

# Applying Tennessee's Definition of Agriculture to Land Use Questions Regarding Agritourism Activities

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## BACKGROUND AND INTRODUCTION

Agritourism continues to be a growing industry in Tennessee as farmers add value to their farm resources, entrepreneurs seek business opportunities, and consumers seek local farm products and experiences. Activities or attractions often considered agritourism are diverse and may include on-farm pick-your-own experiences, retail markets, corn mazes and other seasonal activities, tours or field trips, classes or workshops, day camps, animal exhibits, farm-to-table dinners, nature trails, horseback riding, fishing, hunting, wedding and event venues, farm stay opportunities and much more.

The nature of these activities, however, raises questions as to whether they qualify as “agriculture” for the purposes of Tennessee laws governing land use and property taxation. These questions are important because agritourism operations often raise land use questions related to:

1. **Property use/zoning** – are activities to be or already conducted on a property allowable under applicable zoning?
2. **Nuisance** – are the activities conducted a nuisance as defined by Tennessee law?
3. **Taxation** – should land used for agritourism activities be classified and taxed as agricultural or commercial property?

Results of a study published by the National Agricultural Law Center show that, related to agritourism venues, there was more litigation related to land use than there was for personal injuries.<sup>i</sup> Learn more about agritourism liability in the UT Extension Publication PB1787, *Liability and Agritourism: Implications of Tennessee’s 2009 Legislation* at <https://utia.tennessee.edu/publications/wp-content/uploads/sites/269/2023/10/PB1787.pdf>.

Whether agritourism operations qualify as “agriculture” has important implications for how these operations are treated by Tennessee’s statutes regarding land use.





For example, Tennessee law prohibits counties and cities from regulating land used for agriculture through zoning (although cities may require that agricultural operations obtain building permits for the construction of buildings).<sup>ii</sup> Cities also may be able to regulate agricultural activities pursuant to their powers to protect public health and safety. Further, Tennessee's Right to Farm law protects "normal agricultural activities" following "generally accepted agricultural practices" from nuisance claims.<sup>iii</sup> Finally, "farm property," or land that is used or held for use for agriculture, constitutes one of the four classes of property for the purposes of assessing real property taxes.<sup>iv</sup> Land which holds activities that do not meet the definition of agriculture can be subclassified when

appropriate,<sup>v</sup> meaning a portion of the property may be taxed at an agricultural property tax rate while another portion of the property may be taxed at a non-agricultural/commercial rate.

Thus, a key consideration for determining how agritourism operations are treated under these statutes is determining whether they qualify as agriculture under Tennessee law. This leads to the question, "Which activities meet Tennessee's definition of agriculture?" The best answer, it seems, is "It depends." This publication explores the definition of agriculture in the Tennessee Code as it relates to agritourism-type activities and the interpretation of this definition by a series of court rulings.

<sup>i</sup>Hall, Peggy Kirk and Ellen Essman. Recent Agritourism Litigation in the United States. The National Agricultural Law Center. Accessed online August 25, 2021 at <https://nationalaglawcenter.org/wp-content/uploads/assets/articles/AgritourismLitigationHallFinal.pdf>.

<sup>ii</sup>Tennessee Code Annotated § 6-54-126. Cities and Towns – Municipal Powers Generally – Zoning limitations on agricultural land.

For any land that is used for agricultural purposes as of May 10, 1998, a municipality may not use its zoning power to interfere in any way with the use of such land for agricultural purposes as long as the land is used for agricultural purposes.<sup>\*</sup>

<sup>\*</sup>The Attorney General opined (AG Opinion 10-12) that this law is only concerned with a municipality's power to regulate the use of land and not with that municipality's ability to require building permits.

Tennessee Code Annotated § 5-1-118. County powers shared with municipalities.

(b) Nothing in this part shall be construed as granting counties the power to prohibit or regulate normal agricultural activities.

<sup>iii</sup>"Tennessee Right to Farm Act." Tennessee Code Annotated § 43-26-101

TCA 43-26-103. Farms presumed not nuisances.

(a) It is a rebuttable presumption that a farm or farm operation is not a public or private nuisance. The presumption created by this subsection (a) may be overcome only if the person claiming a public or private nuisance establishes by a preponderance of the evidence that either:

- (1) The farm operation, based on expert testimony, does not conform to generally accepted agricultural practices; or
- (2) The farm or farm operation alleged to cause the nuisance does not comply with any applicable statute or rule, including without limitation statutes and rules administered by the department of agriculture or the department of environment and conservation.

<sup>iv</sup> Tennessee Code Annotated § 67-5-501 (3). Taxes and Licenses—Property Taxes--Definitions--Farm Property

(3) "Farm property" includes all real property that is used, or held for use, in agriculture as defined in §§ 1-3-105 and 43-1-113, including, but not limited to, growing crops, pastures, orchards, nurseries, plants, trees, timber, raising livestock or poultry, or the production of raw dairy products, and acreage used for recreational purposes by clubs, including golf course playing hole improvements.

<sup>v</sup>Rules of the Tennessee State Board of Equalization. Chapter 0600-12: Multiple-Use Subclassification <https://publications.tnsosfiles.com/rules/0600/0600-12.20171121.pdf>.





## TENNESSEE'S DEFINITION OF AGRICULTURE AND ITS APPLICATION TO AGRITOURISM

The term “agriculture” is defined in Tennessee Code Annotated §§ 1-3-105 and 43-1-113 as follows:

(A) **“Agriculture” means:**

- (i) **The land, buildings and machinery used in the commercial production** of farm products and nursery stock;
- (ii) **The activity carried on in connection with the commercial production** of farm products and nursery stock;
- (iii) **Recreational and educational activities on land used for the commercial production** of farm products and nursery stock; and
- (iv) **Entertainment activities conducted in conjunction with, but secondary to, commercial production** of farm products and nursery stock, when such activities occur on land used for the commercial production of farm products and nursery stock;

(B) **As used in this definition of agriculture**, the term **“farm products”** means forage and sod crops; grains and feed crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing; fruits; vegetables; flowers; seeds; grasses; forestry products; fish and other aquatic animals used for food; bees; equine; and all other plants and animals that produce food, feed, fiber or fur;

(C) **As used in this definition of agriculture**, the term **“nursery stock”** means all trees, shrubs, or other plants, or parts of such trees, shrubs or other plants, grown or kept for, or capable of, propagation, distribution or sale on a commercial basis;<sup>vi</sup>

Note that Sections (A)(iii) and (A)(iv) of the statute include “recreational,” “educational,” and “entertainment activities” within the definition of agriculture as long as these activities occur “on land used for the commercial production of farm products and nursery stock.” Sections (B) and (C) define farm products and nursery stock. Section (A)(iv) adds an additional requirement for entertainment. For entertainment activities to fall within the definition of agriculture, they must also be “conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock.”

<sup>vi</sup>Tennessee Code Annotated §1-3-105 and §43-1-113.





While helpful in indicating that some activities beyond the traditional commercial production of farm products may be considered agriculture, the definition does not answer every question about what agritourism activities constitute “agriculture.” Applying this definition of agriculture to agritourism-type activities, therefore, often raises multiple questions:

- What activities qualify as recreational, educational, or entertainment and thus constitute agriculture?
- How are entertainment activities distinguished from recreational and educational activities?
- What does the law mean when it says entertainment must be “in conjunction with, but secondary to, commercial production of farm products and nursery stock”?

Given the lack of clarity, Tennessee courts must answer these and other questions when they apply the law to a specific case. The body of judicial opinions created from court cases helps clarify the definition.





## COURT RULINGS INVOLVING THE DEFINITION OF AGRICULTURE RELATED TO AGRITOURISM

Several court cases have been instrumental in providing additional guidance for interpreting the state's definition of agriculture. Five cases with links to the case decisions are listed below followed by discussion of how these decisions shed light on the definition of agriculture as it relates to some agritourism activities.

1. Velda J. Shore v. Maple Lane Farms, LLC., a 2013 decision by the Tennessee Supreme Court. The text of the Supreme Court's decision is available online at: [tiny.utk.edu/MapleLane](https://tiny.utk.edu/MapleLane).
2. Jefferson County, Tennessee v. Wilmoth Family Properties, LLC, et. al. beginning in May 2017 and running through mid-2021. The decision by the Court of Appeals of Knoxville is available at [tiny.utk.edu/Wilmoth](https://tiny.utk.edu/Wilmoth).
3. Julia Tidwell and Rebekah Hall v. Wilson County; decision on June 9, 2021. The decision filed by the Chancery Court for Wilson County Tennessee at Lebanon is available at [tiny.utk.edu/Hall](https://tiny.utk.edu/Hall).
4. Partnership Management Services & Cumberland Farm LLC v. Davidson County, State Board of Equalization Administration Law Judge Decision for tax years 2016-2019. The decision is available at [tiny.utk.edu/Cumberland](https://tiny.utk.edu/Cumberland).
5. Jimmy Lloyd McCulley v. White County, State Board of Equalization Administration Law Judge Decision for tax years 2017-2019. The decision is available at [tiny.utk.edu/McCulley](https://tiny.utk.edu/McCulley).







The first case, *Shore v. Maple Lane Farms*, occurred before the Tennessee General Assembly adopted the current definition of agriculture in 2014. The result of this case was the impetus behind the addition of language to the statutory definition of agriculture to include entertainment when secondary to the commercial production of farm products.

Taken together, the five cases noted above provide some clarity to the definition of agriculture:

1. **Agritourism activities fall within the scope of the Right to Farm law and are thus protected against nuisance claims.** With regard to “entertainment,” (e.g., amplified music concerts and weddings/ events), these activities are considered agriculture only when “conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities occur on land used for the commercial production of farm products and nursery stock.” (Emphasis added.)
2. **A variety of factors are used to determine whether entertainment activities are “in conjunction with, but secondary to, commercial production of farm products and nursery stock.”** Those factors may include time and effort spent on, and income generated by, the production and sale of farm and nursery products versus entertainment activities.





3. **The application of the definition of agriculture will depend specifically on the facts of each situation and may be reviewed as situations evolve.** A determination that the use of the property meets the definition of agriculture at one point in time is not necessarily final for all time. Changes in the activities conducted or use of the property could lead to a change in determination. In *Jefferson County, TN v. Wilmoth et. al.*, Jefferson County claimed the Wilmoths were operating a commercial wedding event venue in a rural residential area while the Wilmoths contended the county could not enforce its zoning powers because the activities in question met the state’s definition of agriculture. The appellate court’s finding was in favor of the Wilmoths; however, the decision clearly indicated that the ruling was based on the “present effort expended” by the property owners and “the present use” of the property. Therefore, there is likely to be continued discussion and perhaps additional litigation surrounding these issues.
4. **An agritourism operation does not have to be 15 acres in size to be considered farm property for tax purposes as long as the operation meets the statutory definition of agriculture.** The *Julia Tidwell and Rebekah Hall v. Wilson County* case found that the 15-acre requirement is only for eligibility for enrollment in Agricultural, Forest and Open Space Land Act of 1976, commonly known as the Greenbelt Law, and that an eight-acre horse farm operating as a boarding stable and provider of riding lessons was a farm for property tax purposes.
5. **Property may be subclassified for property tax purposes.** Under certain conditions, a split classification for property tax purposes may be warranted if there is a nonqualifying portion of the property under the land’s tax classification. Typically, agritourism operations are classified as farm property for property tax purposes, and if the property is 15 acres or larger it may be eligible for enrollment in the greenbelt. Since 2018, there have been rules that county assessors of property must follow when determining if subclassification of property is warranted.<sup>vii</sup> These rules say that portions of an agritourism operation that meet the legal definition of agriculture must be classified for tax purposes as farm property. The last two cases above are examples of how the subclassification rules have improved the ability of agritourism operators to have structures classified as farm property.

<sup>vii</sup>Rules of the Tennessee State Board of Equalization. Chapter 0600-12: Multiple-Use Subclassification <https://publications.tnsosfiles.com/rules/0600/0600-12.20171121.pdf>.

## A SIDE NOTE ON THE STATUTORY DEFINITION OF “AGRITOURISM ACTIVITY”

Tennessee law provides agritourism operators with protection from claims for damages asserted by participants in agritourism activities (T.C.A. §§ 43-39-101 et seq.)

This law includes a definition of “agritourism activity,” but it applies only to the agritourism liability law itself, however, and is separate from the statutory definition of “agriculture.”

“Agritourism activity” means any activity carried out on a farm or ranch, eligible for greenbelt classification under title 67, chapter 5, part 10, that allows members of the general public, for recreational, entertainment or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities or natural activities and attractions. An activity is an “agritourism activity” whether or not a participant provides compensation in money or other valuable compensation to participate in the activity. “Agritourism activity” includes an activity involving any animal exhibition at an agricultural fair, regardless of the location of the fair (T.C.A., § 43-39-101 (1)).

To learn more about the agritourism liability statute, check out *Liability and Agritourism: Implications of Tennessee’s 2009 Legislation* (PB 1787) online at <https://utia.tennessee.edu/publications/wp-content/uploads/sites/269/2023/10/PB1787.pdf>.





## SUMMARY

Agritourism continues to be a growing industry in Tennessee as farmers add value to their farm resources, entrepreneurs seek business opportunities, and consumers demand local farm products and experiences. The interests of farmers and entrepreneurs who seek to operate these enterprises can be at odds with the interests of neighbors, government zoning or tax assessment officials, and others. Issues typically surround allowable property use, property tax subclassification, county or city zoning ordinances, and nuisance claims by neighbors. Tennessee statutes regarding these issues are applied to both traditional farming operations and agritourism-type activities.

The statutory definition of agriculture indicates “recreational and educational activities” are considered agriculture when conducted on “land used for the commercial production of farm products and nursery stock.” “Entertainment activities” also are considered agriculture but only when “conducted in conjunction with, but secondary to, commercial production of farm products and nursery stock, when such activities occur on land used for the commercial production of farm products and nursery stock.”

The definition does not answer every question of what is considered educational, recreational and entertainment for the purposes of classifying a property use as agricultural. For example, the definition provides no guidance on what is considered “secondary to” when considering entertainment activities. Court opinions in the last decade have provided some guidance on how the definition of agriculture may be applied to various activities and situations. Activities such as weddings, events and amplified concerts are considered entertainment for purposes of the definition. The determination of whether entertainment is “secondary to” the commercial production of farm products hinges on more than one factor and may include time, effort, income from the commercial production of farm products, and perhaps other considerations. While these opinions provide some clarity, questions remain. It cannot be emphasized enough that the determination of whether agritourism-type activities are considered agriculture will depend upon the facts of each specific situation and may change as the activities or property use evolves.







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