

STATE OF WISCONSIN  
IN SUPREME COURT

**FILED**  
MAR 30 2021  
CLERK OF SUPREME COURT  
OF WISCONSIN

Case No. 2018AP1239

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APPLEGATE-BADER FARM, LLC,

Plaintiff-Respondent-Cross-Appellant-Petitioner,

v.

WISCONSIN DEPARTMENT OF  
REVENUE AND RICHARD  
CHANDLER IN HIS CAPACITY AS  
SECRETARY OF THE  
DEPARTMENT OF REVENUE,

Defendants-Appellants-Cross-Respondents.

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**DEFENDANTS-APPELLANTS' MOTION AND  
MEMORANDUM FOR CLARIFICATION OR  
RECONSIDERATION**

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The Defendants-Appellants Wisconsin Department of Revenue, et al. (the "Department"),<sup>1</sup> respectfully move that this Court clarify (or, if necessary, reconsider) the portion of its mandate staying the enforcement of Wis. Admin. Code Tax § 18.05(1)(d). *See* Wis. Stat. (Rule) §§ 809.64; 809.14.

In summary, by statute, January 1 of a given year is the assessment date that local assessors must use when classifying and valuing property for property tax purposes.

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<sup>1</sup> One of the official capacity defendants is former-Department Secretary Richard Chandler. The current Secretary, Peter Barca, may be substituted by operation of law. *See* Wis. Stat. § 803.10(4).

The Department requests a clarification to ensure it is clear that property classification and valuation as of January 1, 2021, remains in effect for the 2021 tax year. Wisconsin's property tax assessment process is decentralized and performed locally by assessors. It is important that the governing rules are clear to ensure those assessors apply the same rules to all property within a municipality and across the state.

## BACKGROUND

### I. Relevant tax provisions and procedures.

As this Court is aware, Wis. Admin. Code Tax § 18.05 provides the definition of “agricultural use” for purposes of property tax assessment. Land ordinarily would be valued at its full value (i.e., fair market value) or based on half of that value if it qualifies as “undeveloped” land. Wis. Stat. § 70.32(1), (2r), (4). In contrast, land that meets the definition of “agricultural use” is taxed based on its value as farmland. *Applegate-Bader Farm, LLC v. DOR*, 2021 WI 26, ¶ 5 (summarizing these provisions). That typically results in a lower property tax for agricultural land than otherwise would apply.

Wisconsin Admin. Code Tax § 18.05(1) provides multiple ways for land to qualify as agricultural, including traditional cropping and pasturing. Wis. Admin. Code Tax § 18.05(1)(a)–(c). In addition, it provides coverage for agricultural land placed in qualifying easements or programs in Wis. Admin. Code Tax § 18.05(1)(d).

If subsection (1)(d) did not exist, then *no* land placed in easements or programs (like temporary easements) would qualify as “agricultural” unless that parcel was also covered under the cropping and pasturing provisions in subsections (1)(a)–(c). For example, the Department has identified

dozens of programs currently covered by subsection (1)(d). (Department Br. 7; R. 79:8–13.) If subsection (1)(d) is not in force, then it is likely those parcels' tax assessments will go up because they will be assessed according to fair market value or as "undeveloped," instead of as agricultural.

Generally, assessment of land is done by local assessors, although the Department has a statutory duty to provide guidance, including through its assessment manual. Wis. Stat. § 73.03(2a). Local assessors apply the tax definitions to determine how to value land that, in turn, affects the property tax owed. That process has multiple steps over time.

A key date in that process is January 1 of a given year: "The assessor shall assess all real and personal property as of the close of January 1 of each year." Wis. Stat. § 70.10. Landowners then may raise objections, which are heard by local boards of review beginning April 4. Wis. Stat. § 70.47(1). There are other possible steps along the way, culminating in property tax bill distributions by the third Monday in December of that year. Wis. Stat. § 74.09(5). Thus, for example, the 2021 assessment for the tax bills that will be sent in December 2021 should reflect the classification and value as of January 1, 2021.

## II. This Court's decision.

The Court issued its decision on March 16, 2021, and remanded to the circuit court to in turn remand to the Department for further action under WEPA. The Court "stay[ed] the enforcement of Wis. Admin. Tax § 18.05(1)(d) pending the Department's compliance with WEPA." *Applegate-Bader Farm, LLC v. DOR*, 2021 WI 26, ¶ 41 ("Op.").

On the merits, the Court ruled that the Department failed to demonstrate in the record that "it made a

preliminary investigation and reached a reasonable conclusion about the environmental consequences of its action.” Op. ¶¶ 3, 41. On remand, the Department must “consider indirect environmental effects when determining whether to prepare an EIS,” Op. ¶ 14, which this Court referenced in Applegate’s complaint and certain information and documents in the rulemaking record, such as statements about the benefits of WRP land, Op. ¶¶ 27, 32 n.11. The Court concluded that the existing rulemaking record was faulty because it lacked the Department’s “discussion of the environmental effects of the rule” and an explanation of the Department’s “rationale behind its negative-EIS decision.” Op. ¶ 32.

This Court recognized that WEPA does not ultimately control agency decision making, and that it may be on remand that “the Department may conclude that an EIS is unnecessary.” Op. ¶ 37. In the meantime, this Court has “stay[ed] the enforcement of Tax § 18.05(1)(d) to preserve the interests of Applegate and the public pending further agency action.” Op. ¶ 40.

#### **REASONS FOR CLARIFICATION OR RECONSIDERATION**

The Department requests that the Court clarify (or, if necessary, reconsider) its stay remedy to ensure that local assessors clearly understand that they should continue to apply Tax § 18.05(1)(d) for the 2021 tax year based on the statutory assessment date of January 1. In addition to following the statute, this avoids midyear changes that likely would increase the tax owed by landowners that relied on the existence of Tax § 18.05(1)(d) as of January 1 and, likewise, would avoid confusion in the assessment process, which relies on that uniform date for assessments.

**I. Request for clarification or reconsideration of the Court's decision as it applies to the 2021 tax year.**

As summarized above, the property tax assessment process uses January 1 as the key date for a given year's assessments. Various other processes may then follow, but those flow from that January 1 determination.

On January 1, 2021, prior to this Court issuing its decision, Tax § 18.05(1)(d) was in force. Thus, given the statutory tax assessment process, the Department believes that it remains proper to apply Tax § 18.05(1)(d) to parcels for the 2021 tax year's assessments, which will govern tax bills issued in December 2021. *See* Wis. Stat. § 70.10.

This applies what was in force on the statutory assessment date and also avoids confusion in the assessment process. If Tax § 18.05(1)(d) was first in force, now is stayed, and then may again become in force during 2021, it could be unclear to local assessors what rules to apply to classification and valuation of property. That uncertainty is removed if the status of Tax § 18.05(1)(d) in effect on January 1, 2021, continues to govern for the 2021 tax year.

This also will provide public benefit to nonparties, preventing those landowners covered by Tax § 18.05(1)(d) from having their property classification and valuation changed midyear. That has no effect on Applegate, whose lands in question were not covered by any version of Tax § 18.05(1), old or new, and whose lands also are not covered if Tax § 18.05(1)(d) is not in force.

The Department therefore requests that this Court clarify (or, if necessary, reconsider) and provide that its stay affecting Tax § 18.05(1)(d) does not apply to parcels for purposes of 2021 property tax assessments and bills.

**II. Request for clarification regarding tax year 2022, if the Department's understanding summarized below is incorrect.**

The Department understands that, upon compliance with this Court's mandate regarding WEPA, the circuit court is to lift the Court's stay. The Department intends to carry out this Court's mandate as expeditiously as reasonably possible, but there appears to be at least the possibility that the stay would remain in force into next year, including the January 1, 2022, assessment date. Further, whether the stay remains in place may, in part, be outside of the Department's control, but rather would depend on the circuit court's future rulings.

If this Court's stay were still in place as of January 1, 2022, the Department understands the consequence to be this: no one will be able to claim agricultural tax status for parcels in easements or programs for tax year 2022 because Tax § 18.05(1)(d) would be stayed and no replacement would exist as of the key January 1, 2022, date. If this Court intended a different result, then the Department requests that the Court clarify, so that the Department may correctly advise local assessors.

Dated this 30th day of March.

Respectfully submitted,

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**CERTIFICATE OF MAILING**

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I hereby certify that 9 copies of Defendants-Appellants' Motion and Memorandum for Clarification or Reconsideration were hand-delivered for filing to the Wisconsin Supreme Court Clerk's Office, 110 East Main Street, Madison, WI 53701, on March 30, 2021. I further certify that 1 copy of this motion was deposited in the United States mail, properly addressed and postage pre-paid, for delivery to:

Ryan L Woody  
Matthiesen Wickert & Lehrer SC  
Post Office Box 270670  
Hartford WI 53027-0670

Dated this 30th day of March 2021.



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