



Assessment and Classification Practices Report

Residential use properties including seasonal residential recreational and residential homestead and nonhomestead property

A report submitted to the Minnesota State Legislature pursuant to Minnesota Laws 2005, First Special Session Chapter 3, Article 1, Section 37

Property Tax Division
Minnesota Department of Revenue
February 12, 2007

Per Minnesota Statute 3.197, any report to the Legislature must contain, at the beginning of the report, the cost of preparing the report, including any costs incurred by another agency or another level of government.

This report cost \$10,000.

MINNESOTA • REVENUE

February 12, 2007

To the members of the Legislature of the State of Minnesota:

I am pleased to present to you this report on the assessment of residential use properties including seasonal residential recreational and residential homestead and nonhomestead property undertaken by the Department of Revenue in response to Minnesota Laws 2005, First Special Session Chapter 3, Article 1, Section 37.

This report provides a summary of classification practices of residential use properties including seasonal residential recreational and residential homestead and nonhomestead property within the State of Minnesota, as well as recommendations to improve the uniformity of assessment and classification of these types of properties.

Sincerely,

Ward Einess
Commissioner

Table of Contents

Legislative charge	1
Working committee.....	1
Executive summary.....	2
Issues identified and addressed	2
Review specific scenarios.....	2
Classification options for residential use properties	3
Tax implications for residential use properties	5
Analysis and recommendations	6
Definitions of residential use properties	6
Class 1a residential homestead property	6
Class 4b and Class 4bb residential nonhomestead property	7
Class 4c(1) seasonal residential recreational noncommercial property	9
Review specific scenarios.....	10
What is the proper classification of a residential parcel of land improved with only a garage or other ancillary structure?.....	10
What is the proper classification of unimproved parcels of land located on waterfront for which the use is unknown?.....	10
Classification and requirements for a parcel previously classified as seasonal residential recreational which is now occupied as a principal residence?.....	10
What is the proper classification of a large tract of land with only a small portion used for residential purposes (split class or all one class)?.....	11
Can a residence located in a city or other “non-recreational area” be classified as 4c(1) seasonal residential recreational property?.....	11
What is the proper classification of a property that has a dual use: it is used seasonally during part of the year and is rented for residential occupancy for part of the year?.....	11
Classification options for residential use properties.....	12
Conclusion	14

Legislative charge

This report was developed in accordance with Minnesota Laws 2005, First Special Session Chapter 3, Article 1, Section 37, which states in part that:

(a) Recognizing the importance of uniform and professional property tax assessment and classification practices, the commissioner of revenue, in consultation with appropriate stakeholder groups, shall develop and issue two reports to the chairs of the house and senate tax committees. The reports shall include an analysis of existing practices and provide recommendations, where necessary, for achieving higher quality and uniform assessments and consistency of property classifications...

(c) The second report will be issued by February 1, 2007, and will address the following property types: ...

(3) residential use properties including seasonal residential recreational and residential homestead and nonhomestead property;...

The purpose of this report is to examine county assessors' current practices in the valuation and classification of residential use property and make recommendations for any changes or clarifications that would increase uniformity throughout the state.

Working committee

In preparation for issuing this report, the Department of Revenue formed a committee composed of department staff members and assessors. The assessor members were selected by the Minnesota Association of Assessing Officers (MAAO). Members of the committee include:

- Steve Kuha, County Assessor, Cass County;
- Steve Skoog, County Assessor, Becker County;
- Gary Grossinger, County Assessor, Stearns County;
- Mel Hintz, County Assessor, St. Louis County;
- Gary Amundson, Regional Representative, Property Tax Division, Department of Revenue;
- Brad Averbeck, Regional Representative, Property Tax Division, Department of Revenue; and
- Jacques Betz, Appraiser, Information and Education Section, Property Tax Division, Department of Revenue

The committee met on October 31, 2006 and December 10, 2006. At these meetings, the group developed a list of issues to address for the purpose of the report, analyzed the issues, and developed recommendations to increase assessment uniformity for residential use properties.

This report is the result of a cooperative effort between the Department of Revenue, Property Tax Division and the MAAO.

Executive summary

In the course of its work, the committee discussed various classification issues that contribute to the lack of assessment uniformity of residential use properties. The committee examined the following property types: class 1a residential homestead property, class 4b and 4bb residential nonhomestead property, and class 4c(1) seasonal residential recreational (noncommercial) property.

Issues identified and addressed

The following is a summary of the issues identified and addressed in this report. More detailed information is provided in the *Analysis and recommendations* section (page 6).

- **Class 4b and Class 4bb residential nonhomestead property:** To facilitate greater uniformity, the department will issue a bulletin to assessors that will contain a definition for *dwelling* or *dwelling unit* to facilitate uniformity in the application of class 4b and 4bb property (see page 7 of this report for the recommended definition). This bulletin will also outline criteria for class 4b and 4bb residential nonhomestead property (see page 8 of this report for these criteria), and contain factors that the assessor is to *consider* when determining if a property qualifies for the residential nonhomestead class (see page 8 of this report for these factors). We also recommend that the restriction which precludes property that has ever been classed as 4c(1) seasonal residential recreational from being classified as 4bb and the provision that precludes such property from receiving a relative homestead be removed from law. This would promote uniformity and ease administration as assessors would no longer be required to track historical classifications in order to determine eligibility for the 4bb class or eligibility to receive a relative homestead.
- **Class 4c(1) seasonal residential recreational (noncommercial) property:** The department will issue a bulletin to assessors that will contain the information to facilitate uniformity in the application of class 4c(1) property (see page 9 for more information).

Review specific scenarios

The committee discussed specific scenarios in which there is a lack of uniformity in assessment practices throughout the state. All recommendations in this section are based on current statutes and guidelines. The questions and the recommendations are as follows. The department will issue a bulletin to assessors to provide guidance in classifying such properties uniformly.

- **What is the proper classification of a residential parcel of land improved with only a garage or other ancillary structure?** The proper classification of a property improved with only a garage would be 4b, provided there is not a seasonal use of the property.
- **What is the proper classification of unimproved parcels of land located on waterfront for which the use is unknown?** By law, such parcels should be classified according to their most probable, highest and best use. The classification of unimproved property requires assessors to use their professional judgment and knowledge of the local real estate market to anticipate how a property will most likely be used. If the most common use on the lake or body of water is residential, such as Lake Minnetonka, the property should be classed 4b. If the most common use of parcels on the lake is for seasonal occupancy, it should be classed 4c(1).

- **What is the proper classification and what are the requirements for a parcel previously classified as seasonal residential recreational which is now occupied as a principal residence?** If the situation is questionable, the assessor should use some of the factors outlined in this report to determine if the property is used by the occupant as a principle place of residence. Once that has been determined, the property would be classified as 4b residential nonhomestead because current law precludes property that has ever been classified as seasonal residential recreational under the current owner from receiving class 4bb residential nonhomestead or from receiving a relative homestead.
- **What is the proper classification of a large tract of land with only a small portion used for residential purposes (split class or all one class)?** The committee was unable to come to a consensus on this issue. In the absence of a legislative change, the department will issue a bulletin containing guidelines for classifying large tracts of land in which a small portion is used for residential purposes.
- **Can a residence located in a city or other “non-recreational area” be classified as 4c(1) seasonal residential recreational property?** Given the statutory definition of class 4c(1) seasonal residential recreational property, it is appropriate to classify a residence located in a city or other “non-recreational area” as class 4(c)1 seasonal residential recreational if it is used for temporary or seasonal occupancy in order to gain access to local recreational or cultural attractions.
- **What is the proper classification of a property that has a dual use: it is used seasonally during part of the year and is rented for residential occupancy for part of the year?** The committee recommends that a primary versus secondary use test be applied to determine the primary use of the property, or in other words, if the owner could only use it as a cabin or as a rental property, which use would prevail? Suggested criteria for making this determination is provided in the report.

Classification options for residential use properties

The committee focused most of its time on residential nonhomestead and seasonal residential recreational property. While there are some questionable homestead situations, in general, assessors have clear guidance for determining when a property is eligible for homestead treatment. The residential nonhomestead and seasonal residential recreational classes have a greater potential for uniformity issues because there are multiple classification options, which inherently adds to a lack of uniformity. Even with the most clear and detailed set of guidelines, the use distinctions between residential nonhomestead and seasonal residential recreational will be difficult to make, and in many cases will result in some degree of inconsistency. If the legislature wants to maximize uniformity, the best approach would be to reduce the number of classification options available to assessors. Reducing the number of possible classifications will promote uniformity both within individual counties and statewide. We have two recommendations along this line for the legislature to consider, both of which, however, have tax policy issues that extend beyond issues of uniformity. Both recommendations would require legislative action.

First, in order to address situations where a residential structure is on a large wooded parcel, we support the findings of the *Rural Woodlands Report* of 2006 and concur with the recommendation that a rural vacant lands class be adopted to limit the classification of rural property not qualifying for the agricultural class to one option – a new rural vacant lands class. In these cases, a split residential-woodlands classification would be the best use classification.

The class rate applied to these properties and exposure to the state general levy are tax policy issues that also come into play. However, the woodlands report also indicated that the number of parcels and value which would be affected by a change in class rate or affected by the state general levy would be minimal. Because we anticipate that the tax impacts stemming from this recommendation would be minimal, we feel that this policy change would be appropriate to make to help bring about better use classification and uniformity for residential properties with large wooded parcels.

Second, from strictly a uniformity perspective, the establishment of a single residential nonhomestead class which would include property in the current 4b, 4bb and 4c(1) noncommercial classes would be the best approach. This option, like that for the woodlands class recommendation, also raises tax policy issues that extend beyond issues of uniformity but to a greater degree. Policy issues such as the appropriate class rate for the new residential class, the implications for the state general tax, and exposure to voter-approved operating levies raise questions pertaining to what property should pay what tax and at what level. However, in this case and unlike the woodlands recommendation, the number of parcels, value, and tax impacts are more significant. As a result, while we recognize that this option best addresses the uniformity issue for residential nonhomestead property, we also recognize that this option presents policy issues that extend beyond the scope of this report.

Tax implications for residential use properties

The following chart shows the tax implications for the various residential use properties.

Tax comparisons for residential use properties*				
Taxable value	1a residential homestead	4bb residential nonhomestead	4b residential nonhomestead	4c(1) seasonal residential recreational
\$76,000	\$456	\$760	\$950	\$846
\$100,000	\$718	\$1,000	\$1,250	\$1,154
\$200,000	\$1,808	\$2,000	\$2,500	\$2,438
\$300,000	\$2,898	\$3,000	\$3,750	\$3,722
\$400,000	\$3,988	\$4,000	\$5,000	\$5,006
\$500,000	\$5,000	\$5,000	\$6,250	\$6,290
\$600,000	\$6,250	\$6,250	\$7,500	\$7,895
\$700,000	\$7,500	\$7,500	\$8,750	\$9,499
\$800,000	\$8,750	\$8,750	\$10,000	\$11,104
\$900,000	\$10,000	\$10,000	\$11,250	\$12,709
\$1,000,000	\$11,250	\$11,250	\$12,500	\$14,314

**Tax amounts calculated using a local tax rate of 100 percent (does not include any special referendums) and payable 2006 class rates (1.00 percent for the first \$500,000 in market value and 1.25 percent for the value exceeding \$500,000 for class 1a residential homestead, class 4bb residential nonhomestead and class 4c(1) seasonal residential recreational property and 1.25 percent for class 4b residential nonhomestead property). State general tax amounts calculated using the state general tax rate on class 4c(1) seasonal residential recreational property for payable 2006 (28.385 percent). For purposes of the state general tax only, the tax rate for the first \$76,000 of noncommercial class 4c(1) seasonal residential recreational property is 0.40 percent.*

It is important to note that taxpayers do not get to choose their classification based on the most beneficial classification rate. In addition, assessors should not consider the tax implications when classifying property.

Classification rates often change over time. With each change, taxpayers are known to make a case to their assessor as to why they should be classified as one class or another. In some cases, they have even appealed their classification to the local and county boards of appeal as well as to Tax Court. For example, in the mid-1990s seasonal residential recreational property had a lower classification rate than residential nonhomestead property, and many taxpayers asked that the assessor change their classification to seasonal residential recreational even though their property was used residentially and not seasonally.

Currently, residential nonhomestead property has a more favorable class rate because properties classified as residential nonhomestead are not subject to the state general levy. In addition, property that has been classified as seasonal residential recreational at any time under the current ownership is prohibited from being classified as class 4bb residential nonhomestead or from receiving a relative homestead. As a result, taxpayers are now requesting that their properties be classified as residential nonhomestead to avoid having to pay the state general tax.

Analysis and recommendations

Definitions of residential use properties

The property types examined in this report are class 1a residential homestead property, class 4b and 4bb residential nonhomestead property, and class 4c(1) seasonal residential recreational (noncommercial) property.

The committee first reviewed the statutory definitions of each class. The resulting analysis and recommendations are provided below.

Class 1a residential homestead property

Minnesota Statutes Section 273.13, subdivision 22, paragraph (a) defines class 1a property as follows:

(a) Except as provided in subdivision 23 and in paragraphs (b) and (c), real estate which is residential and used for homestead purposes is class 1a. In the case of a duplex or triplex in which one of the units is used for homestead purposes, the entire property is deemed to be used for homestead purposes.

Analysis: Generally speaking, assessors do not have difficulty applying the residential homestead classification uniformly throughout the state. The requirements are clearly defined in statute: to receive a residential homestead, the owner must be a Minnesota resident, and the property must be the primary residence of the owner or qualifying relative of the owner.

There are situations in which it can be difficult to determine if the person claiming homestead is using the property as a primary residence. However, the department has issued guidelines to assist assessors in making this decision in difficult cases. The *Property Tax Administrators' Manual* provides the following guidance for determining if the property is the primary residence for the person claiming homestead:

In attempting to determine whether the property is the principal place of dwelling and abode of the owner, the assessor may consider the following factors:

- 1. Where the taxpayer is registered to vote.*
- 2. Where the taxpayer's mail is delivered.*
- 3. The address on the taxpayer's driver's license.*
- 4. Whether the taxpayer lived on the property continuously.*
- 5. Where the taxpayer works.*
- 6. Whether the taxpayer continuously maintained the premises.*
- 7. Whether the taxpayer has any other residence in Minnesota for which they can, or do claim a homestead exemption.*
- 8. Whether the taxpayer has sought to apply for, or received, any rent credits that are available to persons who rent an apartment in Minnesota.*
- 9. The address on the taxpayer's motor vehicle license.*
- 10. The location of the taxpayer's bank accounts, especially the location of the most active checking account.*
- 11. The address on the taxpayer's fishing or hunting licenses and whether they purchased a resident or non-resident license.*

The taxpayer does not have to meet all of the preceding factors. Although this information cannot furnish a definite answer as to the taxpayer's principal residence, it can provide strong clues to the answer. Where the question is close and the assessor is in doubt, the property should be classified nonhomestead and allow the taxpayer to make an appeal through the various avenues of appeal.

Recommendation: The only recommendation that the committee had pertaining to the classification of residential homestead property is to reiterate to assessors that in the case of a duplex or triplex used for homestead purposes, the entire property is eligible for the homestead classification. The department will issue a bulletin to all assessors clarifying issues identified in this report, and that bulletin will emphasize this requirement.

Class 4b and Class 4bb residential nonhomestead property

Minnesota Statutes Section 273.13, subdivision 25, paragraph (b) defines class 4b property as follows:

- (1) residential real estate containing less than four units that does not qualify as class 4bb, other than seasonal residential recreational property;
- (2) manufactured homes not classified under any other provision;
- (3) a dwelling, garage, and surrounding one acre of property on a nonhomestead farm classified under subdivision 23, paragraph (b) containing two or three units; and
- (4) unimproved property that is classified residential as determined under subdivision 33.

Minnesota Statutes Section 273.13, subdivision 25, paragraph (c) defines class 4bb property as follows:

- (1) nonhomestead residential real estate containing one unit, other than seasonal residential recreational property; and
- (2) a single family dwelling, garage, and surrounding one acre of property on a nonhomestead farm classified under subdivision 23, paragraph (b).

Analysis: The 4b and 4bb definitions reference *dwelling* or *dwelling unit*. However, the term *dwelling* is not defined. This has led to some uniformity issues. For example, when asked about the proper classification of a parcel of land improved with only a garage or other ancillary structure, some assessors would classify this property as 4b while others would classify it as 4bb property. The department addressed this issue in a September 6, 2006 letter and stated that such property should be classified as 4b and is not eligible for the 4bb class.

Recommendation: We recommend the following definition be used by assessors to facilitate greater uniformity in the application of the 4b and 4bb residential nonhomestead classes:

A dwelling or unit means a single unit providing complete, independent, living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Since 4bb property requires one unit or dwelling, a property without a dwelling or unit would not be eligible for the 4bb class, i.e., a property containing only a garage would not be eligible for the 4bb class because it would not meet the above definition. A manufactured home could be eligible for the 4bb class as long as it is seated on the land for long-term use and is connected to utilities; this would not include a recreational vehicle, tent or other structure not intended for long-term occupancy.

The department will issue a bulletin to assessors that will contain this definition to facilitate uniformity in the application of class 4b and 4bb property.

Analysis: While there is no statutory explanation of residential nonhomestead property, the Department of Revenue maintains that it is the same as residential homestead property (i.e. it is occupied as a principal place of residence) but for any number of reasons, the property does not qualify for homestead treatment. Such reasons may include but are not limited to: the property is occupied by a renter, the owner/occupant is not a Minnesota resident, the occupant is not a relative that qualifies for a relative homestead, the property is owned by an entity, etc.

Recommendation: In order to promote greater uniformity, the department will issue a directive outlining the criteria for class 4b and 4bb residential nonhomestead property:

- Class 4b and 4bb property is residentially-used property that is not a homestead, but it is either the primary residence of someone or is a vacant dwelling not used for any purpose.
- In the case of unimproved land that is most likely to be used residentially, the proper class is 4b.
- In order to be classed 4bb, the property must be improved with one (and only one) dwelling unit.

The bulletin also will explain that the assessor is to *consider* the following factors when determining if a property qualifies for the residential nonhomestead class:

- Can the names of the occupants be provided?
- Where is the occupant registered to vote?
- Where does the occupant receive mail?
- What is the address on the occupant's driver's license and motor vehicle registration?
- What address did the occupant use on income tax filings?
- Is there only token occupancy or is occupancy real and actual?
- If the property is rented:
 - Can a copy of a lease agreement be provided?
 - Was a Certificate of Rent Paid issued?
 - Does the property owner declare rental income for income tax purposes?

This information does not need to be required for every property to receive the nonhomestead class.

The assessor should apply these factors in a similar fashion as the guidelines for determining homestead in questionable situations. It should be used when the assessor questions whether the property qualifies for the residential nonhomestead class or the seasonal residential recreational class. This situation will likely arise when a property owner contacts the assessor to *request* the residential nonhomestead class instead of class 4c(1) seasonal residential recreational class. The assessor can then use these factors to determine if the property owner or occupant meets the requirement of the nonhomestead class. The occupant does not have to meet all of the preceding factors or provide the above information in every situation. This information cannot furnish a definitive answer as to whether it is the primary residence of the occupant, but it can provide strong clues to the answer.

Analysis: Minnesota Statutes Section 273.13, subdivision 25, paragraph (c) requires assessors to track ownership of a property that has ever been classed as 4c(1) seasonal residential recreational under the current owner because such parcels are precluded from receiving the 4bb classification and also are precluded from receiving a relative homestead. While assessors practice due diligence to make sure properties that have ever been classed as 4c(1) seasonal residential recreational under the current owner do not receive the 4bb class or a relative homestead, doing so can be difficult. If a property was owned by the same person for 50 years, for example, records dating back that far may not be readily available or accessible.

Recommendation: We also recommend that the restriction which precludes property that has ever been classed as 4c(1) seasonal residential recreational from being classified as 4bb and the provision that precludes such property from receiving a relative homestead be removed from law. This would promote uniformity and ease administration as assessors would no longer be required to track historical classifications in order to determine eligibility for the 4bb class or eligibility for a relative homestead.

Class 4c(1) seasonal residential recreational noncommercial property

Minnesota Statutes, Section 273.13, subdivision 25, paragraph (d) defines class 4c(1) property as follows:

(1) except as provided in subdivision 22, paragraph (c), real property devoted to temporary and seasonal residential occupancy for recreation purposes...

Analysis: Prior to the 1992 assessment, the law provided a separate classification for vacant land under Minnesota Statutes, Section 273.13. At the time, that classification carried one of the highest classification rates of all of the classes. In 1991, legislation was enacted that repealed the vacant land classification and provided for unimproved property to be classified at its most probable, highest and best use. According to the 1991 Department of Revenue law summary, this new law was enacted to bring treatment of unimproved parcels into conformity with the principle of classifying improved parcels according to their current use as of the assessment date and eliminate the inequities of taxation of improved parcels versus unimproved parcels.

Prior to the 1991 law change regarding classification of unimproved property, the Department of Revenue maintained that for a property to be classified as class 4c(1) seasonal residential recreational, the owner had to occupy the property for residential purposes. Such residential purposes included camping in a tent, occupying a travel trailer, camper or other recreational vehicle, or living in a cabin on a seasonal or occasional basis.

The Department of Revenue issued a bulletin to all assessors in October 1991 that explained the new law which went into effect for the 1992 assessment. As a result of the law change, the department determined that there no longer needed to be a residential component to receive the 4c(1) seasonal residential recreational class. The example used in the bulletin stated that a bare lot surrounded by seasonal cabins that was zoned for single family residential use should properly be classed as seasonal residential recreational. A bare lot in a residential development zoned for single family residential use would properly be classed as residential nonhomestead just as a vacant lot in an industrial area would be classed as commercial/industrial.

It is the opinion of the Department of Revenue that there does not need to be a residential structure for the property to be used seasonally. Camping is considered to be a seasonal use. If there is no identifiable use of a property, Minnesota Statutes, Section 273.13, subdivision 33 requires assessors to classify it according to its most probable, highest and best use.

What exactly is the most probable, highest and best use can vary across the state. Many counties, especially those located in the traditionally seasonal areas of the state (primarily “up north”) will classify vacant property as class 4c(1) seasonal residential recreational property. This is based on their professional judgment, knowledge of the local market and the “intended use” portion of the Certificates of Real Estate Value that are filed on sales in that area and also the current use of area properties. Therefore, they are following the law in respect to classification of unimproved properties in that they are classifying the property according to its most probable, highest and best use.

Recommendation: The department will issue a bulletin to assessors that will contain the following information to facilitate uniformity in the application of class 4c(1) property.

- Class 4c(1) property is used for temporary, seasonal occupancy for recreational purposes.
- Class 4c(1) property is not the year-round primary residence of anyone.
- The principle criteria in determining class 4c(1) use will be temporary, seasonal occupancy since recreational use is difficult to define.
- The property is occupied on weekends or for longer periods seasonally during the year.
- A unit may be rented on a weekly basis and remain 4c(1).

Review specific scenarios

The committee discussed specific scenarios in which there is a lack of uniformity in assessment throughout the state. All recommendations in this section are based on current statutes and guidelines. The questions and the recommendations are provided below. The department will issue a bulletin to assessors to provide guidance in classifying such properties uniformly.

What is the proper classification of a residential parcel of land improved with only a garage or other ancillary structure?

Analysis: Assuming there is no seasonal use of the property so class 4c(1) seasonal residential recreational is not an option, some assessors would classify the property as class 4bb, and others would classify the property as class 4b.

Recommendation: The proper classification of a property improved with only a garage would be 4b, provided there is not a seasonal use of the property. Such property would not be eligible for the 4bb class because it does not contain *one* dwelling unit.

What is the proper classification of unimproved parcels of land located on waterfront for which the use is unknown?

Analysis: The committee discussed the proper classification of unimproved parcels located on water in which the use is unknown. The committee considered whether the department should issue a directive stating that all such property should be classified a certain class – to promote uniformity across the state – or if it should be left to the assessor to determine the appropriate classification based on the most probable use of the property.

An October 1991 bulletin issued by the department stated that a bare lot surrounded by seasonal cabins that was zoned for single family residential use should properly be classified as seasonal residential recreational. A bare lot in a residential development zoned for single-family residential use would properly be classified as residential nonhomestead.

Recommendation: By law, such parcels should be classified according to their most probable, highest and best use. The classification of unimproved property requires assessors to use their professional judgment and knowledge of the local real estate market to anticipate how a property will most likely be used. If the most common use on the lake or body of water is residential, such as Lake Minnetonka, the property should be classed 4b. If the most common use of parcels on the lake is for seasonal occupancy, it should be classed 4c(1).

Classification and requirements for a parcel previously classified as seasonal residential recreational which is now occupied as a principal residence?

Analysis: The committee discussed the requirements for a parcel that was previously classified as 4c(1) seasonal residential recreational to receive the residential nonhomestead class.

Recommendation: If the situation is questionable, the assessor should use some of the factors outlined in this report to determine if the property is used by the occupant as a principle place of residence. Once that has been determined, the property would be classified as 4b residential nonhomestead. Law precludes property that has ever been classified as seasonal residential recreational under the current owner from receiving class 4bb residential nonhomestead or from receiving a relative homestead.

What is the proper classification of a large tract of land with only a small portion used for residential purposes (split class or all one class)?

Analysis: The department has not issued guidelines for the proper classification of a large tract of land in which there is a dwelling located on a small portion of the land, and there is minimal or no use of the balance of the property, and the group was unable to come to a consensus on the classification of such property. For example, a taxpayer owns 80 acres, occupies a dwelling and site of two acres, and the balance of the land is brushy or wooded and is not put to any real use. Some counties would classify the entire parcel as 1a residential homestead; others would classify the dwelling and a small amount of land as 1a residential homestead and would classify the remaining land as class 2b timber or 4(c)1 seasonal residential recreational property. Some counties are comfortable split classing such properties, and other counties prefer to avoid split classing properties if possible.

Recommendation: The committee was unable to come to a consensus on this issue. In the absence of a legislative change, the department will issue a bulletin containing guidelines for classifying large tracts of land in which a small portion is used for residential purposes.

Can a residence located in a city or other “non-recreational area” be classified as 4c(1) seasonal residential recreational property?

Analysis: The question was raised as to whether a residence located in a city that is used as a temporary residence to attend sporting or cultural events or to access nearby recreational areas could be classified as 4c(1) seasonal residential recreational property.

Recommendation: While the typical summer cabin comes to mind when visualizing the 4c(1) seasonal residential recreational class, it also includes land used for recreational activities such as camping and hunting. Given the statutory definition of class 4c(1) seasonal residential recreational property, it is appropriate to classify a residence located in a city or other “non-recreational area” as class 4(c)1 seasonal residential recreational if it is used for temporary or seasonal occupancy in order to gain access to local recreational or cultural attractions. Tax Court has ruled that property used for this purpose should be classified as such (*Helgeson v. Hennepin County, 1986, 387 N.W.2d. 408*).

What is the proper classification of a property that has a dual use: it is used seasonally during part of the year and is rented for residential occupancy for part of the year?

Analysis: The committee discussed the classification of property that is used seasonally during part of the year and is rented for residential occupancy for part of the year. For example, a lake property is used by the owner during the summer and rented to a teacher during the school year.

Recommendation: The committee recommends that a primary versus secondary use test be applied to determine the primary use of the property, or in other words, if the owner could only use it as a cabin or as a rental property, which use would prevail? Assessors may find the following criteria helpful in determining the primary use of the property:

- Does the value of the property have a reasonable relationship to its use as an income-producing investment?
- Does the owner maintain ownership of furnishings or other personal property at the subject?
- What is the owner's purpose or intent in acquiring or owning the property as indicated on the Certificate of Real Estate Value?

While assessors do not classify property based on *intent* (they classify property based on the *actual use* of the property), considering these three factors together can be an indication as to the primary use of the property.

The committee considered requiring that a property be rented for a certain number of months to receive the nonhomestead class instead of 4c(1) seasonal residential recreational but decided against this recommendation because there is no such requirement for the homestead class.

Classification options for residential use properties

In the course of its work, the committee discussed various classification issues that contribute to the lack of assessment uniformity of residential use properties. The committee examined the following property types: class 1a residential homestead property, class 4b and 4bb residential nonhomestead property, and class 4c(1) seasonal residential recreational (noncommercial) property.

The committee focused most of its time on residential nonhomestead and seasonal residential recreational property. While there are some questionable homestead situations, in general, assessors have clear guidance for determining when a property is eligible for homestead treatment. The residential nonhomestead and seasonal residential recreational classes have a greater potential for uniformity issues because there are multiple classification options, which inherently adds to a lack of uniformity. Even with the most clear and detailed set of guidelines, the use distinctions between residential nonhomestead and seasonal residential recreational will be difficult to make, and in many cases will result in some degree of inconsistency. If the legislature wants to maximize uniformity, the best approach would be to reduce the number of classification options available to assessors. Reducing the number of possible classifications will promote uniformity both within individual counties and statewide. We have two recommendations along this line for the legislature to consider, both of which, however, have tax policy issues that extend beyond issues of uniformity. Both recommendations would require legislative action.

First, in order to address situations where a residential structure is on a large wooded parcel, we support the findings of the *Rural Woodlands Report* of 2006 and concur with the recommendation that a vacant rural lands class be adopted to limit the classification of rural property not qualifying for the agricultural class to one option – a new vacant rural lands class. In these cases, a split residential-woodlands classification would be the best use classification.

The class rate applied to these properties and exposure to the state general levy are tax policy issues that also come into play. However, the woodlands report also indicated that the number of parcels and value which would be affected by a change in class rate or affected by the state general levy would be minimal. Because we anticipate that the tax impacts stemming from this recommendation would be minimal, we feel that this policy change would be appropriate to make to help bring about better use classification and uniformity for residential properties with large wooded parcels.

Second, from strictly a uniformity perspective, the establishment of a single residential nonhomestead class would be the best approach. This class would combine the 4b, 4bb and 4c(1) noncommercial classes into one residential nonhomestead class. It would reduce the number of options assessors have in classifying property as the following statements would be true:

- The assessor would no longer need to determine if there is temporary, seasonal occupancy or a recreational use.
- Any residential parcel containing a dwelling of three units or less would be classed either residential homestead or nonhomestead.
- A parcel improved with only a (noncommercial) garage or other ancillary structure would be classed residential nonhomestead.
- A parcel consisting of 10 acres or less with no identifiable use would be classed residential nonhomestead if it would most probably be used as a site for a dwelling.
- Parcels that are 10 acres or more in size with no identifiable use would be classified as rural lands.
- Assessors would no longer be required to track historical classification in order to determine eligibility for the 4bb class or eligibility for a relative homestead.
- As outlined in the *Rural Woodlands Report*, classification of a large tract of land with only a small portion used for residential purposes would be split classed residential and rural lands as follows: the residential classification would be limited to the lesser of (1) the first parcel or (2) the first 40 acres of contiguously owned land, and the balance would be classified as rural lands (there would be no borrowing to achieve 40 acres).

From a uniformity perspective, the committee believes that multiple residential nonhomestead classes contribute to the lack of uniformity in the classification of a garage or other ancillary structure. In addition, assessors are required to track ownership of a property that has ever been classed as 4c(1) seasonal residential recreational under the current owner because such parcels are precluded from receiving the 4bb classification or from receiving a relative homestead. The multiple classification options for residential property also causes confusion among taxpayers due to the differing tax consequences for 4b, 4bb or 4c(1) property.

This classification option like that for the woodlands class recommendation, also raises tax policy issues that extend beyond issues of uniformity but to a greater degree. Policy issues such as the appropriate class rate for the new residential class, the implications for the state general tax, and exposure to voter-approved operating levies raise questions pertaining to what property should pay what tax and at what level. However, in this case and unlike the woodlands recommendation, the number of parcels, value, and tax impacts are more significant. As a result, while we recognize that this option best addresses the uniformity issue for residential nonhomestead property, we also recognize that this option presents policy issues that extend beyond the scope of this report.

Conclusion

To promote uniformity in the application of residential use properties, the department will issue a bulletin to address many of the issues identified in this report. In addition, we recommend that the restriction which precludes property that has ever been classed as 4c(1) seasonal residential recreational from being classified as 4bb and the provision that precludes such property from receiving a relative homestead be removed from law.

We also support the findings of the *Rural Woodlands Report* of 2006 and concur with the recommendation that a rural vacant lands class be adopted to limit the classification of rural property not qualifying for the agricultural class to one option – a new rural vacant lands class. In these cases, a split residential-woodlands classification would be the best use classification. From strictly a uniformity perspective, the establishment of a single residential nonhomestead class would be the best approach. However, in this case, the tax policy issues associated with this option are fairly significant. As a result, this option has policy implications that extend beyond the scope of this report. Legislative action would be required to adopt a rural lands class and/or establish a single residential nonhomestead class.

