

SDAT Agricultural Transfer Tax

Background

The preservation of agricultural land is extremely important to all citizens of Maryland. Years ago, the Maryland General Assembly declared that it is in the general public interest of the State to foster and encourage farming activities to maintain a readily available source of food and dairy products, to encourage the preservation of open space as an amenity necessary for human welfare and happiness, and to prevent the forced conversion of open space land to more intensive uses. In fact, Maryland was the first State in the nation to formally adopt a policy providing for lower assessments (and property taxes) on land that is actively devoted to farm or woodland uses. The "agricultural use assessment" is granted to farm land or woodland that meets the criteria outlined in State Law. This special assessment means that the land is appraised according to its current use and not according to its actual market value which, in many instances, is significantly higher. The result is that the owner of land receiving the lower "agricultural use assessment" pays less property taxes and there is less pressure to convert the land to more intensive uses. Another method used to preserve agricultural land is the State's Agricultural Land Preservation Program. This program, administered by the Maryland Department of Agriculture, purchases development rights on existing farms thereby ensuring that they will remain as active farms. A key funding source for this program is the Agricultural Transfer Tax, which is a tax imposed on the sale of land removed from receiving the agricultural use assessment. The agricultural use assessment, the agricultural transfer tax, and [Maryland's Agricultural Land Preservation Program](#) work together to preserve farmland and woodland in Maryland. The agricultural transfer tax serves several roles; as a deterrent in the conversion of the land for development; as a penalty when land has been removed and transferred from this preferential use assessment; and finally, in funding the purchase of easements on farmland to protect lands from future development.

When the Agricultural Transfer Tax & Surcharge Applies

The Agricultural Transfer Tax and Surcharge applies at the point of sale on land that receives the agricultural use assessment; or in some cases, where land that had previously received the agricultural use assessment. The Department's website identifies property accounts subject to an Agricultural Transfer Tax on its [Real Property Data Search](#) site. Property accounts subject to an Agricultural Transfer Tax will have a Special Tax Recapture area noted as "Agricultural Transfer Tax". This notation is clearly identified in a **red bold** format both at the top and bottom of the website's property screen so that it is not overlooked.

Technically, the Agricultural Transfer Tax is imposed on the written instrument (deed) conveying title to the property and it must be paid before the document can be recorded in the land records of the county. When the amount of Agricultural Transfer Tax is requested by a customer, the local assessment office prepares an [Agricultural Transfer Tax Statement](#) that contains the details of the tax and surcharge calculation. The Agricultural Transfer Tax Statement provides the total amount that will be due upon transfer. The tax is collected by the local County Finance or Treasurer's Office. State Law (Sections §13-301 through §13-308 of the Tax-Property Article) provides the statutory framework for the Agricultural Transfer Tax and Surcharge. Generally, the law specifies that the tax is due on all transfers of agricultural land unless exempt or the purchaser is willing to sign a Declaration of Intent. *(Refer to those sections below for more details)*

It is important to note that there are a few counties that also impose a County Agricultural Transfer Tax in addition to the State of Maryland's tax. Please contact the Finance or Treasurer's Office for the county in which the property is located within to determine if any additional local tax is applied.

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Because the Agricultural Transfer Tax is imposed on the written instrument conveying title to the property and not on either the buyer or seller, payment of the tax becomes a negotiated item between the two parties. Here, the law requires that the seller notify the buyer of the possibility of the tax being due at the time of transfer. The notification must be in writing and a part of the sales contract. When that is done, the buyer becomes responsible for payment of the tax.

The Rate and Basis for the Tax and Surcharge

The Agricultural Transfer Tax and Surcharge are imposed on the value of the land being removed from the agricultural use assessment. The rate of the tax and surcharge are as follows:

- 5% when the land being removed from agricultural use is 20 acres or more;
- 4% when the land being removed from agricultural use is less than 20 acres in size;
- 3% when the land being removed from agricultural use is less than 20 acres and contains site improvements such as well and septic.
- An additional 25% surcharge is calculated from the Agricultural Transfer Tax amount and added together for the total amount due. *(Note: The Surcharge does not apply to transfers of two acres or less to a child or grandchild of the owner.)*

Method of Calculation of the Agricultural Transfer Tax

The Assessment Office is charged with the responsibility of determining when the Agricultural Transfer Tax is due and the amount to be paid. The law provides specific guidelines that must be followed in making the necessary calculations. As mentioned above, the rate of the tax is dependent upon the size of the tract of land being removed from agricultural use assessment and whether any site improvements exist. The basis for the tax is the value of the land receiving the use assessment. However, at this point the method of determining that value becomes somewhat more complicated. Generally, the consideration paid for the property is used with the applicable rate when the tax is imposed upon transfer. Adjustments are subtracted out from the consideration paid for property for any non-agriculturally assessed land, dwellings or structures to determine the net consideration. The land value used in the tax calculation is determined as follows:

- When the entire tract of land received the agricultural use assessment and no buildings are present, the tax is imposed on the actual consideration to be paid.
- If farm buildings are present, the value of those buildings (as reflected on the assessment records) are subtracted from the total consideration and the tax is imposed on resulting net consideration.
- A similar approach is used to determine net consideration when the entire tract of land did not receive the agricultural use assessment as is the case when the purchase includes a dwelling and homesite. In this instance, the value of the non-agricultural land and dwelling (as reflected on the assessment records) are subtracted from the total consideration.
- The dwelling and/or other building structures may have an index applied to their value prior to being subtracted. This index is to offset any increase in cost since their previous reassessment, thus providing for a more current value to the improvement(s). The amount of the index will vary depending on current economic conditions and the year in which the property was last reassessed.
- The imposition of the Agricultural Transfer Tax and/or the value used in the calculation of the tax may be appealed. These are considered separate appeals so it is important for the appellant to follow any instructions and deadlines contained within their notice.

If a Declaration of Intent is filed on a portion of land or the land is subject to a violation, the rate is applied to the fair market value of the land as determined by the Supervisor of Assessments rather than using the consideration. *(Further explained below)*

Declaration of Intent use in Waiver of the Agricultural Transfer Tax

The intent of the Agricultural Transfer Tax law is to impose the tax only when the land will not continue in agricultural use. Thus, the purchaser may elect to waive the tax by filing a [Declaration of Intent](#) at the time of transfer. This document is the purchaser's agreement that the described amount of land will remain in agricultural use for at least 5 full consecutive taxable years. This commitment involves completing the [agricultural use application](#) that is approved to meet the Department's agricultural use requirements. Purchasers are encouraged to contact the [local Assessment Office](#) for the county the property is located within to discuss the requirements of agricultural use assessment prior to signing a Declaration of Intent. This is to avoid any violation or confusion in this agreement. (Please refer to the [Agricultural Use Assessment](#) for more information)

The purchaser also has the option of waiving a portion of the tax by filing a Declaration of Intent on part of the land and paying the Agricultural Transfer Tax on the other portion of land they intend to develop. When this is done, the consideration to be paid at settlement is not used in the calculation of the tax, rather the Supervisor of Assessments must determine the fair market value for the portion of land being removed. In such cases, the law requires that when a parcel can be further subdivided into 2 or more parcels, the Supervisor of Assessments must be provided with a survey that accurately identifies the location and amount of acreage that is subject to the Declaration of Intent.

The example below illustrates a typical situation where only a portion of land is elected to be developed in the future and have the tax paid on. In this instance, the importance and impact of the survey is crucial in determining the amount of tax that would be due.

Assume that a 50 acre parcel of farmland is being purchased and the buyer intends to pay the Agricultural Transfer Tax on one acre for a homesite to build a house and sign a Declaration of Intent to farm the remaining 49 acres. The 50 acre parcel is divided by a road with a portion of land on one side of the road located against the water, while the portion of land on other side of the road is only subject to a view of water. The one acre homesite has no site improvements, so a 4% rate of tax will be used in the Agricultural Transfer Tax calculation.

Example A) The survey identifies the location of the homesite on the portion of the road where it will only have a water view. The fair market value of the one acre water view homesite is determined to be \$300,000. The Agricultural Transfer Tax ($\$300,000 \times .04 = \$12,000.00$) and 25% Surcharge ($\$12,000 \times .25 = \$3,000.00$) due would be a total of \$15,000.00.

Example B) The survey on the same parcel now identifies the location of the one acre homesite on the portion of the road where it will be waterfront. The fair market value of the waterfront homesite is determined to be much higher in value now at \$800,000. The Agricultural Transfer Tax ($\$800,000 \times .04 = \$32,000.00$) and 25% Surcharge ($\$32,000 \times .25 = \$8,000.00$) due would be a total of \$40,000.00.

Violation of a Declaration of Intent

The law provides a penalty for property owners who avoid the Agricultural Transfer Tax by filing a Declaration of Intent and later fail to comply with the Declaration of Intent's agreement. The Declaration of

Intent represents the purchaser's commitment to maintain land in agricultural use for 5 full consecutive taxable years. This document includes a statement that the purchaser agrees to meet the criteria necessary to receive the agricultural use assessment. Loss of the use assessment during this 5 year period will result in the imposition of the Agricultural Transfer Tax, Surcharge plus a 10% Penalty.

The Assessment Office is responsible for determining when land qualifies for the agricultural use assessment. Likewise, the office is responsible for identifying those instances when there is a violation of a Declaration of Intent and the need to impose the tax and penalty. The imposition of Agricultural Transfer Tax and penalty for a violation works as follows:

- The Assessment Office determines that there has been a violation of a Declaration of Intent for all or a part of the land subject to that agreement;
- The Supervisor of Assessments determines the fair market value of the land subject to the violation;
- The tax is imposed on the fair market value of the land under violation at the appropriate rate depending upon site improvements and size of the land in violation;
- An additional 25% surcharge is added;
- A penalty of 10% is calculated from the Agricultural Transfer Tax due and added to the total due;
- The property owner is sent a notice of their violation containing the amount due. They are also sent a notice containing the new fair market value of the land removed from agricultural use;
- Both notices may be appealed. It is important to follow the appeal instructions and deadlines included with each notice as they are each a separate type of appeal.

To illustrate the violation and penalty, assume that a 50 acre vacant parcel is purchased for \$800,000; the purchaser files a Declaration of Intent on the entire 50 acre parcel and therefore no agricultural transfer tax is paid at the time of transfer. Four years later, the purchaser decides to build a house on the 50 acre parcel and has a permit issued to begin this process. This act represents a violation of the Declaration of Intent because the one acre homesite must now be removed from agricultural use assessment. The Agricultural Transfer Tax, Surcharge and Penalty will now be due for that one acre homesite (assuming the remaining 49 acres of land continue to meet the agricultural use requirements). In the above example, the Supervisor of Assessments determines the fair market value for the vacant one acre homesite to be \$90,000. The rate of 4% is used in the calculation of the Agricultural Transfer Tax. The Agricultural Transfer Tax ($\$90,000 \times .04 = \$3,600.00$), 25% surcharge ($\$3,600 \times .25 = \900.00) and 10% penalty ($\$3,600.00 \times .10 = \360.00) now due for the violation is \$4,860.00.

Exemptions from the Agricultural Transfer Tax

There are certain situations when the transfer of agricultural land is exempt from the Agricultural Transfer Tax. In these cases, there is no need for the purchaser to file a Declaration of Intent even though the land may continue to be farmed. Section §13-207 of the Tax-Property Article of the Annotated Code of Maryland lists those situations when the exemption applies.

It is important to note that the transfer is not necessarily exempt from Agricultural Transfer Tax solely because the purchaser may qualify for a particular property tax exemption or is an immediate family member. The exemptions to the Agricultural Transfer Tax are quite different from other property tax exemptions, and the purchaser should not assume the transaction will be exempt. Questions regarding Agricultural Transfer Tax exemptions should be directed to the [local Assessment Office](#).

Other Important Agricultural Transfer Tax Provisions

The Agricultural Transfer Tax may be due even though the land does not currently enjoy the benefit of the agricultural use assessment. The law requires that the tax be imposed on land that currently receives, or had received, the agricultural use assessment. Once the agricultural use assessment is removed from the land, it is assessed based on its fair market value, real property taxes are then paid based on the higher market value assessment. Tax Property Article Section §13-303(c) of the Annotated Code of Maryland provides for the reduction in the Agricultural Transfer Tax for land that has been removed from the agricultural use assessment. For land removed from the agricultural use assessment on July 1, 2019 or after, the Agricultural Transfer Tax is reduced as follows:

- Reduced by 25% the first full year that property taxes are paid on the market value assessment;
- Reduced by 50% for the second consecutive year property taxes are paid on the market value assessment;
- Reduced by 65% for the third consecutive year and all future years property taxes are paid on the market value assessment until the Agricultural Transfer Tax has been satisfied.

(Note: For land removed from agricultural use prior to July 1, 2019, the total amount of the tax due is reduced by 25% for each consecutive year that property taxes are paid on the market value assessment. Thus, after the fourth consecutive year that property tax was paid on the market value assessment, the Agricultural Transfer Tax is no longer due on the transfer of that land.)

Another important provision is the requirement that the Assessment Office be notified in advance of the recording of the deed so that the agricultural transfer tax can be calculated. If new improvements such as a house have been added to the property, the law requires that the Assessment Office be notified of the pending transfer at least 7 days prior to recording the deed. From a practical point, the office should be informed 7 days prior to settlement. There is a similar requirement when a Declaration of Intent is to be filed on only a portion of the land being transferred. Here, the Assessment Office must determine the fair market value of the land subject to the Agricultural Transfer Tax.

In all cases where an Agricultural Transfer Tax may be due, the property owner (current or prospective) is encouraged to contact their [local Assessment Office](#) for the county where the property is located within to discuss the transaction. The implications of the Agricultural Transfer Tax, Declaration of Intent agreement and agricultural use assessment requirements can be complex and lead to considerable sum of money being due. Therefore it is extremely important that all pertinent aspects of the transaction are reviewed prior to settlement.