



Tax Administration

in North Carolina Course



North Carolina Department of Revenue

Present-Use Value

**Property Tax Section
Local Government Division**

Introduction

- For tax purposes, real property is generally appraised at the market value of its highest and best use.
- Property in PUV is appraised based on its actual use, which is typically lower than the true market value.

Introduction, cont'd.

- There are three uses which can qualify under PUV:
 - Agricultural
 - Horticultural
 - Forestry

Introduction, cont'd.

- In order for land to qualify for PUV, there are generally four requirements:
 - Ownership: only certain ownership situations can qualify
 - Size: there is a minimum amount of acreage required to be in production
 - Income: the property must produce a minimum amount of income, usually from the sale of farmed products (does not apply to forest land)
 - Sound Management: there are management requirements for each type of use

Introduction, cont'd.

- The property owner must make application to be enrolled in PUV
- Once property is approved and enrolled, the difference between the market value tax and the PUV tax is deferred.
- When a property comes out of the PUV program, the taxes deferred for the current and three previous years are immediately due and payable, with interest.

PART I: REQUIREMENTS

REQUIREMENT 1

OWNERSHIP

Ownership Requirements

- Ownership requirements can be divided into two main areas.
 - Owners must meet one of the Qualifying Forms of Ownership.
 - These qualifying owners must meet Additional Requirements for Qualifying Owners.

Qualifying Forms of Ownership

- There are four types of qualifying owners:
 - Individuals
 - Certain Business Entities
 - Certain Trusts and Testamentary Trusts
 - Certain Tenants in Common

Individual Owners

- These are properties owned in a person's actual name.
- Property on which a life estate has been retained is considered owned by the owner of the life estate. [See G.S. 105-302(c)(8).] Qualification for the present-use value program will be based on the qualifications of the owner of the life estate.

Individual Owners, cont'd.

- Properties owned by husband and wife as tenants by the entirety also fall into this category.
- The courts have ruled that property owned by husband and wife as tenants by the entirety is a different ownership than property owned by either the husband or wife separately.

Business Entity Ownership

- Business Entities are:
 - limited liability companies,
 - general partnerships,
 - limited partnerships, and
 - corporations.

Business Entity Ownership, cont'd.

- Only those business entities which meet all four of the following requirements can qualify.

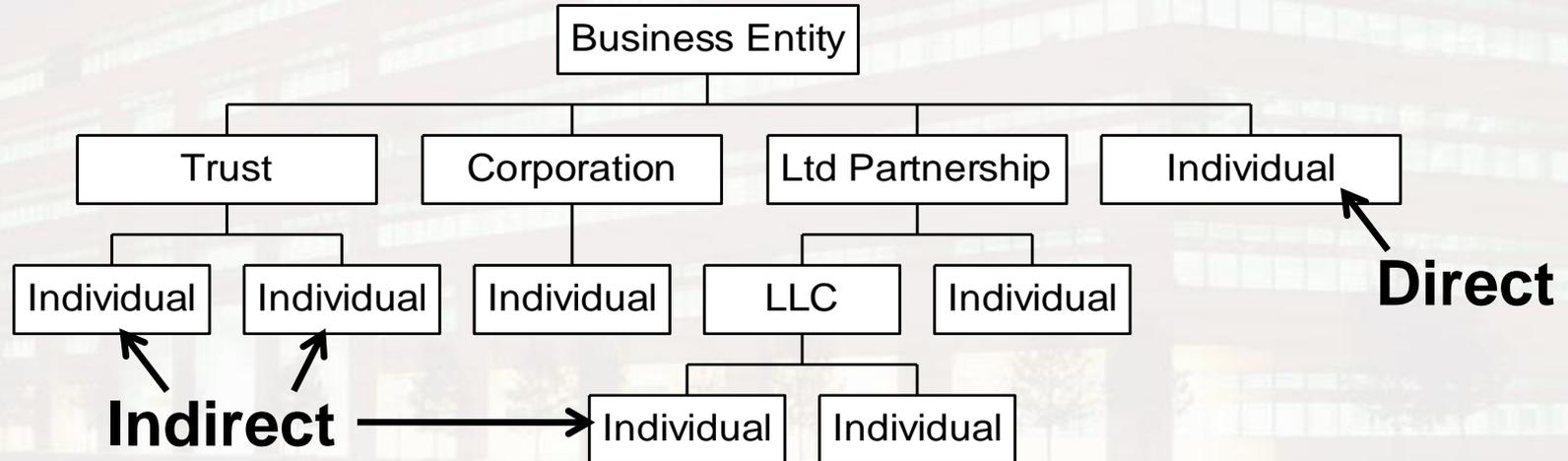
Business Entity Ownership, cont'd.

- Requirement 1:
 - **The business entity must have agriculture, horticulture, or forestry as its principal business.**
 - “Principal business” is not defined in the statutes, but it seems reasonable that at least 50% of the business income must be farming related.

Business Entity Ownership, cont'd.

- Requirement 2:

- All members of the business entity must be individuals, either directly or indirectly.



Business Entity Ownership, cont'd.

- Requirement 3:
 - **All individual members must either be:**
 - actively engaged in the principal business of the entity, or
 - related to an individual member who is actively engaged in the principal business.
 - “Actively engaged” is not defined in the statutes, but probably includes management activities, in addition to more labor-intensive activities.

Business Entity Ownership, cont'd.

- Requirement 4:
 - **The business entity, including its members, cannot be a corporation whose shares are publicly traded.**

Business Entity Ownership, cont'd.

- Family Business Entity Exception:
 - By statute, (only) if the individual members of a business entity are all related to one another, the entity may meet the “principal business” and “actively engaged” requirements by leasing its property for farm purposes.

Business Entity Ownership, cont'd.

- As a result of the NC Farm Act of 2015 [S.L. 2015-263, N.C.G.S. 1050277.2(4)(b)(1)], if the applicant has been approved for the Present-use Value Program in another county, the assessor in any other county must presume the principal business of the applicant is Agriculture, Horticulture, or Forestry, unless the assessor has evidence to rebut the presumption.

Trust Ownership

- For PUV purposes, there are two types:
 - “Ordinary” trusts, where the (still living) **creator** of the trust transfers **property** to a **trustee**, for the benefit of the **beneficiary**.
 - Testamentary trusts, which are similar, but “finalized” through the provisions of someone’s will. **Only certain testamentary trusts can qualify for PUV.**

Trust Ownership, cont'd.

■ “Ordinary” Trust Requirements:

- Must be created by an individual landowner, who transferred the land to the trust.
- All beneficiaries are, directly or indirectly (remember this from before?), individuals who are either the creator or a relative of the creator.

Trust Ownership, cont'd.

■ Testamentary Trust Requirements:

- Must be created by an individual landowner, who transferred the land to the trust.
- The land qualified for PUV before it was transferred.
- The creator had no relatives at the time of death.
- The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes.

Ownership by Tenants in Common

- This form of ownership is merely a combination of two or more of the previously described forms.
- Each owner is called a “tenant,” and each tenant must be able to meet all ownership requirements independently.
- Each combination of tenants is a unique owner.

Requirements for Qualifying Owners

- Once qualified, all owners must meet additional requirements with respect to their property--either:
- the Standard Ownership Requirements, or
- one of the two Exceptions to the Standard Ownership Requirements.

Standard Requirements for Property Owned by Individuals

- The property must meet one of these requirements:
 - The property is the owner's place of residence as of January 1.
 - The current owner, or his/her relative, has owned the property for the four full years preceding January 1 of the year for which application is made.
 - If the current owner received the property from a business entity or trust, then, at the time of transfer:
 - the property must have been qualified for and receiving PUV, and
 - the current owner must have been a member of the business entity or a beneficiary of the trust.

Standard Requirements for Property Owned by Business Entities

- The property must have been owned by one or more of the following for the four years immediately preceding January 1 of the year for which application is made:

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- The business entity.
- A member of the business entity.
- Another business entity whose members include a member of the business entity that currently owns the land.

Standard Requirements for Property Owned by Trusts

- The property must have been owned by one of the following for the four years immediately preceding January 1 of the year for which application is made:
 - The trust.
 - One or more of the creators of the trust.

Standard Requirements for Property Owned by Tenants in Common

- Each qualified tenant must independently meet the Standard Ownership Requirements.
- If the tenants change, a new ownership is created, which must again meet the qualification and ownership requirements.

Exceptions to the Standard Ownership Requirements

- Two exceptions for qualifying owners:
 - Exception for Continued Use
 - Exception for Expansion of Existing Unit

Exception for Continued Use

- All of the following conditions must be met:
 1. The land was already in PUV when the current owner received it.
 2. The current owner will continue using the land under the same PUV program.
 3. The land will continue to meet size requirements.
 4. The current owner must have applied for PUV within 60 days of transfer.
 5. The current owner accepts liability for any deferred taxes.

Continued Use – Special Situations

- This exception **does not apply** when the seller has voluntarily removed the property from the present-use value program, regardless of whether or not any of the rollback taxes have been paid.
- This exception **does apply** when the seller has voluntarily paid some, all, or none of the deferred taxes, but has NOT requested removal from the present-use value program.

Continued Use – Special Situations

- This exception is not required when the owner is a business entity, and either **converts** to another business entity form or **merges** with one or more other entities.
- These processes are covered under the following statutes:
 - Corporations: G.S. Chapter 55, Articles 11 and 11A
 - Partnerships: G.S. 59-73.1 through G.S. 59-73.33
 - LLCs: G.S. 57C-9A-01 through G.S. 57C-9A-29
- When these processes are carried out according to statute, the result is **not** considered a transfer, so no exception (no new application, etc.) is required.

Exception for Expansion of Existing Unit

- Through this exception, the new owner may still immediately qualify the land for the **next year** if all of the following conditions are met:
- At the time of transfer, the new owner owned other land already in present-use value.
- At the time of transfer, the land was not appraised at its present-use value.

Exception for Expansion of Existing Unit

- At the time of transfer, the land being transferred was being used for the same purpose as the land owned by the new owner that is already in present-use value.
- At the time of transfer, the land being transferred was eligible for present-use value with regard to production and sound management requirements.

Exception for Expansion of Existing Unit

- Since the land was not already in PUV, the new owner must timely file an initial application during the next listing period, typically the month of January.

REQUIREMENT 2

SIZE

Initial Qualifying Tract

- At least one tract* must meet the following minimum acreage requirements:
- **Agriculture**—10 acres in actual production (actively engaged in the commercial production or growing of crops, plants, or animals)
- **Horticulture**—5 acres in actual production (actively engaged in the commercial production or growing of fruits and vegetables or nursery and floral products)
- **Forestry**—20 acres in actual production (actively engaged in the commercial growing of trees)
- * a contiguous area of land, made up of one or more tax parcels

Initial Tract, cont'd.

- Land used to farm fish and other aquatic species can qualify for agricultural PUV with either 5 acres in actual production or 20,000 pounds produced for sale annually.
- The initial tract must have the minimum amount in actual production, and does not include the homesite, land lying fallow, or land enrolled in CRP, but does include land under agricultural buildings.
- Land can be considered in agricultural use, even if horticultural crops are grown on it, if the horticultural crops are only grown on an annual or rotating basis.

Additional Acreage

- Once the initial tract contains the required amount of acreage in production, additional acreage can be added with somewhat more flexible requirements.
- Qualifying agricultural or horticultural tracts can include additional acreage containing woodland or wasteland (i.e., non-productive land).
- Qualifying forestland tracts can include additional acreage containing wasteland, but not containing agricultural or horticultural land.

Additional Acreage, cont'd.

- “Forestland” is woodland which qualifies for PUV.
- If an agricultural or horticultural tract contains 20 or more additional acres of woodland, then the woodland must generally be in compliance with a written forest management plan (more on this later).
- If the highest and best use of the additional woodland is to diminish wind erosion, to protect water quality, or (for agricultural tracts) to, provide a buffer for adjacent poultry or livestock operations, then that woodland will not count toward the 20-acre threshold.

The Farm Unit

- Here, “farm” applies equally to agricultural, horticultural, or forestry operations.
- The “farm unit” is the initial qualifying tract, plus additional acreage, which may or may not be able to qualify on its own.
- To be considered a part of the farm unit, the additional acreage must:
 - Have the same owner;
 - Be in the same PUV classification (agricultural, horticultural, or forestry);
 - Be in the same county, or within 50 miles of a qualifying tract; and
 - Be in active production and under sound management.

REQUIREMENT 3

INCOME

Income

- Forestland tracts have no income requirement.
- An agricultural or horticultural farm unit must contain at least one tract which produced an average gross income of at least \$1,000 for each of the three years prior to making application.
- The income **must** be from:
 - The sale of products produced from the land;
 - Government soil conservation or land retirement payments; or
 - “Tobacco Buyout” payments.

Invalid Income Sources

- Other forms of income, such as the following, do not qualify:
 - Rental income
 - Stud fees or boarding fees
 - Training or showing fees
 - Hunting leases
 - Sale of firewood, pine cones, pine straw, etc.
 - Fees for tractor work, baling, hauling, curing, drying, etc.
- Only the previously listed sources can be considered

Other Income Issues

- Even after the initial application, the land must continue to meet the income requirement to continue in PUV.
- Taxpayer income information should be handled securely and confidentially.
- When a landowner wishes to convert from one PUV classification to another, the property must immediately (by the end of the next growing season) be able to meet the applicable income requirement for the new classification.



REQUIREMENT 4

SOUND MANAGEMENT

Sound Management Defined

- Sound management is:
 - a program of production,
 - designed to obtain the greatest net return from the land,
 - consistent with its conservation and long-term improvement.
- Sound management for forestland is different than for agricultural and horticultural land.

Forestry Sound Management

- Sound management for forestry requires a written plan which contains at least the following elements:
 1. A statement of the long-term and short-term objectives of the landowner
 2. A map or aerial photograph which delineates each stand referenced in the plan
 3. A detailed description or inventory of each stand, together with specific recommendations for each stand
 4. Dates and methods for interim harvest and regeneration
 5. Plan for regeneration for each stand after final harvest

Agricultural & Horticultural Sound Management

- Sound management for agricultural and horticultural land does not require a written plan. The landowner can demonstrate sound management by providing any one of the following as evidence:
 1. Enrollment in, and compliance with, an agency-administered and approved farm management plan;
 2. Compliance with a set of best management practices for the commercial production of agricultural or horticultural products;
 3. Compliance with a minimum gross income per acre test, as established by the county;
 4. Evidence of net income from the farming operation;
 5. Evidence that farming is the operator's principal source of income;
or
 6. Certification by a recognized agricultural or horticultural agency within the county that the land is operated under a sound management program

PART II: PUV ADMINISTRATION

1. Application

- In order for the assessor to approve a PUV application, the application must be both proper and timely.
- A **proper** application must clearly show that the property comes within one of the classes, and must also contain any other relevant information required by the assessor to properly appraise the property at present-use value.
- A **timely** application is one filed:
 - During the regular listing period;
 - Within 30 days of the date of a notice of change in value;
or
 - Within 60 days of the date of a transfer of property already in PUV

Untimely Applications

- An untimely application can be approved for good cause, but only by the Board of Equalization and Review, or by the Board of County Commissioners if the Board of E&R is not in session. The assessor cannot approve an untimely application.
- An untimely application can only be approved for taxes (regardless of **fiscal** year) levied in the **calendar** year of application.

2. Disqualification and Removal from PUV (“Rollback”)

- When property fails to continue meeting one or more of the four requirements, the property no longer qualifies for PUV, and is therefore removed from the program.
- When the property is removed from PUV, deferred taxes from the year of disqualification, plus the three prior years, become immediately due and payable, together with interest.
- The property owner is obligated to notify the assessor, during the listing period, of any change which could disqualify all or part of the land from the PUV program.
- The property owner can also voluntarily remove property from the PUV program.

Rollback Exceptions

- When an owner changes land use from a PUV classification to classification under the Wildlife Conservation Program, the taxes deferred under PUV remain a lien on the property, but do not become due. The property use continues under the WCP rules.
- The owner of a property in PUV can voluntarily pay some or all of the deferred taxes without removal from the program.
- If the property no longer meets the income requirement, solely as the result of enrollment in the Conservation Reserve Program (CRP), no deferred taxes are due, and their lien is extinguished.

Rollback Exceptions, cont'd

- If a Present-Use Value property is sold for PUV value or less to a non profit that qualifies for a property tax deferral under NCGS 105-275(12) or (29), or to the state, political subdivision of the state or US, **then**
- No deferred taxes are due and their lien is extinguished.

Rollback Exceptions, cont'd.

- If a Present-Use Value property is sold for more than the PUV value to a non profit that qualifies for a property tax deferral under NCGS 105-275(12) or (29), or to the state, political subdivision of the state or US, **then**
- A factor is applied to the rollback. The factor **only** applies to the three prior years deferred taxes. The current tax year is billed at market value.

Rollback Exceptions, cont'd.

- The factor is determined by Sales Price – Present Use Value divided by the Assessed Value – Present Use Value.
- $Taxes = Deferred Taxes \times \frac{\text{sale price of property} - PUV \text{ of property}}{\text{assessed value of property} - PUV \text{ of property}}$
- The taxes due are the lesser of the deferred taxes or the deferred taxes after applying the factor.

Rollback & Condemnations

- When PUV property is taken through the power of eminent domain, the condemned property is subject to rollback just as with any other disqualification.
- The property owner may be entitled to reimbursement from the condemnor for the deferred taxes, if:
 - The owner is a natural person whose property is taken in fee simple by a condemnor exercising the power of eminent domain; and
 - The owner also owns agricultural land, horticultural land, or forestland that is contiguous to the condemned property and that is in active production.
- Any such reimbursement is between the property owner and condemnor, and does not involve the assessor

3. Compliance Reviews

- G.S. 105-296(j) requires the assessor to review annually at least one-eighth of all properties in PUV, to determine whether those properties continue to qualify for PUV classification.
- While the statutes do not require a new application as a part of the review process, the assessor will need to review essentially the same information to determine whether the property still qualifies.
- The assessor may request assistance from appropriate state and federal agencies in conducting the review.

Compliance Review Results

- If there is sufficient information to determine that the property no longer qualifies, the assessor may notify the property owner of the disqualification, and/or bill for the deferred taxes.
- If the assessor requests (in writing) additional information from the property owner, the owner has 60 days from the date of the assessor's letter to provide the additional information.
- Any subsequent written request by the assessor gives the owner another **60** days to comply.

4. Appeals

- When an assessor determines that a property fails to qualify for PUV, or that an application for PUV is untimely, the assessor should notify the property owner in writing of the decision.
- The property owner has 60 days from the date of the assessor's decision letter to appeal to the Board of Equalization and Review, or to the Board of County Commissioners if the Board of E&R is not in session.
- The property owner has 30 days from the date of the Board's decision letter to appeal to the Property Tax Commission.

PART III: SPECIAL SITUATIONS

1. Conservation Reserve Program

- CRP is a collection of federal programs administered through the Farm Service Agency. The property owner should be able to demonstrate that they are enrolled in a CRP program administered by the FSA.
- Under G.S. 105-277.3(d), land enrolled in CRP is considered to be in actual production for purposes of the size requirement, and payments received under the CRP programs are counted toward the income requirement.
- CRP land is assessed as either forestland or agricultural land (horticultural land is assessed at the agricultural rate).
- The land still has to meet the minimum size and income requirements to remain in PUV. Recall, however, that deferred taxes are forgiven if the sole reason for disqualification is a change in income due to CRP enrollment.

2. Conservation Easements

- Conservation easements are voluntary development restrictions placed on a property by the owner. The easement, and its enforcement rights, are conveyed to another party.
- As of January 1, 2017, property which is properly in PUV, and then subjected to a qualified conservation easement, can remain in PUV without regard to the production, income, and (presumably) size requirements. At least 25% of the easement value must be donated.
- The exception applies only to the portion of the land affected by the easement. The unaffected land must still meet all PUV requirements.
- If the property is transferred, the new owner must still be a qualifying owner, but does not have to meet the Standard Ownership Requirements. The new owner must also file a new application within 60 days of the date of transfer.

3. Christmas Trees

- Evergreens planted for harvest as Christmas trees are considered horticultural crops. Because several years pass between planting and harvest, it is difficult to meet the income requirement with this use; therefore, an exception has been created to address this issue:
- While the trees are growing, the property owner must meet the “in lieu of gross income” requirement, which is a sound management program detailed in the Use Value Advisory Board (UVAB) Manual, published annually by the NCDOR. There are one set of recommendations for the mountain counties, and another for the rest of the state.
- When the trees are harvested, there is a gross income requirement of \$2,000 per acre for the mountain counties, and \$1,500 per acre for the rest of the state.

4. Turkey Disease

- A production exception has been developed to address the impact of Poult Enteritis Mortality Syndrome, which has occurred in some counties.
- When land is properly in PUV for turkey production, and then taken out of production solely as a precaution because PEMS has been discovered in the same county or a neighboring county, the land will still be considered to be in actual production and to meet the minimum gross income requirements.
- Additionally, the land must have been in actual production during the preceding two years, so the exception is only available for a maximum of two years.

5. Annexation

- In 2017, annexation reform changed how PUV affects the annexation process.
- In order for land in PUV to be annexed by a municipality, the landowner must give written consent to annexation. If consent is not given, the property cannot be annexed.
- If consent is given, the property will be subject to municipality property taxes, based on the PUV assessment, and will also be entitled to receive services from the municipality.

PART IV: PRESENT-USE VALUES

The “Schedule of Values” (SOV)

- G.S. 105-317 requires that the county adopt “uniform schedules of values, standards, and rules to be used in appraising real property at its true value **and at its present-use value,**” which have been prepared under the supervision of the assessor. Collectively, these items are usually referred to as the “Schedule of Values.”
- Land classified under the PUV program is to be appraised based on its ability to produce income with typical management.
- The capitalization rate for forestland is set by statute at 9%. Income from agricultural and horticultural land is to be capitalized at a rate which is determined by the Use Value Advisory Board (UVAB), but which must be at least 6%, and no more than 7%.

Use Value Advisory Board

- The UVAB is composed of several members representing agricultural, forestry, county, and property tax perspectives, and is supervised by the NSCU Agricultural Extension Service.
- The UVAB annually submits a recommended present-use value manual, which is then published and distributed by the NCDOR. These recommendations are based on the analysis of statewide information relating to land income production and soil types.
- Assessors and counties are not required to adopt the values recommended by the UVAB, but are required to use the capitalization rates set by statute and the UVAB.

PART V: WILDLIFE CONSERVATION PROGRAM

Introduction

- New for 2010, the Wildlife Conservation Program (WCP) is designed to provide preferential property tax valuation for land put into certain conservation uses. It is not a part of the PUV program, but the program operates similarly.
- Land which qualifies under this program is assessed at the same rate as agricultural land, regardless of whether the land is open or wooded.
- Taxes are deferred as with PUV, and, upon failure of the land to continue qualifying under WCP, deferred taxes for the current and three preceding years become immediately due and payable, just as with PUV.

Ownership Requirements

- Qualifying Owners: The land must be owned by an individual, a family business entity, or a family trust. A “family business entity” is one in which all individual members are relatives. A “family trust” is a trust in which all beneficiaries are either the creator of the trust or a relative.
- Ownership Requirements: The qualifying owner must have owned the property for the previous five years, unless:
 - If owned by a family business entity, the property was owned by one or more of the members for the previous five years
 - If owned by a family trust, the property was owned by one or more of the beneficiaries for the previous five years
 - The property was already in WCP and is acquired by a qualifying owner, and the owner files an application and signs a conservation agreement within 60 days of the date of transfer

Size Requirements

- The land must consist of at least 20 contiguous acres which meet the use requirements.
- No more than 100 acres of an owner's land in a single county may be classified in WCP.

Use Requirements

- The land must be managed under a written wildlife habitat conservation agreement with the NC Wildlife Resources Commission. The plan must be in effect as of January 1 of the year for which qualification is claimed.
- The owner must either:
 - Protect an animal species that lives on the land, and which is listed by the NCWRC as protected, **or**
 - Conserve one of several specified priority animal wildlife habitats
- Additionally, the land must have been either in PUV when the agreement was signed, or used for the purpose stated in the agreement for the three years preceding January 1 of the year for which qualification is claimed.

“Rollback” Exceptions

- When property was in PUV, then was enrolled in WCP, then became eligible again for PUV under the same owner, the property will continue in PUV without taxes becoming due. The lien on the property remains.
- When property is in WCP and then transferred to a new owner who makes a timely application to continue in WCP and signs the agreement in effect for the land, the property will continue in WCP without taxes becoming due. The lien on the property remains.
- Like with PUV, when WCP land is donated to the government or to certain nonprofit organizations, and the transfer is the sole reason for disqualification, the property will come out of WCP, but no taxes will be due, and the lien will be extinguished.

Application

- In addition to the actual application (Form AV-56), the property owner must also execute a conservation agreement with the NCWRC. The agreement must be in effect as of January 1 for the year in which the benefit is claimed.
- Although an application is required under G.S. 105-282.1(2), there is no statutory provision as to when an application is timely or untimely. Since many provisions of the WCP are modeled after the PUV program, it is believed that the legislative intent was to use the same application provisions as used in the PUV program.

Application, cont'd.

- Therefore, as with PUV:
 - An initial application is considered timely filed during the regular listing period; and in the event of a transfer of property in the WCP, the new owner must file an application and sign the conservation agreement within 60 days of the date of transfer.
 - An untimely application can be approved for good cause, but only by the Board of Equalization and Review, or by the Board of County Commissioners if the Board of E&R is not in session. The assessor cannot approve an untimely application.
 - An untimely application can only be approved for taxes (regardless of **fiscal** year) levied in the **calendar** year of application.

QUESTIONS?