement for contiguous parcels of 20 acres or more under one ownership but none of the parcels may be devoted to commercial or industrial use;
  - Contiguous or noncontiguous parcels totaling less than 20 acres under one ownership must be devoted to agricultural use and the owner or lessee must market \$1,500 or more in annual gross income from raising animals or growing crops or would have to meet the income requirement if not for production failure or marketing delay.
- Creates new class of property for parcels of “nonproductive real property” of less than 20 acres that are precluded from being developed for residential, commercial, or industrial purposes because of subdivision or zoning laws, regulations or ordinances, or for other reasons.
  - Improvements on this class of property are taxed as class four (residential/commercial).
  - New class taxed at 2 percent of market value.

## 1991

### Chapter 590

Prohibits agricultural classification on subdivided parcels of more than 20 acres with stated restrictions that “effectively” prohibit its use for agricultural purposes.

### Chapter 705

- Revises definition of “agricultural” to include sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes.
- Lower acreage requirement (10 acres) for agricultural classification for growing sod, ornamental, nursery, or horticultural crops (still must meet \$1,500 or exception for production failure or marketing delay).
- Improvements used for crop production for sod, ornamental, nursery, and horticultural crops are not eligible for reduced tax rate (80 percent of class four) that is allowed for other improvements on agricultural land.

# AGRICULTURAL PROPERTY TAXATION

1993

## Chapter 267

Repeals reduced tax rate (80 percent of class four) for improvements on agricultural land and 1 acre of real property beneath the improvement and moves this property to class four.



The 1993 Legislature enacted requirements similar to those in current law.

## Chapter 627

Enacts acreage and income requirements that are similar to current law.

- Contiguous parcels of 160 acres (an increase from 20 acres) under one ownership are eligible for agricultural valuation if none of the parcels are devoted to residential, commercial, or industrial use;
- If the owner or lessee markets at least \$1,500 in annual gross income, including rental or lease of the land for grazing or other agricultural purposes and rental payments made under the federal conservation reserve program or a successor to that program, the following are eligible for agricultural valuations:
  - Contiguous parcels of 20 acres or more and less than 160 acres under one ownership if “used primarily for raising and marketing agricultural products”; and
  - Noncontiguous parcels of 20 acres or more and less than 160 acres if part of a bona fide agricultural operation and not devoted to residential, commercial, or industrial use.
- Retains eligibility for agricultural valuation for parcels totaling less than 20 acres under one ownership that are “actively devoted to agricultural use” if the owner or lessee markets \$1,500 in annual gross income or would have if not for production failure or marketing delay.
  - Marketing for parcels of less than 20 acres does not include payments for rental or lease of the land for agricultural use or rental payments under the federal conservation reserve program. This distinction still exists in current law.
- Requires application to Department of Revenue if land is less than 160 acres.
- Adds to class three property (agricultural) a designation for parcels of 20 acres or more but less than 160 acres under one ownership that is not eligible for valuation as agricultural but not used for commercial or industrial purposes (known today as nonqualified agricultural property). Land is valued at productive capacity of grazing land and taxed at seven times the rate for agricultural land.

1995

## Chapter 474

Repeals the special 10-acre requirement for sod, ornamental, nursery, or horticultural crops, which means these crops have to meet the other acreage and income requirements.

## Chapter 485

Provides that 1 acre under an improvement on agricultural land is classified as agricultural property and valued at the class with the highest productive capacity of agricultural land. One acre under nonqualified agricultural property continues to be valued as class four property at market value.

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# AGRICULTURAL PROPERTY TAXATION

## 2003

### Chapter 577

Adds biological control insects to definition of “agricultural.”

## 2005

### Chapter 376

Land may not be classified as agricultural or nonqualified agricultural land if covenants or restrictions prohibit agricultural use.

### Chapter 543

Allows agricultural classification for parcels of 20 acres or more and less than 160 acres that is within 15 air miles of the family farming entity if the owner submits proof that 51 percent or more of the owner’s Montana annual gross income is derived from agricultural production and:

- property taxes on the property are paid by the family corporation, family partnership, sole proprietorship, or family trust and 51 percent of the entity’s Montana annual gross income is derived from agricultural production; or
- the owner is a shareholder, partner, owner, or member of the family farm entity that is involved in Montana agricultural production and 51 percent of the person’s or entity’s Montana adjusted gross income is derived from agricultural production.

## 2007

### Chapter 478

- Standardizes language related to eligibility requirements for parcels of 20-160 acres and parcels less than 20 acres by requiring that parcels of 20 acres or more and less than 160 acres be “actively devoted to agricultural use” (instead of “used primarily for raising agricultural products”) and providing eligibility if the \$1,500 income requirement is not met due to production failure or marketing delay.
- Provides that to be eligible for agricultural classification grazing land must be capable of sustaining a minimum number of animal unit months of carrying capacity that equates to \$1,500 in annual gross income as determined by the Department of Agricultural Economics and Economics at Montana State University.

### Chapter 510

Parcel of less than 20 acres qualifies as agricultural if it did in a prior year, was reduced for a public use, and has not been further divided.

## 2015

### Chapter 9

Requires that parcels of 20 acres or more but less than 160 acres that do not meet income requirement must be part of a family-operated farm, family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production to be eligible for agricultural classification.

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# AGRICULTURAL PROPERTY TAXATION

## Current Version of 15-7-202

**15-7-202. Eligibility of land for valuation as agricultural.** (1) (a) Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use.

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural land if:

(A) the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101 and if, except as provided in subsection (3), the owner or the owner's immediate family members, agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products produced by the land; or

(B) the parcels would have met the qualification set out in subsection (1)(b)(i)(A) were it not for independent, intervening causes of production failure beyond the control of the producer or a marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and

(B) the land is not devoted to a residential, commercial, or industrial use.

(iii) Parcels of land that are part of a family-operated farm, family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production consisting of 20 acres or more but less than 160 acres that do not meet the income requirement of subsection (1)(b)(i) may also be valued, assessed, and taxed as agricultural land if the owner:

(A) applies to the department requesting classification of the parcel as agricultural;

(B) verifies that the parcel of land is greater than 20 acres but less than 160 acres and that the parcel is located within 15 air miles of the family-operated farming entity referred to in subsection (1)(b)(iii)(C); and

(C) verifies that:

(I) the owner of the parcel is involved in agricultural production by submitting proof that 51% or more of the owner's Montana annual gross income is derived from agricultural production; and

(II) property taxes on the property are paid by a family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production and 51% of the entity's Montana annual gross income is derived from agricultural production; or

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# AGRICULTURAL PROPERTY TAXATION

(III) the owner is a shareholder, partner, owner, or member of the family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production and 51% of the person's or entity's Montana annual gross income is derived from agricultural production.

'(c) For the purposes of this subsection (1):

(i) "marketing" means the selling of agricultural products produced by the land and includes but is not limited to:

(A) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

(B) rental payments made under the federal conservation reserve program or a successor to that program;

(ii) land that is devoted to residential use or that is used for agricultural buildings and is included in or is contiguous to land under the same ownership that is classified as agricultural land, other than nonqualified agricultural land described in 15-6-133(1)(c), must be classified as agricultural land, and the land must be valued as provided in 15-7-206.

(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:

(a) except as provided in subsection (3), the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101;

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent, intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice; or

(c) in a prior year, the parcels totaled 20 acres or more and qualified as agricultural land under this section, but the number of acres was reduced to less than 20 acres for a public use described in 70-30-102 by the federal government, the state, a county, or a municipality, and since that reduction in acres, the parcels have not been further divided.

(3) For grazing land to be eligible for classification as agricultural land under subsections (1)(b) and (2), the land must be capable of sustaining a minimum number of animal unit months of carrying capacity. The minimum number of animal unit months of carrying capacity must equate to \$1,500 in annual gross income as determined by the Montana state university-Bozeman department of agricultural economics and economics.

(4) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

(5) The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is valued as provided in 15-6-133(1)(c) and is taxed as provided in 15-6-133(3). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.



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# AGRICULTURAL PROPERTY TAXATION

(6) For the purposes of this part, growing timber is not an agricultural use.

## Proposed Clarification to 15-7-202

The 2015-2016 Revenue and Transportation Interim Committee proposed four bills to revise agricultural valuation laws, none of which became law. As part of that process, committee staff worked with the Department of Revenue to understand how section 15-7-202, MCA, is interpreted and to clarify duplicative language within the section. The clarified language is offered below and could be included in legislation advanced by this committee or could be proposed as stand-alone clarification legislation.

Section 15-7-202, MCA, is amended to read:

**"15-7-202. Eligibility of land for valuation as agricultural.** (1) ~~(a)~~ Contiguous parcels of land totaling 160 acres or more under one ownership are eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a residential, commercial, or industrial use.

~~(b) (i)~~ (2) Contiguous or noncontiguous parcels of land of ~~20 acres or more but~~ less than 160 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural land if:

~~(A) (a)~~ the land is used primarily for raising and marketing, ~~as defined in subsection (1)(e)~~, products that meet the definition of agricultural in 15-1-101 and if, except as provided in subsection ~~(3) (5)~~, the owner or the owner's immediate family members, agent, employee, or lessee markets not less than \$1,500' in annual gross income from the raising of agricultural products produced by the land; or. For the purposes of determining annual gross income under this subsection:

(i) "marketing" means the selling of agricultural products produced by the land; and

(ii) for parcels of land of 20 acres or more and less than 160 acres, includes:

(A) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

(B) rental payments made under the federal conservation reserve program or a successor to that program.

~~(B) (b)~~ the parcels would have met the qualification set out in subsection ~~(1)(b)(i)(A) (2)(a)~~ were it not for independent, intervening causes of production failure beyond the control of the producer or a marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

~~(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:~~

~~(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and~~

~~(B) the land is not devoted to a residential, commercial, or industrial use.~~

(3) The following parcels are also eligible for valuation, assessment, and taxation as agricultural land:

# AGRICULTURAL PROPERTY TAXATION

~~(a) parcels that totaled 20 acres or more in a prior year and qualified as agricultural land under this section but for which the number of acres was reduced to less than 20 acres for a public use described in 70-30-102 by the federal government, the state, a county, or a municipality, and since that reduction in acres, the parcels have not been further divided; and~~

~~(iii)(b) Parcels~~ parcels of land that are part of a family-operated farm, family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production consisting of 20 acres or more but less than 160 acres that do not meet the income requirement of subsection (1)(b)(i) ~~may also be valued, assessed, and taxed as agricultural land~~ (2)(a) if the owner:

~~(A)(i)~~ applies to the department requesting classification of the parcel as agricultural;

~~(B)(ii)~~ verifies that the parcel of land is greater than 20 acres but less than 160 acres and that the parcel is located within 15 air miles of the family-operated farming entity referred to in this subsection ~~(1)(b)(iii)(C)~~ (3)(b); and

~~(C)(iii)~~ verifies that:

~~(A)~~ the owner of the parcel is involved in agricultural production by submitting proof that 51% or more of the owner's Montana annual gross income is derived from agricultural production; and

~~(B)~~ property taxes on the property are paid by a family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production and 51% of the entity's Montana annual gross income is derived from agricultural production; or

~~(C)~~ the owner is a shareholder, partner, owner, or member of the family corporation, family partnership, sole proprietorship, or family trust that is involved in Montana agricultural production and 51% of the person's or entity's Montana annual gross income is derived from agricultural production.

~~(e) For the purposes of this subsection (1):~~

~~(i) "marketing" means the selling of agricultural products produced by the land and includes but is not limited to:~~

~~(A) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and~~

~~(B) rental payments made under the federal conservation reserve program or a successor to that program;~~

~~(ii)(4) land~~ Land that is devoted to residential use or that is used for agricultural buildings and is included in or is contiguous to land under the same ownership that is classified as agricultural land, other than nonqualified agricultural land described in 15-6-133(1)(c), must be classified as agricultural land, and the land must be valued as provided in 15-7-206.

~~(2) Contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use are eligible for valuation, assessment, and taxation as agricultural each year that the parcels meet any of the following qualifications:~~

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# AGRICULTURAL PROPERTY TAXATION

- ~~—(a) except as provided in subsection (3), the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than \$1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101;~~
- ~~—(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent, intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice; or~~
- ~~—(c) in a prior year, the parcels totaled 20 acres or more and qualified as agricultural land under this section, but the number of acres was reduced to less than 20 acres for a public use described in 70-30-102 by the federal government, the state, a county, or a municipality, and since that reduction in acres, the parcels have not been further divided.~~

~~(3)(5)~~ For grazing land to be eligible for classification as agricultural land under subsections ~~(1)(b) and (2) and (3)~~, the land must be capable of sustaining a minimum number of animal unit months of carrying capacity. The minimum number of animal unit months of carrying capacity must equate to \$1,500 in annual gross income as determined by the Montana state university-Bozeman department of agricultural economics and economics.

~~(4)(6)~~ The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise is not considered a bona fide agricultural operation.

~~(5)(7)~~ The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is valued as provided in 15-6-133(1)(c) and is taxed as provided in 15-6-133(3). If land has been valued, assessed, and taxed as agricultural land in any year, it must continue to be valued, assessed, and taxed as agricultural until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

~~(6)(8)~~ For the purposes of this part, growing timber is not an agricultural use."

## LAND UNDER A RESIDENCE ON AGRICULTURAL PROPERTY

The 2017 Legislature considered a Revenue and Transportation Interim Committee-requested [bill](#) to classify land under a residence on agricultural property as class four residential property valued at market value. Such land is currently valued as agricultural property at the highest productive capacity. The bill sponsor withdrew the bill before a hearing was held but the policy was again considered for this study.

Historically, land under a residence on property otherwise classified as agricultural property has been valued differently depending on the year. When the Legislature first enacted agricultural classification and valuation laws in 1973, the property under a residence was not eligible for valuation based on productivity and continued to be valued based on market value. The 1985 Legislature moved residential improvements into a separate class of property. This property was still valued at market value but the tax rate was reduced to 80% of the tax rate for other residential property. The 1993 Legislature repealed the reduced tax rate but that action was followed in 1995 by passage of the policy that remains in effect today: 1 acre under a residence on agricultural property is valued based on the highest productive capacity of agricultural land.

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# AGRICULTURAL PROPERTY TAXATION

The Department of Revenue provided two analyses related to this topic. One [analysis](#) compares taxable value for 1 acre under a residence on agricultural property, nonqualified agricultural property, and timber property. The acre under a residence is valued at market value for all property except qualified agricultural property. [A second analysis](#) shows the taxable value impact by county and parcel size and estimates the difference in taxes due if 1 acre under a residence on agricultural property is valued at market value.

After reviewing this analysis, the committee requested additional information showing the same information but assuming only ½ acre under a residence is valued at market value as class four residential property. The Department of Revenue provided three documents to fulfill the request: one each for parcels of [less than 20 acres](#), parcels of [20 acres to less than 160 acres](#), and parcels of [160 acres or more](#).

The committee did not request draft legislation to change the valuation of land under a residence on agricultural property.

## ELIGIBILITY BASED ON INCOME PER ACRE

The income requirement for parcels of less than 160 acres is \$1,500 in gross income, regardless of the size of the parcel. Toward the end of the last interim and during this study, the committee has discussed changing the income requirement to a certain level of income per acre. The specific proposal discussed would base the income requirement for the parcel on the productive value assigned to the parcel for valuation purposes. The Department of Revenue provided [two possible methods](#) for implementing such a policy but raised technical concerns such as how to apply the policy to parcels with mixed agricultural uses.

After the committee considered proposals from owners of orchards and vineyards (see next section), a request was made to review laws in Idaho and Washington specific to valuation practices related to orchards and vineyards. The overview of neighboring states' agricultural classification and valuation practices did not originally include Washington but the requested review revealed that Washington uses an income per acre requirement for certain parcels.

In Washington, parcels of 5 acres or more and less than 20 acres that are devoted primarily to agricultural uses may qualify for agricultural valuation if the parcels produce at least \$200<sup>20</sup> per acre for 3 of the 5 calendar years preceding the date of application. Parcels of less than 5 acres must produce total gross income of \$1,500 in 3 of the 5 calendar years preceding the date of application and parcels of 20 acres or more are not required to meet an income requirement.

The committee did not request draft legislation to revise the income requirement used to qualify parcels under 160 acres for agricultural classification.

## ORCHARD AND VINEYARD OWNERS' PROPOSALS

Members of the committee that represent the Flathead region suggested the committee invite owners of orchards and vineyards to discuss their proposals related to agricultural classification and valuation. In 2016, the State Tax Appeal Board invalidated an administrative rule for which there was no statutory authority. That led the Department of Revenue to review all

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<sup>20</sup> Requirement is \$100 or more for land classified before January 1, 1993.

# AGRICULTURAL PROPERTY TAXATION

administrative rules related to agricultural classification and to repeal a rule allowing for provisional agricultural classification for certain parcels. The [proposal from the orchard and vineyard owners](#) is to place in statute the policy that was previously in administrative rule.

The committee requested a draft bill to allow for provisional classification for parcels with 100 fruit trees or 120 vines that are maintained with approved husbandry practices.

## POSSIBLE BILL DRAFTS

The committee requested staff work with the Department of Revenue to create a proposal to address concerns related to agricultural eligibility for parcels of less than 160 acres. Because no clear solution emerged with support from all interested parties, staff instead summarized ideas proposed during public comment, discussed by committee members, and policies that could be borrowed from nearby states.

### Possible Bill Draft Concepts for Agricultural Property Study

Category	Concept	Source
Eligibility	Require agricultural use for a period of time before eligibility for agricultural classification	<ul style="list-style-type: none"> <li>Idaho: devoted to agriculture use during last 3 growing seasons</li> <li>Washington: 3 of 5 years, including income requirement based on parcel size</li> </ul>
Eligibility	Require parcel to be 1 acre or more to be classified as agricultural	2015-2016 RTIC <a href="#">HB 29</a>
Eligibility	Remove nonqualified agricultural property designation	2015-2016 RTIC <a href="#">HB 75</a>
Income	Index or change \$1,500 gross income requirement for parcels of less than 160 acres	<ul style="list-style-type: none"> <li>2015-2016 RTIC <a href="#">HB 28</a>: \$3,500</li> <li>DOR</li> <li>South Dakota: \$2,500 or gross income in 3 of last 5 years that is 10% or more of taxable value of the agricultural property (excluding improvements)</li> </ul>
Income	Require income per acre	<ul style="list-style-type: none"> <li>Sen. Barrett: based on productive value determined by DOR</li> <li>Washington: \$200 per acre (for 3 of 5 years before application) for parcels of 5 acres or more and less than 20 acres</li> </ul>

# AGRICULTURAL PROPERTY TAXATION

Income	Allow agricultural classification for crops that do not produce income immediately	<ul style="list-style-type: none"> <li>• Montana orchard and vineyard owners based on previous DOR rule: allow classification for up to 5 years with 100 fruit trees or 120 vines</li> <li>• Washington: parcels of 5 acres or more and less than 20 acres, minimum \$100 investment per acre if harvest is expected within 7 years</li> </ul>
Land under residence	Value 1 acre or ½ acre under a residence at market value (as class four property)	<ul style="list-style-type: none"> <li>• 2015-2016 RTIC <a href="#">HB 27</a></li> <li>• DOR</li> <li>• Montana statute, 1973-1995<sup>21</sup></li> </ul>
Irrigation costs	Allow the \$50 per acre maximum water cost deduction from net income for all irrigated land. Taxpayer will no longer have to submit energy costs (which may only be done online.) Estimated revenue loss for 101 mills of \$291,000.	DOR and its informal agricultural working group

## BILL DRAFTS CONSIDERED BY COMMITTEE

The committee asked staff to draft two bills for committee consideration: one to allow for provisional agricultural classification for parcels with fruit trees and vines and one to revise the irrigation cost deduction used for valuing irrigated parcels. There was also public comment from Rep. Jeff Essmann (R-Billings) suggesting that the committee draft a bill to require agricultural use for all agricultural property, including parcels of greater than 160 acres. The committee discussed this idea and decided to review a draft bill prepared for last interim’s study of agricultural property. LCag00 is a simplification of section 15-7-202, MCA, and is provided by staff for the committee’s consideration.

### LCag01

This draft provides for provisional agricultural classification for 5 years for fruit trees, vines, and Christmas trees. These crops take time to reach maturity and do not produce income for a number of years after planting. The new language, taken from a former Department of Revenue rule, requires at least 100 live fruit trees, 120 live vines, or 2,000 live Christmas trees, and requires use of accepted husbandry practices, such as fencing, watering systems, trellising, and pruning or shearing. After 5 years, the taxpayer must apply for agricultural classification and meet the \$1,500 gross revenue requirement otherwise provided in statute.

The committee requested a committee bill, [LC 394](#), to include LCag01 and the simplification of section 15-7-202, MCA, contained in LCag00.

<sup>21</sup> From 1985-1993 improvements on agricultural property were in a separate class, valued at market value, and taxed at 80% of the class four tax rate. Ch. 699, L. 1985.

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# AGRICULTURAL PROPERTY TAXATION

## LCag02

The productive value of irrigated agricultural property includes a deduction for water costs. This water cost deduction is made up of a base water cost of \$15 an acre, labor costs of \$5, \$10, or \$15 depending on the type of irrigation system used, and energy costs reported each reappraisal cycle to the Department of Revenue. The total deduction for water costs may not exceed \$50.

LCag02 would simplify the water cost deduction by allowing the maximum \$50 water cost deduction for all irrigated property. Taxpayers would no longer be required to report energy costs. Information provided by the Department of Revenue indicates that most taxpayers who report energy costs receive the maximum deduction and that this change would result in an annual revenue loss of about \$291,000 resulting from the application of the 101 mills to the value of the affected agricultural property.

The committee requested this concept as a committee bill. The assigned bill number is [LC 395](#).

## LCag03

The 2015-2016 Revenue and Transportation Interim Committee considered LCag03 but did not request it as a committee bill. The draft is provided to the current committee in response to Rep. Essmann's public comment encouraging the committee to require agricultural use for all property classified as agricultural. Under current law, contiguous parcels of 160 acres or more do not have to be used for agricultural purposes but the parcels may not be used for residential, commercial, or industrial purposes. LCag03 requires parcels of 160 acres or more to be used primarily for agricultural purposes while also allowing portions of the property to be idle for land management or conservation purposes.

The committee did not approve this concept as committee legislation.

## LCag00

This bill draft is intended to simplify and clarify section 15-7-202, MCA, without making any policy changes. The table on the next page summarizes the different parcel sizes and classification requirements included in the section. The committee requested a committee bill, [LC 394](#), to include LCag01 and the simplification contained in LCag00.

# AGRICULTURAL PROPERTY TAXATION

Subsection	New Sub.	Description of Land	Req. ag use	Not Res., Com, Ind.	One owner	\$1,500 <sup>22</sup>	Additional Information
(1)(a)	(1)	Contiguous parcels of > 160 acres		✓	✓		
(1)(b)(i)	(2)	Contiguous parcels of ≥ 20 acres and < 160	✓		✓	✓	“Actively devoted to agricultural use,” “land used primarily for raising and marketing” agricultural products
(1)(b)(ii)	(3)	Noncontiguous parcels ≥ 20 acres and < 160	✓	✓	✓	✓	Land must be “part of a bona fide agricultural operation”
(1)(b)(iii)	(4)(b)	Family farm of ≥ 20 acres and < 160					<ul style="list-style-type: none"> <li>Family farm must be in agricultural production</li> <li>Parcel must be within 15 air miles of family farm</li> <li>Owner’s income from agriculture, taxes paid by family farm</li> </ul>
(2)	(2),(3)	Contiguous or noncontiguous parcels of < 20 acres	✓		✓	✓	“Actively devoted to agricultural use”
(2)(c)	(4)(a)	Contiguous or noncontiguous parcels of < 20 acres that totaled > 20 acres in prior year but reduced for public use	✓		✓		Parcels cannot have been further divided
(3)	(6)	Grazing (≤ 160 acres)	✓		✓	✓	Capable of sustaining a minimum AUM equal to \$1,500
(5)	(8)	No application ≥ 20 acres and < 160			✓		Nonqualified agricultural, may not be devoted to commercial or industrial purpose

<sup>22</sup> The income requirement specifies the marketing of \$1,500 in annual gross income from the raising of agricultural products. For parcels specified in subsection (1), “marketing” includes rental or lease of the land if it is used for agricultural purposes and rental payments made under the federal Conservation Reserve Program.



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# AGRICULTURAL PROPERTY TAXATION

## CONCLUSION

The Revenue and Transportation Interim Committee's study of agricultural property taxation included a review of the history of agricultural property classification in Montana and of agricultural property classification in neighboring states. Committee consideration focused on eligibility for agricultural classification for parcels of less than 160 acres. The main topics of interest included whether to change the valuation of 1 acre under a residence on agricultural property from productive value to market value, the \$1,500 gross income requirement for parcels of less than 160 acres, provisional agricultural classification for property with fruit trees and vines, and simplification of the cost deduction for irrigated property. The committee requested two committee bills: [LC 394](#) to provide for provisional agricultural classification for certain property with trees and vines, and [LC 395](#) to revise the irrigated land cost deduction.

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