HB

475

HB 475
Interim 88
H. Research Rpt

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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August 15, 1988

MEMORANDUM

TO: Representative Henry Springer

FROM: Patricia Brawley pb
Legislative Analyst

RE: Tax Assessments on Undeveloped Land
Research Request 89.008

You requested information about provisions in other states for property tax relief for owners of undeveloped lands which are adjacent to developed lands. You asked specifically about tax assessments on property near several major western ski resorts.

Property tax laws are generally based on the traditional presumption that the highest and best use of land is that which provides the greatest financial profit. States with natural resources as their primary economic base--such as Vermont, Wyoming, Washington and Oregon--provide tax relief for areas designated as timber and/or agricultural land. Some states--such as Oregon and Washington--also provide tax relief for areas designated as "open spaces." This classification is intended to preserve a variety of natural and/or scenic resources. None of the states surveyed--Colorado, Washington, Oregon, Wyoming and Idaho--provide tax relief to owners of property adjacent to developments, unless such property can be classified as timber, open space, or agricultural land for the economic purposes noted above. Farmland in Alberta receives special tax consideration through a similar provision. In addition, as part of a national park, the town of Banff is leased from the federal government, and property tax relief is provided to residents who depend on access to the resort for their livelihood.

An exception to the traditional notion of highest and best use of land is Oregon's single family residence law which provides that property within a

commercial or industrial zone, but used exclusively as a single family residence, shall be assessed on its residential use, without consideration of the commercial or industrial influence. Other exceptions include a tax credit for homestead owners in Wyoming and a property tax exemption for retired persons in Washington who are unable to pay such tax. See attached statutes.

I am enclosing House Research Agency memorandum 88.138 (Conservation Easements), which may be of interest to you.

I hope this information is useful. If you have questions, please call me at this office.

Attachments

car companies undergoing major work including remodeling, renovation, conversion or repairs shall be exempt from taxation.

(2) For purposes of this section, the term "major work" shall include all remodeling, renovation, conversion, reconversion or repairs to a railroad car in which the total labor expended for such work exceeds 10 work hours.

(3) The exemption described in subsection (1) of this section shall apply for the period of time in which the railroad cars are awaiting or undergoing major work or are awaiting transportation to or from or are being transported to or from a facility performing such major work.

(4) No exemption under subsection (1) of this section shall be allowed unless the department is furnished sufficient documentary information to prove that the claimant is entitled to the exemption. [1973 c.245 §2; 1987 c.158 §48]

Note: 308.665 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 308 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

SINGLE FAMILY RESIDENCE PROPERTY

308.670 Single family residences within commercial or industrial zones assessed at single family residence value. Notwithstanding ORS 308.205 or 308.235, but subject to ORS 308.232:

(1) Any land and improvements which are within a zone allowing industrial or commercial use or more residential density than a single family residence zone established under ORS 215.010 to 215.190 and 215.402 to 215.438 or 227.215 to 227.300, but which are used, and have been used for the preceding five years, exclusively for single family residence as defined in subsection (2) of this section shall, upon compliance with ORS 308.675, be valued at its true cash value for single family residence and not at the true cash value the land and improvements would have if applied to other than single family residence.

(2) As used in ORS 308.670 to 308.685:

(a) "Owner" includes purchaser under recorded instrument of sale.

(b) "Single family residence" means a structure designed as a residence for one family and sharing no common wall or parcel of land with another residence of any type and which is the principal place of abode of the owner.

(3) The special assessment provisions of this section shall be determined as of January 1. However, if qualified land and improvements become disqualified prior to July 1 of the same year, the land and improvements shall be valued under ORS 308.232 at true cash value as defined by law without regard to this section. [1975 c.655 §1; 1977 c.679 §1; 1981 c.804 §67]

Note: 308.670 to 308.685 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 308 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

308.675 Application for special assessment; form; contents; execution. (1) Any owner of a single family residence entitled to special assessment under ORS 308.670 must, to secure the assessment, make application therefor to the county assessor on or before April 1 of the first year in which the assessment is desired.

(2)(a) The application shall be made upon forms prepared by the Department of Revenue and supplied by the county assessor and shall include information reasonably required to determine whether the special assessment shall be allowed.

(b) The application may be signed by any one of the following:

(A) The owner of the single family residence land and improvements who holds an estate therein in fee simple or for life.

(B) Any one of tenants in common or tenants by the entirety, holding an estate in the single family residence land and improvements in fee simple or for life.

(C) Any person of legal age, duly authorized in writing to sign an application on behalf of any person described in subparagraph (A) or (B) of this paragraph.

(D) The guardian or conservator of an owner.

(E) The purchaser of the fee simple or life estate of an owner under a contract of sale.

(c) The assessor or the deputy of the assessor shall not approve an application signed by a person whose authority to sign is not a matter of public record unless there is filed with the assessor a true copy of the deed, contract of sale, power of attorney or other appropriate instrument evidencing the signer's interest or authority. When filed with the assessor only, the instrument shall not constitute a public record.

(3) There shall be annexed to each application the affidavit or affirmation of the applicant that the statements contained therein are true. [1975 c.655 §2; 1977 c.679 §2]

Note: See note under 308.670.

OREGON

308.680 Assessment of approved land; notice to assessor of change in land use; election by governing body to disqualify property upon transfer; limitation. (1) Upon approval of an application, the county assessor shall assess land and improvements approved under ORS 308.675 at the special assessment provided in ORS 308.670 and shall also enter on the assessment and the tax roll the notation "potential additional tax liability" until the property becomes disqualified for such assessment by:

(a) Notification in writing by the taxpayer to the assessor to remove such special assessment;

(b) Sale or transfer to an ownership which makes the property exempt from ad valorem taxation;

(c) Removal of the special assessment by the assessor upon the discovery that the property is no longer being used for a single family residence; or

(d) Transfer of ownership of property when such property is subject to an ordinance which makes subsection (2) of this section inapplicable to such property, and the transfer occurs after the effective date of the ordinance.

(2) (a) Except as provided in paragraph (b) of this subsection, the sale or transfer to a new owner or transfer by reason of death of a former owner to a new owner or other transfer shall not operate to disqualify property from the special assessment provisions of ORS 308.670 to 308.685 so long as the property continues to be used exclusively as a single family residence.

(b) This subsection shall not apply to property if the city or county with planning and zoning jurisdiction over such property adopts an ordinance which makes this subsection inapplicable to such property. An ordinance adopted by a city or county under this paragraph shall not apply to an entire class of zoning districts but shall be limited in application to property within a single restricted geographic area within the city or county. The city or county adopting such ordinance shall give individual mailed notice thereof to all owners of property within the area receiving the special assessment within 30 days after the effective date of the ordinance. Such notice shall include a statement explaining the effect of disqualification under the ordinance.

(3) When, for any reason, the property or any portion thereof ceases to be used exclusively for a single family residence as defined in ORS 308.670 (2), the owner at the time of the change in use shall notify the assessor of such change prior to the next January 1 assessment date. [1975 c.555 §3; 1977 c.679 §3]

Note: See note under 308.670.

308.685 Disqualified land; additional tax; notice to owner; cancellation of additional tax upon rezoning. (1)(a) Except as provided in subsection (2) of this section, whenever property which has received special assessment as a single family residence under ORS 308.670 thereafter becomes disqualified for the assessment, the assessor shall notify the owner thereof and there shall be added to the tax extended against the property on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property tax, an additional tax equal to five times (or such lesser number of times, corresponding to the number of successive years prior to the year of disqualification, single family residence assessment was in effect for the property) the total amount by which the taxes that would have been imposed had the property been assessed without regard to ORS 308.670 exceeds the taxes that were imposed under ORS 308.670 for the assessment year for which single family residence assessment was last in effect for the property.

(b) However, if property becomes disqualified under ORS 308.680 (1)(d) and the property first received the special assessment under ORS 308.670 after October 4, 1977, and prior to the effective date of the ordinance, then the provisions of paragraph (a) of this subsection shall not apply.

(2) Whenever property which has received special assessment as a single family residence under ORS 308.670 thereafter becomes disqualified for such assessment, and the notice required by ORS 308.680 (3) is not given, the assessor shall notify the owner thereof and notwithstanding ORS 311.220, there shall be added to the tax extended against the property on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property tax, an additional tax equal to the sum of the following:

(a) An amount equal to five times (or such lesser number of times, corresponding to the number of successive years prior to the assessment year for which the property should have been disqualified for special assessment as single family residence) the total amount by which the taxes that would have been imposed had the property been assessed without regard to ORS 308.670 exceeds the taxes that were imposed pursuant to ORS 308.670 for the assessment year for which single family residence assessment was last properly in effect for the property; and

(b) The total amount by which the taxes that would have been imposed had the property been

assessed without regard to ORS 308.670 exceeds the taxes that were assessed for the assessment year for which the notice should have been given and each assessment year thereafter, together with the interest that would have accrued had the amounts been placed on the tax roll in the applicable years; and

(c) A penalty equal to 20 percent of the amount specified in paragraph (b) of this subsection; however, no penalty shall be imposed on any amount attributable to interest.

(3) In cases where the designation of specially assessed property is removed as a result of sale or transfer to an ownership which makes it exempt from taxation pursuant to ORS 308.680 (1)(b), the lien for such increased taxes and interest shall attach as of the day preceding such sale or transfer.

(4) The amount determined to be due under subsection (1) of this section may be paid to the tax collector prior to the completion of the next general property tax roll, pursuant to ORS 311.370.

(5) Whenever a single family residence zone is established which includes property which is receiving special assessment as a single family residence under ORS 308.670, the county assessor and tax collector shall cancel any potential additional taxes to be collected under this section. [1975 c.655 §4; 1977 c.679 §4; 1979 c.350 §8; 1985 c.524 §2]

Note: See note under 308.670.

SINGLE FAMILY DWELLING DEFERRED MAINTENANCE PROJECTS

308.690 "Deferred maintenance" defined. (1) As used in ORS 308.690 to 308.700, "deferred maintenance" means maintenance, repairs or replacements to an existing dwelling or portion thereof as described in subsection (2) of this section. In no event does it mean the addition of new construction to an existing building which increases the number of square feet of living space.

(2) Deferred maintenance includes maintenance, repairs or replacements of the following:

(a) Broken floor joists, missing sections or collapsed interior floors;

(b) Improperly installed or collapsing partitions, loose or missing plaster;

(c) Broken or missing sash, frames or window panes;

(d) Inadequate light or ventilation;

(e) Missing or defective weather stripping or storm windows;

(f) Missing or broken doors;

(g) Collapsed or broken stairs, stairways or stair railings;

(h) Missing or inoperative sanitary facilities;

(i) Hazardous gas or electric installations;

(j) Leaking sinks or defective drainboards;

(k) Improperly installed, obstructed, broken or leaking piping, drains, vents or traps;

(L) Inoperative or obsolete heating plant;

(m) Electrical insulation missing or damaged, overloaded electrical circuits, improper electrical installations or connections;

(n) Split or buckled basement support beams, open breaks or severe settlement in basement walls;

(o) Inadequate exterior wall and attic insulation;

(p) Open cracks or breaks in exterior building walls;

(q) Holes or cracks through roof, defective roof flashing or skylights;

(r) Collapsing or deteriorating chimneys;

(s) Broken or missing gutters and downspouts;

(t) Rotted fascia boards, eaves, soffits and cornices;

(u) Collapsed or broken porch joists, columns or railings;

(v) Rotted or broken porch flooring;

(w) Missing or broken step treads;

(x) Exterior or interior paint; and

(y) Weatherization materials certified in accordance with ORS 316.088 (3). As used in this paragraph, "weatherization materials" has the meaning given that term by ORS 316.088 (1)(b). [1975 c.355 §2; 1977 c.811 §3; 1979 c.534 §2]

Note: 308.690 to 308.700 were enacted into law by the Legislative Assembly and were added to and made a part of ORS chapter 308 but not added to any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

308.695 Application of ORS 308.690 to 308.700. ORS 308.690 to 308.700 shall apply only to deferred maintenance of owner-occupied, single-family dwellings performed and completed during the period July 1, 1975, to December 31, 1982. [1975 c.355 §3]

Note: See note under 308.690.

308.720 Return showing gross earnings; payment of tax. Every company upon which a tax is imposed under ORS 308.710 (2), on or before February 1 of each year shall make a return to the department, in such form and on such blanks as the department may provide, showing the amount of its gross earnings during the calendar year preceding, the year-end number of subscribers in each rural telephone exchange, the pole line miles of each rural telephone exchange and such other facts and information as the department may require. The company shall compute and forward with the return the tax imposed by ORS 308.710 (2). [1957 c.628 §6]

308.725 Examination of return by department; apportioning tax to counties. (1) The Department of Revenue shall examine and determine the accuracy of the returns forwarded under ORS 308.720. The department shall thereafter apportion the amount of tax so received among the several counties in which the company operates rural telephone exchanges. The part to be apportioned to a county shall bear the same ratio to the total of the tax so received as the number of wire miles of the rural telephone exchanges or parts thereof in the county bears to the total number of wire miles of all rural telephone exchanges or parts thereof operated by the company in this state. The part apportioned to each county shall be remitted to the treasurer of the county and shall be distributed among the code areas of the county on the basis of wire miles in each code area and among the districts in each code area in the proportion that the rate of tax levy in each district as shown by the tax levy filed with the assessor for the year last in process of collection bears to the total tax rate of the levies of all such taxing bodies for such year.

(2) Whenever the department determines that the use of wire miles under subsection (1) of this section does not fairly apportion the tax, it may apportion the tax to the counties in which the property of the rural telephone exchange is situated in such manner as the department deems reasonable and fair. The department shall advise each assessor of the value apportionment of the companies' properties within the county of the assessor for purposes of distribution of taxes to the taxing district in the county. [1957 c.628 §7; 1963 c.238 §2; 1965 c.492 §1; 1967 c.226 §1; 1969 c.595 §12]

308.730 Tax as a lien; delinquency date; action to collect. (1) The tax imposed under ORS 308.710 (2) shall be a debt due and owing from the company and shall be a lien on all the property, real and personal, of the company on and after February 1 of each year. Interest shall be charged and collected on any tax so imposed and not paid when due at the rate of one percent per month or fraction of a month until paid. The taxes so imposed shall be delinquent if not paid within one year following the due date thereof.

(2) The Department of Revenue shall enforce collection of the tax imposed under ORS 308.710 (2) and immediately after the delinquency date thereof may institute an action for the collection of the taxes, together with interest, costs and other lawful charges thereon. The department shall have the benefit of all laws of this state pertaining to provisional remedies against the properties, either real or personal, of such companies, without the necessity of filing either an affidavit or undertaking, as otherwise provided by law. [1957 c.628 §8; 1981 c.623 §5]

OPEN SPACE LANDS

308.740 Definitions for ORS 308.740 to 308.790. As used in ORS 308.740 to 308.790, unless a different meaning is required by the context:

(1) "Open space land" means:

(a) Any land area so designated by an official comprehensive land use plan adopted by any city or county; or

(b) Any land area, the preservation of which in its present use would:

(A) Conserve and enhance natural or scenic resources;

(B) Protect air or streams or water supply;

(C) Promote conservation of soils, wetlands, beaches or tidal marshes;

(D) Conserve landscaped areas, such as public or private golf courses, which reduce air pollution and enhance the value of abutting or neighboring property;

(E) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space;

(F) Enhance recreation opportunities;

(G) Preserve historic sites;

(H) Promote orderly urban or suburban development; or

(I) Retain in their natural state tracts of land, on such conditions as may be reasonably required by the legislative body granting the open space classification.

(2) "Current" or "currently" means as of next January 1, on which the property is to be listed

and valued by the county assessor under ORS chapter 308.

(3) "Owner" means the party or parties having the fee interest in land, except that where land is subject to a real estate sales contract, "owner" shall mean the contract vendee. [1971 c.493 §2]

308.745 Policy. The legislature hereby declares that it is in the best interest of the state to maintain, preserve, conserve and otherwise continue in existence adequate open space lands and the vegetation thereon to assure continued public health by counteracting pollutants and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. The legislature further declares that it is in the public interest to prevent the forced conversion of open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such open space land, and that assessment practices must be so designed as to permit the continued availability of open space lands for these purposes, and it is the intent of ORS 308.740 to 308.790 to so provide. [1971 c.493 §1]

308.750 Application for open space use assessment; contents of application; filing; reapplication. An owner of land desiring current open space use assessment under ORS 308.740 to 308.790 shall make application to the county assessor upon forms prepared by the Department of Revenue and supplied by the county assessor. The owner shall describe the land for which classification is requested, the current open space use or uses of the land, and shall designate the paragraph of ORS 308.740 (1) under which each such use falls. The application shall include such other information as is reasonably necessary to properly classify an area of land under ORS 308.740 to 308.790 with a verification of the truth thereof. Applications shall be made prior to December 31, 1971, for classification for the assessment year commencing January 1, 1972, and thereafter applications to the county assessor shall be made during the calendar year preceding the first assessment year for which such classification is requested. If the ownership of all property included in the application remains unchanged, a new application is not required after the first assessment year for which application was made and approved. [1971 c.493 §3]

308.755 Submission of application for approval of local granting authority; grounds for denial; approval; withdrawal of application. (1) Within 10 days of filing in the office of the assessor, the assessor shall refer each application for classification to the planning commission, if any, of the governing body and to the granting authority, which shall be the county governing body, if the land is in an unincorporated area, or the city legislative body, if it is in an incorporated area. An application shall be acted upon in a city or county with a comprehensive plan in the same manner in which an amendment to the comprehensive plan is processed by such city or county, and by a city or county without a comprehensive plan after a public hearing and after notice of the hearing shall have been given by three consecutive weekly advertisements in a newspaper of general circulation in the city or county, the third published at least 10 days before the hearing. Each advertisement for one or more hearings shall be no smaller than three column by five inches in size. In determining whether an application made for classification under ORS 308.740 (1)(b) should be approved or disapproved, the granting authority shall weigh the benefits to the general welfare of preserving the current use of the property which is the subject of application against the potential loss in revenue which may result from granting the application.

(2) If the granting authority in so weighing shall determine that preservation of the current use of the land will:

(a) Conserve or enhance natural or scenic resources;

(b) Protect air or streams or water supplies;

(c) Promote conservation of soils, wetlands, beaches or tidal marshes;

(d) Conserve landscaped areas, such as public or private golf courses, which enhance the value of abutting or neighboring property;

(e) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations, sanctuaries, or other open spaces;

(f) Enhance recreation opportunities;

(g) Preserve historic sites;

(h) Promote orderly urban or suburban development; or

(i) Affect any other factors relevant to the general welfare of preserving the current use of the property;

the granting authority shall not deny the application solely because of the potential loss in revenue which may result from granting the application.

(3) The granting authority may approve the application with respect to only part of the land which is the subject of the application; but if any

part of the application is denied, the applicant may withdraw the entire application. [1971 c.493 §4]

308.760 Notice to assessor of approval or denial; recording approval; assessor to record potential additional taxes on tax roll; appeal from denial. (1) The granting authority shall immediately notify the county assessor and the applicant of its approval or disapproval which shall in no event be later than April 1 of the year following the year of receipt of said application. An application not denied by April 1 shall be deemed approved, and shall be considered to be land which qualifies under ORS 308.740 to 308.790.

(2) When the granting authority determines that land qualifies under ORS 308.740 to 308.790, it shall enter on record its order of approval and file a copy of the order with the county assessor within 10 days. The order shall state the open space use upon which approval was based. The county assessor shall, as to any such land, assess on the basis provided in ORS 308.765, and each year the land is classified shall also enter on the assessment roll, as a notation, the assessed value of such land were it not so classified.

(3) Each year the assessor shall include in the certificate made under ORS 311.105 a notation of the amount of additional taxes which would be due if the land were not so classified.

(4) On approval of an application filed under ORS 308.750, for each year of classification the assessor shall indicate on the tax roll that the property is being specially assessed as open space land and is subject to potential additional taxes as provided by ORS 308.770, by adding the notation "open space land (potential add'l tax)".

(5) Any owner whose application for classification has been denied may appeal to the circuit court in the county where the land is located, or if located in more than one county, in that county in which the major portion is located. [1971 c.493 §5]

308.765 Determination of true cash value of open space lands. In determining the true cash value of open space land which has been classified as such under ORS 308.740 to 308.790, each year the assessor shall, notwithstanding the provisions of ORS 308.205:

(1) Assume the highest and best use of the land to be the current open space use, such as park, sanctuary or golf course, and the assessor shall not consider alternative uses to which the land might be put.

(2) Value the improvements on the land, if any, as required by ORS 308.205. [1971 c.493 §6]

308.770 Change in use of open space land; notice to assessor; withdrawal from classification; collection of additional potential taxes. (1) When land has once been classified under ORS 308.740 to 308.790, it shall remain under such classification and it shall not be applied to any other use than as open space unless withdrawn from classification as provided in subsection (2) of this section, except that if the use as open space land changes from one open space use to another open space use, such as a change from park purposes to golf course land, the owner shall notify the assessor of such change prior to the next January 1 assessment date.

(2) During any year after classification, notice of request for withdrawal may be given by the owner to the county assessor or assessors of the county or counties in which such land is situated. The county assessor or assessors, as the case may be, shall withdraw such land from such classification, and immediately shall give written notice of the withdrawal to the granting authority that classified the land; and additional real property taxes shall be imposed on such land in an amount equal to the total amount of potential additional taxes computed under ORS 308.760 (3) during each year in which the land was classified, together with interest at the rate of two-thirds of one percent a month, or fraction of a month, from the dates on which such additional taxes would have been payable had the land not been so classified, limited to a total amount not in excess of the dollar difference in the value of the land as open space land for the last year of classification and the market value under ORS 308.205 for the year of withdrawal.

(3) If the owner fails to give the notice required under subsection (1) of this section during the period of classification, upon withdrawal under subsection (2) of this section, the assessor shall add to the tax extended against the land previously classified, an amount, if any, equal to the additional taxes that would have been collected had the assessor valued the classified land on the basis of the changed open space use, together with interest at the rate of two-thirds of one percent a month, or fraction of a month, from the dates on which such additional taxes would have been payable. [1971 c.493 §7]

308.775 Withdrawal by assessor when use changed; notice to granting authority; imposition of additional taxes; interest; penalty; exception in case of certain sale of land. (1) When land which has been classified and assessed under ORS 308.740 to 308.790 as open space land is applied to some use other than as open space land, except through compliance

with ORS 308.770 (2), or except as a result of the exercise of the power of eminent domain, the owner shall within 60 days thereof notify the county assessor of such change in use. The assessor or assessors shall withdraw the land from classification and immediately shall give written notice of the withdrawal to the granting authority that classified the land; and additional real property taxes shall be imposed upon such land in an amount equal to the amount that would have been due under ORS 308.770 if notice had been given by the owner as of the date of withdrawal, plus a penalty equal to 20 percent of the amount so determined.

(2) If no notice is given as required by subsection (1) of this section, the assessor, upon discovery of the change in use, shall compute the amount of taxes, penalty and interest described in subsection (1) of this section, as though notice had been given, and shall add thereto an additional penalty equal to 20 percent of the total amount so computed, for failure to give such notice.

(3) The limitation described in ORS 308.770 (2) applies only to the computation of taxes and interest, and not to the penalties described in subsections (1) and (2) of this section.

(4) The provisions of subsections (1) and (2) of this section shall not apply in the event that the change in use results from the sale of a least 50 percent of such land classified under ORS 308.740 to 308.790 within two years after the death of the owner. [1971 c.493 §8]

308.780 Prepayment of additional taxes; extending taxes on tax roll; collection; distribution. (1) The amount determined to be due under ORS 308.770 or 308.775 may be paid to the tax collector prior to the completion of the next general property tax roll, pursuant to ORS 311.370.

(2) The amounts under ORS 308.770 or 308.775 shall be added to the tax extended against the land on the next general property tax roll, to be collected and distributed in the same manner as the remainder of the real property taxes. [1971 c.493 §9; 1979 c.350 §9]

308.785 Reports from owner to assessor; effect of failure of owner to make report upon request. The assessor shall at all times be authorized to demand and receive reports by registered or certified mail from owners of land classified under ORS 308.740 to 308.790 as to the use of the same. If the owner shall fail, after 90 days' notice in writing by certified mail to comply with such demand, the assessor may immediately withdraw the land from classification, give written notice to the granting authority of the withdrawal, and apply the penalties provided in ORS 308.770 and 308.775. [1971 c.493 §10]

308.790 Rules and regulations. The Department of Revenue of the State of Oregon shall make such rules and regulations consistent with ORS 308.740 to 308.790 as shall be necessary or desirable to permit its effective administration. [1971 c.493 §11]

GROSS EARNINGS TAX ON MUTUAL OR COOPERATIVE DISTRIBUTION SYSTEMS

308.805 Mutual and cooperative electric distribution systems subject to tax on gross earnings. (1) Every association of persons, wholly mutual or cooperative in character, whether incorporated or unincorporated, the principal business of which is the construction, maintenance and operation of an electric transmission and distribution system for the benefit of the members of such association without intent to produce profit in money and which has no other principal business or purpose shall, in lieu of all other taxes on the transmission and distribution lines, pay a tax on all gross revenue derived from the use or operation of transmission and distribution lines (exclusive of revenues from the leasing of lines to governmental agencies) at the rates prescribed by ORS 308.807. The tax shall not apply to or be in lieu of ad valorem taxation on any property, real or personal, which is not part of the transmission and distribution lines of such association.

(2) The Department of Revenue, pursuant to ORS 308.505 to 308.655, shall assess for ad valorem taxation all the real and personal property of such associations which is not a part of "transmission and distribution lines," as defined in subsection (3) of this section. All other property subject to ad valorem taxation shall be assessed in the manner otherwise provided by law, by the assessor of the county in which such property has a tax situs.

(3) As used in ORS 308.805 to 308.820:

(a) "Transmission and distribution lines" shall include all property that is energized or capable of being energized or intended to be energized, or that supports or is integrated with such property. This includes, but is not limited to, substation equipment, fixtures and framework, poles and the fixtures thereon, conductors, transformers, services, meters, street lighting equipment, easements for rights of way, generating equipment, communication equipment,

§ 39-1-204. Home owner's tax credit.

(a) Subject to subsection (g) of this section, a person who occupies a specified homestead as his home and principal residence is entitled to a property tax credit in the amount provided by subsection (d) or (e) of this section. No more than one (1) home owner's tax credit shall be allowed on the same piece of property during any year.

(b) A person who wishes to claim a home owner's tax credit shall file a claim under penalties of perjury with the county assessor on or before the fourth Monday in May on forms provided by the department of revenue and taxation. The forms may be mailed to property owners and may be published in a newspaper by county assessors and the mailed or published form may be filled out and returned by mail or in person to county assessors. The applicant shall list the property claimed to be subject to the tax credit, state that the property is the principal place of residence of the applicant and state that no other home owner's claims have been or will be submitted by the applicant during the remainder of the calendar year. False claims are punishable as provided by W.S. 6-5-303.

(c) In completing the assessment roll of the county the county assessor shall indicate the assessed value used as a base for computation of the home owner's tax credit and the county treasurer shall collect from the property owner the amount of tax due minus the amount of tax credit allowed. On or before September 1, county assessors shall certify the credits granted pursuant to this section to the state tax commission. On or before October 1 the state treasurer out of funds appropriated for that purpose shall reimburse each county treasurer for the amount of taxes which would have been collected if the property tax credit had not been granted. The county treasurer shall distribute to each governmental entity the actual amount of revenue lost due to the tax credit.

(d) The tax credit under subsection (a) of this section is one thousand four hundred sixty dollars ($1,460.00) times the mill levy to be applied against the property if the dwelling and land, not to exceed two (2) acres on which the dwelling is located, have a combined assessed value of less than three thousand nine hundred dollars ($3,900.00), or five hundred ninety dollars ($590.00) times the mill levy to be applied against the property if the dwelling and land, not to exceed two (2) acres on which the dwelling is located, have a combined assessed value of at least three thousand nine hundred dollars ($3,900.00) but less than five thousand eight hundred fifty dollars ($5,850.00) and if:

(i) The dwelling and land on which the dwelling is located are owned by the same person or entity; and

(ii) The dwelling has been occupied in Wyoming since the beginning of the calendar year by the applicant.

(e) The tax credit under subsection (a) of this section is five hundred ninety dollars ($590.00) times the mill levy to be applied against the property if:

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(i) The dwelling has an assessed value of less than five thousand eight hundred fifty dollars ($5,850.00); and

(ii) The land on which the dwelling is located is not owned by the same person or entity owning the dwelling; and

(iii) The dwelling has been occupied in Wyoming since the beginning of the calendar year by the applicant.

(f) As used in this section:

(i) "Applicant" means:

(A) A person who occupies and owns a homestead either solely or jointly with his spouse;

(B) A person who occupies a homestead as a vendee in possession under a contract of sale;

(C) A person who occupies a homestead owned by a corporation primarily formed for the purpose of farming or ranching if the person is a shareholder or is related to a shareholder of the corporation; or

(D) A person who occupies a homestead owned by a partnership primarily formed for the purpose of farming or ranching if the person is a partner or is related to a partner in the partnership.

(ii) "Dwelling" means a house, trailer house, mobile home, transportable home or other dwelli .g place.

(g) Every person or entity holding an escrow for the payment of taxes on property owned by another shall notify the owner of the property of the amount of home owner's tax credit allowed to the owner under this section annually on or before October 1.

(h) The home owner's tax credit authorized by this section is allowed during a fiscal year only if the legislature has appropriated monies [that] the state tax commission determines to be necessary to reimburse all local governments for tax losses created by this section during that fiscal year. When it appears to the state treasurer that the monies appropriated are insufficient to reimburse the counties as provided herein, the money available shall be prorated among the counties at an amount less than one hundred percent (100%).

(j) The purpose of this section is to provide general property tax relief for certain persons who own their residences through a system of tax credits and general fund appropriations. The relief provided is to offset in part the general tax burden. Thus, the tax relief provided is determined by reference to property tax assessment and collection mechanisms but is not limited to property tax relief nor formulated upon legislative power to relieve such taxes. It is for the general relief of taxes and grounded upon general legislative power. In adopting this method of reimbursement of property taxes and providing that no local government shall incur any loss of property tax revenue under subsection (h) of this section, any bond issues or other matters relying upon the assessed value of a local government for computation shall be predicated upon the assessed value of the local government before computation of tax credits under this section. (Laws 1979, ch. 163, § 1; 1980, ch. 41, § 1; 1982, ch. 7, § 1; 1983, ch. 148, § 1; 1984, ch. 64, § 200; 1985, ch. 6, § 1.)

Cross references. — As to Wyoming tax commission, see § 39-1-302.

The 1984 amendment, effective July 1, 1984, in subsection (d) substituted "six thousand one hundred sixty dollars ($6,160.00)" for "eight thousand one hundred sixty dollars ($8,160.00)" in two places and substituted "eight thousand two hundred dollars ($8,200.00)" for "ten thousand two hundred dollars ($10,200.00)".

The 1985 amendment rewrote subsections (d) and (e) to the extent that a detailed comparison would be impracticable.

Laws 1985, ch. 6, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved February 8, 1985.

Editor's notes. — There is no subsection (i) in this section as it appears in the printed acts.

Appropriations. — Laws 1985, ch. 6., § 2, reads: "There is appropriated to the state treasurer from the general fund the sum of six million dollars ($6,000,000.00) or as much thereof as may be necessary to reimburse taxing entities for lost revenues as by law provided. The tax credit authorized by this act applies to the 1985 tax year."

ARTICLE 3. STATE ADMINISTRATIVE PROVISIONS

Cross references. — As to county board of equalization, see § 39-2-302. As to state board of equalization, see art. 15, §§ 9, 10, Wyo. Const.

Am. Jur. 2d, ALR and C.J.S. references. — Estoppel of state or local government in tax matters, 21 ALR4th 573.

§ 39-1-301. Department created.

The department of revenue and taxation is created. (Laws 1973, ch. 248, § 1; 1977, ch. 45, § 1.)

Law reviews. — For comment, "Competitive Bidding on Public Works in Wyoming: Determination of Responsibility and Preference," see XI Land & Water L. Rev. 243 (1976).

§ 39-1-302. Appointment of commissioners; appointment of division administrators; additional employees.

(a) The governor shall appoint, with senate confirmation, three (3) tax commissioners who are the department's executive and administrative heads. Not more than two (2) commissioners may be members of the same political party. Each appointment of the tax commissioners shall be for a six (6) year term. The three (3) commissioners shall comprise the Wyoming tax commission as well as the state board of equalization. The commission, with the approval of the governor, may appoint administrators as needed for the divisions of the department. The commission may employ professional, technical and other employees to work in any of the divisions. The commission may formulate the policies and programs to be carried out by the department through its respective divisions and adopt suitable rules and regulations to implement the administration of this act pursuant to the provisions of the Wyoming Administrative Procedure Act [§§ 16-3-101 through 16-3-115].

(b) The commissioners shall elect a chairman and a vice-chairman who shall serve for two (2) years. (Laws 1973, ch. 248, § 1; 1975, ch. 17, § 1; 1977, ch. 45, § 1.)

Library References
Taxation ⇐241(1).
C.J.S. Taxation § 281 et seq.

84.36.370. Repealed by Laws 1974, Ex.Sess., ch. 182, § 6, eff. May 5, 1974

The repealed section, relating to exemptions from percentage of residential property tax for qualified owners, was derived from:

Laws 1971, Ex.Sess., ch. 288, § 4
Laws 1972, Ex.Sess., ch. 126, § 1
Laws 1973, 1st Ex.Sess., ch. 98, § 1.
See, now, §§ 84.36.381 to 84.36.389.

84.36.379. Residences—Property tax exemption—Findings

The legislature finds that the property tax exemption authorized by Article VII, section 10 of the state Constitution should be made available on the basis of a retired person's ability to pay property taxes. The legislature further finds that the best measure of a retired person's ability to pay taxes is that person's disposable income as defined in RCW 84.36.383(6).

Enacted by Laws 1980, ch. 185, § 3.

Applicability—Laws 1980, ch. 185: "Except for the amendment to § 84.36.381(2) by this 1980 act, sections 3 through 5 of this 1980 act are effective for property taxes due in 1982 and thereafter." [Laws 1980, ch. 185, § 7.] The reference to "sections 3 through 5 of this 1980 act" refers to § 84.36.379 and to the 1980 amendments to §§ 84.36.381 and 84.36.383.

Library References
Taxation ⇐219.
C.J.S. Taxation § 240 et seq.

84.36.380. Repealed by Laws 1974, Ex.Sess., ch. 182, § 6

The repealed section, providing definitions, procedures, and penalties applicable to owners claiming residential property tax exemption, was derived from

Laws 1971, Ex.Sess., ch. 288, § 5, as amended by Laws 1972, Ex.Sess., ch. 126, § 3.
See, now, §§ 84.36.381 to 84.36.389.

84.36.381. Residences—Property tax exemptions—Qualifications

A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of January 1st of the year for which the exemption is claimed: *Provided*, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: *Provided further*, That confinement of the person to a hospital or nursing home shall not disqualify the claim of exemption if the residence is temporarily unoccupied or if the residence is occupied by a spouse and/or a person financially dependent on the claimant for support;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate;

(3) The person claiming the exemption must have been sixty-one years of age or older on January 1st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: *Provided*, That any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the preceding year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve.

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of eighteen thousand dollars or less shall be exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of fourteen thousand dollars or less but greater than twelve thousand dollars shall be exempt from all regular property taxes on the greater of twenty-four thousand dollars or thirty percent of the valuation of his or her residence, but not to exceed forty thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of twelve thousand dollars or less shall be exempt from all regular property taxes on the greater of twenty-eight thousand dollars or fifty percent of the valuation of his or her residence.

Enacted by Laws 1974, Ex.Sess., ch. 182, § 1, eff. May 5, 1974. Amended by Laws 1975, 1st Ex.Sess., ch. 291, § 14, eff. July 2, 1975; Laws 1977, Ex.Sess., ch. 268, § 1, eff. June 15, 1977; Laws 1979, Ex.Sess., ch. 214, § 1, eff. June 4, 1979; Laws 1980, ch. 185, § 4; Laws 1983, 1st Ex.Sess., ch. 11, § 2, eff. May 11, 1983; Laws 1983, 1st Ex.Sess., ch. 11, § 5, eff. Jan. 1, 1984; Laws 1987, ch. 301, § 1.

Applicability—Laws 1987, ch. 301: "This act shall be effective for taxes levied for collection in 1989 and thereafter." [Laws 1987, ch. 301,§ 2.]

Intent—Laws 1983, 1st Ex.Sess., ch. 11: "The legislature finds that inflation has significant detrimental effects on the senior citizen property tax relief program. Inflation increases incomes without increasing real buying power. Inflation also raises the values of homes, and thus the taxes on those homes. This act addresses the problem of inflation in two ways. First, the assessed value exemption is tied to home value so it will increase as values rise. Secondly, though the income of must senior citizens does not keep pace with inflation, it is the legislature's intent that inflationary increases in incomes will not result in program disqualification. Therefore, the income levels are adjusted to reflect the forecasted increase in inflation. The legislature also recommends that similar adjustments be examined by future legislatures." [Laws 1983, 1st Ex.Sess., ch. 11, § 1.]

Applicability—Laws 1983, 1st Ex. Sess., ch. 11: "This act applies to taxes first due in 1984 and thereafter." [Laws 1983, 1st Ex.Sess., ch. 11, § 7.]

Effective dates—Laws 1983, 1st Ex. Sess., ch. 11: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except sections 5 and 6 of this act shall take effect January 1, 1984." [Laws 1983, 1st Ex.Sess., ch. 11, § 8.] "Sections 5 and 6 of this act" refer to the amendments to §§ 84.36.881 and 84.36.385 by Laws 1983, 1st Ex. Sess., ch. 11, §§ 5 and 6, respectively. Expect for "sections 5 and 6 of this act," the effective date of "this act," Laws

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1983, 1st Ex.Sess., ch. 11, including the amendments to §§ 84.36.381 and 84.36.385 by Laws 1983, 1st Ex.Sess., ch. 11, §§ 2 and 3, is May 11, 1983.

Applicability—Laws 1980, ch. 185: See Note following § 84.36.379.

Applicability—Laws 1979, Ex.Sess., ch. 214: "The exemption created by sections 1 through 4 of this act shall be effective starting with property taxes levied in calendar year 1979 for collection in calendar year 1980. The former exemption created by the law amended shall continue to be effective with respect to property taxes levied in calendar year 1978 for collection in calendar year 1979. [Laws 1979, Ex.Sess., ch. 214, § 10.] "[S]ections 1 through 4 of this act" consist of the amendments by Laws 1979 Ex.Sess., ch. 214 to §§ 84.36.381, 84.36.383, 84.36.385, and 84.36.389.

Effective dates—Severability—Laws 1975, 1st Ex.Sess., ch. 291: See Historical Note following § 82.04.050.

Severability—Laws 1974, Ex.Sess., ch. 182: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [Laws 1974, Ex.Sess., ch. 182, § 8.]

Cross References

Parks and recreation commission, authority to grant senior citizen's pass to persons qualifying for property tax exemption under this section, see § 43.51.055.

Senior citizens, reduced utility rates for low income senior citizens, income not to exceed amount specified in provision of this section, see § 74.38.070.

Library References

Taxation ⇐219.

C.J.S. Taxation § 240 et seq.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Attorney General's Opinions

Both because of a lack of statutory authority and possible constitutional objections under Washington Constitution, Article VIII, section 7, a county transportation authority may not directly reduce or eliminate fares only for (a) senior citizens, a category being created only on the basis of age, or (b) students attending public schools except (in the latter case) through an interlocal cooperation act agreement with participating school districts; likewise, although such action would not be constitutionally objectionable in the case of low income citizens or the handicapped, a county transportation authority presently lacks the requisite statutory authority to reduce or to entirely eliminate fares for those individuals. Op.Atty.Gen.1980, No. 25.

Neither Const. Art. 7, § 10 nor such implementing legislation as is contained in § 84.36.381 et seq., qualify an individual for a property tax exemption with respect to a "residence occupied by a share owner under a cooperative housing association agreement [which] is not owned by the association, but is leased by the association from a third party pursuant to a long term lease". Op. Atty.Gen.1979, L.O. No. 24.

Obligation of grantees from senior citizens [who timely claim tax exemption and pay "first half" of taxes] to pay one-half of original amount levied. Op. Atty.Gen.1972, No. 23.

Inclusion of all of applicant's income from federal civil service or railroad retirement pension in computing income for purposes of exemption provided by this statute. Op.Atty.Gen.1972, No. 10.

Property taxpayers' disqualification for tax exemption [granted by § 4, Chapter 288, Laws 1971, 1st Ex.Sess.] on receiving income causing reduction of federal social security benefits; effect of amended federal legislation. Op.Atty. Gen.1971, No. 27.

Termination of exemption when person entitled thereto dies or sells property before taxes become payable. Op. Atty.Gen.1971, No. 31.

84.36.383. Residences—Definitions

As used in RCW 84.36.381 through 84.36.389, except where the context clearly indicates a different meaning:

(1) The term "residence" shall mean a single family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands not to exceed one acre. The term shall also include a share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides. The term shall also include a single family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality thereof including an Indian tribe or in the state of Washington, and notwithstanding the provisions of RCW 84.04.080, 84.04.090 or 84.40.250, such a residence shall be deemed real property.

(2) The term "real property" shall also include a mobile home which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe, connections with sewer, water, or other utilities: *Provided*, That a mobile home located on land leased by the owner of the mobile home shall be subject, for tax billing, payment, and collection purposes, only to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(3) The term "preceding calendar year" shall mean the calendar year preceding the year in which the claim for exemption is to be made.

(4) "Department" shall mean the state department of revenue.

(5) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the residence for the preceding calendar year, less amounts paid by the person claiming the exemption or his or her spouse during the previous year for the treatment or care of either person in a nursing home.

(6) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended [1] prior to January 1, 1980, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(a) Capital gains;

(b) Amounts deducted for loss;

(c) Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments;

(f) Veterans benefits other than attendant-care and medical-aid payments;

(g) Federal social security act [2] and railroad retirement benefits;

(h) Dividend receipts; and

(i) Interest received on state and municipal bonds.

(7) "Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence.

Enacted by Laws 1974, Ex.Sess., ch. 182, § 2, eff. May 5, 1974. Amended by Laws 1975, 1st Ex.Sess., ch. 291, § 15, eff. July 2, 1975; Laws 1979, Ex.Sess., ch. 214, § 2, eff. June 4, 1979; Laws 1980, ch. 185, § 5; Laws 1983, 1st Ex.Sess., ch. 11, § 4, eff. May 11, 1983; Laws 1985, ch. 395, § 3; Laws 1987, ch. 155, § 2.

[1] 26 U.S.C.A. § 1 et seq.

[2] 42 U.S.C.A. § 301 et seq.

Intent — Applicability — Effective dates — Laws 1983, 1st Ex.Sess., ch. 11: See Historical Notes following § 84.36.381.

Applicability—Laws 1980, ch. 185: See Historical Note following § 84.36.379.

Applicability—Laws 1979, Ex.Sess., ch. 214: See Historical Note following § 84.36.381.

Effective dates—Severability—Laws 1975, 1st Ex.Sess., ch. 291: See Historical Note following § 82.04.050.

Library References
Taxation ⇐219.
C.J.S. Taxation § 240 et seq.

WESTLAW Electronic Research
See WESTLAW Electronic Research Guide following the Preface.

Attorney General's Opinions
Where but only where a mobile home is permanently affixed to realty so as to constitute an improvement, and the bona fide purchaser, encumbrancer, or contract buyer has acquired an interest in the real estate upon which it is located prior to the time the mobile home is assessed, the proviso to the second sentence of RCWA 84.40.080 will apply so as to prevent an omitted property assessment. Op.Atty.Gen.1980, No. 4.

84.36.385. Residences—Claim for exemption—Forms—Change of status—Publication and notice of qualifications and manner of making claims

A claim for exemption under RCW 84.36.381 as now or hereafter amended, shall be made and filed between January 2 and July 1 for exemption from taxes payable the following year and thereafter and solely upon forms as prescribed and furnished by the department of revenue.

A person granted an exemption under RCW 84.36.381 shall inform the county assessor of any change in status affecting the person's entitlement to the exemption on forms prescribed and furnished by the department of revenue.

If the assessor finds that the applicant does not meet the qualifications as set forth in RCW 84.36.381, as now or hereafter amended, the claim or exemption shall be denied but such denial shall be subject to appeal under the provisions of RCW 84.48.010(5). If the applicant had received exemption in prior years based on erroneous information, the taxes shall be collected subject to penalties as provided in RCW 84.40.130 for a period of not to exceed three years.

The department and each local assessor is hereby directed to publicize the qualifications and manner of making claims under RCW 84.36.381 through 84.36.389, through communications media, including such paid advertisements or notices as it deems appropriate. Notice of the qualifications, method of making applications, the penalties for not reporting a change in status, and availability of further information shall be included on or with property tax statements and revaluation notices for all residential property including mobile homes, except rental properties.

Enacted by Laws 1974, ch. 182, § 3, eff. May 5, 1974. Amended by Laws 1977, Ex.Sess., ch. 268, § 2, eff. June 15, 1977; Laws 1979, Ex.Sess., ch. 214, § 3, eff. June 4, 1979; Laws 1983, 1st Ex.Sess., ch. 11, § 3, eff. May 11, 1983; Laws 1983, 1st Ex.Sess., ch. 11, § 6, eff. Jan. 1, 1984.

Intent — Applicability — Effective dates — Laws 1983, 1st Ex.Sess., ch. 11: See Historical Notes following § 84.36.381.

Applicability—Laws 1979, Ex.Sess., ch. 214: See Historical Note following § 84.36.381.

Library References
Taxation ⇐251.
C.J.S. Taxation §§ 304, 305.

84.36.387. Residences—Claimants—Penalty for falsification—Reduction by remainderman

(1) All claims for exemption shall be made and signed by the person entitled to the exemption, by his or her attorney in fact or in the event the residence of such person is under mortgage or purchase contract requiring accumulation of reserves out of which the holder of the mortgage or contract is required to pay real estate taxes, by such holder or by the owner, either before two witnesses or the county assessor or his deputy in the county where the real property is located: *Provided*, That if a claim for exemption is made by a person living in a cooperative housing association, corporation, or partnership, such claim shall be made and signed by the person entitled to the exemption and by the authorized agent of such cooperative.

(2) If the taxpayer is unable to submit his own claim, the claim shall be submitted by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(3) Any person signing a false claim with the intent to defraud or evade the payment of any tax shall be guilty of the offense of perjury.

(4) The tax liability of a cooperative housing association, corporation, or partnership shall be reduced by the amount of tax exemption to which a claimant residing therein is entitled and such cooperative shall reduce any amount owed by the claimant to the cooperative by such exact amount of tax exemption or, if no amount be owed, the cooperative shall make payment to the claimant of such exact amount of exemption.

(5) A remainderman or other person who would have otherwise paid the tax on real property that is the subject of an exemption granted under RCW 84.36.381 for an estate for life shall reduce the amount which would have been payable by the life tenant to the remainderman or other person to the extent of the exemption. If no amount is owed or separately stated as an obligation between these persons, the remainderman or other person shall make payment to the life tenant in the exact amount of the exemption.

Enacted by Laws 1974, Ex.Sess., ch. 182, § 4, eff. May 5, 1974. Amended by Laws 1975, 1st Ex.Sess., ch. 291, § 16, eff. July 2, 1975; Laws 1980, ch. 185, § 6.

Effective dates—Severability—Laws 1975, 1st Ex.Sess., ch. 291: See Historical Note following § 82.04.050.

Library References
Taxation ⇐839.
C.J.S. Taxation § 1026.

84.36.389. Residences—Rules and regulations—Audits—Confidentiality—Criminal penalty

(1) The director of the department of revenue shall adopt such rules and regulations and prescribe such forms as may be necessary and appropriate for implementation and administration of this chapter subject to chapter 34.04 RCW, the administrative procedure act.

(2) The department may conduct such audits of the administration of RCW 84.36.381 through 84.36.389 and the claims for exemption filed thereunder as it considers necessary. The powers of the department under chapter 84.08 RCW apply to these audits.

(3) Any information or facts concerning confidential income data obtained by the assessor or the department, or their agents or employees, under subsection (2) of this section shall be used only to administer RCW 84.36.381 through 84.36.389. Notwithstanding any provision of law to the contrary, absent written consent by the person about whom the information or facts have been obtained, the confidential income data shall not be disclosed by the assessor or the assessor's agents or employees to anyone other than the department or the department's agents or employees nor by the department or the department's agents or employees to anyone other than the assessor or the assessor's agents or employees except in a judicial

proceeding pertaining to the taxpayer's entitlement to the tax exemption under RCW 84.36.381 through 84.36.389. Any violation of this subsection is a misdemeanor.

Enacted by Laws 1974, Ex.Sess., ch. 182, § 5, eff. May 5, 1974. Amended by Laws 1979, Ex.Sess., ch. 214, § 4, eff. June 4, 1979.

Applicability—Laws 1979, Ex.Sess., ch. 214: See Historical Note following § 84.36.381.

Library References
Taxation ⇐219.
C.J.S. Taxation § 240 et seq.

84.36.400. Improvements to single family dwellings

Any physical improvement to single family dwellings upon real property shall be exempt from taxation for the three assessment years subsequent to the completion of the improvement to the extent that the improvement represents thirty percent or less of the value of the original structure. A taxpayer desiring to obtain the exemption granted by this section must file notice of his intention to construct the improvement prior to the improvement being made on forms prescribed by the department of revenue and furnished to the taxpayer by the county assessor: *Provided*, That this exemption cannot be claimed more than once in a five-year period.

The department of revenue shall promulgate such rules and regulations as are necessary and convenient to properly administer the provisions of this section.

Enacted by Laws 1972, Ex.Sess., ch. 125, § 3.

Severability—Laws 1972, Ex.Sess., ch. 125: See Historical Note following § 84.40.045.

Library References
Taxation ⇐220.
C.J.S. Taxation § 249.

84.36.410. Repealed by Laws 1980, ch. 155, § 7, eff. April 1, 1980

The repealed section, establishing procedure and rules under which solar energy systems may be exempted from property tax, was derived from Laws 1977, Ex.Sess., ch. 384, § 1.

84.36.450. Repealed by Laws 1975–76, 2nd Ex.Sess., ch. 61, § 20, eff. March 1, 1976

The repealed section, exempting leasehold estates from property tax, was derived from Laws 1973, 1st Ex.Sess., ch. 187, § 11.

See, now, § 84.36.451.

84.36.451. Right to occupy or use certain public property (including leasehold interests)

The following property shall be exempt from taxation: Any and all rights to occupy or use any real or personal property owned in fee or held in trust by:

(1) The United States, the state of Washington, or any political subdivision or municipal corporation of the state of Washington; or

(2) A public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites; and

(3) Including any leasehold interest arising from the property identified in subsections (1) and (2) of this section as defined in RCW 82.29A.020:

Provided, That the exemption under this section shall not apply to any such leasehold interests which are a part of operating properties of public utilities subject to assessment under chapter 84.12 RCW nor be construed to modify the provisions of RCW 84.40.230.

Enacted by Laws 1975–76, 2nd Ex.Sess., ch. 61, § 14, eff. March 1, 1976. Amended by Laws 1979, Ex.Sess., ch. 196, § 10, eff. July 1, 1979.

Effective date—Laws 1979, Ex.Sess., ch. 196: See Historical Note following § 82.04.240.

Effective date—Severability—Laws 1975–76, 2nd Ex.Sess., ch. 61: See §§ 82.29A.900, 82.29A.910.

Cross References

Cancellation of taxes levied for collection in 1976, see § 82.29A.150.

Leasehold excise tax, exemptions, see § 82.29A.130.

Taxation of improvements not defined as contract rent, see § 82.29A.160.

Library References
Taxation ⇐241.1(3).
C.J.S. Taxation § 282 et seq.

WESTLAW Electronic Research
See WESTLAW Electronic Research Guide following the Preface.

Attorney General's Opinions

Entitlement to leasehold interest tax exemption with respect to time "renegotiated"; requirements for exemption of leasehold interest granted by Indian to non-Indian, under subd.(8) of this section. Op.Atty.Gen.1974, No. 8.

"Renegotiation," with respect to taxable leasehold interests in property owned by state or its political subdivisions, as not including mutually agreed on changes in the lease during its term that are not part of any extension or renewal. Op.Atty.Gen.1973, No. 17.

Notes of Decisions

For purposes of applying RCW 84.04.080, which defines leaseholds as personalty and also includes an personalty any improvements to realty titled in the name of the United States, non-Indian owned leaseholds on tribal real property and removable improvements installed by the holder of a leasehold interest are personal property and taxable as such Chief Seattle Properties, Inc. v. Kitsap County (1975) 86 Wash.2d 7, 541 P.2d 699.

84.36.455, 84.36.460. Repealed by Laws 1975–76, 2nd Ex.Sess., ch. 61, § 20, eff. March 1, 1976

The repealed sections, relating to leasehold and educational exemptions effectiveness in event leasehold in lieu excise taxes held invalid and tax on improvements owned or by acquired by sublessee is taxable to such sublessee, were derived from Laws 1973, 1st Ex.Sess., ch. 187, §§ 14, 15.

84.36.470. Agricultural or horticultural produce or crop—Phase out exemption

Any agricultural or horticultural produce or crop, including any animal, bird, or insect, or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom grown or produced for sale by any person upon his own lands or upon lands in which he has a present right of possession who is exempted from payment of business and occupation tax pursuant to RCW 82.04.330 as now or hereafter amended shall be assessed for the purposes of ad valorem taxes according to the following schedule:

Commencing with assessment as of January 1, 1975, for taxes due in 1976 the assessment level shall be seventy-five percent of true and fair value.

Commencing with assessment as of January 1, 1976, for taxes due in 1977 the assessment level shall be seventy percent of true and fair value.

Commencing with assessment as of January 1, 1977, for taxes due in 1978 the assessment level shall be sixty percent of true and fair value.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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February 19, 1988

MEMORANDUM

TO: Representative Sam Cotten

ATTN: Ned Farquhar

FROM: Karen Oakley KO
Legislative Analyst

RE: **Conservation Easements**
Research Request 88.138

You asked for information on conservation easement statutes in other states. You also asked what federal and local tax benefits a landowner achieves by granting a conservation easement and how conservation easements affect federal and local government revenues.

In this memorandum, we present background information on easements in general and on conservation easements in particular, and discuss the conservation easement statutes of other states; the tax and revenue consequences of conservation easements; and the applicability of conservation easements to the Alaska situation.

The primary source of information presented in this memorandum is Powell on Real Property, Vol. 3, Chapter 34A entitled "Conservation Easements," by William R. Ginsberg, published by Matthew Bender and Co. This article provides a definitive and very readable review of the topic and is attached (Attachment A).

In summary, we found:

- The conservation easement is a well-established legal concept and is widely used throughout the United States as a means to protect scenic or other natural values of private land and to preserve historic structures.

- Because a conservation easement is held by a person, rather than by an adjacent parcel, the easement is considered to be held in gross. Under common law, an easement in gross cannot run with the land. To ensure that a conservation easement is enforceable in perpetuity, this common law deficiency must be corrected by statute.

- **Alaska is one of only four states that does not have a conservation easement statute.**

- State statutes typically specify: the purposes for which easements may be made; the types of organizations that are eligible to receive an easement; the duration of an easement; and the parties that are empowered to enforce the terms of an easement. In specifying the purposes, holders and enforcers of conservation easements, states vary considerably.

- Landowners that donate a conservation easement to a charitable organization are eligible for a federal income tax deduction. Landowners granting a conservation easement may also pay less local property tax due to decreased value of the parcel.

- Governments are the most common holders of conservation easements, and easements represent a cost-effective way for governments to protect the public value of private land. The revenue foregone by allowing conservation easements is considerably less than the cost of fee simple purchase of land.

- Native corporations are the major private landowners in Alaska. Conservation easements may provide a way to protect portions of these lands from development while still allowing subsistence use.

BACKGROUND

Easements in General

An easement is a legal agreement between a property owner and the holder of the easement that affects the present owner's and all future owners' use of the property. An easement is a limitation on the possessory rights of an owner in the form of an enforceable property right.

Easements may be negative or affirmative. A negative easement restricts the use to which land subject to the easement may be put. An affirmative easement grants the right to perform certain activities on the property, such as the right to cross the land or to erect powerlines.

An easement may also be either "appurtenant" or "in gross." An easement appurtenant is the most familiar form of easement and refers to the situation where two parcels of land, usually adjacent, are held by different owners, and one parcel is benefitted and the other parcel burdened by the grant of certain rights, for example, the right to cross. If the owner of Parcel A grants a right-of-way to the owner of Parcel B, the right of the owner of Parcel B to cross Parcel A becomes one of the property rights that comes with ownership of Parcel B. A right-of-way is an affirmative appurtenant easement that lasts in perpetuity and runs with the land.

In contrast to the easement appurtenant which transfers property rights from one parcel to another, the easement in gross transfers property rights from one parcel to a person, corporate or natural, that owns no land at all. Under common law, the easement in gross is not assignable and cannot run with the land.

The Conservation Easement

The conservation easement is a restriction on the use of real estate. The easement is usually held by a nonprofit or governmental entity and is a negative easement in gross. A conservation easement has specific purposes commonly including the protection of natural, scenic or open space values or preserving the historical or cultural aspects of real property.

Conservation easements were first employed in the late 1880s in Boston to protect parkways. During the 1930s, the U.S. Fish and Wildlife Service began to obtain easements as a means to preserve wetlands for migratory waterfowl. The National Park Service also began the practice of purchasing scenic easements along highways. In the 1960s, many states authorized the acquisition of scenic easements along highways to take advantage of federal funds made available for that purpose by the Federal Highway Beautification Act.

As the use of scenic highway easements developed, the applicability of the easement to other objectives, such as preservation of open space or historic preservation, was urged. Beginning with California in 1959 and New York in 1960, many states passed legislation authorizing government or nonprofit organizations to acquire conservation easements. The laws removed the common law impediment to holding an easement in gross in perpetuity. By 1975, 16 states had conservation easement statutes; by 1984, 44 states had conservation easement statutes (see following section for a discussion of state statutes).

Although the highway beautification act had an important influence on the development of the conservation easement, the 1964 determination by the Internal Revenue Service that the value of a conservation easement donated to a charitable organization was deductible for federal income tax purposes probably had an even greater effect.

In 1985, the Land Trust Exchange, a national association of land trusts, published a study of the use of conservation easements throughout the United States (Attachment B). They found that over 1.7 million acres were protected by conservation easements. Of these easements, 1.2 million acres were held by the federal government, 200,000 by state and local governments and 350,000 acres by nonprofit organizations.

CONSERVATION EASEMENT STATUTES IN OTHER STATES

The primary purpose of a state conservation easement law is to overcome the short term nature of an easement in gross under the common law. Because an easement in gross, under the common law, does not run with the land and therefore does not last in perpetuity, the conservation easement must be created in statute.

Almost all states have adopted some type of conservation easement statute during the past 30 years.[1] In 1981, the National Conference of Commissioners on Uniform State Laws approved a Uniform Conservation Easement Act (Attachment C). Many of the states that adopted a conservation easement statute during the 1980s fashioned their statutes after this uniform act.

In establishing the conservation easement, state statutes typically address four topics:

1) Purpose. Some states may allow conservation easements to be used to achieve a broad range of objectives, while other states restrict the use of conservation easements to a few specifically defined purposes.

2) Duration. State statutes generally provide that conservation easements shall be in perpetuity or of unlimited duration, unless the parties provide otherwise in the document creating the restrictions. Some states set a minimum term of 10 to 15 years.[2]

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[1]The only states that have not adopted a conservation easement statute are Alaska, Hawaii, Kansas and Wyoming.

[2]Under the IRS code, the tax benefits from donating a conservation easement accrue only if the easement runs in perpetuity.

(3) **Holders.** State statutes fall into two categories with respect to the parties that are permitted to hold a conservation easement: those which allow only a government agency to receive an easement and those which also allow private nonprofit organizations to receive easements. Within these categories, there are many variations. For example, Mississippi allows only the Mississippi Commission on Wildlife Conservation to hold conservation easements. South Carolina allows a variety of governmental agencies to hold easements, but allows only one nonprofit organization, the Nature Conservancy, to hold conservation easements. In contrast, Utah allows any party entitled to own real property interests to hold a conservation easement.

(4) **Enforcement.** The success of a conservation easement in achieving its objective depends in part on enforcement of the terms of the agreement, and enforcement depends on having standing (and resources) to sue. Few state statutes clearly specify the categories of persons that have standing to enforce an agreement. The Uniform act recommends that four classes, including third parties, be granted standing.

Copies of conservation easement statutes from Oregon (1983), which is patterned after the uniform act, Washington (1979), Connecticut (1971) and Minnesota (1985) are attached as examples (Attachment D).

TAX AND REVENUE CONSEQUENCES OF CONSERVATION EASEMENTS

For the property owner that grants a conservation easement, both federal income taxes and local property taxes may be reduced. Conservation easements therefore may act to reduce the tax revenues of the federal government and of the local governments in which the conservation easements lie. In this section, the tax consequences (for the individual) and the revenue consequences (for governments) are discussed.

Federal Income Tax Consequences

Under the Internal Revenue Service (IRS) Code, the donation of a conservation easement to a qualified charitable organization qualifies as a tax-deductible charitable contribution. The IRS statute and implementing regulations are attached in Attachment E, and a recent tax journal article on obtaining the deduction for contribution of a conservation easement is attached in Attachment F.

The federal tax law on conservation easements is, as you might expect, complex.[3] In brief, to qualify for a charitable donation deduction, a conservation easement must meet three tests: it must consist of a qualified real property interest, be given to a qualified organization and be used, in perpetuity, exclusively for conservation purposes. Qualified organizations must have both a commitment to protect the conservation purposes of the donation and the resources to enforce the restrictions.

Qualified conservation purposes are defined as:

- the preservation of land areas for outdoor recreation by, or the education of, the general public;
- the protection of relatively natural habitat of fish, wildlife or plants or similar ecosystem;
- the preservation of open space (including farmland and forest land) where such preservation is: 1) for the scenic enjoyment of the general public; or 2) pursuant to a clearly defined federal, state or local governmental conservation policy, and will yield a significant public benefit; or
- the preservation of an historically important land area or a certified historic structure.

Real Property Tax Consequences

Because a conservation easement severely limits the uses to which a property may be put, the market value of the property should be reduced. Since real property taxes are based on assessed valuation, conservation easements should reduce property value and, thereby, local tax liability. However, some local governments may fail to recognize a conservation easement as a factor in the assessment of property burdened by a conservation easement. To ensure that the effect of a conservation easement is considered in the determination of assessed value, some state statutes specifically address this topic (see the Oregon statute at 271.785).

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[3]A former IRS attorney, Stephen J. Small, who helped write the current conservation easement regulations, is now in private practice and has recently written a book entitled The Federal Tax Law of Conservation Easements. This book, as well as other memos on conservation easement tax topics, are available from the Land Trust Exchange.

Valuation of Conservation Easements

The primary issue that arises with both the deductibility of a conservation easement donation and local property tax assessment is the valuation of a conservation easement. Under the IRS code and under most local tax assessment codes, the value of an easement is its fair market value. As a practical matter, however, there is no market for conservation easements. They are not ordinarily bought and sold, thus there is no direct method to determine their market value.

The traditional method of valuing a conservation easement is the "before and after" approach where the value of the easement is equal to the difference between the fair market value of the total property before granting of the easement and the fair market value of the property after the easement. Since there have been very few sales of properties encumbered by conservation easements, the "after" valuation is difficult to determine.

Another method of valuing conservation easements for IRS purposes has been used: the comparable sales method. The comparable sales method suffers from the same drawback as the "before and after" method; sales data on which to base an appraisal are sparse.

Issues of conservation easement valuation are discussed in greater detail in Attachment A, pp. 55-63, and in Attachment F.

Effect on Federal and Local Government Revenues

Obviously, conservation easements cause a decrease in federal income tax revenues and in local property tax revenues, but as yet, no one has attempted to quantify these decreases.

The Land Trust Exchange (in their 1985 survey) found that some local governments were opposed to conservation easements because they feared erosion of their tax bases. However, only 21 percent of the respondents to the survey indicated that any of their easements had reduced property taxes. Mr. Ginsberg in (his article at pp. 53 - 54) noted that fears of erosion of the tax base have little basis in fact:

> . . . Any meaningful diminution in the tax base as a result of conservation easements is highly unlikely in most jurisdictions where the major portion of assessed value is based on improvements, not land. If a reduction in assessed value occurs as a result of conservation easements, there would be countervailing economic and environmental benefits. These would include a reduction in the demand for (and costs of) public services, and enhanced values of other property in the area.

For both the federal and local governments, conservation easements represent a cost-effective way to secure open space or to protect other conservation values. As the Land Trust Exchange found, the vast majority of conservation easements are held by federal, state and local governments. Had these governments been required to purchase these properties in fee simple to protect the desired values, the costs would be considerably greater than the foregone tax revenues.

APPLICATION TO ALASKA

Although Alaska does not have a conservation easement statute, Title 29 (Municipal Code) recognizes the possibility of such easements. Alaska Statute 29.45.050, which specifies the optional exemptions and exclusions that a local government may include in its property tax code, allows a local government to exempt from taxation a conservation easement that is granted to a governmental body in perpetuity [AS 29.45.050(e)]. Since Alaska statutes do not currently provide for conservation easements, this section of the Municipal Code presumably has not yet had any practical effect.

In Alaska, the majority of land is owned by federal, state and local governments, and some persons might question the need for a conservation easement statute. In this regard, it is important to remember that a conservation easement is an agreement entered into voluntarily by a property owner. For some persons, the federal and local tax benefits may be the primary reason that they wish to enter into such an agreement, although the Land Trust Exchange found that most landowners granting conservation easements were motivated by a desire to preserve unique characteristics of their land. A conservation easement statute merely provides private landowners with an option for protecting their land.

A conservation easement statute may be of particular interest to native landowners concerned with protecting lands used for subsistence. Native corporations are major private landowners in Alaska. In theory, there is no reason that a native corporation could not grant a conservation easement to a governmental or nonprofit organization for the purposes of protecting its land.[4] The conservation easement is a voluntary agreement made by a private landowner, and the agreement can include any variety of terms and conditions. Such an agreement would presumably preclude all future development (negative easement) but allow an affirmative easement allowing the landowners to enter the property to pursue subsistence activities. Conservation easement agreements commonly include such affirmative easements for the purposes of inspection and enforcement.

I hope you find this information useful. If we can provide any additional information, please let me know.

Attachments

Attachments are numerouse, may be seen in this office.

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[4]We have not attempted to research the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act, or the recent 1991 amendments to see whether these statutes contain any provisions that would preclude a native corporation from entering into a conservation easement agreement; nor have we attempted to ascertain whether any federal income tax benefits would accrue to a native corporation granting a conservation easement for subsistence. You may wish to have an attorney undertake these analyses.

ALASKA STATE LEGISLATURE
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February 4, 1985

MEMORANDUM

TO: Representative Peter Goll

FROM: David Teal
Director

RE: Approaches to Agricultural Land Preservation
Research Request 85-155

In preparation for hearings on HB 39, Bob Berry asked us to investigate approaches to agricultural land preservation. This memorandum briefly describes a variety of approaches used in other states to preserve agricultural land. The extent to which these different approaches have been effective is also discussed, as are some of the direct and indirect costs associated with their implementation.

Findings

In this memorandum, four techniques for preserving agricultural land are examined: agricultural zoning; tax incentives; purchase of development rights; and transfer of development rights. All of these approaches except zoning are voluntary programs which rely on the landowners' cooperation.

Of the four approaches, agricultural zoning and tax incentives have been used much more extensively than purchase or transfer of development rights to protect agricultural land. Studies of the effectiveness of the various techniques have revealed that tax incentives have been relatively ineffective in the long run in preserving agricultural land. Agricultural zoning has been effective in some situations, but has tended to be ineffective when minimum lot sizes have not been adequate and/or when residential development is allowed too liberally in farm zones. Both the purchase and transfer of development rights can potentially be very effective, but these techniques have been used only to a limited extent to date.

The studies that we have reviewed emphasize that any one approach to farmland preservation on its own is unlikely to insure the continuation of existing farming operations. In addition to protecting the farmland, studies point out the need to develop markets for agricultural products and to provide the infrastructure necessary for agricultural production.

Criticisms which are often made of agricultural land preservation programs in growing urban areas are that: 1) land which is needed for residential, commerical and industrial development is taken off the market; and 2) the price of other land increases, thus making residential and other nonagricultural uses more costly to develop. The extent to which these criticisms are valid depends upon a variety of factors; perhaps the most important variable is the amount of land available for development in a community. Some communities have found that the demand for residential/commerical/industrial development can be easily accommodated on land which is not suitable for farming. In other areas, there may be direct competition for scarce land between agricultural and nonagricutural uses.

Regulatory Approaches

Zoning is the primary regulatory approach to farmland preservation which has been used by local governments in many states. According to the 1982 National Agricultural Lands Study, "agricultural zoning is the most popular and common method used by local governments to prevent the use of agricultural land for nonagricultural purposes."[1]

Agricultural zoning generally sets aside certain areas of a municipality in farm use zones, with large minimum lot sizes. Some zoning ordinances allow nonfarm dwellings in the agricultural zones, while others prohibit them altogether. Nonexclusive agricultural zones are probably the most common; in these zones, agriculture is the preferred use, but nonfarm dwellings and many institutional, utility and community uses are also permitted if they meet certain conditions.

During the 1970s, at least 270 jurisdictions (104 countries and 166 municipalities) adopted agricultural zoning to protect their farmlands.[2] Public attitudes toward agricultural zoning vary widely; in some communities, there is strong support while in others, a great deal of opposition has developed.

An example of agricutural zoning is found in the state of Oregon. State statute requires local governments to preserve farmlands through the adoption of exclusive farm use zones.[3]

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[1]Regional Science Research Institute, National Agricultural Lands Study, "The Protection of Farmland: A Reference Guidebook for State and Local Governments," U.S. Government Printing Office, 1982.

[2]National Agricultural Land Study.

[3]Oregon Revised Statutes, Chapter 215.

Some nonfarm uses are permitted in farm zones, including schools, churches, utility facilities and, with special approval, certain commercial activities, golf courses, parks, single-family dwellings, etc. A specific minimum lot size is not required; however, state guidelines note that any minimum lot size should be of an appropriate size to allow for the continuation of the existing commercial agricultural enterprise.

One of the criticisms of agricultural zoning is that it drives up the price of other land which is not agriculturally zoned. By limiting the supply of land for residental, commercial and industrial uses, agricultural zoning may indirectly cause the price of the remaining land to escalate. The National Agricultural Lands Study cites five case studies of agricultural zoning in which "the price of land within the designated development area had jumped appreciably after the agricultural zones and development areas were designated."

Tax Incentives

While regulatory approaches, such as zoning, prevent a land owner from converting his land to nonagricultural uses, other approaches are designed to discourage farmland conversion through the use of special incentives. These nonregulatory approaches to preserving agricultural land have been used by states and municipalities with varying degrees of success. Probably the most widely used incentive is some form of tax relief to the farmland owner; this tax relief can apply to property taxes, estate taxes or income taxes.

Property tax incentives include preferential assessment and deferred taxation. One problem often faced by farmers who own land near developing urban areas is that the land is assessed and taxed at its value for residential or commerical use, rather than its farm value.

Under preferential assessment, farmland is assessed at its agricultural use value, thus reducing a farmer's taxes. According to the National Agricultural Lands Study, 17 states authorize preferential assessment of farmland. Another 28 states, including Alaska, have deferred taxation programs. Under deferred taxation, farmland also is taxed at its use value; in addition, if the land is later converted to nonfarm uses, the owner must pay all or some portion of the back taxes that were deferred under the program.

The Alaska program (AS 29.53.035), for example, allows the land owner to defer property taxes that would otherwise be due if the land were assessed at market value. If the land is converted to nonfarm uses, the owner is then liable "to pay an amount equal to the additional tax at the current mill levy together with 8 percent interest for the

preceding 7 years, as though the land had not been assessed for farm use purposes." An important component of the program is that the State reimburses municipalities for the real property tax revenues lost.

This voluntary program had 115 participants statewide in FY 82, 63 percent of whom were from the Mat-Su Borough. A total of 19,197 acres were subject to farmland use value assessment in FY 82. (See Attachment A for a summary of program statistics.)

It is important to note that tax incentives will be effective in reducing the conversion of farmland to other uses only when rising taxes are the farmer's primary motivation for selling his land. According to a 1979 University of Alaska report, studies of the success of use-value assessment in preserving agricultural lands have shown discouraging results. Although use-value assessment tends to keep land temporarily in agriculture, it does not prevent the conversion of agricultural land to other uses in the long run.

The National Lands Study makes the following findings about differential assessment programs:

> In short, differential assessment and circuit breaker tax credits are not, in themselves, effective techniques for reducing the rate of conversion of farmland to nonfarm uses. Most sales occur in the fringes of urban areas, where other considerations such as high offering prices, demographic factors, and the disruptions of suburban development overwhelm rising property taxes as causes for the sale of farmland. Even where tax reductions may enable a farmer to keep farming, they often only postpone the sale a few years until he retires or dies.[4]

Purchase or Transfer of Development Rights

Purchase of Development Rights. As of 1980, four states and five local governments had established purchase of development rights programs for the purpose of protecting farmland.[5] A development right, in the context of farmland protection, generally refers to the right of the land

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[4]National Agricultural Land Study, page 63.

[5]Maryland, Massachusetts, Connecticut and New Hampshire all have purchase of development rights programs: New Jersey also had a demonstration project, initiated in 1976, which was later discontinued. King County, Washington, is an example of local government involvement in the purchase of agricultural rights. That program was not operating until bonds were sold in the fall of 1982.

owner to develop the land for some nonagricultural use, such as a residential or commercial subdivision. When this right is purchased (by a state or local government), the land owner retains only the agricultural rights to the land and, thus, may use the land only for farm-related purposes. The acquisition of development rights is equivalent to the acquisition of an easement on the property.[6]

A voluntary program for the purchase of development rights will not be effective unless adequate public funds are available to purchase the rights and land owners are willing to sell their rights. In a 1979 study conducted by the University of Alaska's Agricultural Experiment Station, the researchers surveyed farmers in Alaska to determine their interest in a development rights purchase program. Farmers were mailed questionnaires in five regions of the state: Delta, Copper River Basin, Kenai-Kodiak, Fairbanks and Matanuska-Susitna. Most of the respondents in all regions except the Mat-Su area expressed little or no interest in selling development rights. In the Mat-Su area, one-half of the respondents indicated little or no interest, while one-half expressed moderate to high interest in such a program.[7] (See Attachment B for a summary of the report's findings.)

Transfer of Development Rights. The purchase of development rights, described above, can be expensive for a state or local government to implement, especially if there is a lot of land owner interest in the program. The transfer of development rights (TDR) is an alternative approach which relies primarily on the private sector for its funding and implementation. Transfer of development rights shifts the responsiblity for purchasing rights from the government to private developers.

The operation of a TDR system is described in the National Agricultural Lands Study as follows:

> In the classic TDR system, a preservation district is identified, as is a development district. Development rights are assigned to owners of land in the preservation district in a systematic manner.

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[6]A variation on the purchase of development rights is to purchase the property in fee simple and then to lease or sell it again with certain restrictions placed on its use. The Alaska program to sell agricultural rights to State-owned land is a related approach.

[7]William Workman, Edward Arobio, and Anthony Gasbarro, An Examination of a Development Rights Purchase Program for Alaska Agricultural Lands, Agricultural Experiment Station, University of Alaska, Fairbanks, January 1979. There were a total of 106 respondents statewide to the question regarding interest in development rights purchase.

> However, owners of land in the preservation district are not allowed to develop, but instead may sell their development rights to owners of land in the development district, who may use these newly acquired development rights to build at higher densities than noramlly allowed by the zoning.[8]

At least 12 local governments in the United States have adopted TDR systems to preserve farmland and open space. Most of the ordinances allow only for the transfer of rights to build dwelling units in residential zones. According to the Lands Study cited above, very few transfers have actually occurred under the existing TDR ordinances.

* * *

A copy of an earlier memo on this subject is attached. Please let us know if you have any questions or would like further information on any of the approaches discussed in this memorandum.

DT

Attachments

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[8]National Agricultural Lands Study, page 174.

ATTACHMENT A
FARM USE LAND ASSESSMENT

FY 82 PROGRAM SUMMARY BREAKDOWN MUNICIPALITY	NUMBER OF APPLICANTS	NUMBER OF ACRES	FULL AND TRUE LAND VALUE	TOTAL DEFERRED VALUE	TOTAL DEFERRED TAX
ANCHORAGE, MUNICIPALITY OF	5	124.31	$ 2,607,800	$ 1,802,088	$ 13,364.58
FAIRBANKS NORTH STAR BOROUGH	17	2,839.48	2,965,125	2,517,950	$ 14,144.82
HAINES BOROUGH	1	14.09	54,250	40,650	$ 234.72
KENAI PENINSULA BOROUGH	18	3,790.24	5,415,250	3,239,350	$ 13,072.78
KODIAK ISLAND BOROUGH	2	324.44	107,079	85,662	$ 471.13
MATANUSKA-SUSITNA BOROUGH	72	12,104.43	18,503,840	12,909,740	$100,961.28
STATEWIDE TOTAL	115	19,196.99	$29,653,344	$20,595,440	$142,249.31
AVERAGE PER APPLICANT	1	167.0	$ 257,855	$ 170,091	$ 1,236.95
AVERAGE PER ACRE			$ 1,544	$ 1,073	$ 7.41
SEVEN-YEAR SUMMARY OF PROGRAM PERFORMANCE					
FISCAL YEAR 1976	91	18,759	9,279,400	6,140,300	77,805
FISCAL YEAR 1977	84	15,970	13,783,182	11,552,062	99,170
FISCAL YEAR 1978	86	15,467	13,807,490	11,373,877	118,616
FISCAL YEAR 1979	87	13,562	17,283,615	15,328,994	140,092
FISCAL YEAR 1980	108	16,412	19,705,705	18,338,680	145,129
FISCAL YEAR 1981	116	17,666	22,997,524	20,348,079	178,714
FISCAL YEAR 1982	115	19,197	29,653,344	20,595,440	142,249

Source: Alaska Taxable, Department of Community and Regional Affairs

ATTACHMENT B

AN EXAMINATION OF A DEVELOPMENT RIGHTS PURCHASE PROGRAM FOR ALASKA AGRICULTURAL LANDS

William G. Workman
Edward L. Arobio
Anthony F. Gasbarro

Agricultural Experiment Station
University of Alaska
Fairbanks, Alaska

A report submitted to the Department of Natural Resources, State of Alaska, in accordance with terms of research contract CC10 1142.

January, 1979

SUMMARY AND CONCLUSIONS

The conversion of farmland to nonagricultural uses is progressing at a fast pace in Alaska as in other parts of the country. The purpose of this study was to examine the feasibility of the use of public purchase of development rights from agricultural landowners in the state as a means of slowing this trend. The framework for analysis called for an assessment of the potential benefits and costs of such a public policy designed to stall the market forces that are leading to these shifts in rural land use patterns.

Initially, the inquiry dealt with the question of why the patterns of resource use generated by the land market might be socially undesirable. The principal determination here was that some of the benefits that flow from the existence of agricultural land use are not captured by the farm or ranch operators. Rather they are external benefits which accrue to persons outside the agricultural sector and as such are not considered by the landowner in his decisions regarding land use. Since some of these benefits, such as open space and other environmental amenities, are also collective goods, a voluntary exchange market system provides no adequate mechanism by which those desiring these goods may register their preferences with the landowners. Thus, there may be a justification for social action to correct this market failure.

While conversion of agricultural land to residential and industrial uses is widespread in Alaska, the greatest shifts in land use patterns are taking place within commuting distance of the more densely populated areas around Fairbanks and Anchorage. This pattern is particularly

noticeable in the Matanuska Valley near the communities of Palmer and Wasilla. Understandably then, the greatest support for a public program to preserve these agricultural lands exists in this region. This support is reflected in a resolution, under consideration by the Matanuska-Susitna Borough Assembly, to compensate current farmers with land grants to forego the development of their lands.

Our examination of present and potential agricultural development in the state revealed that the economic contribution of the agricultural industry to the Alaska economy is currently quite small. In the local area of the Matanuska Valley, however, agriculture continues to represent a more significant portion of the economic base. Further, it was determined that a significant amount of potentially productive agricultural land exists in this area. Much of this land is held by the state and borough governments. The public sector, then, is in a position to determine future use of these lands through its land disposal programs. Recent sales in which only the agricultural rights were conveyed to the private sector illustrate the influence that government may have on land use patterns. These findings also suggest that the future of agriculture in the Matanuska Valley (as well as other parts of the state), and, hence, the availability of the other amenity values associated with this industry, may not depend on the lands currently in production. At issue, of course, is whether the least cost method of achieving the social benefits produced by an agricultural industry is to maintain the land currently in production or to use state and local government land disposal policy to achieve this end.

A review of development rights purchase programs in other parts of the country was instructive, although experiences with this public policy tool are too few and relatively untested for one to adequately evaluate their success. The one fact that stands out, however, is that the purchase of development rights on agricultural lands is a very expensive undertaking. Unlike the Alaska situation, the acquisition programs initiated elsewhere are aimed at preserving agricultural economies that are currently quite viable. Another important characteristic of these programs is that they are being used in areas where there are few opportunities for expansion of the existing agricultural activity.

A condition necessary for the success of a development rights purchase program is that it be acceptable to agricultural landholders. Our survey of farmers and ranchers in the state showed only a small amount of interest among these individuals on a state-wide level. Most of the interest expressed was concentrated among those landholders in the Matanuska and Susitna Valleys. The survey results also provided information regarding the potential purchase price of development rights. This information again showed a development rights purchase program to be a costly proposition.

Information regarding the size of agricultural firms in Alaska shows that in many cases the scale of operation is inadequate to take advantage of size economies. One thing that a development rights buy-back program might accomplish would be to allow the expansion of individual operations through the availability of lower priced agricultural land. Related to this, the buy-back method might be useful for acquiring

the development rights to existing non-agricultural "inholdings" within areas of agricultural activity in the state. The acquisition of development rights to these isolated inholdings could reduce the risk of having a land use develop which was incompatible with agriculture. At the same time, the use of the program in this context could facilitate the application of large-scale agricultural operations in farming areas.

Public acquisition of development rights is only one of a number of tools available for use in attempting to preserve agricultural lands. The main advantages of such a program have to do with the equitable treatment of farmland owners and the opportunity provided for long term maintenance of agricultural activities. These advantages must be balanced, of course, against the high relative cost of this approach.

As stated before, the primary benefit attributable to the preservation of private agricultural land in the state appears to be the open space and related environmental amenity values associated with this land. This is particularly the case when applied to maintaining certain scenic areas around communities or along highways. These benefits, by themselves, may justify some extra-market control of the conversion of agricultural lands to other uses in some critical areas. In Alaska these concerns are naturally most important in the urbanized areas, particularly in locations within commuting distance of Anchorage. The critical questions here, of course, are how much are Alaskans willing to compensate landowners, through the purchase of development rights, to forego the option of converting their land, and how are these costs to be distributed among the state's residents.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch V, State Capitol
Juneau, Alaska 99811
(907) 465-3991

February 21, 1983

MEMORANDUM

TO: Representative Barbara Lacher

FROM: Susan Brody, Director SEB

RE: Preservation of Agricultural Lands (HB 148)
Research Request 83-58

HB 148 would allow the State to purchase preservation easements on privately-owned farmland for the purpose of protecting this land from conversion to urban uses. In selling the easement to the State, the land owner would relinquish the right to develop the land for any purpose other than farm use. Bob Harris of your staff asked us to summarize the bill and to estimate the amount and cost of land eligible for State purchase of easements. He also asked us to provide any available data concerning the amount of farmland converted to other uses.

Summary of HB 148

Section 1 of the bill finds that farmland located close to urban centers in Alaska is threatened because its market value for future development exceeds its market value for farm use. The bill further finds that the acquisition by the State of preservation easements on agricultural land will help to protect this land from conversion to urban uses.

Section 2 of the bill adds a new chapter to AS 03 entitled "Preservation of Agricultural Land." The way in which the preservation easement program would operate is described briefly below.

AS 03.07.010 would authorize the State to purchase agricultural preservation easements on privately-owned farm land. It also would allow the State to exchange State land for privately-owned agricultural land or for preservation easements on that land. Any sale, exchange or donation of an easement would be voluntary on the part of the land owner. Furthermore, the owner would not be required to farm the land as long as (s)he does not use or subdivide the land for residential, commercial or industrial purposes.

Under Section .020 of the new Chapter, land would be eligible for protection if it is privately owned and the soil under at least 40 percent of the surface of the parcel is classified as classes II-IV by the U.S. Soil Conservation Service. In addition, the parcel would have to contain at least 40 acres in cultivation or farm use or, if it is adjacent to an established farm(s), would have to have no less than 20

acres in farm use or cultivation. In this latter case, the adjacent farm(s) would have to be at least 40 acres in size and have been in operation for 10 years or more.

The bill establishes a procedure for setting priorities when funds are insufficient to purchase easements on all eligible land. Section .030 would allow the Director of the State Division of Agriculture to identify farmland preservation "priority districts" and to allocate funds for purchase of easements according the following priorities:

1. farmland threatened by early conversion to subdivisions, commercial or industrial uses;

2. farmland of recognized value for tourism;

3. farmland with a history of high productivity;

4. farmland close to market; and

5. farmland within established agricultural areas.

The bill also establishes criteria to be used in acquiring easements within priority districts. Section .040 would require the State to favor those valid offers where the land is threatened, the land was used for farming in the preceding 12 months, the land will form a contiguous farming area with other acquired land, acquisition of the easement will achieve both urban separation and agricultural production, and where the offer is below appraisal.

Section .050 would require the Division Director to consider any adopted municipal plans, ordinances or recommendations relating to farmland preservation prior to allocating easement purchase funds to priority districts within municipalities.

Section .060 would specify the information which must be included by the land owner as part of an offer to sell or exchange a preservation easement. The information to be required includes a legal description of the land and a price, and may include an appraisal in support of the asking price. Within 30 days, the State would have to notify the owner of the sufficiency of the offer. If a corrected, sufficient offer is made within 30 days of the notification, the land is determined to qualify.

The Division Director also would have to notify the appropriate municipality within 30 days if any part of the qualifying land is within a municipality. In turn, the municipal government would have an additional 30 days to request that the State reconsider the determination. If there is a reconsideration request, the State would be required to hold a public hearing in the municipality.

Section .070 would establish time limits within which the State could accept offers or make counter offers.

Under the proposed program, the State could purchase an agricultural preservation easement for either the asking price or the difference between the fair market value of the land and the agricultural value of the land, whichever was less (Section .080). The value determination would be based on one or more qualified appraisals.

Section .090 of the new Chapter would define the uses permitted on land subject to an agricultural preservation easement. These permitted uses would include:

1. agricultural use of the land by the owner;

2. removal of minerals or materials from the subsurface if the land were immediately returned to a condition as favorable to agriculture as existed prior to the extraction;

3. operation of machinery used in agricultural production;

4. sale of agricultural products produced on the land;

5. construction of buildings for farming operations; however, land used for farm residences would not be allowed to exceed one acre per 40 acres of land.

Residential subdivision would not be permitted on land subject to a preservation easement. Furthermore, the acquisition of a preservation easement by the State would not grant the public a right of access or use, nor would it affect any existing easements, rights of way, or rights of access.

Farmland Converted to Other Uses

We were able to obtain data on farmland conversion for the Matanuska-Susitna Borough only. Our attempts to obtain similar data from other areas of the state, such as the Fairbanks North Star Borough, met with no success.

The table on page 4 shows the amount of farm land subject to subdivision activity in the Matanuska-Susitna Borough from 1976 to 1982. Only approved subdivisions and waivers are included. According to Borough Manager Gary Thurlow, all land was located within farms prior to subdivision, but it was not necessarily cleared land or active crop land.

Table 1
Subdivision Activity on Agricultural Lands, Mat-Su Borough
1976 - 1982

Year	Regular Subdivisions	Waivers*
1976	846 acres**	628 acres
1977	1,759 acres	357 acres
1978	483 acres	1,054 acres
1979	1,731 acres	1,717 acres
1980	978 acres	1,254 acres
1981	383 acres	417 acres
1982	679 acres	1,254 acres
Total	6,859 acres	6,681 acres

*Waivers are subdivisions where the parcels created are 5 acres or larger in size. Some of this land could continue to be farmed.
**All figures are rounded to the nearest acre.

Source: Gary Thurlow, Borough Manager, Mat-Su Borough

Amount and Cost of Land Eligible for Preservation Easements

It is difficult to estimate with any accuracy the amount of land that would be eligible for the proposed preservation easement program and the possible cost to the State of such a program. However, we have identified two sources of information upon which a very rough estimate might be based. These sources are:

- a report completed in 1979 by the University of Alaska for the Department of Natural Resources (DNR) concerning a possible development rights purchase program for agricultural land in the state; and
- data compiled by the Department of Community and Regional Affairs on participation in the farm use land assessment program established under AS 29.53.035.

University of Alaska Study. A study conducted in 1978 by the U. of A.'s Agricultural Experiment Station for DNR[1] examined the feasibility of a development rights purchase program to protect Alaska's agricultural land. As described, this program has some similarities to the preservation easements programs as proposed in HB 148. I have attached a copy of relevant sections of the report for your information (see Attachment A). A brief summary of the authors' findings follows.

The report notes that the Soil Conservation Service identified approximately 15.2 million acres of potential agricultural land throughout the state. However, much of this land is away from population centers without surface transportation access, and is in either State or federal ownership. The report also contains data on actual utilization of land for crop production (commercial vegetables, feed crops and harvested grassland) in various regions of the state.

For the period 1971-76, there was an average of about 19,270 acres being utilized for crops in the state as a whole; 29 percent of this acreage was in the Tanana Valley, 59 percent in the Matanuska-Susitna Valley, and 11 percent on the Kenai Peninsula. In 1981, according to the U.S. Department of Agriculture, the amount of land in crops had increased to about 38,000 acres. Of this, 65 percent was in the Tanana Valley, 26 percent in the Matanuska-Susitna Valley, and 5 percent on the Kenai Peninsula (see Table 2).

Table 2
Alaska Cropland Utilization

	1971-76 (avg.)	1981
Tanana Valley	5,670 acres	24,700 acres
Mat-Su Valley	11,290 acres	10,000 acres
Kenai Peninsula	2,170 acres	2,000 acres
Other	140 acres	1,300 acres
Total	19,270 acres	38,000 acres

Source: Alaska Crop and Livestock Reporting Service

[1] William Workman, Edward Arobio, Anthony Gasbarro, An Examination of a Development Rights Purchase Program for Alaska Agricultural Lands, (Agricultural Experiment Station, University of Alaska, January, 1979)

To determine how a development rights purchase program might be applied in Alaska, the researchers for the U. of A. study mailed questionnaires to 263 agricultural landowners in various regions of the state. A total of 112 of the questionnaires were returned and used as the basis for their report. Respondents were asked to indicate their interest in selling development rights to their cleared and uncleared agricultural land. On a statewide basis, 35 percent of the respondents expressed moderate to high interest in the sale of development rights while 65 percent expressed little or no interest. Over half of the landowners moderately or highly interested in selling development rights were from the Matanuska-Susitna region.

The questionnaire also asked the respondents to place a value on the development rights for their agricultural land. First, average market values for cleared and uncleared land, as perceived by the respondents, were calculated. Average values for cleared and uncleared land ranged from $1,500 per acre in Delta to $3,900 per acre in the Fairbanks region. The weighted average cleared land value for the five regions was $3,300 per acre. Table 3 summarizes the land value information obtained from the survey. It should be remembered that these values were based on the subjective judgment of the landowner and that the data is over four years old.

Table 3

Average Perceived Land Values By Region
(Dollars per Acre)

Region	Cleared Land Value	Number of Respondents	Uncleared Land Value	Number of Respondents
Fairbanks	$3,900	13	$2,900	11
Delta	1,500	9	1,300	8
Copper River	1,900	6	900	6
Matanuska-Susitna	3,800	28	3,600	24
Kenai-Kodiak	3,700	13	3,100	13
TOTALS		69		62
Weighted Average	$3,300		$2,800	

Source: Agricultural Experiment Station, U. of A., 1979

Land owners were also asked to place a value on the development rights to their land. However, the authors of the report indicate that many of the respondents apparently did not understand how to value a development right. This, in conjunction with the small number of respondents answering this question, may mean that the values obtained are unreliable. With this cautionary note in mind, the authors' reported average development rights values in the Fairbanks, Mat-Su and Kenai-Kodiak areas ranging between $3,100 and $3,600 per acre.

Farmland Use Value Assessment Program. Data from the State's farmland use value assessment program also might be used to determine the amount of interest in, and cost of, an agricultural preservation easements program. AS 29.53.035 allows farm use land to be assessed on the basis of its value for farm use and not as if it were subdivided or used for some nonfarm purpose. The program allows the land owner to defer taxes that would otherwise be due if the land were valued at market value. If the land is converted to nonfarm uses, the owner is then liable for all the back taxes (including interest) which were deferred through the program (see Attachment B).

As with the proposed program in HB 148, participation in the use value assessment program is voluntary on the part of the land owner. Data from the Department of Community and Regional Affairs on the use value program for fiscal years 1976 through 1982 is presented in Table 4. It shows that there were 115 participants in the program statewide in FY 82, 63 percent of whom were from the Mat-Su Borough. A total of 19,197 acres were subject to farmland use value assessment in FY 82.

The column on the table entitled "total deferred value" represents the development rights value of the land; that is, the difference between the full and true value of the land and the farm use value of the land. Dividing the total statewide deferred value by the number of acres in the program yields an average development rights value of $1,073 per acre, while the statewide average full and true value is $1,545/acre. The deferred (or development rights) value equals $1,067 per acre in the Mat-Su Borough and $887 per ace in the Fairbanks North Star Borough.

These values are considerably lower than those reported in the U. of A. study discussed earlier. According to Assistant State Assessor Mike Worley, the values may not reflect current market conditions as land in some boroughs has not been revalued for several years. Steve Van Sant, the Mat-Su Borough assessor, reports that they are currently in the process of reviewing farmland values as part of their revaluation process. He reported the most current range of values to Mike Worley for typical farms in the borough.

According to Mr. Van Sant, the full market value of a typical 80 acre farm in an outlying area of the borough would be about $3,000 an acre, while a larger 300 acre farm would be valued closer to $1,000/acre. However, it is important to remember that there are many variables involved in determining the market value of any particular piece of property--water availability, topography, distance to urban areas, etc. Mr. Van Sant also reported to Mike Worley that the farm use value of a typical farm currently tends to be from 20 to 50 percent of its full market value.

Possible Costs of a Preservation Easements Program. Given the quality of available data, it is not possible to estimate accurately the cost to the State of a preservation easements program. However, we have computed two very rough estimates for you which may assist you in evaluating the cost of the proposed program.

If all those farmland owners currently participating in the State's use value assessment program were to participate in the preservation easement program, the cost to the State would be roughly $21 million. In FY 82, the use value assessment program included 19,197 acres of farmland. Multiplying this acreage by the total deferred value (see Table 4) of this land yields a cost of approximately $20.6 million.

Farmland in the Mat-Su Borough is being converted to subdivisions at a rate of roughly 1,000 acres per year (see Table 1). It would cost the State roughly $1.1 million at a minimum to purchase preservation easements on 1,000 acres of Mat-Su Valley farmland. This is based on an average deferred (or development rights) value in the Mat-Su Borough of $1,067 per acre.

Neither of these methods provides an accurate estimate of possible program participation and costs. Unfortunately, no data is currently available on the amount of existing and potential farmland in private ownership. In addition, a more thorough research effort would be required to develop good data on the average market and farm use value of farmland in various areas of the state.

We hope the information provided here is useful to your committee's deliberations on HB 148. Please let us know if we can be of further assistance.

TABLE 4
FARM USE LAND ASSESSMENT

FY 82 PROGRAM SUMMARY BREAKDOWN MUNICIPALITY	NUMBER OF APPLICANTS	NUMBER OF ACRES	FULL AND TRUE LAND VALUE	TOTAL DEFERRED VALUE	TOTAL DEFERRED TAX
ANCHORAGE, MUNICIPALITY OF	5	124.31	$ 2,607,800	$ 1,802,088	$ 13,364.58
FAIRBANKS NORTH STAR BOROUGH	17	2,839.48	2,965,125	2,517,950	$ 14,144.82
HAINES BOROUGH	1	14.09	54,250	40,650	$ 234.72
KENAI PENINSULA BOROUGH	18	3,790.24	5,415,250	3,239,350	$ 13,072.78
KODIAK ISLAND BOROUGH	2	324.44	107,079	85,662	$ 471.13
MATANUSKA-SUSITNA BOROUGH	72	12,104.43	18,503,840	12,909,740	$100,961.28
STATEWIDE TOTAL	115	19,196.99	$29,653,344	$20,595,440	$142,249.31
AVERAGE PER APPLICANT	1	167.0	$ 257,855	$ 70,091	$ 1,236.95
AVERAGE PER ACRE			$ 1,544	$ 1,073	$ 7.41
SEVEN-YEAR SUMMARY OF PROGRAM PERFORMANCE					
FISCAL YEAR 1976	91	18,759	9,279,400	6,140,300	77,805
FISCAL YEAR 1977	84	15,970	13,783,182	11,552,062	99,170
FISCAL YEAR 1978	86	15,467	13,807,490	11,373,877	118,616
FISCAL YEAR 1979	87	13,562	17,283,615	15,328,994	140,092
FISCAL YEAR 1980	108	16,412	19,705,705	18,338,680	145,129
FISCAL YEAR 1981	116	17,666	22,997,524	20,348,079	178,714
FISCAL YEAR 1982	115	19,197	29,653,344	20,595,440	142,249

Source: Alaska Taxable, Department of Community and Regional Affairs

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
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January 13, 1987

MEMORANDUM

TO: Representative Niilo Koponen

FROM: Mary Jennings MJ
Legislative Analyst

RE: **Means of Assessing Property Value**
Research Request 88.067

As you requested, this memorandum discusses commonly accepted methods of real property valuation, property tax exemptions in Alaska and the applicability of the site valuation method of property taxation to Alaska.

Property Valuation Methods

The comparative sales approach to value is frequently called the market data or sales approach. The approach rests on the principle of substitution, which assumes that no commodity has a value greater than that for which a similar commodity--offering similar uses, similar utility, and similar function--can be purchased with the reasonable time limits that the buyers' market demands. Both subject and comparable properties must have the potential of a similar, if not identical, highest and best use in order to obtain valid estimate of value. In other words, all the properties compared must possess the capacity of satisfying the needs and desires of the same buyer. The basic steps in the comparative sales approach are: 1) collecting and analyzing the data; 2) selecting appropriate units of comparison; 3) making reasonable adjustments based on the market; and 4) applying the data to the subject of appraisal.

The fundamental strength of the comparative sales approach is that it reflects what buyers and sellers are actually doing and paying. This approach places less reliance on subjective judgements and the opinions of the appraiser because the data are taken directly from the market and related directly to the subject. The comparison of actual sales is generally recognized as a good appraisal practice by courts and other review authorities.

The cost approach to value, also known as the summation approach, provides a value indication that is the summation of the estimated land value and the depreciated cost of the building and other improvements. The primary use of the cost approach is to obtain a value estimate that can be compared with value estimates from other methods of appraisal. Additionally, the cost approach is utilized for properties for which comparable sales data are not available, such as schools, hospitals and churches. The steps in the cost approach are as follows: 1) estimate the site value, as if vacant; 2) estimate replacement costs or reproduction costs of improvements; 3) estimate the amount of accrued depreciation; 4) subtract the estimate of accrued depreciation from the estimated cost new; and 5) add estimated site value to estimate of depreciated replacement or reproduction cost. The cost approach is considered valuable by professionals because it is applicable to most classes of property and serves as a good foundation for uniformity and equality in assessments.

The income approach, frequently referred to as capitalization of net income estimates market value by converting the future benefits of property ownership into an expression of present worth. As for cost and comparative sales approaches, the principle of substitution applies; a property has a market value equal to the amount upon which it is capable of producing a return consistent with that anticipated from investments with similar risk. The basic steps in the income approach are as follows: 1) estimate potential gross income; 2) deduct for vacancy and collection loss; 3) add miscellaneous income; 4) determine operating expenses; 5) deduct operating expenses to determine net income before discount, recapture, and taxes; 6) select the proper capitalization rate; 7) determine the appropriate capitalization procedure to be used; and 8) capitalize the flow of net income into an estimated property value. The income approach is valuable for the following reasons:

when no reliable sales data are available and the cost approach is inconclusive or inconveniencing, the income approach is the best value indicator;

investors, the typical owners of income-producing properties, place chief emphasis on the income approach in making decisions to buy or sell; and

the income approach is a valid check on the value indications in the cost and comparative sales approaches to value.

Property Valuation Methods in Alaska. Municipalities in Alaska have discretion to appraise property by whatever recognized method of valuation they choose, so long as there is not fraud or clear adoption of a fundamentally wrong principle of valuation.[1] According to State Assessor Mike Worley, municipalities in Alaska utilize combinations of all three methods of valuation under a mass appraisal process (i.e., the process of valuing a universe of properties as of a given date, utilizing standard methodology, employing a common reference for data, and allowing for statistical testing). Mr. Worley added that this is the universally accepted procedure for determining property value.

We contacted assessors in the Municipality of Anchorage, the Fairbanks North Star Borough, the Haines Borough and the City and Borough of Juneau to obtain an overview of the application of property valuation methods in their particular municipalities. Assessors from the City Borough of Juneau, the Fairbanks North Star Borough, and the Haines Borough stated that, for residential properties, the cost approach tempered with market sales data is the primary means of determining value. The Municipality of Anchorage utilizes the the direct sales approach supplemented with cost data for valuing residential properties.

All four municipalities use the cost approach, tempered with market sales data, to estimate the value of commercial properties. Bill Olsen, of the Municipality of Anchorage, stated that national manuals listing cost information are adjusted for a particular market in order to utilize the cost approach. In cases of assessment appeal by commercial property owners, all the municipalities utilize income capitalization data to verify assessments.

Property Tax Exemptions

Alaska Statutes 29.45.030 discusses the types of property that are exempt from general taxation. Included in these exemptions are the following: municipal-, State- or federal-owned property; household furniture; property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes; property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces; money on deposit; and the first $150,000 of the assessed value of the real property of senior citizens and disabled veterans. Additionally, two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under State law.

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[1] Hobit v. Greater Anchorage Area Borough, Supreme Court Opinion No. 636, (File No. 1214), 473 p. 2d 630 (1970).

Alaska Statute 29.45.050 discusses optional exemptions. The section states that a municipality may exclude or partially exempt certain types of residential property from taxation by ordinance. The following types of residential property may be exempt from taxation: boats and vessels; property of nonprofit organizations used exclusively for community purposes; historic sites, buildings and monuments; land of a nonprofit organization used for agricultural purposes--if rights to subdivide the land are conveyed to the State; personal property; business inventories; and any or all types of motor vehicles. Attachment A, from Alaska Taxable, 1986 identifies the various types of property that are exempt from taxation in municipalities in the state.

In addition to the above mentioned optional exemptions, AS 29.45.050 states that a municipality may, by ordinance, classify and exempt or partially exempt the following types of property:

> privately owned land, wetlands and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body;
>
> all or part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to aesthetic improvements in natural features or aesthetic improvement of an existing structure (this exemption may continue for up to four years from the date the improvement is completed);
>
> all or part of the increase in assessed value of improvements to a single-family dwelling if the principal purpose of the improvements is to increase the amount of space for occupancy (this exemption may continue for up to two years from the date the improvement is completed);
>
> land for fire protection service and fire protection facilities;
>
> the assessed value that exceeds $150,000 of real property owned by senior citizens and disabled veterans;
>
> real or personal property used in processing timber from up to 75 percent of the rate of taxes levied on other property; and
>
> pollution control facilities (this exemption may not exceed five years in duration).

The State Assessor does not compile data concerning municipalities that have passed ordinances allowing the above exemptions. According to Chris Follis, assistant to the State Assessor, these exemptions are used by relatively few municipalities. Mr. Follis added that he was not aware of any municipalities that have passed ordinances in order to exempt scenic lands, land for fire protection services or pollution control facilities from taxation.

Of the municipalities we contacted, the assessors of both the Fairbanks North Star Borough and the City and Borough of Juneau stated that the municipalities have passed ordinance which allow exemptions for residential improvements. The Fairbanks North Star Borough and the Haines Borough have passed ordinances that allow the assessed value of aesthetic improvements to be eligible for exemption. According to the Haines Borough Assessor, Haines has passed ordinances that allow for the partial exemption of timber production facilities and exemption of the property with assessed value in excess of $150,000 of senior citizens and disabled veterans.

Site Value Taxation

Site value taxation--also known as graded taxation, land taxation, two tier taxation and incentive taxation--allows a deferentially heavy taxation of land, or complete exemption of improvements from general taxation. This type of tax is practiced in Pennsylvania. In 1913, Pennsylvania authorized the cities of Pittsburgh and Scranton to shift, over a period of twelve years, to a "graded tax" under which land is taxed at twice the rate of improvements; since 1925 this has been the practice of both cities.[2] However, the "graded tax" applied only to city levies, not to county and school levies, which are large for both of these cities. Consequently, improvements are taxed at approximated 70 percent of the rate on land, not 50 percent.[3] Legislation passed in 1951 and 1959 extended authorization for differential taxation of land to 48 other Pennsylvania cities. According to the Pennsylvania Local Government Commission, seven cities in the state currently utilize site value taxation.

Mr. Steven B. Cord of the Center for the Study of Economics, has analyzed site value taxation for many years. Mr. Cord has compiled data from cities in Pennsylvania that have have adopted site value taxation. Mr. Cord

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[2]Netzer, Dick, "Economics of the Property Tax, The Brookings Institute. Washington, D.C., 1966.

[3]City of Scranton and the City of Pittsburgh assessors' offices, telephone conversation, January 1988.

stated that his research has shown that the taxation method encourages development. Mr. Cord explained that when localities are allowed to shift taxes off buildings onto land, buildings are cheaper to operate and construct, and it becomes more expensive to keep valuable land sites out of use or in underuse. I have attached legisalation from Pennsylvania and a report by Mr. Cord concerning site value taxation.

Site Value Taxation In Alaska. According to the State Assessor Mike Worley, implemenation of site value taxation in Alaska would require statutory changes. He explained that legislation would be needed to allow municipalities to exempt improvements or to tax land at a higher rate than improvements. Mr. Worley said his office is aware of site value taxation and has spoken with officials from Australia, where the method of taxation is also practiced. According to Mr. Worley, Australia has not witnessed significant economic benefit from the tax. Mr. Worley stated that the limited adoption of site value taxation, especially in the United States, prevents him from determining its economic effects.

I hope you find this information useful. Due to the complex nature of the subjects presented in this memorandum, we have provided a broad overview. If you would like us to research a specific area, please contact this office.

Attachments

ATTACHMENT A
Local Assessment Policy

TABLE II

LOCAL ASSESSMENT POLICY

BOROUGHS	RESIDENTIAL	GENERAL PERSONAL PROPERTY	BOATS & MOTOR VEHICLES	VESSELS	BUSINESS INVENTORY	AIRCRAFT
ANCHORAGE	FV	FV	ST COL	FV	FV	FV
BRISTOL BAY	OP EX	FV	FV	FV	FV	FV
FAIRBANKS NORTH STAR	OP EX	EX	EX	EX	EX	EX
HAINES BOROUGH	FV	FV	FV	5/15	FV	FV
JUNEAU	FV	FV	EX	EX	FV	FV
KENAI PENINSULA	OP EX	FV	FV	FV	EX	FV
KETCHIKAN GATEWAY	FV	FV	ST COL	5/15	FV	FV
KODIAK ISLAND	FV	FV	ST COL	EX	FV	FV
MATANUSKA-SUSITNA	FV	FV	ST COL	FV	FV	FV
NORTH SLOPE	OP EX	FV	FV	FV	FV	FV
SITKA	FV	FV	FV	5/15	FV	FV
CITIES						
CORDOVA	FV	EX	EX	EX	EX	EX
CRAIG	FV	EX	EX	EX	EX	EX
DILLINGHAM	FV	FV	FV	FV	FV	FV
EAGLE	FV	FV	EX	EX	EX	EX
GALENA	NA	NA	NA	NA	NA	NA
HOONAH	NA	NA	NA	NA	NA	NA
HYDABURG	NA	NA	NA	NA	NA	NA
KAKE	NA	NA	NA	NA	NA	NA
KING COVE	NA	NA	NA	NA	NA	NA
KLAWOCK	NA	NA	NA	NA	NA	NA
NENANA	FV	FV	FV	FV	FV	FV
NOME	FV	FV	FV	FV	FV	NA
PELICAN	FV	FV	EX	5/15	FV	FV
PETERSBURG	FV	FV	ST COL	EX	FV	FV
ST. MARY'S	NA	NA	NA	NA	NA	NA
SKAGWAY	FV	EX	EX	EX	EX	EX
TANANA	NA	NA	NA	NA	NA	NA
UNALASKA	FV	FV	EX	EX	FV	FV
VALDEZ	OP EX	EX	EX	EX	EX	EX
WRANGELL	FV	FV	EX	EX	FV	FV
YAKUTAT	FV	EX	EX	EX	EX	EX

TABLE II

LOCAL ASSESSMENT POLICY

Notes for Interpretation of Table II

FV = Full and True Value Assessment

EX = Exempt Property

NA = Municipality Does Not Levy Property Taxes

OPTIONAL EXEMPTION: Optional residential exemption up to $10,000 exercised (AS 29.45.050[a])

STATE COLLECTION: State collected, annual motor vehicle tax (AS 28.10.431)

5/15 Optional, $5 & $15 fee collected in lieu of property tax (AS 29.45.050[b][1])

Note: Eight first class cities located outside of boroughs do not levy or collect property taxes. They are: Galena, Hoonah, Hydaburg, Kake, King Cove, Klawock, St. Mary's and Tanana.

Second class cities have no school responsibility but may levy a limited property tax not to exceed five mills. The second class cities of Eagle and Whittier are the only second class cities which levy and collect a property tax.

ATTACHMENT B
Pennsylvania Legislation

THE GENERAL ASSEMBLY OF PENNSYLVANIA

Act No. 534 - Session of 1959

Signed by Governor David L. Lawrence

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A N A C T

Amending the act of June 23, 1931 (P. L. 932) entitled "An Act relating to cities of the third class and amending, revising and consolidating the law relating thereto" changing tax levy provisions when land and buildings are taxed separately.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2531, act of June 23, 1931 (P. L. 932) known as the "Third Class City Code" reenacted and amended June 28, 1951 (P. L. 662) and amended March 15, 1956 (P. L. 1283) is amended to read:

4. The council of any city may by ordinance in any year levy separate and different rates of taxation for city purposes on all real estate classified as land exclusive of the buildings thereon and on all real estate classified as buildings on land.

When real estate tax rates are so levied, rates shall be determined by the requirements of the city budget as approved by council. Higher rates may be levied on land if the respective rates on lands and buildings are so fixed so as not to constitute a greater levy in the aggregate than a rate of fifteen mills on both land and buildings, and they shall be uniform as to all real estate within each such classification.

5. Where the city council by a majority action shall upon due cause petition the court of quarter sessions for the right to levy additional millage, the court after such public notice as it may direct and after hearing may order a greater rate than fifteen mills but not exceeding five additional mills to be levied.

(This Act was passed by the State Senate of Pennsylvania by a unanimous vote and by the House of Representatives by a vote of 138 to 48).

See Purdon 53.37531

ATTACHMENT C
"The Evidence: For Land Value Taxation

The Evidence

For Land Value Taxation

by Steven B. Cord

A Compilation of Studies Presenting Hard Objective Evidence on Whether a Building-to-Land Shift in Property Tax Rates Produces an Increase in New Constuction

CENTER FOR THE STUDY OF ECONOMICS
2000 Century Plaza (238)
Columbia MD 21044

Preface

What would happen in your town if the property tax were gradually shifted, over the years, off buildings onto land? For example, McKeesport, Pa. has done this so that now it is levying a 10% tax rate on land only 2 ½% on buildings, instead of raising the same revenue by taxing both land and buildings at about 5%. If constructing and operating buildings attracted less property tax (eventually none), wouldn't it be more profitable to build and construct them? Wouldn't this encourage new construction and re-employment in your town?

The current property tax on buildings is a powerful deterrent to new construction and re-employment. Consider: a typical 2% annual tax rate on a new improvement of, say, $100,000 will cost $2,000 a year, which is equivalent to a one-time cost of $20,000 (assuming a 10% interest rate), which in turn is equivalent to a 20% excise tax on the $100,000 improvement. 20%! If someone proposed a 20% excise tax on a necessity of life - on a residence, office or factory - his proposal would be rejected immediately, and rightly so. But the property tax on buildings does exactly that.

If the property tax falls on land values instead, then the city re-coups the revenue it lost by taxing buildings less, and very important - landowners will be encouraged to put their sites to efficient use. For who would keep a site out of use, or in inefficient use, if the annual rental value had to be paid out, at least in large part, in local taxes? If you rented a site (which is equivalent to paying a tax on its value), wouldn't you be impelled to put it immediately to the most profitable use you could think of?

This is the theory. It is logically airtight. It should work in reality. But does it in fact?

The articles reprinted in this pamphlet appear to provide substantial evidence that the theory is working in the real world. In fact, the results seem almost too good to believe. In all of these studies, the building-to-land tax shift was rather mild, yet noticeable construction spurts were obtained.

Could other factors have caused these construction spurts? What, in literally hundreds of cities without exception? Well, let the reader judge for himself (he should know there is even more evidence available than has been printed here; for example, Harrisburg, one of the seven Pennsylvania two-rate cities, is prospering mightily since it adopted the two-rate approach; ditto for Washington, Pa. which went two-rate as recently as 1985).

Readers wanting additional evidence could write us for a copy of the book entitled **Catalyst!** ($5/copy).

Of course, it is also true that there are many non-land-value-tax cities throughout the world with prosperous economies. Doesn't this weaken the case for LVT? Shouldn't they be suffering?

No, the existence of prosperous non-LVT cities does not undermine the LVT case. Given the evidence in this pamphlet, it's reasonable to think that they would be even more prosperous if they had LVT. Also, their prosperity could be due to the hard work of their citizens, their enterprising and risk-taking ability, a surge in demand for the products they produce - all strong factors which we could assume would be even stronger with LVT. After all, many of yesteryear's prosperous non-LVT cities are today's depressed areas.

These studies don't show that cities must suffer if they don't employ LVT. They only show that cities do better if they have it.

These studies can make one think, "if such a mild building-to-land tax switch has produced such remarkable results, what would happen in these cities if they shifted **all** their taxes onto land values, not just some? And then what would happen if the whole economy did it and not just a few cities? Wouldn't it be as if the economy were to jump out of the water and fly into the sky?"

Here are three final thoughts:

- It was Allan Hutchinson, a city councilman in the state of Victoria, Australia, who conceived the method of comparing building permits issued both before and after a building-to-land switch, as well as comparing the switching localities to neighboring and comparable localities. We have changed his methodology only slightly. Our hats off to him and his colleagues.
- The studies in this pamphlet have all been reprinted from the eight-times yearly bulletin **Incentive Taxation**. One result has been that certain statements of a general nature are repeated in these articles. The reader will be pardoned if he skips over the repetitions to get at the central facts of each study.
- The idea of taxing land more than buildings has received the endorsement of literally hundreds of urban land tax experts, from Ralph Nader and **The New Republic** on the left to William Buckley and the **Wall Street Journal** on the right. For example, Urban Land Institute Research Monograph No. 4 (p. 28) says of the land value tax that it is "a golden key to urban renewal, to the automatic regeneration of the city - and not at public expense."

So, dear reader, first read the evidence, then judge for yourself. And then act accordingly.

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I

Pennsylvania

Evidence

Study in Pittsburgh Shows Spurt in New Construction Follows Two-Rate Property Tax Expansion

The theory is simple enough : decrease the property tax rate on buildings and we make new construction and rehabilitation more profitable. And if we increase the land tax rate, we encourage landholders to put their sites to an efficient use in order to get enough income to pay at least the increased land tax plus a profit on the improvement as well. This slight change in the property tax can provide a carrot-and-stick incentive to urban redevelopment, and quoting an Urban Land Institute report, "at no extra tax cost" to local government.

Fine theory, but does it work in practice? There is ample evidence that it does:

- Spurts in new construction have followed tax shifts from building to land in all 24 municipalities in Victoria, Australia which have made such a shift since 1954, and these cities have far out-constructed comparable neighboring municipalities which did not undertake such a shift (Incentive Taxation, 1/78, 10/77, Spring 1980, 6/84 -- issues sent on request).
- Similar results emerge from a study of 325 cities in the Republic of South Africa: those cities taxing land the most, experienced the biggest construction spurt (Incentive Taxation, 9/83 issue).
- All five cities which have had a two-rate property tax for longer than three years have experienced construction spurts larger than their comparable neighbors (Incentive Taxation, 10-11/82, 10/83, 11/83).

Now comes a new detailed study of Pittsburgh's experience with the two-rate tax, conducted by the Center for the Study of Economics (publisher of this bulletin). It finds the same sequence of events: a building-to-land tax shift followed by a construction spurt. The logic of the matter clearly points to cause-and-effect.

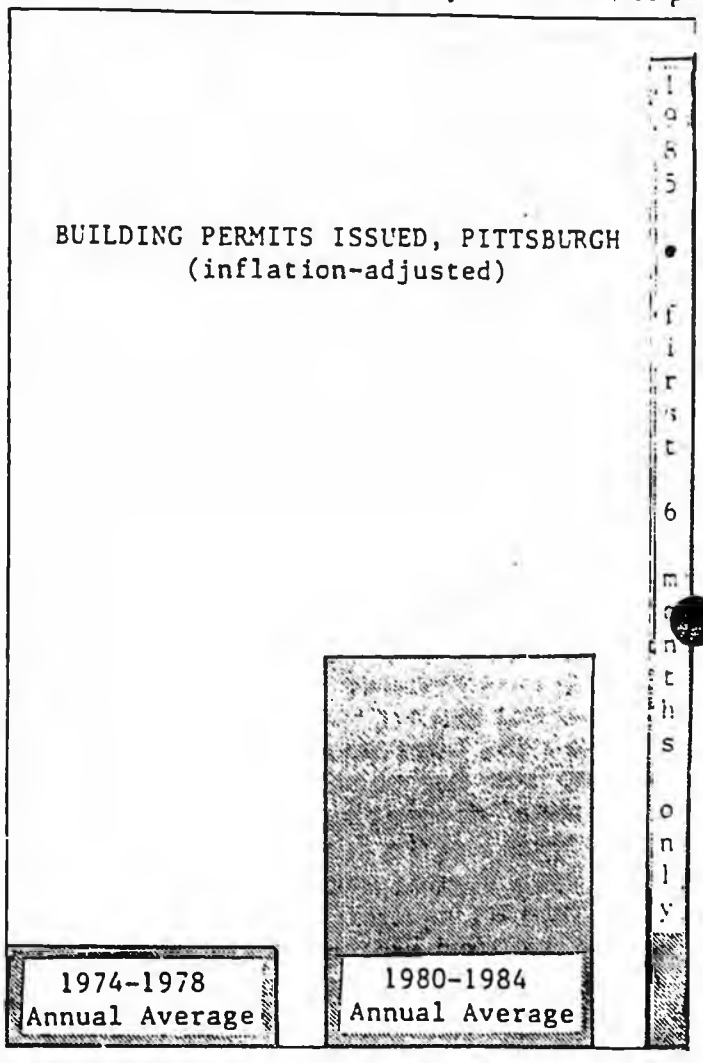
CSE Study

Pittsburgh has been taxing land more than buildings since 1913. From 1925 to 1979, its land tax rate was always double its building tax rate. In 1979, as the result of having obtained a Home Rule Charter from the state legislature, it almost doubled its rate on land without changing the building tax rate at all; in that year its property tax rates were 9.75% on land and 2.45% on buildings. They have been changed repeatedly since then so that now the rates stand at 15.15% on land and 2.7% on buildings.

Now let us see what CSE's study of Pittsburgh's two-rate experience has uncovered:

(1) In the years 1980-84, when Pittsburgh was expanding the difference between its land tax rate and building tax rate, its new construction, as measured by its building permits issued, was 5.9 times higher than in the pre-change years of 1974-78 (city figures, Pittsburgh Bureau of Building Inspection). For the entire United States, 1980-84 building permits were only 1.6 times greater than for 1974-78 ("Construction Review," 11-12/84, tables C-1, C-4, C-6). Pittsburgh did better than the nation, much better--almost four times better!

(2) CSE also attempted to rule out the inflation factor by adjusting the annual figures for building permit issuance by changes in the cost of living. When this was done, CSE found that the adjusted 1980-84 figures exceeded those of 1974-78 by 3.92 times (see p. 16, PA Economy League study).



(3) Since 1979, Pittsburgh's building boom has been spearheaded by several big, new downtown office buildings whose profitability was significantly increased by the building-to-land tax shift. For instance:

- the Pittsburgh Plate Glass complex save $615,335 a year in property taxes because of the two-rate approach as compared to a one-rate property tax raising the same revenue for the city.
- One Mellon Square Building save $1,291,266 a year.

The Oxford Plaza complex saves $36[illegible],369 a year. In addition, these savings are enhanced by smaller yet still significant three-year tax abatements on the improvements only (not the land), which is similar to the two-rate tax. One must assume that these tax

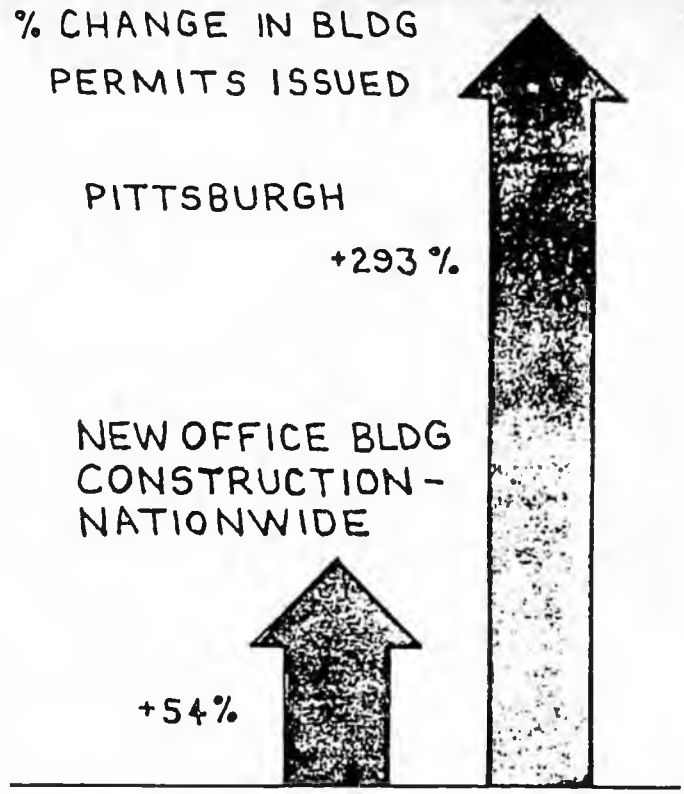
incentives figured in the final decision to build these job-producing mammoths (the Oxford Plaza Building, with thousands of jobs, replaced a parking lot which provided maybe 3-4 jobs).

Final empirical verification that a building-to-land tax shift will spur new construction and re-employment must always remain elusive. We can never be sure that we will have accounted for all the other relevant factors, but there surely is a logical reason to connect the two-rate tax to the construction spurt, and it has actually occurred in so many places throughout the world that it is hard to doubt a cause-and-effect connection.

Contemplate this: if you are looking to buy a home in a community which levies a tax on the full rent on land, then the price of land would be zero (or near zero). You could invest in common stock what you save on land cost, and then use your dividends to pay the annual land-rent tax.

You'd pay nothing for the land and you'd have extra income to cover your land-rent tax. In addition, your buildings, wages, retail purchases, etc. would all be tax-free!

Wouldn't you prefer to locate in a land value tax community as compared to a tax-labor-and-capital community?



In 1979, Pittsburgh, Pa. increased its tax rate on land by 18 mills and another 18 mills in 1980. The above chart compares building permits issued in 1976-78 to 1979-81 for Pittsburgh and for new office building construction nationwide.

Poorer Homeowners in Pittsburgh Save Money with the Two-Rate Property Tax

Pittsburgh's homeowners in those wards with less-than-median income save AT LEAST $728,741 a year with the city's two-rate property tax, and the annual savings are actually much more than that. So concludes a research study conducted by the Center for the Study of Economics (C.S.E.).

C.S.E. is a non-profit research organization which publishes Incentive Taxation and prepares objective studies on the two-rate property tax. It was first organized in 1980. Incentive Taxation printed the first half of this study in last month's issue when it presented evidence to show that Pittsburgh's two-rate property tax seems to have helped bring about a spurt in new construction in the city.

Before examining how the two-rate approach downtaxes poorer homeowners, we should point out that Pittsburgh has been taxing land assessments at a higher property tax rate than buildings since 1913. From 1925-1979 the city's land tax rate was always double the city's building tax rate; since 1979, the land tax rate has been greatly increased while the building tax rate has been raised only slightly; as of 1985, the land tax rate is 15.15% and the building tax rate is 2.7% (assessments are officially at 25% of market value).

The C.S.E. Study

Now let us see how C.S.E. arrived at the conclusion that homeowners in the poorer wards in Pittsburgh save AT LEAST $728,741 a year with the two-rate approach. Some detective work is required.

First, it is necessary to determine which of the thirty-two wards in the city are poorer-than-median; this could be ascertained from U.S. census data (1980 Census-Pittsburgh, Table P-11).

Second, C.S.E. had to determine how homeowners fared under the two-rate tax. The Allegheny County Assessment Dept., which assesses for the city, doesn't classify property according to use - residential, commercial, industrial, etc. - but rather classifies property according to incorporated and un-incorporated ownership (see 1/5/85 "Total Value Municipal Summary," p. 3, Ray Watt, Assessor's Office). It is safe to assume that all or nearly all homeowners are listed on the un-incorporated list, as there is no advantage for a homeowner to incorporate and considerable time and expense to do so.

When C.S.E. combined the census with the assessment data, it found that the un-incorporated properties in Pittsburgh's poorer-than-median wards

saved AT LEAST $728,741 a year with the two-rate approach (15.15%/2.7%) as compared to what they would have to pay with a one-rate tax (5.16% on both land and buildings) raising the same revenue for the city.

Poorer Homeowners in Pittsburgh Save

$728,741/Year AT LEAST

At Least!

But the actual savings to the homeowners in the poorer-than-median wards are much more than $728,741 a year. This is because the un-incorporated classification includes, in addition to homeowners, some unincorporated commercial and industrial property as well as vacant lots. These properties tend to pay more with the two-rate approach (certainly all vacant lots do). If they were excluded from the un-incorporated list, then only homeowners would be left and consequently their savings in the poorer-than-median wards would far exceed $728,741 a year.

And as far as tenants are concerned, they clearly are beneficiaries of the building-to-land tax shift, as they pay no land tax at all and there will be less building tax to be passed on to them in the form of higher apartment-rent.

Some may ask, "Isn't the land tax passed on to tenants in the form of higher apartment-rent?" Perhaps it is in the short run and in some cases, but every economics textbook asserts that a tax on land values cannot be passed on to tenants in the long run. They argue that a tax on buildings can be passed on because it causes some buildings to become unprofitable to operate and thus fall into disuse; also, it reduces the profits on new construction and so fewer buildings get built. In the long run, the smaller supply of buildings allows the rental price to be raised. But land is different – its supply is fixed and so a tax on land values cannot increase the rental price of land; because the tax won't decrease the supply of land or increase the demand for it, the tax won't increase its rental price. In the short run, a land tax might be passed on because of pass-through leases but in the long run when leases are renewed, the land-rent increases won't stick. If landlords insisted, some tenants would move out of town and others would economize on their use of space, and the lower demand for land would cause a return to the previous land-rent level, all other factors remaining the same.

In fact, because more sites would be used if taxed, then the supply of available land would be increased -- with a consequent lowering (not raising) of rent!

This economic reasoning is important because it means that a building-to-land tax shift benefits all tenants, poor ones included – they pay no land tax and there will be less building tax to be passed on to them in their apartment-rents. Almost half the city's population lives in rental quarters (U.S. Census-Pittsburgh 1980, H-1), and we can assume that an even greater proportion of poorer people in town are tenants. So the two-rate approach would be a great benefit to the poorer tenants, although by exactly how much it is hard to say.

Megabuck Savings for Harrisburg Developer

Harrisburg (pop. 53,115) is slowly emerging from a rough decade. This capital city of Pennsylvania was cruelly buffeted by the Agnes flood of 1972. In addition, huge shopping centers ringing the city have been slowly strangling the retail business in the downtown area.

But Harrisburg has been fighting back. New construction has increased since it first started to tax land more than buildings in 1974. A huge complex containing office skyscrapers and an indoor shopping mall sprouted up a few years ago - and therein lies the first part of our tale.

This multi-million dollar complex, called Strawberry Square, is currently assessed at $24,488 million for buildings, $1,477 million for land (assessments are at 60% of assessed market value). If a flat tax rate of 2.829% were levied on all land and buildings, the city government would get as much revenue as it now gets with 5.825% land, 2.188% buildings. But the Strawberry Square complex would then pay $112,857 a year more in property taxes. In other words, that is the amount it saves with Harrisburg's current two-rate tax.

Megabuck Savings

The latest news in Harrisburg is that a new addition to Harrisburg's downtown, in addition to Strawberry Square, is on the verge of final approval. It is a hotel conference office complex of huge proportions - some $60-$80 million in all. Application is being made for a UDAG grant to cover some of the expenses (maybe as much as $4-$6 million).

If we assume that the new complex will have the same building-to-land ratio as does the existing part of Strawberry Square, and that seems like a reasonable assumption, then the proposed buildings will save about $180,000 a year in taxes because of Harrisburg's two-rate property tax. It is hard to imagine that the prospective developers did not include low property tax costs of this magnitude in their calculations before offering to bid on the project. We'll never know whether they would have gone ahead with this project even with a flat tax rate, we can only say that this handsome tax savings was an added inducement. It is reasonable to think it helped clinch the deal.

Other Aspects

While it is true that these big downtown developers get substantial tax reductions with a building-to-land tax switch, do keep in mind that they provide the community with much-needed new jobs. And it is not the homeowners in town who are picking up the tax burden. Most of them pay less with a two-rate tax: about 60% of them, according to a citywide study performed in 1981. It is the under-users of land who pay more, and they are preventing the unemployed from working on their sites.

Just recently, the Harrisburg city government moved to a new, modern and beautiful city hall. The old Municipal Building, built 1910, stands starkly empty but plans are afoot for selling it to a condominium developer. Extensive remodeling will have to be done, of course - and because of the two-rate property tax, it will all be taxed at a lower rate. Thus, the plans are more likely to be realized. Generally, apartment buildings are the biggest tax savers as the result of an LVT shift.

The current city administration is favorably disposed toward land value taxation. Writes Mayor Stephen Reed: "I believe that there is an incentive for new construction and rehabilitation when a higher rate of tax on land exists."

We look forward to continued good news from Harrisburg.

LVT Scranton Maintains Construction Lead Over Non-LVT Wilkes-Barre

Nestled in the northeastern corner of Pennsylvania are two sister cities - Scranton and Wilkes-Barre.

They are similar in many ways. The declining anthracite coal mining industry has been important to both of them, as is the newer electronics, garment and trucking industries. Both can boast of many institutions of higher learning. They are twelve miles apart and their citizenry share similar ethnic backgrounds. They share the same airport and philharmonic symphony. They tax real estate at about the same general percentage. Scranton has a population of 87,000, Wilkes-Barre 51,000; both experienced about a 14% population decline from 1970 to 1980.

But there is one significant difference between the two cities: in 1980 Scranton nearly doubled its tax rate on land to 9.6% while maintaining its building rate unchanged at 2.55%; in addition, it passed a law (known as LERTA) exempting all newly constructed commercial and industrial improvements from the property tax for the first ten years (the land was not tax-exempted), and new residential construction received a somewhat lesser but still generous exemption. Wilkes-Barre did none of these things; it continued to tax land and buildings at the same rate.

Scranton's city officials had hoped to encourage new construction. A study undertaken by the editor of this publication and published in the Summer 1982 issue indicated that their hopes were being fulfilled.

This study of building permits issued in Scranton revealed that in the two-year period following the uptax on land coupled with the net downtax on buildings, new construction in Scranton increased 14% in number of building permits issued and 22% in value - and this in the teeth of a nationwide construction recession (1980-1981). In neighboring and comparable Wilkes-Barre, the corresponding figures showed a decline of 30% and 44% respectively.

The Wilkes-Barre construction decline was understandable in light of the stiff 1980-81 construction recession. But what could account for the Scranton increases during the same period of time? It would seem logical to ascribe it to the uptax on land, which should dissuade landowners from keeping their sites out of less-than-most-appropriate use; also the downtaxing of new improvements would encourage new construction and renovation. No other relevant changes seems to have occurred in the economies of Scranton and Wilkes-Barre since 1980.

New 1982 Figures

Your editor felt, however, that this study was somewhat incomplete. Symmetry demanded that a three-year period following the change, not two years, was needed to compare to the three-year period prior to the change. So back he went not long ago to the city halls of these two cities to unearth the taxable building permits issued for the year 1982. He found that Scranton was still out-constructing Wilkes-Barre. The theory and the facts were still in consonance. See the chart accompanying

A Comparison of the Number and Value of Taxable Building Permits Issued in Scranton and Wilkes-Barre Both Before and After January 1980, when Scranton Almost Doubled Its Land Tax Rate and Substantially Reduced its Tax Rate on New Construction.

	1977-1979		1980-1982		% Change 1980-1982 - 1977-1979 / 1977-1979	
	Number	Value	Number	Value	Number	Value
Scranton	1145	$8,658,747	1239	$10,669,047	+ 8%	+ 23%
Wilkes-Barre	2520	$14,542,318	1651	$7,721,485	-33%	-47%

NOTE: The numbers and values are annual averages for the years indicated. For example, 1145 building permits were issued annually, on the average, during 1977-1979.

this article

The study is now complete. We have compared the three years after the Scranton rate changes of January 1980 with the three years before. If we include years too far away from the change, then we run the danger of other factors arising to affect the rate of construction in these two cities.

Of course, the possiblity of other factors affecting materially the construction patterns in these two cities can never be entirely ruled out. None seem apparent, however, and it is reassuring to note that similar comparisons of other LVT and non-LVT cities in Pennsylvania show similar results, as do similar comparisons in dozens of cities in Victoria, Australia and literally hundreds of cities in the Republic of South Africa.

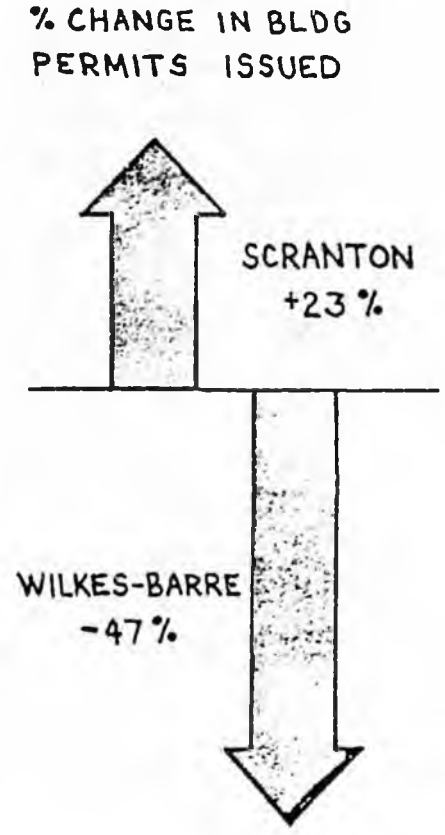
Another reassurance: the highly respected Fortune Magazine recently ran a full-scale article on the Scranton/Wilkes-Barre statistics as well as similar statistics from other Pennsylvania cities, all of which have appeared in this and previous issues of this publication. Two of their researchers, editor Gurney Breckenfeld and writer Ed Baig, visited the same sources which your IT editor visited and verified the accuracy of these statistics. You needn't take our word only; take Fortune's. It's the same. We welcome their independent verification. So should you.

Conclusion

Has it crossed your mind, "If Scranton's modest uptax on land and downtax on new construction has seemingly produced a construction upsurge, what would continued annual moves to uptax land and downtax buildings produce? How much more new construction would there be, and above all how much more new employment would result?"

If Scranton were to move steadily, year by year, in a land tax direction so that within five years or so the property tax would fall only on land and not at all on investors in new construction and rehabilitation, couldn't we reasonably expect to see a significant dent made in its still-high unemployment rate? What we need is vision and vigor on the part of leaders in business and government to act upon proven theory - to turn studies into reality.

And what about your city?



In 1980, Scranton, Pa. adopted a higher tax rate on land than on buildings. Wilkes-Barre did not. The above chart compares building permits issued in 1977-79 to 1980-82.

LVT McKeesport Still Ahead

At first glance, the city of McKeesport, Pa. seems to have little going for it. It depends heavily on the steel industry, and everyone knows how badly off that industry is. As a result, unemployment in McKeesport is far above the national average. Downtown retailing is suffering; vacancy signs can be seen on the main street, and Cox, the town's only department store, has been forced to close down. Many people are pessimistic about McKeesport's economic future.

But there's a lot of life in the old town yet. The streets buzz with people and cars, there's considerable office employment downtown, city goverment and private civic organizations are mounting strong efforts to combat the economic malaise.

And wonderful to relate - new construction and rehabilitation have been increasing steadily, year after year since 1980. It's the best statistic the town can offer to show that the city is still economically alive, with a viable future.

The year 1980 is a key year, since it was then that the city introduced the two-rate tax:

- It increased the tax rate on land from 2.45% to 9%.
- It decreased the tax rate on buildings from 2.45% to 2%.
- New construction was given a three-year tax exemption (but not the underlying land assessment).

The net effect of the tax rate changes was to increase the total property tax revenues by almost 50%. The city government was then in a financial bind. One would think that the increased property tax burden would have reduced new construction and rehabilitation, but the reverse occurred. Following the aforementioned tax change, new construction and rehabilitation for the three-year period averaged 38% more than in the previous three year period. 38%!

We should not be surprised that when land is taxed more, an incentive will be created for the owners to put their sites to a fuller use (limited by zoning); and that when buildings are taxed less, it would be easier for the landowners to improve their sites.

Taxable Building Permits Issued

	1977-79 Annual Average	1980-82 Annual Average	% Change
McKeesport	$1,716,000	$2,370,191	+ 38%
Clairton	$746,710	$539,564	- 28%
Duquesne	$1,053,315	$839,731	- 20%

Source: Building permit records in the three city halls

Tax land and we create the incentive for it to be used intensively, and economic growth results. This cannot be said about any other tax, since they are levied on labor or labor-produced commodities; the more they are taxed, the more dis-incentive we create. This seems to be borne out by the facts in McKeesport. See the table below.

Note that McKeesport's 38% gain is for taxable building permits issued. Tax-exempt construction was excluded because it is not affect by tax considerations.

Duquesne and Clairton

Of course, the question should immediately arise - could other factors have been responsible for McKeesport's 38% gain? You can never know for sure, but none seem to be present.

In order to further rule out other factors, it makes sense to compare the record of McKeesport (pop. 31,017) to that of its neighbors, Clairton (pop. 12,073) and Duquesne (pop. 10,099). The latter is right across the Monongahela River and the other is downstream about two miles. Each of the three cities has one U.S. Steel mill as well as steel-related industries, and consequently they all have much higher-than-average unemployment. There are no other nearby comparable cities.

These three cities are truly triplets, the only visible relevant difference being that McKeesport up-taxed land and down-taxed building in 1980, while the other two cities did not.

When we compare the record of building permits issued in Clairton and Duquesne to that of McKeesport, we see that the latter did considerably better than its two comparable neighbors. In fact, it did much better - Clairton's new construction and rehabilitation fell off 28% in 1980-82 as compared to 1977-79, while Duquesne's fall-off was 20%. The accompanying table gives the details.

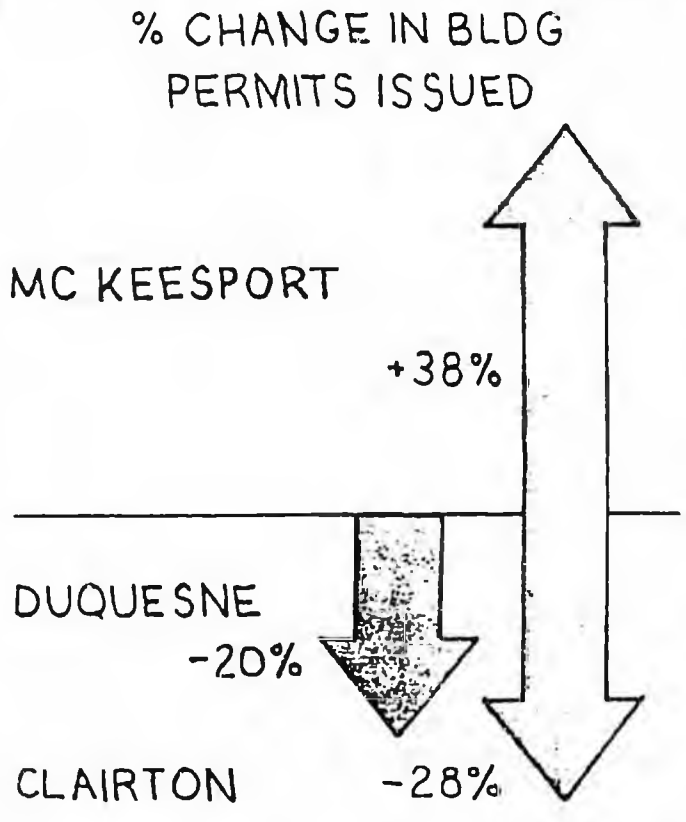
Considering the hair-raising depression in construction that occurred during 1980-82, the record of Clairton and Duquesne is better than might be expected, but clearly McKeesport did much better.

It is reassuring to note that these results are corroborated by similar studies comparing LVT Scranton to neighboring Wilkes-Barre, LVT Pittsburgh to other U.S. cities, and by similar studies in the state of Victoria, Australia (24 cities) and the Republic of South Africa (over 300 cities).

There is another kind of corroboration for these figures. FORTUNE Magazine sent two researchers around in Pennsylvania to gather research for their August 8th article on land value taxation, and they came up with near-identical figures on building permits issued in McKeesport - Clairton - Duquesne (Scranton and Wilkes-Barre also), and reached the same conclusions. It is legitimate to wonder if the editor of Incentive Taxation, who is an announced land-tax advocate, didn't "doctor" the building-permit figures to suit his preconceptions. Well, the independent FORTUNE corroboration should put to rest these fears. If any IT reader wants to do his own verification, he need only consult the bulding-permit statistics in the three city halls; they are public records.

Conclusion

This Tale of Three Cities is now completed. We have compared their new construction for the three years following McKeesport's 1980 tax change to the three years before. Although no test in a changing urban setting can be declared as air-tight as what a chemist might do in a controlled laboratory setting, the case for land value taxation is clearly strengthened, especial-



In 1980, McKeesport, Pa. adopted a higher tax rate on land than on buildings. The other two cities did not. The above chart compares building permits issued in 1977-79 to 1980-82.

ly when the corroboration is added into the record

And why not? It shouldn't surprise us that an up-tax on land would penalize inefficient use while a down-tax on construction would give added incentive to build.

How much more evidence do our city officials need before they act to introduce a two-rate property tax? Let them bear in mind that there are unemployed people out there - some of them are their neighbors - who are suffering because the present one-rate tax is an obstacle to economic growth.

Two-Rate Tax in New Castle, Pa. Followed by Construction Spurt

Up 70%!

That's the average annual increase in new construction experienced by New Castle, Pa., after it adopted a two-rate property tax.

More specifically, the dollar-value of building permits issued in New Castle was 70% higher per year for the years 1982-85 than for the years 1979-81. The first year for New Castle's two-rate property tax was 1982, and then in 1984 the city spread the rates further apart. The rates are now 6.78% on land and 2.1% of buildings.

8.2% of this 70% could be accounted for by general inflation (based on statistics from the U.S. Statistical Abstract 1985, p. 467).

This fact was unearthed by a study conducted by the Center for Local Tax Research, 5 East 44th St., New York, N.Y. 10021. C.L.T.R. engages in objective studies of the property tax and based this study on an examination of the city's records of building permits issued, which are on file for public inspection in City Hall.

The C.L.T.R. study revealed that at least $1,200,804 more (adjusted for inflation) in new construction occurred during 1982-85 than in 1979-81 - see chart.

Comparison of Taxable Building Permits
Issued in New Castle, Pa.
for the Three Years Before the Introduction
of the Two-Rate Tax (1982) with the
Four Years Thereafter

1979 =	$1,799,537	1982 =	$3,622,847
1980 =	2,897,330	1983 =	1,990,649
1981 =	899,752	1984 =	2,226,356
		1985 =	4,854,569

[Source: C.L.R.T. Study based on city records of building permits issued.]

Job-starved New Castle could use the extra new construction during the post-1982 two-rate years. The city's economy has relied on heavy industries and they have been severely buffeted recently.

It is interesting to note that despite the adverse economic conditions, New Castle experienced a construction spurt anyway. Lately, this new construction is the only bright economic trend in New Castle.

The Center for Local Tax Research reported that New Castle increased its building permit fee in 1984 and 1985. This change has had the effect of inducing many builders to reduce the dollar-value estimate of the permits they are seeking in order to lessen the fee they have to pay. If the fee had remained the same as in previous years, the estimated dollar value of building permits issued would have been higher in 1984 and 1985 than actually reported, and the construction spurt would have been reported to be higher than 70%. Also: the 1986 building permits issuance will show a huge increase.

Comparison to Other Cities

There is good reason to believe that the building-to-land tax shift resulted in the spurt in new construction. After all, if we reduce taxes on buildings, we make them cheaper and more profitable to build and maintain. And if simultaneously we increase the tax on land assessments, we encourage landowners to develop their sites more efficiently in an effort to obtain an income adequate to pay for the higher land tax as well as a reasonable profit on their improvement investment.

"But," some could say, "maybe the construction spurt was due to other factors than the building-to-land tax switch. Just because the spurt followed the switch doesn't prove cause-and-effect."

Well, this is an objection worthy of consideration. It's difficult, though, to see what other factors could possibly cause the construction spurt, especially in view of New Castle's depressed economy. And then there's another aspect of the study by the Center for Local Tax Research which strongly undermines the other-factors explanation.

C.L.T.R. examined the building permits issued in two neighboring and comparable cities - Farrell and Sharon, Pa. The economies of these cities also depend heavily on heavy industry and have experienced considerable unemployment lately. So it should come as no surprise that the average annual construction (as measured by building permits issued) is decidedly down for the 1982-85 period as compared to the 1979-81 period. Sharon's new construction was off 90% while Farrell was down 66%. Compare this to New Castle's increase of at least 70%!

This New Castle-Sharon-Farrell study is strongly corroborated by other similar studies reported in this publication. For example,

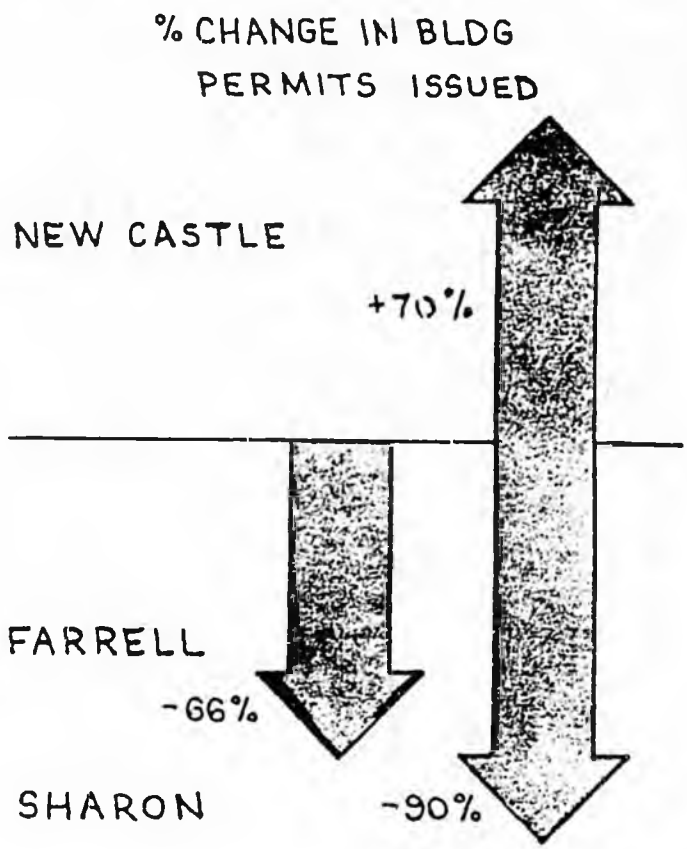
- Pittsburgh experienced a 114% increase in its three post-land-tax-increase years as compared to its three

prior years (see Oct.-Nov. 1982 issue); its construction spurt far out-distanced the nationwide construction increase during the same years.

- Scranton experienced a 23% increase in its three post-land-tax-increase years as compared to its three prior years (see Oct. 1983 issue); neighboring and comparable Wilkes-Barre experienced a 47% decrease during the same years.
- McKeesport experienced a 38% increase in its three post-land-tax-increase years as compared to its three prior years (see Nov. 1983 issue); neighboring and comparable Duquesne and Clairton experienced 20% and 28% declines respectively in new construction during the same years. Duquesne has since adopted a two-rate property tax.
- 23 cities switched to taxing only land values in the Australian state of Victoria since 1955. All of them experienced construction spurts far out-distancing the construction records of neighboring and comparable cities (see issues of Oct. 1977, Jan. 1978, and Nov. 1978).
- A 310-city study in the Republic of South Africa showed that those cities taxing only land values experienced the greatest construction increase over a 20-year period. Cities taxing land more than buildings experienced the next greatest construction increase. Cities taxing land and buildings at the same rate experienced the least construction increase. And cities switching to taxing only land, or to taxing land more than buildings, experienced a greater construction increase than any of the above categories (see Sept. 1983 issue). These issues are available from this publication for one dollar each.

If there were only one study supporting the contention that a building-to-land tax switch encourages new construction, it would be legitimate to question whether the tax switch caused the construction spurt, but in light of all these studies, can we not conclude that the switch encourages new construction? Why shouldn't it happen in your town also?

What are you doing to encourage construction and reduce unemployment in your town via the land value tax?



In 1980, New Castle, Pa. adopted a higher tax rate on land than on buildings. The other two cities did not. The above chart compares building permits issued in 1979-81 to 1982-1983.

Mayor James Barrett McNulty (Scranton;): "We're really used to it. People don't even recognize that it's in place in the City of Scranton. We've increased the rate four times as of 1980, and as a result we've had a tremendous increase in the number of building permits in the city for the years 1980 and '81 with an increase of up to 22% in the City of Scranton, while in our neighboring city of Wilkes-Barre, which is 14 miles down the Susquehanna Valley, there has been a drop of 44% over the last three years. I believe that one of the main reasons for that is that the builder is no longer penalized in the City of Scranton."

II

Australian

Evidence

Two American Experts Report: LVT Easier to Administer in Australia and New Zealand

In the fall of 1964, two American experts visited Australia and New Zealand in order to evaluate the land value taxation systems being practiced there. They were A. M. Woodruff, then Provost of the University of Hartford (and formerly a real estate appraiser) and L. L. Ecker-Racz, then Assistant Director for Taxation and Finance of the Advisory Commission on Intergovernmental Relations. Their report appeared in the October 1965 issue of "The Tax Executive."

Their comments on the ease and fairness with which land value taxation can be administered are especially interesting. We quote the following from their report:

Dr. J. F. N. Murray, the highly regarded author of the leading Australian textbook on valuation techniques holds that

"(a) equity in valuation can be more easily achieved when the rating is based on land rather than a combination of land and building.

"(b) considerable economies can be achieved if the Valuer General (chief assessor) does not need to maintain records on the character of buildings.

"(c) most of the errors in valuation involve buildings and not land; and

"(d) use of cadastral maps not only readily permits equalization of land values but reference to such maps makes it very simple for an aggrieved owner to determine whether he is treated equitably.

"In consulting with the United Nations concerning tax systems for new nations, where ownership records are good enough to permit clear identification of taxible holdings, Murray strongly advocates site value taxation because of its simplicity and the relative ease with which inexperienced civil servants can be trained to do the job.

"The argument commonly heard in America that site value rating is administratively impossible because of the difficulty of assessing land apart from the buildings on it, is not heard at all in Australia and New Zealand. Many decades of experience have convinced even the most hardened skeptics that while it may be considerably more difficult to appraise the land component of a single improved parcel apart from the building on it, the reverse is true when great numbers of properties have to be evaluated for tax purposes. Involved calculations need be made only for selected bench mark properties and the values established for the bench marks may be extrapolated to all properties, very much as American assessors customarily build up land value maps. The land value atlas or 'cadastral map' is the device for accomplishing the extrapolation. Both Australian and New Zealand tax professionals, including a few who either oppose site value taxation or are lukewarm to it, are agreed on its administrative simplicity.

> Woodruff and Ecker-Racz also reported that "the earlier graduated land taxes of the Commonwealth of Australia, the Australian states, and the central government of New Zealand were a decided factor in the breaking up of large landed estates."

"The case for the use of unimproved capital value for the base of property taxation on grounds of administrative simplicity, efficiency, and resultant equity between individual owners and classes of owners is also impressive, if only because professional administrators representing as a group nearly 300 years of collective experience are satisfied that substantial savings could be realized in valuation (assessment) costs, and assessment quality raised, if unimproved capital value were the only base used for local and state property taxation."

They Don't Kid Around in New South Wales

Some people who know a little bit say that since Australian localities don't have to raise tax money to pay for schools or police - those are state and federal functions there - the tax rates on land there are insignificantly low and provide no valid test of the common Australian practice of raising all local revenue by a tax on land only. If those towns exhibit spurts in new construction when they shift their building tax to a land tax, it's pure coincidence and the main cause for the construction spurt must be due to some other factor.

You're entitled to raise your eyebrows at such an explanation since the construction spurt invariably follows in so many cases upon the adoption of the single local land tax that coincidence would seem to be ruled out as the explanation. But now new evidence comes to us from the state of New South Wales which shows that the tax rate on land is in fact significantly high - much higher than in this country, for example.

In New South Wales, which includes the huge and booming city of Sydney, all localities are required by law to tax land values only. The tax rates there range, for most localities, from 2% to 7% of assessed value, and in Australia the assessments are up-to-date and genuine (in large part because the assessors there are state civil service employees and are not paid by their neighbors and assessees, and also they need only assess land rather than both land and buildings, and this considerably simplifies their task).

In addition, water and sewer rates are levied separately. They range from 1% to 5.2% and when they are added to the basic general rates, it is seen that the tax rate on land is substantial enough to produce the construction spurts mentioned above. (Information from Sidney Gilchrist's article in Progress Magazine, Melbourne, June 1979, page 9)

How New South Wales is Beating the Home-Building Recession

In the past, "Incentive Taxation" has presented ample statistical evidence from many states in Australia showing that spurts in new construction have followed the shift to a tax on land values only. Now a new state has just been heard from - New South Wales.

It had been difficult to get evidence from this state, since every locality in it has been taxing only land values for over sixty years, thus making it difficult to run before-and-after-adoption studies or comparisons between land-taxing and non-land-taxing localities.

But in 1974, the Sydney Metropolitan Water Sewerage and Drainage Board and theHunter District Board (serving Newcastle and its surrounding area) switched to a tax on land values only, effective for 1975 and thereafter. The switch affected 1,255,000 homes which had previously been taxed both on land and buildings. Commercial and industrial properties were not affected by the switch and continued under the old system.

Interestingly, water and sewer boards in rural areas of New South Wales have long been taxing on land values only. Now that tax has been extended to the urban boards.

The statistical table in this article shows the home-building approvals for the areas covered by the Sydney, Newcastle and Melbourne water and sewerage boards. The Melbourne and Metropolitan Board of Works does not use the land-tax-only system and is included here for the sake of comparison.

Before we analyze the data, the reader should know that a serious recession occurred in Australia, as in this country, in 1975. It hit the home-building industry particularly hard.

Let's Look at the Data

The statistical table shows immediately that home-building recovered from the recession much more quickly and fully in land-value-taxing Sydney and Newcastle than in non-land-value-taxing Melbourne.

- In Sydney, the number of approvals increased 11% from 1975 to 1979; in Newcastle, despite serious setbacks in its large ship-building industry, approvals increased 72%. In unfortunate Melbourne, approvals decreased 14% over the same period.
- Sydney increased its total dollar value of home-building approvals by 94% in the 1975-1979 period, while Newcastle's increase came to 87%. Melbourne lagged behind with only a 43% increase.

HOME-BUILDING JOB APPROVALS

Year ended 30th June	Number of New Dwellings approved	Total Values of all Dwelling approvals ($000's)
SYDNEY STATISTICAL DIVISION*		
1979	25,513	878,889
1978	22,319	698,911
1977	21,312	591,981
1976	17,392	445,153
1975	23,047	452,729
NEWCASTLE STATISTICAL DISTRICT		
1979	2,995	96,103
1978	1,724	88,086
1977	1,585	71,661
1976	1,407	57,536
1975	1,742	51,337
MELBOURNE STATISTICAL DIVISION†		
1979	15,674	547,626
1978	15,863	554,825
1977	21,771	658,485
1976	24,250	618,359
1975	18,323	383,684

* Includes Wollongong Statistical District also served by the Sydney Water and Sewerage Board.

† Excluding shires of Flinders, Hastings, Healesville and Mornington which are outside the Melbourne and Metropolitan Board of Works rating area.

‡ The horizontal line separates the figures since un-taxing dwellings from those under the old basis where they were taxed.

The statistical table comes from the September 1979 issue of Progress Magazine (Melbourne), page 3 and is compiled by Alan R. Hutchinson from building approval statistics published regularly by the Australian Bureau of Statistics.

Corroborating Data

Mr. Hutchinson also informs us that "the superiority of the N.S.W. performance over that of the Melbourne area applies only to dwelling construction." Remember that commercial and industrial properties in New South Wales were not switched over to the land-tax-only system and they show no greater improvement in new approvals issued for 1975 to 1979 than did the similar non-land-taxed properties in Melbourne. Welcome corroboration! It reduces the likelihood that other factors may be causing the greater dwelling construction in Sydney and Newcastle.

If and when the land-tax-only system is extended to commercial and industrial properties in New South Wales, it will then be interesting to examine their four-year change in approvals issued.

The Darvall Board of Inquiry has recently recommended that the Melbourne Board of Works be given power to switch to land value taxation. The dissemination of Hutchinson's figures should make the switch more likely.

In the face of this sea of evidence, this flood of studies, showing that the higher taxation of land values stimulates economic growth, is it not legitimate to ask readers of this publication: what are you doing to get your own home town or state to increase the tax on land values and decrease unemployment and poverty?

Seymour Shire Building Permits Escalate Since Adoption of Land Value Taxation

Three years have now passed since Seymour Shire - a rural area in Victoria, Australia - changed over to taxing only land values instead of penalizing building owners with a property tax on both land and buildings. It is now time to analyze the results, as seen by this chart produced by Allan Hutchinson for the February 1985 issue of "Progress" Magazine:

Year Ending 30th Sept.	Values of Building Permits Issued for:				
	No. of Dwelling	New Dwellings	Alterations & Additions to Dwellings	Building Other	All new
Buildings Un-Taxed		$ 000's	$ 000's	$ 000's	$ 000's
1984	131	5,270	78	3,215	8,563
1983	89	3,672	143	584	4,399
1982	63	2,412	135	2,769	5,316
Buildings Taxed					
1981	58	1,998	22	988	3,008
1980	56	1,760	56		3,361
1979	68	1,905	62	845	2,812

The source of these statistics is the quarterly publication by the Victorian office of the Australian Bureau of Statistics (catalog number 8702.2), which contains data on building permits issued.

The essence of the chart is this:

- Seymour Shire issued 55% more building permits in the three-year period following the switch to land value taxation (LVT) as compared to the three-year period preceding.
- The dollar value (in Australian dollars) of building permits issued was 99% greater for the after-period as compared to the before-period.

Could this construction spurt in Seymour Shire be due to factors other than the introduction of LVT? We are aware of no other factors, although you never know. But it is relevant to point out that ALL 22 of the other localities in the state of Victoria which switched to LVT since 1955 experienced a similar construction spurt, after-switch as compared to before, and not only that, but their construction spurt exceeded by far that of neighboring and comparable cities. See Incentive Taxation issues of 10/77, 1/78 and 11/78. In the light of all this experience, each reader should judge for himself how valid the "other factors" explanation is in explaining the construction results of LVT.

And after making an appropriate judgment, let each reader then ACT accordingly.

(The state of Victoria is in the southeastern corner of Australia. Its capital city is Melbourne).

Seymour Shire Prospers During a Recession

IT readers of some years' standing will remember that we have published three separate studies on all 23 localities in the southeastern Australian state of Victoria which switched after 1954 from taxing land and buildings to taxing only land. In each case, a building boom followed the switch, and the boom exceeded any new-construction increase that might have occurred in neighboring and comparable localities. See IT issues of October 1977, January 1978 and November 1978 (available upon request).

In September 1981, Seymour Shire became the twenty-fifth locality in Victoria to shift to land-only taxation since 1954. Reports received earlier this year in this country tell that Seymour Shire is no exception: building permits issued are far greater than in the best previous year. The "Seymour Telegraph" of October 9, 1982 quoted a local government report as saying:

> "There has been a building boom in Seymour Shire over the past year with building permits valued at more than $7,000,000 being issued."

The official report went on to say that Seymour Shire's building permits issued in the year ending September 30, 1982 (which is the first year following the switch to land-only taxation) was almost 2 1/2 times the value of the best previous year, and the number of building permits issued represented a 5% increase over the best previous year.

This should come as no surprise: un-tax buildings and we'll have more of them; up-tax land and we encourage the fuller use of sites.

But wait - there is more to consider. The Australian Bureau of Statistics reported that in the year ended October 31, 1982, new home construction in the state Victoria slumped to its lowest level in 20 years! "If ever there were any doubts as to just how bad conditions have become, then these figures will certainly put an end to them," Housing Industry Association chief executive Les Groves said.

So - after Seymour Shire switched to land-only taxation, it experienced an unprecedented building boom while the

state in which it is located slumped to a 20-year low.

The score on land value taxation in Victoria is now 23 wins, no losses. In Pennsylvania, the score is 5-0. Isn't it reasonable to say that the longer we delay introducing a two-rate tax in our home town, the more we contribute to the decline of local business and the more the army of the unemployed grows and grows? How much more evidence is needed to convert intellectual approval into real-life action? To know and not to act . . .

(Information for this article came from Progress Magazine of Melbourne, issue of Dec. 1982-Jan. 1983)

Perhaps this question has crossed your mind: "If land value taxation is so good, why hasn't it been more widely adopted?" Well, if you're not going to act after reading articles like the one above, then at least you'll know the basic answer to the question.

Hard Facts Show Land Value Taxation Spurs Economic Growth

In its five years of existence, this periodical has presented literally dozens of studies showing how the adoption of land value taxation was almost immediately followed by increased construction and rehabilitation. The chart on the right presents still more evidence. It presents building permit statistics for those localities which have switched to the land-value-tax-only basis since 1970.

The chart is based on A.M.I.S. Australian government statistics as gathered by the Land Values Research Group, Alan Hutchinson, Director, and as reproduced from Progress Magazine (Melbourne), November 1975, p. 11. UCV stands for unimproved capital value, which to Americans means a tax only on land values. NAV means net annual value and represents a tax on the estimated annual income of real estate; it is mostly a tax on buildings.

The figures in parentheses represent the building permits which could have been expected had local taxes on buildings continued after 1970 in accordance with the general construction trends in the State Statistical Divisions in which these localities are situated.

Municipality and local tax basis. Year ended 30th June		Dwelling permits issued Nos.		Value $ (000's)		Total value of all building permits $ (000's)	
KILMORE SHIRE							
Buildings un-taxed							
1975	UCV	112	(51)	2258	(981)	2577	(1646)
1974	UCV	110	(67)	1688	(1000)	1830	(1563)
1973	UCV	79	(55)	1109	(662)	1394	(1047)
1972	UCV	45	(41)	611	(443)	925	(680)
*1971	UCV	26	(27)	348	(334)	570	(530)
Buildings taxed							
1970	NAV	32		342		592	
1969	NAV	19		202		388	
1968	NAV	21		207		320	
BUNINYONG SHIRE							
Buildings un-taxed							
1975	UCV	108	(38)	2149	(763)	3349	(986)
1974	UCV	114	(60)	1824	(944)	2723	(982)
1973	UCV	90	(48)	1278	(624)	2080	(657)
*1972	UCV	44	(35)	550	(396)	1897	(444)
Buildings taxed							
1971	NAV	30		322		393	
1970	NAV	33		353		414	
1969	NAV	28		298		415	
MELTON SHIRE							
Buildings un-taxed							
1975	UCV	517	(326)	9211	(6503)	11902	(7689)
*1974	UCV	825	(485)	11881	(7461)	14850	(8423)
Buildings taxed							
1973	NAV	587		7202		8848	
1972	NAV	467		5043		5893	
1971	NAV	299		3212		3907	

UCV means Unimproved Capital Value of land.
NAV means Annual Value of land plus buildings.
*The transition year comprises 9 months of un-taxed and the remaining three months of taxed buildings

For example, in 1975, Kilmore Shire issued $2,577,000 in building permits, more than four times the value issued in the last year prior to the switch to the land-only tax. Had Kilmore Shire experienced the same post-1970 growth rate as its district did, it would have issued only $1,646,000 in building permits. The difference of $931,000 represented wages and profits that would not have existed at all without a switch to a land-tax-only system.

It might cross your mind that perhaps we are showing you statistics for only those land-taxing localities which have had good construction records. Not so. Rest easy.

This article, coupled with three others that have appeared in the past, show statistics for ALL the localities in the state of Victoria which have adopted land value taxation between 1955 and 1974. See our previous issues for October 1977, January 1978 and November 1978. Thus, there has been no selective use of statistics to substantiate the case for land value taxation.

ALLAN R. HUTCHINSON,
B.Sc., M.I.E. Aust.

New Victorian Study: LVT Towns Outgrow Their Neighbors

If more hard evidence is needed, here it is.

● In the Melbourne metropolitan area, the 27 cities taxing land values only for local government showed an average inter-census growth for privately built dwellings of 12.9%, while the 15 cities that tax land and building values together showed an average growth of only 2.8%.

● For all of the state of Victoria, Australia, the average growth rate was 15.2% for the land tax only localities compared with a 10.9% for the tax-buildings-also localities.

A comment on "inter-census" it refers to the difference in privately dwelling construction between the latest government census, June 30, 1976, and the previous census of June 30, 1971.

These statistics come to us from Progress Magazine (Melbourne), July 1979 page 8 and were based on a 17-page report giving details for each of the 211 councils in Victoria. Copies of the full study (Reference 4.4) are obtainable at $1.00 per copy from Mr. H. B. Every, Hon. Secretary, Land Values Research Group, 27 McCallum Road, Doncaster, Vic. 3108, Australia.

One can wonder what tremendous economic growth would ensue if these land taxing towns in Victoria were to impose an increasingly higher tax rate on land assessment, using the extra revenue to pay for their residents' state and federal taxes, or perhaps they could distribute the extra land tax revenue received on an equal per capita basis.

Conclusion: How much more hard evidence do you need before you try to get your town to lower the property tax rate on buildings and raise it on land?

Sale City Sizzles

It didn't happen yesterday, but if it was true then, it is true now and it has important implications for the beleaguered economies of our American cities. We refer to an article appearing in the February 1971 issue of Progress Magazine. It deals with the spectacular rise of Sale City, 136 miles east of Melbourne. The following is excerpted from that article:

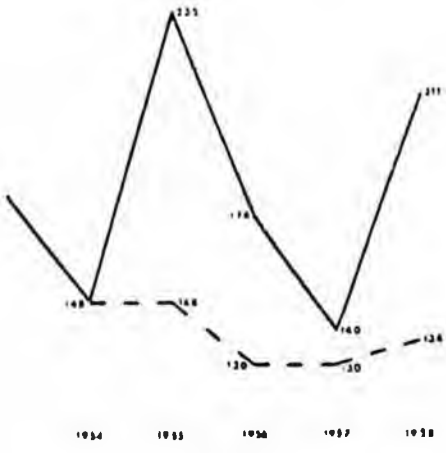
"Its growth has been spectacular for a rural city. Its population stood at 6,537 at the census in 1954, when it ceased imposing local taxes on homes and other improvements. By the 1961 census it had risen to 7,899 (an increase of 20.8 per cent). By the next census in 1966 it had risen further to 8,648 (increase of 9.5 per cent) and in 1970 is approximately 11,000. The growth to 1967 preceded the gas and oil developments which have accelerated it since.

"Before it changed to site value rating with untaxed improvements in 1954, the prospects of Sale looked bleak. Number and value of building permits issued had progressively fallen for the three years preceeding. But the stimulus of untaxed buildings first stopped the rot and then reversed the trend, and the city has never looked back since. At the time of the change-over, value of building permits issued in the year was $296,000. For the year ended June 1970 the value totalled $3,310,000.

"An article in the magazine 'The Age' says, 'The townfolk say there is no doubt that the discovery of natural gas in Bass Strait, with its consequent industrial establishments near Sale, accelerated the city's growth. But they claim it was happening anyway - that Sale was progressing rapidly towards increased industrial and commercial self-sufficency and that the past three years of rapid expansion should be regarded merely as a most welcome shot in the arm for local confidence.'

"Motels numbered only three a couple of years ago and now there are seven with more planned. Just about every pub in town has the builders in remodelling and on the outskirts of the city developers are going great guns with new housing subdivisions. At the Sale Club they argue whether they have 13 or 16 millionaires as members. Significantly they were mostly farmers!" "

In our American cities, wages and profits are lower than they ought to be, and unemployment and poverty await those who slip and fall in the competitive struggle. Is there an urban politician here or there who can look beyond the numerous short-term crises that beset him, and do something basic and powerful for the long run benefit of his constituents?



Sale City

The above chart represents actual new construction (solid line) after the adoption of LVT compared with projected construction levels (dashed line) had this town followed the construction changes of other non-LVT towns in its statistical district. (The above figures represent old Australian pounds. One pound equals two new Australian dollars.)

Sydney vs. Melbourne: Another LVT Success Story?

Sydney and Melbourne are cities in Australia of similar size (population 2.7 million and 2.4 million respectively) - but with one important difference. Sydney has been taxing only land values for its revenue needs for decades while Melbourne taxes both land and buildings. In 1976, the independent Sydney Water and Sewerage Board, which had been taxing both land and buildings, switched to a tax on only land values (LVT) for all of its not inconsiderable revenue needs. The Melbourne Water and Sewerage Board continued to levy a land and building tax.

Since 1976, residential construction has increased much faster in Sydney than in Melbourne. The difference is surprising - in excess of eleven-fold! These statistics from Progress Magazine (2/83, Melbourne) tell the story:

Year	Unit ($ millions)	Value of Dwelling Permits Issued Sydney Metro	Melbourne Metro
1981-82	(..)	1193	790
1976-77	(..)	554	718
Growth	(..)	639	72

During the years covered above, Sydney's value of dwelling permits increased 115% while Melbourne's increased only 10%.

One might expect that if new construction is taxed less, there will be more of it; if land is taxed more, then it will be more fully developed. Nevertheless, other factors might also help account for Sydney's greater growth.

Yet it is reassuring to note that once again the LVT town shows more economic viability than the non-LVT one. There are literally hundreds of corroborating comparisons pointing to the same conclusion, with more to come.

Something to think about in these times of high unemployment.

Study Shows LVT Towns Have Fewer Properties in Tax Arrears

Latest information just received from Victoria, Australia shows that towns in the Melbourne suburbs which tax only land values (LVT) have less property in tax arrears than towns which tax both land and buildings. Here are the figures:

	Arrears as Percent of Revenue Collected		
	1976-77	1977-78	1978-79
Non-LVT Localities			
Bacchus Marsh Shire			
Cranbourne Shire			
Bulla Shire	6.62	6.25	5.82
Lillydale Shire			
Healesville Shire			
Sunshine City			
LVT Localities			
South Melbourne City			
Sherbrooke Shire			
Croydon City	3.50	3.46	4.13
Ringwood City			
Melton Shire			

Source: Allan Hutchinson, January 7, 1981 letter to Incentive Taxation, citing Australian Government Bureau of Census and Statistics.

In other words, an average of 6.23% of the revenue collected in the non-LVT localities was in tax arrears (non-payment), while for the LVT localities the same percentage was 3.7%, or almost half.

Mr. Hutchinson also gave the arrears/revenue percentages for central Melbourne City. For the years given above, they are: 5.14%, 3.02%, 1.20%, for a three-year average of 3.12%, which is about equal to the three-year average of the LVT localities. But it would seem wiser to compare the arrears revenue percentages of the suburban LVT localities with the suburban non-LVT localities rather than with the quite different central city.

These figures should help allay the fears of local officials in the United States who think that if the property tax is shifted from buildings to land, many derelict properties will revert to the city in tax default. Not so - the result rather will be an increase in construction.

As a matter of fact, the LVT localities listed above have an average improvements-to-land ratio which is 14% higher than their suburban non-LVT counterparts. This indicates a higher rate of construction in the LVT localities.

And one last point: the taxes payable on vacant land under LVT in all the localities listed above are more than double the taxes payable under the non-LVT approach. It is vacant land rather than built-upon land which mainly becomes tax delinquent. If there were no other factor working it could therefore be expected that the amount of unpaid taxes on vacant land would increase under LVT more than twice as quickly as under non-LVT. But the evidence here is that they are increasing only at about half the rate under land value taxation.

Ignore This Hard Evidence If You Can

The evidence piles up. Up and up and up. Now comes still more.

Regular readers of this bulletin have seen numerous hard-fact studies showing how land value taxation boosts new construction and rehabilitation.

Now comes yet one study more. And it is a beauty.

The Land Values Research Group of Melbourne, Australia, using data from the Australian Bureau of Statistics, has examined the record of new construction and rehabilitation in Caulfield City (Victoria, Aus.) and the seven cities adjoining it. Here is what the Group found:

In the three-year period 1966-69, Caulfield City taxes only land values for local revenue purposes. Then it went on to a dual tax system, collecting part of its revenue from a tax on land values and part from a tax on real estate income. This unfortunate regression at least gives us the opportunity of finding out what happens when a city reduces its reliance on land value taxation.

What happened in Caulfield? It shouldn't happen to your town, but maybe it has. The immediate effect of the change was to cut the total value of dwelling permits issued by half for the three-year 1969-1972 period as compared to the 1966-1969 land-tax-only period. Nor had the total value of dwelling permits recovered by the 1975-1978 period.

In the four adjoining cities taxing only land values (Moorabin, Oakleigh, Malvern, Cumberwell), the value of dwelling permits issued progressively increased from the initial period of 1966-1969 through 1969-1972, 1972-1975 and 1975-1978. In the latter period the value of dwelling permits issued were 50% higher than in the initial period!

But lo! The poor non-land-taxing neighboring cities of Brighton, Prahran and St. Kilda. Their value of dwelling permits issued progressively decreased, so that by 1975-1978 it was less than half of the initial period of 1966-1969!

To sum up: the cities which taxes only land values experienced progressive economic growth Caulfield suffered when it started taxing buildings. The cities levying an income tax on real estate did worst of all.

If you want a copy of the report, send one dollar to Allan R. Hutchinson, Hon. Director, Land Values Research Group, 3? Allison Ave., Glen Iris, Victoria 3146 Australia.

Is it too much to say that the unemployment and economic stagnation that might exist in your home town is partially the fault of those who, having read the results of this study and the many others like it, make no effort to get the mayor and city councilmen to lower the tax rate on buildings while increasing the tax rate on land?

Construction Spurt in Kilmore Shire

The latest figures for the township of Kilmore Shire show continued construction growth ever since its electorate voted in 1971 to tax land values only.

- In the four years prior to the switch new construction grew 104%. In the four years after the switch, it grew 209%.
- Construction continued to grow so that by 1977 (the last year for which statistics are available), it had grown by 508%.

But you are entitled to think, "Maybe it would have happened anyway. Maybe the whole region experienced construction growth."

As a matter of fact, the whole region did grow, but only by 160%, which is considerably less than Kilmore's 508%. All this is revealed in the figures in parentheses in the table below. They show the construction which could have been expected had Kilmore followed the construction growth of the Goulbourn statistical district in which it is located. They are arrived at by multiplying the construction figure for the last year of taxed buildings (1970 = A$592,000) by the construction change for each of the following years.

For instance construction in the entire Goulbourn district was off 20% from 1970 to 1971. Had Kilmore followed the construction trends of its district it could have expected A$474,000 in new construction (A$592,000 minus 20%). Instead, after having adopted taxation on land values only, it had A$570,000 in new construction.

Year ending June 30th	Value of all Building Permits Issued (A$'000's)
Land Value Tax Only	
1977	3602 (1539)
1976	2658 (1598)
1975	2577 (1527)
1974	1830 (1450)
1973	1394 (799)
1972	925 (509)
1971*	570 (474)
Buildings Taxed	
1970	592
1969	388
1968	320
1967	290

*In 1971, land value taxation was used for the last nine months only.

Source of statistics: Australian Bureau of Statistics, building permits reference number 7, 1978, Victorian Office.

Note that in every year from 1971 to 1977, Kilmore's actual construction outstripped what it could have expected had it followed its district's construction trends.

In fact, it experienced A$5,660,000 more in con-

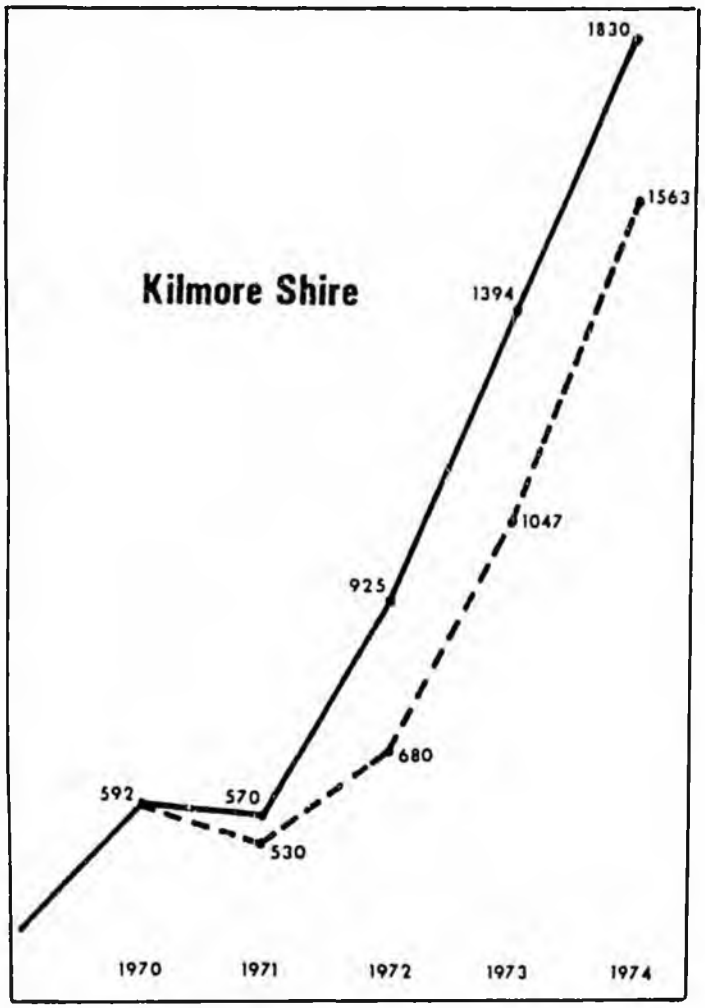
struction that could have been expected. In percentage terms, 72% more for the entire seven-year period!

To Be Expected

No one should be surprised to see this faster growth. After all, wouldn't you prefer to build in a community where your efforts would not be taxed? If you owned land, would you be less willing to keep it out of full use if you had to pay a heavier tax on it whether you used it or not? Wouldn't you want to build an improvement on it at least adequate to pay the tax on it? So we should expect a shift to land value taxation to spur new construction.

Are there people in your town walking around looking for jobs because land is not being taxed enough, buildings too much? Wouldn't land value taxation spur new construction in your town, just as in Kilmore? Why should it be any different?

What are you doing to improve economic conditions in your town?



The above chart represents actual new construction [solid] after the adoption of LVT compared with projected construction levels (dashed line) had this town followed the construction changes of other non-LVT towns in its statistical [group].

Draw Your Own Conclusion

Buninyong is a rural shire 73 miles west of Melbourne. It was famous in the past as a rich gold mining center but its fortunes declined when the mines were worked out. In 1972, the local taxpayers, mostly farmers and cattlemen, voted out the old property tax system and replaced it with a tax on land values only. It has no other taxes.

We present here the record of building permits issued both before and after the change. You draw your own conclusions.

Year ended 30th June	Building Permits Issued Number	Value (A$'000's)
Buildings un-taxed (LVT)		
1978	184	7.087
1977	158	5.976
1976	166	4.545
1975	108	3.349
1974	114	2.723
1973	90	2.080
1972*	44	1.897
Buildings taxed		
1971	30	393
1970	33	414
1969	28	415

*Year of tax change: three months of taxed and nine months of un-taxed buildings.

The source of these statistics is Progress Magazine (Melbourne), June 1979, page 3, as taken from the Australian Bureau of Statistics, series catalog number 8703.2.

Bear in mind that 1975-76 were years of serious recession in the building industry.

Good Old Evidence for Land Value Taxation

Good evidence is good evidence, no matter how old it is. According to a pamphlet by Johan Hansson entitled "Land Value Reform in New Zealand" and published around 1910 -

- in those towns of New Zealand which are not taxing land values exclusively, the increase in population from 1901 to 1906 was 15.5%;
- in the land-tax-only towns, the increase was 29%.
- the value of improvements increased 36% in the non-LVT towns and 82.3% in the LVT-only towns.

These statistics were based on government census data. They seem to support the contention that LVT induces economic growth, and this is how we might combat unemployment today.

III

Miscellaneous

Evidence

How to Contain Urban Sprawl and Save the Clean-and-Green Countryside

I live about a quarter of a mile north of Indiana, Pa., a town of some 15,000 souls. Between my house and the town boundary there are four empty lots for which the owner is asking $17,000 apiece. In the other direction, away from the town about two miles out, is a pretty picture postcard farm, surrounded here and there by homesteads. The farm now bears a sign, "For Sale."

There's a clear cause-and-effect relationship between the empty urban lots and this farm (as well as others) up for sale in the countryside. Because homeowners are not settling on those urban empty lots, they are settling in the countryside, enticing farmers to sell out. And when the homeowners settle out of town, they buy an acre or two, whereas in town they would have bought a quarter-acre plot.

To be sure, many homeowners out in the countryside are there by choice. They prefer the great outdoors to in-town living. But most of them would have preferred to live in town, as the higher price of in-town land indicates.

Because these homeowners are living out of town while working and shopping in town, they use gas, emit exhaust, use up the roads, increase costs for the extension of sewers, gas and water to their distant sites, etc.; all these costs would be less if they could have settled on the in-town and near-town lots which were their preferences had not these lots been held out of use at a huge price.

Not only that, but public transportation becomes uneconomic in sprawled out, sparsely settled areas.

In addition, the city provides roads, sewers, utilities, schools, hospitals, police and fire protection to those lots at huge cost. What a waste to service empty lots! And what a windfall profit to the landowners, since the taxes paid by workers and building owners finance the public improvements that enable these landowners to sell out at a huge profit. What an insane system - the active producers of wealth are taxed to enrich non-producers! How much would those vacant lots be worth if those public improvements didn't exist?

Of course, the obvious solution is to tax land more. It would become too expensive to keep land out of use and it would also bring down the price of land within the means of lower-income homeowners.

Because we don't tax land more, the countryside is despoiled, gas is wasted, pollution increases, and the cost of local government services skyrockets. Also land costs more and so does homeowning.

"When urban land shoots up in price, developers are encouraged to construct in the suburbs or rural areas instead. When rural land prices zoom, then farmers are encouraged to sell out at a speculative profit. Up-taxing land and down-taxing buildings is the antidote." - Catalyst!, p. 36

Moreover, because countryside land is inadequately taxed, it is used inefficiently and this causes still more invasion of the clean and green. Rural sprawl is no good, either.

21¢

"Wait a minute," some readers will say. "That all could be true, but look about you. There isn't much vacant land around. There are more important causes of the problems you mention."

Not so. In 1971, the prestigious journal "Land Economics" published a vacant land survey of all 86 U.S. cities with populations over 100,000. Fully 21¢ of the land area in the cities for which data was available (58 out of the 86) was vacant and buildable upon. 21¢! A much greater percentage than that was vacant, but not all the vacant land was buildable upon (see Ray Northam, "Vacant Urban Land in the American City," Land Economics, 11/71).

The chart below gives vacant land information for 13 of the 86 cities surveyed.

Vacant and Buildable Land in 13 U.S. Cities

City	Date Reported	Proportion of land area vacant	Total Acres Vacant Land	Proportion Considered Buildable	Proportion vacant and buildable	Net Acres of Buildable Vacant Land
Allentown, Pa.	1970	22¢	2,465	75¢	17¢	1,849
Erie, Pa.	1970	17	2,063	95	17	1,960
Fresno, Ca.	1970	20	3,169	100	20	3,169
Jersey City, N.J.	1970	17	1,750	100	17	1,750
Los Angeles, Ca.	1970	10	29,408	100	10	29,408
Milwaukee, Wis.	1970	23	14,092	85	20	11,978
Mobile, Ala.	1966	59	46,782	NA	NA	NA
Newark, N.J.	1966	9	1,422	NA	NA	NA
New York, N.Y.	1970	13	25,656	90	12	23,090
Pittsburgh, Pa.	1970	23	8,230	36	8	2,963
San Diego, Ca.	1970	54	107,537	95	51	102,160
San Francisco, Ca.	1970	5	1,371	85	4	1,165
San Jose, Ca.	1970	57	39,630	62	35	24,571

Sources: Ray Northam, "Vacant Urban Land in the American City," Land Economics, 11/71. Values referring to dates other than 1970 are calculated from data in National Commission on Urban Problems, "Land Use in 106 Large Cities," Three Land Research Studies, Study No. 2, Research Report No. 12, (Washington, D.C.: Government Printing Office, 1968). Values referring to 1970 are based upon personal corresponddence with officials of each of the cities reported.

"Ah, yes," some will say. "But that was in 1971, or just prior. What about today?"

Well, these are the most recent figures I can find. But consider: Most of these cities have lost population since 1970. Abandoned old buildings are a well-known urban problem of the 1970's. It is not likely that the 21% vacant-yet-buildable figure has decreased, and it may well have increased.

Other studies corroborate this one. They are summarized in a book entitled "Catalyst!" available for $5.00 from HGFA, 2000 Century Plaza, Suite 238, Columbia, MD. For example, a 1966 U.S. census report showed the number of vacant lots to be 14.25 million, or 1.25 million more than in 1957, despite all the new construction of the 1957-1966 period. This is another indicator that the 21% vacant-yet-buildable figure is not out of date.

But there's another big consideration. Unused land is just the tip of the iceberg. What about all the partially used land sites - aren't they semi-vacant? To the degree they're vacant, shouldn't they be added to the 21% basic figure?

For example, suppose we put a camping tent on a valuable vacant site, isn't it still mostly vacant? Suppose the site contains a building which was once suitable but has depreciated into dilapidation; once again we have a partially used site. Aren't most downtown parking lots in only partial use? Ditto for two-story buildings at valuable intersections, and so on. Many sites are not being put to their highest and best use, and so they are to that extent vacant.

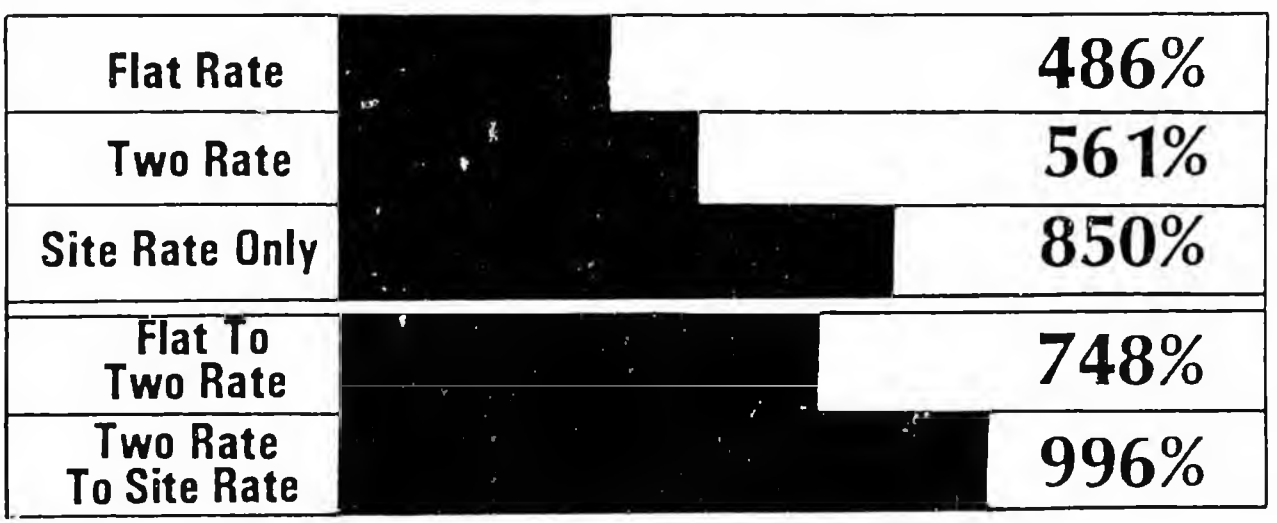
It is not possible to measure exactly how much partial use there is, but it is clearly considerable.

Tax land more and we do much to correct the ills of urban sprawl. We do much to keep our countryside clean and green.

Don't tax land more and we continue to dilapidate both town and country. And fall victim to other economic ills also.

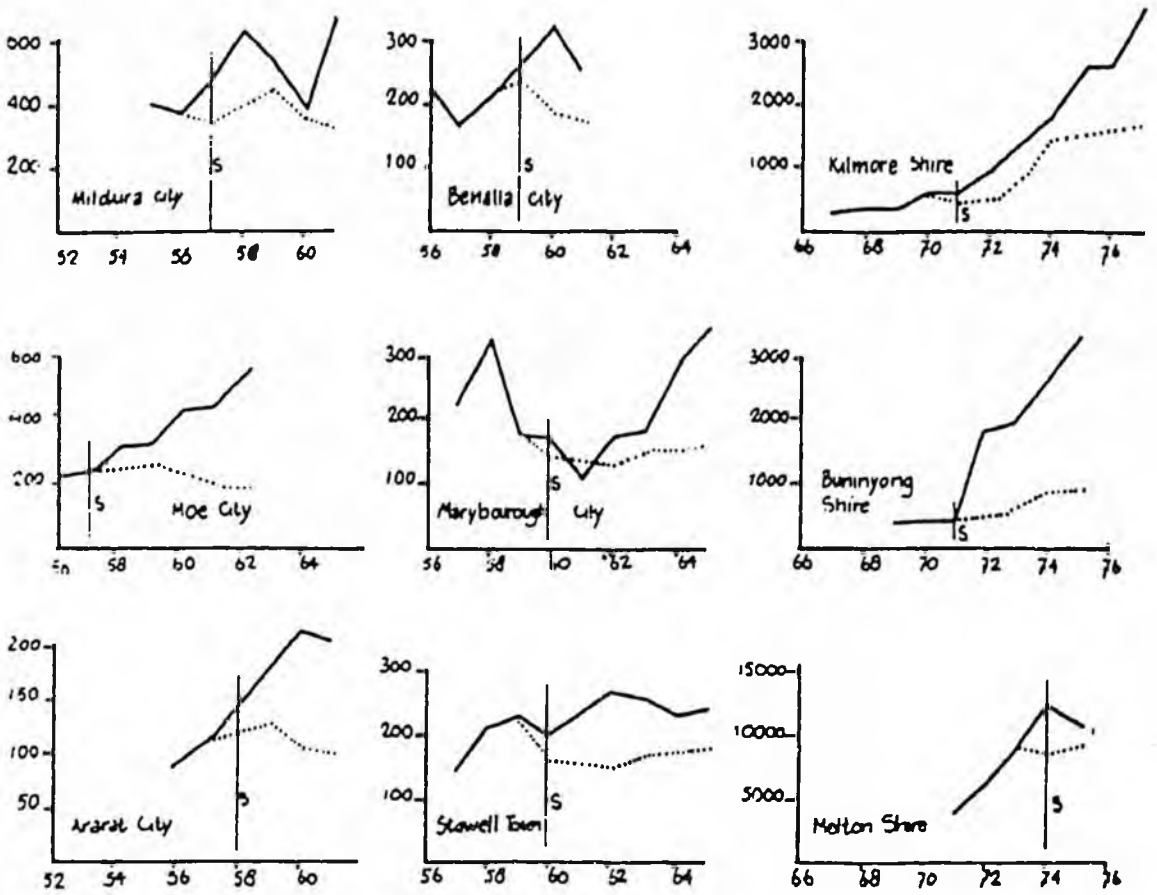
COMPARISONS OF THE 20-YEAR GROWTH OF THE 125 LARGEST TOWNS IN THE R.S.A.

1959 - 1979 Bldg. Assessments



This chart shows that in the Republic of South Africa during 1959-79, cities taxing only land-sites increased their building assessments the most (i.e., bldg. asmts. increased 850% for cities taxing only site values). And when they shifted toward taxing land-sites more during 1959-79, they showed the greatest building assessment increase of all. Land value taxation seems to produce economic growth.

Flat Rate - same property tax rate on both land and building assessments. Two Rate - higher rate on land. Site Rate Only - only land asmts. taxed. The last two categories refer to towns which switched, 1959-1979.



The solid line above represents actual new construction. These towns adopted LVT in the year indicated by the vertical line marked "S" (for switch). The dotted lines represent what the construction would have been had these towns followed the construction changes of the other towns (some of which were taxing land-only) in its statistical district. [The above figures represent old Australian pounds. One pound equals two new Australian dollars.]

The Urban Land Institute calls land value taxation "A golden key to urban renewal, to the automatic regeneration of the city—and not at public expense."

(Research Monograph No. 4, Pg. 28)

We take this opportunity to thank the Robert Schalkenbach Foundation for its generous grant which made possible the publication of this pamphlet.

Would you like to obtain copies of Catalyst! [115 pages, $5],"Incentive Taxation" [free back issues, $2/yr. subscription], or more information on two-rate taxation? Then contact the Center for the Study of Economics, 2000 Century Plaza [238], Columbia MD 21044, [301]740-1177 or after office hours [301] 997-9232.

A biographical note about the author of these articles: Steven Cord has been a professor of history and social science for 24 years at Indiana University of Pennsylvania [13,000 students, Indiana, Pa.]. He retired in 1986 to become full-time president of C.S.E. and editor of "Incentive Taxation." He has authored two books and many research articles on land value taxation. He is married, with three children.

1987
ISBN 0-911312-76-5

FILE CONTENTS FILE NAME HB 475 Dt Referred 2/15/88

#	Date In	Doc. Type	Date	DESCRIPTION Subject	From	Copied	Init
(1)	2/17/88	Bill	2/15/88				
(2)	4/4/88	Revised	4/4/88	HB 475 Revised	DCRA		
(3)	4/4/85	CS HB 475	4/4/88	HB 475 CS	S Dawson		
(4)	4/1/88	Relevant Background	4/1/88	Background materials	S Dawson		
(1.1)	4/5	CS FN	4/5	DCRA - FN			
(1.2)	4/5	CS PP	4/5	DCRA - PP			
(5)	4/5	ltr		Assessing Offices			
(6)	4/6	memo	4/6	Mat-Su Bor. -			
n	4/8	Minutes					
(7)	4/15	page		State Assessor info			
	4/8	WR					
	4/15	Minutes					
	4/15	WR					
				Dept. report - House Research			

(#) = Distributed, all files (Ltr) = Master, Backup, Next Com. Files

Official Business

COMMITTEE:

HOUSE COMMUNITY & REGIONAL AFFAIRS

DATE: Fri. April 15, 1988

SIGN-IN

Subject of meeting:

HB 475 Tax Assessments of Undeveloped Land

NAME (PLS PRINT)	YOUR TITLE & ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
MIKE WORLEY	P.O. Box B.H. JUNEAU	465-4787	DCRA	YES
Gary Lewis	PO 1609 Palmer	745-9638	Mat-Su Borough	Yes

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H C+RA 4-8-88 3:00 P.M.
4-15-88 3:00 PM.

HB 475
State Assessor

(7) HB 475

For an Act entitled: "An Act relating to real property tax deferments; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

*Section 1. AS 29.45 is amended by adding a new section to read:

Sec. 29.45.063. TAXES DEFERRED ON HOMESTEAD PROPERTY (a) A municipality may by ordinance partially defer real property taxes due on homestead property. A tax deferment under this section may:

(1) only be applied to taxes resulting from an increase in the assessed value of the land, and

(2) be granted only to the extent a tax exceeds the prior year's tax on the same land by more than 10%.

(b) Deferred property taxes shall become a lien against the property and must be paid in full if the property is sold, leased, conveyed or used for non-residential purposes.

(c) Interest on the deferred tax shall accrue at 8% per annum.

(d) In this section "homestead property" is defined as owner occupied residential real estate in which the owner has acquired title through established federal or State of Alaska homestead programs.

Sec. 2 This act takes effect January 1, 1989.

2/17

D R F P N

BILL PREPARATION/ACTION*

Bill # HB 475 Date Referred: 2/15/88 Out:

Title: Tax Assessments of Undeveloped Land

Sponsor: Phillips Referrals: CRA Res

CONTACTS:**********

Name		
Miller Woodbury	3/31/88	Dept

****

REMARKS:

MEETINGS:**********

Date	Action
4-8-8	1st hrng - next wk

*See other side for additional information. CONTAC.TXT

File Contents

HB 475 - Tax Assessments of Undeveloped Land

No.	Description
1.	Bill - HB 475
1.1.	Zero Fiscal Note with Comment - DCRA
1.2	Position Paper - DCRA
2.	Bill Review - Harrison
3.	Proposed CS [add subsection (c)]
4.	Background material
5.	Alaska Assoc. of Assessing Officers - ltr
6.	Mat-Su Borough Memo

HB475.FIL
4/5/88

(1.1) HB 475

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 475
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: "An act..tax assessments of certain undeveloped land;..effective date."
Sponsor: Representative Phillips
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: Municipal & Regional Assistance Div.
Components: State Assessor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The passage of the bill would cause no fiscal impact to the State. If adopted by municipalities however, it could cause a substantial shift of the tax burden from one segment of taxpayers to another.

Prepared by: Jim Plasman, Deputy Director — Phone: 465-4750
Division: Municipal & Regional Assistance — Date: 4/5/88

Approved by Commissioner: _____ — Date: 4-5-88
Agency: Community & Regional Affairs

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

(1.2) HB 475

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

☐ *P.O. BOX B*
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PHONE: (907) 465-4700

☐ *949 E. 36TH AVENUE, SUITE 400*
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

April 5, 1988

POSITION PAPER

RE: CS for House Bill 475

SPONSOR: Representative Phillips

Program Effects of the Bill

House Bill 475 would allow municipalities by ordinance to assess "undeveloped land" that has increased in value as a result of plans for or construction of a major development at a value as if no construction, or plans for construction, existed.

Undeveloped land is defined as a parcel of at least 40 acres with improvements worth no more than $200,000.

Comments

The Department has no general objection to the passage of optional municipal property tax exemptions. When granted, however, we believe those options should be consistent with existing statutes, should serve a positive public purpose, and should provide adequate guidance and direction to municipalities. It is our position that HB 475 falls considerably short of fulfilling those criteria.

We strongly believe that this bill does not serve a broad public purpose. The benefactors of this legislation would be a narrow segment of the state's population, and, any tax relief enjoyed by these few would cause a greater tax burden to be placed on the majority. Tax exemptions should at least be available to, or potentially available to the majority of the property owners within a municipality. The property owners this bill would benefit are in the extreme minority.

Municipalities are currently looking for ways to encourage economic development and strengthen their local tax bases. Those activities are fully supported, and, in fact, promoted by this department. CSHB 475 encourages precisely the opposite. It would tend to manipulate the open real estate market by shielding certain properties from market influences, and, it would promote economic stagnation by encouraging non-development, which would inhibit growth of the local tax base.

CSHB 475 does not provide adequate guidance for its implementation at the municipal level. The terms "substantially", "plans for construction", "major development" and "area" are not defined and are therefore open to broad interpretation and most certainly would result in unequal application of the law statewide.

Summary

In summary, the Department opposes the concept and direction promoted by this bill. We believe that tax exemptions, if adopted, should have positive impacts in municipalities and should benefit as many taxpayers as possible. We believe that it would be poor public policy to allow property tax relief to a narrow segment of the state's population who would automatically receive benefits through property value increases in an open real estate market.

Marty K. Rutherford
Acting Deputy Commissioner

(2) HB 475

Alaska State Legislature

House of Representatives

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

April 4, 1988

TO: Henry Springer, Chairman HCRA

FROM: David C. Harrison, P. A., HCRA DCH

SUBJECT: Review HB 475 "An Act relating to tax assessments of certain undeveloped land; and providing for an effective date." [Phillips]

****

Section 1. AS 29.45 is amended by adding a new section to read:

Sec. 29.45.063. UNDEVELOPED LAND (a) If the full and true value of undeveloped land increases substantially due to plans for or construction of a major development in the area, the undeveloped land shall be assessed on the basis of what the full and true value of the land would be if no plans for or construction of the major development existed.

COMMENTS: The effects of this bill is to place/hold assessment limitations on the full and true value of undeveloped land that increases for reasons specifically mentioned herein. Concern that a large development or plans for such type development might raise surrounding homestead like property assessed values and cause increased property taxes.

The questions could be asked?
How many families would this bill affect?
Is it necessary to require cities to do this or should this be optional with local governments?
Should statewide application be made if municipalities could provide this under present law?

CS FOR HOUSE BILL NO. 475 (only)
Substitute bill enclosed provides to a municipality that approves the application of this section by ordinance. dch.

Effective date Jan. 1, 1989.

(3)HB475

5-1876B
Cook
3/4/88

Original sponsor: Phillips

IN THE HOUSE

CS FOR HOUSE BILL NO. 475 ( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to tax assessments of certain undeveloped land; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 29.45 is amended by adding a new section to read:

Sec. 29.45.063. UNDEVELOPED LAND. (a) If the full and true value of undeveloped land increases substantially due to plans for or construction of a major development in the area, the undeveloped land shall be assessed on the basis of what the full and true value of the land would be if no plans for or construction of the major development existed. Undeveloped land assessed under this subsection shall continue to be assessed under this subsection only so long as the owner at the time of the increase in value retains title to the land and the land qualifies as undeveloped land.

(b) In this section "undeveloped land" means a parcel of land that is at least 40 acres in size with improvements assessed at no more than $200,000.

(c) This section applies only to a municipality that approves the application of this section by ordinance.

* Sec. 2. This Act takes effect January 1, 1989.

(4) HB475

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

February 9, 1988

MEMORANDUM

TO: Representative Randy Phillips

ATTN: Janet Seitz

FROM: Patricia Brawley pb
Legislative Analyst

RE: Proposed Eagle Valley Ski Resort: Cost of Utilities and Access
Research Request 88.118 (Supplemental Information)

Attached please find additional information from the National Conference of State Legislatures on land use taxation. I hope this information is useful to you.

Attachment

WISCONSIN'S FARMLAND PRESERVATION PROGRAM
CURRENT LAW AND STATUS

STAFF BRIEF 82-18

Wisconsin Legislative Council Staff

State Capitol

Madison, Wisconsin

July 28, 1982
(Corrections Made August 10, 1982)

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STAFF BRIEF 82-18*

WISCONSIN'S FARMLAND PRESERVATION PROGRAM CURRENT LAW AND STATUS

INTRODUCTION

This Staff Brief was prepared for the Legislative Council's Special Committee on Interrelationship of Urban and Rural Policies, which was created by the Legislative Council at its meeting of May 27, 1982. The Special Committee's directive included, among other things, that it "...examine state programs and policies relating to agricultural lands and maintenance of urban centers to determine whether such programs are achieving their intended objectives and whether these objectives are in conflict or produce competition between urban and rural interests...."

This Staff Brief provides a description of the Farmland Preservation Program and briefly reviews the current status of this relatively new, major "rural" program. PART I describes the statutory basis for, and operation of, the Program, while PART II reviews the current level of Program implementation. PART III summarizes studies which examined whether the Farmland Preservation Program (a) preserves farmland or (b) affects patterns of urban development.

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*This Staff Brief was prepared by Leslie Glustrom, Science Analyst, Legislative Council Staff.

PART I

DESCRIPTION OF THE FARMLAND PRESERVATION LAW

A. LEGISLATIVE HISTORY

1. The Original Law; Chapter 29, Laws of 1977

The Farmland Preservation Law was enacted by the 1977 Legislature as part of the 1977-79 Biennial Budget Act [Ch. 29, Laws of 1977], in order to provide income tax credits to owners of farmland who participate in some form of land use planning designed to preserve farmland.

The income tax credit available under the Farmland Preservation Law is based on a complex formula involving the amount of property tax paid and the household income. In general, as a farmer's property tax bill increases, so does the credit, while as household income increases, the tax credit decreases. In this sense, the tax credit program is termed a "circuit breaker" approach; as the size of the property tax relative to household income increases, so does the size of the tax credit. Conversely, as the property tax decreases relative to household income, so does the credit. Under the original formula, only low- and moderate-income farmers who participated in the Farmland Preservation Program received a tax credit. [The tax credit and land use planning components of the Farmland Preservation Law will be described in further detail in Sections B and C, below.]

Since enactment of the original law, a number of changes have been made by the Legislature. Some of the key changes are described below.

2. Chapter 418, Laws of 1977

A variety of changes were made in the original Farmland Preservation Law by the 1978 Budget Review Act [Ch. 418, Laws of 1977]. Among other things:

a. The definition of "income" was modified to exclude the first $7,500 of nonfarm wages;

b. The maximum amount of property tax used to calculate the credit was increased from $4,000 to $6,000; and

c. The maximum tax credit was increased from $2,600 to $4,200.

In addition, Ch. 418, Laws of 1977, modified the provisions in the law relating to soil and water conservation. The original law [Ch. 29 Laws

of 1977] required that farmers receiving tax credits as a result of a preservation agreement operate their farm in accordance with a soil and water conservation plan. No provisions were made for deviations from the conservation plan. Chapter 418, Laws of 1977, required that the farm be operated in substantial accordance with an approved soil and water conservation district plan and allowed deviations from the conservation plan, if personnel were not available to institute the suggested conservation practices or the practices were not economical for the owner to adopt.

3. Chapter 34, Laws of 1979

During the 1979 Legislative Session, additional changes were made in the original law by a number of laws including the 1979-81 Biennial Budget Act [Ch. 34, Laws of 1979]. Among other things, Ch. 34, Laws of 1979:

a. Allowed individual stockholders of "tax-option" corporations to claim their share of the income tax credit.

b. Modified the formulae used to calculate the amount of property taxes used to compute the credit and the income tax credit. The effect of these changes was to provide a higher tax credit to those farmers with a lower income.

c. Modified the population density criteria used to define counties where income tax credits are only available if the land is subject to exclusive agricultural zoning. Previously, counties having a population of 75,000 or more, or those adjacent to a county with a population of 400,000, had to have an exclusive agricultural zoning ordinance, for owners of farmland to be eligible for an income tax credit after 1982. Chapter 34, Laws of 1979, changed this so that presently counties having a population density of 100 or more persons per square mile are required to have exclusive agricultural zoning for farmers to be eligible for a tax credit after 1982. As will be described below, farmers in counties with population densities of less than 100 persons per square mile are eligible for tax credits if the county either has exclusive agricultural zoning or a farmland preservation plan.

4. 1981-83 Legislative Session

The 1981-83 Legislature made several changes in the Farmland Preservation Law. Among other things, the 1981 Legislature:

a. Modified the formula for calculating what constitutes "excessive property tax" with the result being that most farmers will receive a smaller credit than previously [Ch. 20, Laws of 1981].

b. Modified the definition of income by:

(1) Deleting the deduction for the first $7,500 of nonfarm income [Ch. 20, Laws of 1981];

(2) Requiring the inclusion of nonfarm business losses [Ch. 20, Laws of 1981]; and

(3) Disallowing depreciation deductions for more than $25,000 [Ch. 317, Laws of 1981].

The net effect of these changes was to generally increase the calculated household income and thereby reduce the tax credit.

c. Modified the Program to provide a minimum credit, equal to 10% of property taxes, to any farmer subject to an exclusive agricultural zoning ordinance, regardless of income [Ch. 93, Laws of 1981].

d. Provided that after July 1, 1983, the Agricultural Lands Preservation Board would be abolished and its duties would be transferred to the newly-created Land Conservation Board [Ch. 346, Laws of 1981]. [The functions of the Agricultural Lands Preservation Board are described in Section B, below.] The Agricultural Lands Preservation Board [s. 15.135 (3), Stats.] consists of the Secretaries of the Department of Administration (DOA), the Department of Development (DOD) and the Department of Agriculture, Trade and Consumer Protection (DATCP) or their designees and two public members appointed by the Governor. The Land Conservation Board consists of the Secretaries of DOA and DATCP or their designees, three members of county land conservation committees designated at the annual meeting of the conservation committees and two public members appointed by the Governor.

[Chapter 346, Laws of 1981, mandated that each county establish a land conservation committee which is to be responsible for certain soil and water conservation functions.]

B. LAND USE PLANNING PROVISIONS OF THE FARMLAND PRESERVATION PROGRAM

This section describes the land use planning provisions of the Farmland Preservation Program. The original Farmland Preservation Law

provided for two phases in the Program. The initial phase (which terminates in 1982) allowed farmers to qualify for income tax credits regardless of whether local government took any farmland preservation action. After 1982, however, farmers can only become eligible for tax credits if there has been local government action to preserve farmland. These two phases of the Program are described below.

1. Initial Preservation Agreements

From commencement of the Farmland Preservation Program in December 1977, until September 30, 1982, farmers can qualify for tax credits (provided the other eligibility requirements are met) by signing an initial agreement to preserve the farmland [s. 91.31, Stats.]. To be eligible to sign an agreement, the farmer must have 35 or more acres in a parcel and the land must have produced $6,000 in gross profit from agricultural uses during the last year or $18,000 in gross agricultural profit during the preceding three years [s. 91.01 (6), Stats.].

If a farmer signs a preservation agreement, no structures may be built or improvements made on the land [s. 91.13 (8), Stats.], unless they comply with one of the following criteria:

a. They will provide a residence for a person (or a family of which at least one member) earns a substantial part of his or her livelihood from the farm or for the parent or child of the operator of the farm;

b. They are consistent with agricultural use;

c. They are approved by the local governing body and the DATCP; or

d. They are incident to a scenic, access or utility easement or license.

In addition, a farmer who signs an initial agreement must either have a soil and water conservation plan or such a plan must be under development. Farmers who sign an initial agreement are exempt from special assessments for sanitary sewers, water, lights or nonfarm drainage projects unless the farmer decides to accept the assessment in order to benefit from the improvements [s. 91.15, Stats.].

To apply for an agreement [s. 91.13, Stats.], a farmer applies to the county clerk who notifies the DATCP as well as several local government officials who have 30 days to comment on the application. The county board has 120 days to approve or reject the application. If the county board approves the application, it forwards it to the DATCP which must approve the application unless the farmland does not meet the eligibility criteria described above related to size and profits. If the county board

rejects the application, the farmer may appeal to the Land Conservation Board.

The tax credits available to a farmer who executes an initial preservation agreement and the penalties for violating or not renewing an initial agreement after the expiration date of September 30, 1982, are described in Sections C and D, below.

2. Land Use Planning Requirements After 1982

After 1982, for a farmer to be eligible for tax credits, the local governmental unit in which the land is located, must have taken some action to preserve agricultural land. In counties with a population density of 100 or more persons per square mile ("urban" counties), farmers are only eligible for tax credits if the land is subject to an exclusive agricultural use zoning ordinance. Counties with population densities of 100 persons per square mile or more are: Brown, Dane, Eau Claire, Fond du Lac, Jefferson, Kenosha, La Crosse, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago.

As noted previously, farmers in counties with a population density less than 100 persons per square mile ("rural" counties) are eligible for tax credits if the county has an agricultural land preservation plan (and the farmer signs a preservation agreement) or the land is subject to an exclusive agricultural use zoning ordinance [s. 91.11 (1) and (2), Stats.].

The provisions of and procedures to be used in adopting agricultural use preservation plans and exclusive agricultural use zoning ordinances are described below.

a. County Agricultural Preservation Plans

One way for a county (with a population density of less than 100 persons per square mile) to make farmers eligible for tax credits is to adopt an agricultural preservation plan. An agricultural preservation plan must be consistent with any county land use plan [s. 91.51, Stats.], and must be based on studies and surveys of various characteristics (e.g., agricultural use, population, urban growth, public facilities and open space) of the county [s. 91.53, Stats.]. County agricultural preservation plans are not binding on landowners or the county. They are intended to guide future land use decisions and can serve as the basis for adopting an exclusive agricultural zoning ordinance.

Agricultural preservation plans must contain statements of policy regarding such things as preservation of agricultural lands, urban growth,

provision of public facilities and protection of natural resources. The plans must also contain maps identifying agricultural areas to be preserved, areas of special environmental significance, and, if necessary, transition areas. Transition areas are areas in predominantly agricultural use which the plan identifies for future development. Transition areas must contain at least 35 acres while areas to be preserved for agricultural use must contain at least 100 acres [s. 91.55, Stats.].

Agricultural preservation plans must contain "implementation programs" including land use controls designed to implement the policy statements, plans for development of public facilities to serve existing and new developments, procedures for controlling the installation of private waste disposal systems and a program for protecting areas of special environmental, natural resource or open space significance [s. 91.57, Stats.].

County agricultural preservation plans must include any agricultural preservation plans adopted by municipalities in the county (if they meet the requirements specified for county plans) and indicate how the county plan compares to any regional land use plans [s. 91.59, Stats.].

Before the plan can be adopted, a hearing must be held and comments solicited from all the towns, cities and villages in the county, the regional planning commission for the county and all adjoining counties [ss. 91.51 and 91.59, Stats.].

The Farmland Preservation Law provided state grants for the development of county agricultural preservation plans and maps [s. 91.65, Stats.]. Up to this point, over $1.5 million in grants have been provided to counties for planning and mapping.

In order for farmers to be eligible for tax credits, counties developing agricultural preservation plans must have the plans certified by the Agricultural Lands Preservation Board. [After July 1, 1983, certification will be by the Land Conservation Board.]

Once a county agricultural preservation plan has been certified, a farmer whose land is designated for preservation is eligible to sign an agreement to preserve the land [s. 91.11, Stats.]. Such an agreement is identical to the initial preservation agreements described above, except:

(1) The agreement can last from 10 to 25 years (rather than expiring on September 30, 1982, as the initial agreements do); and

(2) That farming operations must be conducted in "substantial accordance" with a soil and water

conservation plan (rather than simply having to have such a plan in existence or under development, as is required for an initial agreement).

In addition, farmers who own farmland, which is classified as a transition area under a county agricultural land preservation plan, may sign a transition area agreement which is similar to both the initial and final preservation agreements except:

(1) The agreement lasts for five to 20 years (rather than 10 to 25 years); and

(2) The farmer is not exempt from special assessments (as farmers under a preservation agreement are).

b. Exclusive Agricultural Use Zoning

The other route for farmers to become eligible for tax credits under the Farmland Preservation Law is through adoption of an exclusive agricultural use zoning ordinance by a county, city or village. [Town adoption of an exclusive agricultural use zoning ordinance only qualifies farmers for tax credits if the county has adopted an agricultural preservation plan.]

Exclusive agricultural use zoning ordinances are generally adopted the way other county, city, village or town zoning ordinances are [s. 91.73, Stats.]. For example, if a county which did not previously have a county zoning ordinance adopts an exclusive agricultural zoning ordinance, it is not effective in any town (except as described below for "urban" counties) until the ordinance is approved by the town board [s. 59.97 (5) (c), Stats.]. On the other hand, if a county which previously had a county zoning ordinance amends the ordinance to adopt exclusive agricultural zoning, the amendment automatically becomes effective unless a town files a resolution disapproving the ordinance [s. 91.73 (4), Stats.]. The only major change made in existing zoning procedures by the Farmland Preservation Law was with respect to counties with a population density of 100 or more persons per square mile. In these "urban" counties, towns can only reject an exclusive agricultural zoning ordinance (if no previous county zoning existed) if a majority of the towns in the county file resolutions disapproving of the exclusive agricultural zoning ordinance within six months of adoption of the ordinance by the county board. If a majority of towns in the county disapproves of the county exclusive agricultural zoning ordinance within six months, the ordinance is rejected for all of the towns in the county [s. 91.73 (3), Stats.].

An exclusive agricultural zoning ordinance must meet the following standards [s. 91.75, Stats.]:

> (1) Except for establishment of the residences described in (2) below, or separation of existing residences from larger farms, the minimum parcel size for establishing a residence or a farm operation is 35 acres;
>
> (2) The only new residences allowed are those allowed under preservation agreements (i.e., for a person who, or a family in which at least one member, earns a substantial part of his or her livelihood from the farm or for the parent or child of the operator of the farm).
>
> (3) No structures or improvements may be allowed unless they are consistent with agricultural uses (or gas and electric utility uses).
>
> (4) The only special exceptions or conditional uses allowed are those related to agricultural, religious, utility (other than gas or electric), institutional or governmental uses which do not conflict with agricultural uses and which are necessary in light of the alternative locations available. [The DATCP must be notified of the approval of any exceptions or conditional uses in areas zoned for exclusive agricultural use.]

To qualify farmers for income tax credits, ordinances must be certified by the Agricultural Lands Preservation Board [s. 91.78, Stats.]. [After July 1, 1983, certification will be by the Land Conservation Board.]

A local unit of government may only approve a petition for a rezoning of an area zoned for exclusive agricultural use after considering whether [s. 91.77, Stats.]:

> (1) Adequate public facilities are, or will be, available;
>
> (2) Provision of necessary public facilities will not place an unreasonable burden on the affected local unit of government; and
>
> (3) The land proposed for rezoning is suitable for development and development will not result in undue water or air pollution, cause unreasonable

soil erosion or have an unreasonably adverse effect on rare or irreplaceable natural areas.

The DATCP is to be notified of all rezonings but does not have the power to veto a local decision to rezone.

C. INCOME TAX CREDIT PROVISIONS OF THE FARMLAND PRESERVATION PROGRAM

This section of the Staff Brief describes the income tax credits available to farmers who participate in the farmland preservation programs described above.

As described previously, in general, the amount of income tax credit available depends on the household income and the amount of property taxes paid. The higher the property taxes, the higher the credit, while the higher the income, the lower the credit. [Also, the Farmland Preservation Law was amended by the 1981 Legislature to provide a minimum tax credit to any farmer subject to an exclusive agricultural use zoning ordinance, regardless of the household income. The minimum credit is equal to 10% of the property tax (up to $6,000).]

Calculation of the maximum available income tax credit involves a fairly detailed formula which has been revised several times since enactment of the original Farmland Preservation Law. The formula is comprised of the following three major steps [s. 71.09 (11) (b), Stats.].

1. Determining the Household Income

Household income includes adjusted gross income plus transfer payments such as unemployment compensation, social security, pensions and public assistance. In calculating income for claiming a farmland preservation credit, a farmer can (subsequent to the changes made by the 1981 Legislature) claim a deduction for the first $25,000 of depreciation only, and no deductions are allowed for nonfarm business losses. Also, nonfarm income must be included. [Previously, the first $7,500 of nonfarm income was not considered income.]

2. Calculating the Amount of "Excessive Property Taxes"

The amount of "excessive property taxes" is determined by subtracting a specified amount, based on the size of household income, from the property tax bill. The maximum property tax which can be used as a starting point is $6,000. Then, as household income increases, the amount subtracted from the property tax bill increases so the amount of excessive property taxes decreases. Conversely, lower income households will subtract less from the property tax bill and will therefore calculate a

higher excessive property tax. The amount subtracted from the property tax bill to determine excessive property taxes is equal to 7% of the second $5,000 of household income plus 9% of the third $5,000 plus 11% of the fourth $5,000 plus 17% of the fifth $5,000 plus 27% of the sixth $5,000 plus 37% of household income in excess of $30,000.

3. Determining the Size of the Maximum Tax Credit

The size of the maximum possible income tax credit is determined using the amount of excessive property tax and is equal to 90% of the first $2,000 of excessive property taxes plus 70% of the second $2,000 and 50% of the third $2,000 of excessive property taxes. The maximum credit cannot exceed $4,200 -- the credit available assuming $6,000 in excessive property tax.

Table 1 shows the maximum amount of tax credit for a given property tax bill and household income.

TABLE 1

Farmland Preservation Tax Credits Schedule
Effective for Property Taxes Levied in 1981

Household Income	Property Tax Bill					
	1,000	2,000	3,000	4,000	5,000	6,000
0	900	1,800	2,500	3,200	3,700	4,200
5,000	900	1,800	2,500	3,200	3,700	4,200
10,000	585	1,485	2,255	2,955	3,525	4,025
15,000	180	1,080	1,940	2,640	3,300	3,800
20,000	0*	585	1,485	2,255	2,955	3,525
25,000	0	0	720	1,620	2,360	3,050
30,000	0	0	0	405	1,305	2,115
35,000	0	0	0	0	0	0
40,000	0	0	0	0	0	0

*Note: If land is subject to an exclusive agricultural zoning ordinance, the farmer is eligible for a minimum tax credit equal to 10% of property taxes (up to $6,000) regardless of household income.

Source: Department of Agriculture, Trade and Consumer Protection.

4. Determining the Size of the Actual Credit

Table 1 shows the maximum tax credit available. However, farmers are only eligible for 100% of the maximum tax credit if the county in which the farm is located has a certified agricultural preservation plan and the farm is located in an area zoned by a county, city or village for exclusive agricultural use. If a county (with a population density of less than 100 persons per square mile) has an agricultural preservation plan and the farmer has a farmland preservation agreement, but the land is not zoned for exclusive agricultural use, the tax credit is equal to 70% of the maximum. Similarly, if the farm is located in an area zoned by a county, city or village for exclusive agricultural use, but the county has not adopted an agricultural preservation plan, the tax credit is also 70% of the maximum. Note in this case, as well as the case of a farmer

receiving 100% of the maximum credit, the exclusive agricultural use zoning must be done by a county, city or village ordinance; a town exclusive agricultural zoning ordinance (in a county which does not have exclusive agricultural zoning) only qualifies farmers for tax credits if the county has an agricultural preservation plan and the town adopts an exclusive agricultural use zoning ordinance. In that case, a farmer can be eligible for 70% of the maximum credit without signing a preservation agreement. [A preservation agreement is normally required to receive a tax credit in counties with agricultural preservation plans.] Finally, if a farmer has an initial preservation agreement, the tax credit equals 50% of the maximum. [Initial preservation agreements, which expire on September 30, 1982, were described above.] These variations are summarized in Table 2, below.

TABLE 2

Percentage of Maximum Tax Credit
Available to Farmers Participating
in Various Farmland Preservation Programs

Farmland Preservation Program	Percentage of Maximum Credit	Statutory Cite
1. County has a certified agricultural preservation plan and land is zoned by a county, city or village for exclusive agricultural use. [A preservation agreement is not required].	100%	s. 71.09 (11) (b) 3 a, Stats.
2. Land is subject to a transition area agreement (i.e., land must be in a transition area identified by a county agricultural preservation plan) and the land is located in an area zoned by a city, village or county exclusive agricultural use zoning ordinance.	100%	s. 71.09 (11) (b) 3 b, Stats.
3. Land is subject to a 10- to 25-year preservation agreement, but is not in an area zoned for exclusive agricultural use. [Note: This only applies in counties with less than 100 persons per square mile which have adopted agricultural preservation plans.]	70%	s. 71.09 (11) (b) 3 c, Stats.
4. Land is zoned by a county, city or village for exclusive agricultural use but the county has not adopted an agricultural preservation plan. [A preservation agreement is not required.]	70%	s. 71.09 (11) (b) 3 e, Stats.
5. County has adopted an agricultural preservation plan and the town has an exclusive agricultural zoning ordinance. [A preservation agreement is not required.]	70%	s. 71.09 (11) (b) 3 d, Stats.
6. Land is subject to an initial preservation agreement (expires September 30, 1982).	50%	s. 71.09 (11) (b) 3 f, Stats.

5. The 10% Minimum Credit

As noted previously, starting in 1981, any farmer who is subject to an exclusive agricultural use zoning ordinance is eligible to receive a minimum tax credit (of up to $600) equal to 10% of the property tax bill (up to $6,000), regardless of the size of the household income [Ch. 93, Laws of 1981]. In this case, the exclusive agricultural use zoning ordinance may be adopted by a county, city, village or town.

D. PENALTIES UNDER THE FARMLAND PRESERVATION LAW

This section describes penalties under the Farmland Preservation Law for not preserving farmland in accordance with a preservation agreement or an exclusive agricultural use zoning ordinance. In general, if a preservation agreement expires, or is relinquished before the expiration date in accordance with the procedure established by the Farmland Preservation Law (described below) or land under an exclusive agricultural use zoning ordinance is rezoned, the penalty is creation of a lien against the property for all or part of the tax credits received under the Program (including interest in some cases). The lien is payable to the state at the time the land is sold or at the time the land is converted to a prohibited use (e.g., developed) [s. 91.19 (10), Stats.].

If a farmer wants to relinquish a preservation agreement before the expiration date, application must be made to the local governing body (e.g., county, village or town board or city council). The local governing body may only approve the application to relinquish the agreement for one of the following reasons [s. 91.17 (2) (b), Stats.]:

1. The agreement imposes continuing "economic inviability" due to the restrictions of the agreement. ["Economic inviability" does not, however, result merely from the existence of uses of the land which would allow higher returns.]

2. Significant natural physical changes which are generally irreversible and permanently affect the land.

3. Surrounding conditions prohibit agricultural use.

If the local governing body approves the application, it must be referred to the Land Conservation Board which may either approve or reject the application. If the local governing body rejects the application (or does not act within 120 days), the applicant may appeal to the Land Conservation Board. If an application to relinquish a preservation agreement is approved, a lien on the land is prepared for the amount shown in Table 3.

Table 3 also summarizes the liens applied for nonrenewal of an agreement, or rezoning of land previously under an exclusive agricultural use zoning ordinance, as well as the civil penalties for violating the use

restrictions of a preservation agreement without first having had the agreement relinquished. Also, as indicated in Table 3, there is no penalty if land subject to a preservation agreement is sold if the agreement is transferred with the sale.

TABLE 3

Penalties Under the Farmland Preservation Law

Farmland Preservation Mechanism and Action Taken	Penalty	Statutory Cite
Initial Preservation Agreement		
- Owner withdraws from the agreement before the agreement expires.	Lien on the land for all tax credits received plus 6% interest compounded from the time the credit was received until the lien is paid.	s. 91.37 (1), Stats.
- Initial agreement expires and a final agreement is not applied for because all or part of the land is not eligible for an agreement and is not subject to exclusive agricultural zoning.	Lien on the land for credits received during the last two years on that part of the land which is not eligible for a final agreement.	s. 91.37 (2), (4) and (5), Stats.
- Initial agreement expires and a final agreement is not applied for even though all or part of the land would be eligible for a final agreement (and the land is not subject to exclusive agricultural zoning).	Lien on the land for all tax credits received on that part of the land which is eligible for a final agreement plus 6% interest compounded from the time of expiration.	s. 91.37 (3) and (5), Stats.
Final Preservation Agreement		
- Ownership changes; agreement remains in effect.	No penalty.	s. 91.17 (1), Stats.
- Owner dies or is permanently disabled.	Lien on the land for the credits received during the last 10 years plus 6% interest compounded from the time of relinquishment due to death or disability.	s. 91.17 (2), Stats.
- Agreement expires and is not renewed.	Lien on the land for the credits received during the last 10 years plus 6% interest compounded from the time of relinquishment.	s. 91.17 (8), Stats.
- Application to relinquish agreement before the expiration date is approved.	Lien on the land for the credits received during the last 10 years plus 6% interest compounded from the time the credit was received until the lien is paid.	s. 91.17 (7), Stats.
Transition Area Agreement		
- Transition area agreement expires and is not renewed.	Lien on the land for the credits received during the last 10 years plus 6% interest compounded from the time the credit was received until the lien is paid.	s. 91.17 (7), Stats.
- Application to relinquish agreement before expiration date is approved.	Lien on the land for the credits received during the last 10 years plus 6% interest compounded from the time the credit was received until the lien is paid.	s. 91.17 (7), Stats.

TABLE 3 - CONTINUED

Penalties Under the Farmland Preservation Law

Farmland Preservation Mechanism and Action Taken	Penalty	Statutory Cite
Final Preservation Agreement or Transition Area Agreement		
- Use of the land changed to a prohibited use without first relinquishing the agreement.	Owner may be enjoined by the Attorney General (on behalf of the state) or an attorney for a local governing body and may be subject to a civil penalty for "actual damages" up to double the value of the land at the time the agreement was approved.	s. 91.21 (1), Stats.
- Failure to operate the farm in substantial accordance with a soil and water conservation plan.	Civil penalties described directly above may apply after owner has been given one year to comply.	s. 91.21 (3), Stats.
Exclusive Agricultural Use Zoning		
- Land is rezoned or a special exception or conditional use permit for a non-agricultural use is granted.	Lien on the land for the credits received during the last 10 years plus 6% interest compounded from the time of relinquishment.	ss. 91.77 (2) and 91.79, Stats.

Note: 1) With respect to preservation agreements, liens are not filed for any tax credits paid on land which is subject to exclusive agricultural use zoning [ss. 91.19 (12) and 91.37 (6), Stats.].

2) Interest on a lien is not compounded during any period for which the farmland is subject to a subsequent preservation agreement or is zoned for exclusive agricultural use [s. 91.19 (7) and (8), Stats.].

PART II

STATUS OF THE FARMLAND PRESERVATION PROGRAM

This Part of the Staff Brief describes the status of the Farmland Preservation Program, indicating the number of farmland preservation agreements in effect, the number of counties which have adopted agricultural preservation plans, the number of towns which have adopted exclusive agricultural zoning and the amount of tax credits paid under the Program. Typically, the DATCP compiles statistics on the Farmland Preservation Program every six months. The most recent report fully summarizing the status of the Program is dated December 31, 1981 ["Technical Report #9: Final Participation Report for 1981, Wisconsin Farmland Preservation Program" (December 31, 1981); referred to hereafter as "Technical Report #9"]. This Part relies primarily on the information in Technical Report #9. However, where more recent information is available from the DATCP, this is also included. It should be recognized, however, that any more recent information represents only preliminary estimates which may change as more information becomes available.

A. FARMLAND PRESERVATION AGREEMENTS

As of December 31, 1981, there was a total of 2,100 farmland preservation agreements in effect. According to DATCP staff, these were essentially all initial or final preservation agreements, since only one or two transition area agreements have been signed. These agreements cover about 546,000 acres.

In addition, as of July 1, 1982 (the application deadline for receiving tax credits for 1982), an additional 700 applications for agreements were received.

B. AGRICULTURAL PRESERVATION PLANS

As of December 31, 1981, 32 counties had adopted agricultural preservation plans which had been certified by the Agricultural Lands Preservation Board. Figure 1 shows the status of county efforts to adopt agricultural preservation plans as of December 31, 1981. An additional 28 counties were scheduled to have plans adopted and certified in 1982. As of July 1, 1982, seven of these county plans had been adopted and certified (Door, Grant, Kenosha, Kewaunee, Outagamie, Racine and Winnebago). In addition, several counties (Green Lake, Oconto, Ozaukee and Rusk) which were not previously preparing preservation plans have begun the planning and mapping process.

FIGURE 1

Wisconsin Farmland Preservation Planning Projects
December 31, 1981

Source: Technical Report #9, "Participation in the Wisconsin Farmland Preservation Program," Wisconsin Department of Agriculture, Trade and Consumer Protection (December 31, 1981).

As noted in Part I, farmers in "rural" counties (less than 100 persons per square mile) which have an agricultural preservation plan can enter into a preservation agreement and receive 70% of the maximum allowable tax credit. In either a rural or "urban" (100 or more persons per square mile) county with an agricultural preservation plan, farmers can become eligible for 70% of the maximum tax credit if the town in which the land is located adopts exclusive agricultural zoning.

C. EXCLUSIVE AGRICULTURAL ZONING

As of December 31, 1981, 20 counties had adopted exclusive agricultural zoning ordinances. Figure 2 indicates those counties and the number of towns in each county that had adopted the exclusive agricultural use zoning ordinance.

FIGURE 2

County Adopted Exclusive Agricultural Use Zoning
December 31, 1981

TOP NUMBER - TOWNS THAT HAVE ADOPTED ZONING

BOTTOM NUMBER - TOTAL NUMBER OF TOWNS IN COUNTY

Source: Technical Report #9, "Participation in the Wisconsin Farmland Preservation Program," Wisconsin Department of Agriculture, Trade and Consumer Protection (December 31, 1981).

In addition to the county exclusive agricultural zoning ordinances shown in Figure 2, there are other exclusive agricultural zoning ordinances in effect in the state which have been certified by the Agricultural Lands Preservation Board. First, there are a relatively small number (less than 10) certified ordinances adopted by a city or village. Secondly, there are a number of towns which have adopted (or are in the process of adopting) an exclusive agricultural use zoning ordinance, even though the county has not adopted such an ordinance. [As noted above, in counties with an agricultural preservation plan, adoption of an exclusive agricultural use zoning ordinance by a town qualifies farmers for 70% of the maximum tax credit.]

The total number of farms protected by county-adopted exclusive agricultural zoning ordinances as of December 31, 1981, was 13,278. [Not all of these farms, however, applied for or received tax credits for the 1980 tax year, since as described below, credits were received by a total of only 6,300 farms. For the 1980 tax year, this could be partially attributed to the fact that not all farmers in zoned areas would have been eligible for tax credits (i.e., their household income may have been too high). For the 1981 tax year, however, the formula was changed to provide a minimum tax credit (10% of the first $6,000 of property taxes) to all farmers subject to exclusive agricultural zoning, regardless of income. The effect of this change on the number of farms receiving tax credits cannot yet be ascertained since a final analysis of 1981 claims has not been made.]

D. TAX CREDITS

For the 1980 tax year (credits paid in 1981), more than $10 million in tax credits was paid to over 6,300 farms with the average credit being approximately $1,600. Table 4 indicates the number of credits granted, the total of the credits and the average size of the credit for each county.

TABLE 1

Farmland Preservation Tax Credits By County
Payments Made in 1981 for 1980 Taxes

	# Credits	Total	Ave. Credit
Adams	9	$6,099.50	$782.43
Ashland	1	313.00	313.00
Barron	113	169,243.40	1,495.95
Bayfield	2	529.50	254.25
Brown	8	6,120.56	765.07
Buffalo	35	44,289.20	1,258.25
Burnett	4	2,348.50	587.12
Calumet	31	34,561.20	1,114.94
Chippewa	5	2,358.00	471.60
Clark	10	9,076.30	907.63
Columbia	603	1,094,161.60	1,814.53
Crawford	11	9,432.50	857.50
Dane	617	873,501.34	1,416.72
Dodge	78	116,796.80	1,497.39
Door	9	8,304.00	922.66
Douglas	0	0	0
Dunn	17	20,278.52	1,192.85
Eau Claire	2	1,723.00	861.50
Florence	0	0	0
Fond du Lac	45	39,748.06	833.29
Forest	0	0	0
Grant	24	32,317.59	1,346.56
Green	67	86,572.40	1,292.12
Green Lake	4	3,006.10	751.52
Iowa	583	1,561,041.91	2,235.56
Iron	1	730.00	730.00
Jackson	5	6,260.50	1,252.10
Jefferson	805	1,400,152.35	1,739.22
Juneau	12	16,001.76	1,333.64
Kenosha	9	11,157.00	1,239.66
Kewaunee	4	5,622.50	1,405.62
LaCrosse	95	164,991.00	1,736.74
Lafayette	187	401,546.30	2,147.34
Langlade	1	1,519.00	1,519.30
Lincoln	2	1,937.10	968.55
Manitowoc	56	61,399.10	939.38
Marathon	42	43,651.00	1,039.30
Marinette	5	6,221.50	1,244.30
Marquette	1	2,369.00	2,369.00
Milwaukee	11	7,499.33	681.75
Monroe	14	14,725.01	1,051.35
Oconto	5	4,735.00	947.00
Oneida	1	3,338.75	3,338.75
Outagamie	14	17,227.10	1,231.15
Ozaukee	9	12,129.70	1,348.74
Pepin	45	77,535.10	1,725.22
Pierce	99	118,422.20	1,196.18
Polk	17	21,589.20	1,269.95
Portage	2	1,572.00	786.00
Price	0	0	0
Racine	25	28,735.64	1,149.02
Richland	28	31,714.50	1,132.66
Rock	519	837,522.81	1,613.91
Rusk	1	567.50	567.50
St. Croix	130	192,806.10	1,483.12
Sauk	132	209,154.90	1,584.50
Sawyer	1	2,572.50	857.50
Shawano	33	37,161.58	1,032.25
Sheboygan	201	237,488.73	1,175.68
Taylor	14	10,832.00	773.71
Trempealeau	65	84,153.30	1,294.67
Vernon	25	24,843.00	993.72
Vilas	1	2,561.20	2,561.20
Walworth	442	889,005.53	2,011.32
Washburn	3	5,401.00	1,800.33
Washington	19	24,313.98	1,279.68
Waukesha	21	20,743.50	987.78
Waupaca	23	22,254.15	855.32
Waushara	4	4,994.00	1,248.50
Winnebago	25	23,276.20	929.24
Wood	7	8,554.54	1,228.27
Menominee	0	0	0
State Total	5,729	9,494,204.75	1,657.24

Note: Totals do not add due to missing addresses for several filers. Also, returns are sorted by address of filer. The farm may be located in another county.

Source: "Technical Report #9, 'Participation in the Wisconsin Farmland Preservation Program,' Wisconsin Department of Agriculture, Trade and Consumer Protection (December 31, 1981).

Table 5 summarizes the status of both the land use planning and tax credit aspects of the Farmland Preservation Program as of December 31, 1981.

TABLE 5

Status of the Farmland Preservation Program
as of December 31, 1981

	Number of Farms	Percentage of Total Number of Farms in the State 1/	Number of Acres	Percentage of Total Number of Acres of Farmland in the State 1/
Farmland Preservation Provisions				
Preservation Agreements	2,100	2.2%	546,000	3.0%
Exclusive Agricultural Zoning 2/	13,278	14.3%	2,667,343	14.3%
TOTAL	15,378	16.5%	3,213,343	17.3%
Tax Credits (Paid in 1981 for 1980 Tax Year)				
Total Number of Credits	6,300			
Total Amount of Credits (approximate)	$10,300,000			
Average Size of Credit (approximate)	$1,600			

1/ Statewide totals from "1982 Wisconsin Agricultural Statistics," Wisconsin Department of Agriculture, Trade and Consumer Protection (June 1982). In 1981, there were 93,000 farms and 18,600,000 acres of farmland in the state.

2/ Totals are for number of farms and number of acres protected by county exclusive agricultural use zoning. Not all farms protected by zoning received tax credits.

PART III

STUDIES ON THE FARMLAND PRESERVATION PROGRAM:

PRESERVATION OF FARMLAND AND PATTERNS OF URBAN DEVELOPMENT

The original law creating the Farmland Preservation Program, directed the DATCP to study the Program and report back to the Legislature by January 1, 1981 [SECTION 1641e, Ch. 29, Laws of 1977]. Consequently, the DATCP, in conjunction with the University of Wisconsin (UW)-Madison and UW-Extension Departments of Agricultural Economics, studied several aspects of the Farmland Preservation Program, including an analysis of: (a) participation in the Program; (b) the process of local government action under the Program; (c) farmers' response to farmland preservation agreements; (d) effects of exclusive agricultural zoning on farmland preservation; (e) distribution of tax credits; and (f) the effect of the Farmland Preservation Program on soil conservation practices.

Part III describes those studies which address the following two key questions--one from a rural perspective, the other urban:

a. Does the Farmland Preservation Program preserve farmland?

b. Does the Farmland Preservation Program affect patterns of urban development?

This Part relies primarily on the following studies of the Farmland Preservation Program:

a. Barrows, Richard and John Redman, "The Effects of Exclusive Agricultural Zoning in Columbia County, Wisconsin," Agricultural Economics Staff Paper #190, UW-Extension (January 1981). [Referred to hereafter as "Staff Paper #190."]

b. Barrows, Richard and Carol Smith, "The Effects of Exclusive Agricultural Zoning in Walworth County, Wisconsin," Agricultural Economics Staff Paper #195, UW-Extension (February 1981). [Referred to hereafter as "Staff Paper #195."]

c. Barrows, Richard, "Overview and Analysis of Participation in the Farmland Preservation Program, 1977-1979," Agricultural Economics Staff Paper #194, UW-Extension (January 1981). [Referred to hereafter as "Staff Paper #194."]

A. DOES THE FARMLAND PRESERVATION PROGRAM PRESERVE FARMLAND?

In evaluating the Farmland Preservation Program from a rural perspective, perhaps the most important question is, "Does the Farmland Preservation Program preserve farmland?" The short answer to this question is that it is probably too early to tell. The Farmland Preservation Program has only been in effect since December 1977 and the permanent Program is only beginning this year. Consequently, it is difficult to tell whether, in the long run, the Farmland Preservation Program will effectively preserve farmland. However, at least two of the studies cited above give some indication of the effectiveness of the Program.

1. Zoning

Zoning appears to be tne method of choice for most farmers to participate in the Farmland Preservation Program. Of the 6,300 farms receiving tax credits in 1981 for the 1980 tax year, only about 1/3rd (2,100) had preservation agreements. The rest were subject to exclusive agricultural use zoning. In addition, there are a large number of farms (approximately 9,000) protected by exclusive agricultural zoning which did not claim tax credits. Also, the counties with exclusive agricultural zoning are located primarily in the southeastern corner of the state where the best agricultural soils are also located [Staff Paper #194, pp. 4-7]. Consequently, in order to evaluate whether the Farmland Preservation Program preserves farmland, a key component is to determine whether exclusive agricultural zoning preserves farmland.

Although the Farmland Preservation Law has not been in effect long enough to have studied the effects of exclusive agricultural zoning enacted under the law, there are two studies analyzing the effects of exclusive agricultural zoning ordinances adopted in southeastern counties before enactment of the Farmland Preservation Law. Because the exclusive agricultural zoning ordinances adopted in these two counties generally met the standards established in the Farmland Preservation Law for exclusive agricultural zoning, these studies, described below, can give some indication of the effectiveness of exclusive agricultural zoning enacted subsequent to the Farmland Preservation Law.

a. Effect of Exclusive Agricultural Zoning in Columbia County on Farmland Preservation

In March 1973, Columbia County amended its comprehensive zoning ordinance and effectively transferred all land which was previously in an agricultural zoning district into an exclusive agricultural zoning district. The difference is that under the original ordinance, land zoned as "agricultural" could be used for "any use permitted in a Single-Family

Residence District; two-family dwellings, except a major subdivision..." [Staff Paper #190, p. 8]. The 1973 amendment to the comprehensive zoning ordinance deleted this provision and reduced the number of residential uses permitted in the zoning district. The result was an "exclusive" agricultural use zoning ordinance. [Note that "exclusive" agricultural zoning is not completely "exclusive," since an additional residence can be built on each farm if the occupant is connected with the farm operation and certain special exceptions and conditional uses which do not conflict with agricultural use are allowed, as under the Farmland Preservation Law.]

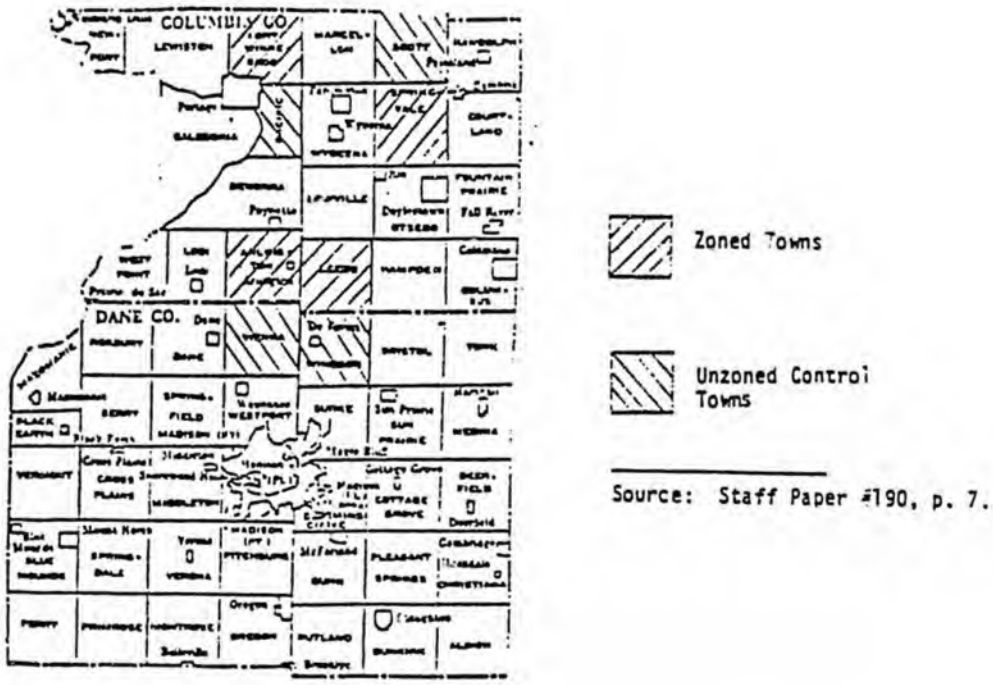
In order to study the effects of exclusive agricultural use zoning in Columbia County, Richard Barrows and John Redman, the authors of Staff Paper #190, chose four zoned towns in Columbia County to compare with four unzoned "control" towns as follows:

Zoned Towns (All in Columbia County)	Control Towns
Springvale	Scott (Columbia County)
Arlington	Vienna (Dane County)
Leeds	Windsor (Dane County)
Fort Winnebago	Pacific (Columbia County)

Figure 3 shows the location of these four pairs of towns.

FIGURE 3

Location of Zoned and Unzoned Towns Used to Study the Effects of Exclusive Agricultural Use Zoning in Columbia County



Source: Staff Paper #190, p. 7.

The authors note that although the towns are generally paired to minimize differences between the zoned town and the control town, there are, nonetheless, differences due primarily to size and locational factors. In general, however, the differences between the control and zoned towns leads to the expectation of more development in the zoned towns (i.e., because they are bigger or have soils better suited to development than the control towns) except that in the control towns in Dane County (Vienna and Windsor) one would expect more development pressure because of their proximity to Madison and other population centers.

To compare the amount of development in the zoned towns, the researchers looked at the number of rezoning petitions granted for the zoned towns. As noted by the authors, "The approval of a rezoning petition does not necessarily mean that the parcel was developed, but it is a good indication that the owner intended to do so sometime in the immediate future" [Staff Paper #190, p. 19].

In order to study development in the unzoned towns, other data sources had to be used since, obviously, there were no rezoning petitions to study. For the unzoned Columbia County townships, the authors reviewed sanitary permits. [A sanitary permit is required to build a septic system or other on-site waste disposal system.] For the unzoned towns in Dane County, information on development was gathered from building permits.

Table 6 summarizes the results of the comparison of the zoned and control towns. For all four pairs of towns, there was more acreage developed in the unzoned control town than in the zoned town. In the case of Arlington (Columbia County) and Vienna (Dane County), the difference was relatively small, but in the other three pairs of towns, the difference was substantial. Overall, there were 323 acres developed in the zoned towns while there were 1,010 acres developed in the unzoned control towns.

TABLE 6

Number of Developments and Acreage in
Zoned and Unzoned Control Towns, 1973-1977

Town [Z=zoned C=control]	Individual Parcels		Subdivisions		Total Acres Developed
	No.	Acres	No.	Acres	
Springvale (Z)	8	99	0	0	99
Scott (C)	12	158	1	72	230
Arlington (Z)	13	91	0	0	91
Vienna (C)	23	83	1	20	108
Leeds (Z)	0	0	0	0	0
Windsor (C)	28	75	6	221	304
Fort Winnebago (Z)	11	133	0	0	133
Pacific (C)	35	207	4	161	368

Source: Staff Paper #190, p. 24.

In addition, the researchers looked at the quality of the soil in the areas developed. In all cases, there was a higher proportion of development on high-quality soils in the control towns than in the zoned towns. The authors concluded that, "Not only was the absolute amount of development less in the towns with exclusive agricultural zoning, but the development that did occur was more often directed to lower-quality agricultural soils than in the towns without any [exclusive agricultural zoning]" [Staff Paper #190, p. 26].

b. Effect of Exclusive Agricultural Zoning in Walworth County on Farmland Preservation

Walworth County adopted an exclusive agricultural zoning ordinance in 1974. There are at least two important differences between the exclusive agricultural use zoning in Columbia County and that in Walworth County. First, the Walworth County zoning maps were prepared after a large number of community meetings and an extensive mapping process to identify "prime agricultural land." Designation of land to be included in the exclusive agricultural zoning district in Walworth County was based on soil quality, size of farms and suitability of soils for on-site septic systems [Staff Paper #195, pp. 8 and 9]. On the other hand, Columbia County did not make an effort to map their prime farmlands prior to adoption of the exclusive agricultural zoning ordinance. Rather, Columbia County just included all lands which were previously zoned agricultural in the exclusive agricultural districts. Secondly, Walworth County designated a substantial amount of land (approximately 25% of the land in the County) as "suitable for urban development." That is, Walworth County specifically set aside land designated for urban development, whereas Columbia County did not do this.

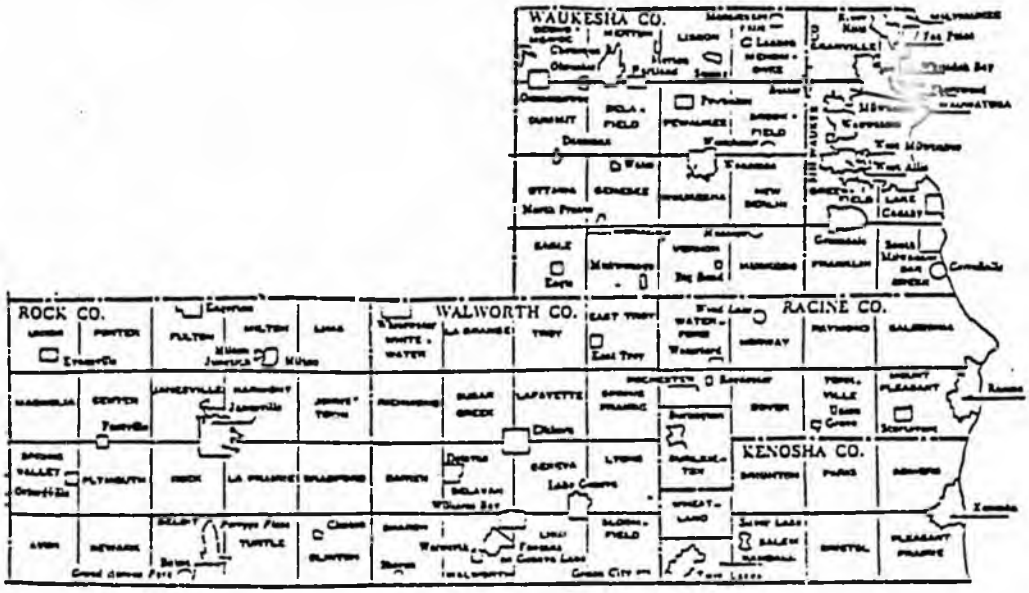
To study the effect of exclusive agricultural zoning in Walworth County, the authors of Staff Paper #195 examined three areas, each consisting of the unincorporated land lying within about four miles of either side of certain segments of the Walworth County line.

Figure 4 shows Walworth County and towns in surrounding counties. The sample areas were in the following towns:

Walworth County Towns	Control Towns
Sharon, Darien and Richmond	Clinton, Bradford and Johnstown (Rock County)
Troy and East Troy	Eagle and Mukwonago (Waukesha County)
Lyons and Bloomfield	Wheatland and Randall (Kenosha County)

FIGURE 4

Walworth and Surrounding Counties
(For Description of Study Areas See Text)



Source: Staff Paper #195, p. 13.

Once again, while there are some differences between the unzoned control areas and the zoned areas, these differences are generally slight, with the exception of the unzoned areas in Waukesha County which lie approximately four miles closer to Milwaukee than the corresponding zoned areas in Walworth County. Consequently, the unzoned areas in Waukesha County might be expected to have experienced slightly more development pressure [Staff Paper #195, p. 12]. On the other hand, three of the "unzoned" control towns adopted some sort of zoning or land use control during the period of the study (1971-1977). As a result, it could be expected that these "control" towns would not have experienced as much development pressure had they not acted to control development. The Town of Eagle (Waukesha County) adopted three-acre zoning in late 1976, the Town of Clinton (Rock County) adopted exclusive agricultural zoning in 1974 and Mukwonago (Waukesha County) adopted a moratorium on development in unincorporated areas in October of 1977, at the end of the study period. Because of these actions, the effects of exclusive agricultural zoning in Walworth County as compared to the "control" towns was probably less pronounced than if the "control" towns had not taken any action [Staff Paper #195, p. 14].

To examine the amount of development in the zoned and unzoned towns, the researchers reviewed certified survey maps. All of the counties in the study require that either certified survey maps be filed with the county whenever land divisions occurred which resulted in the creation of parcels five acres or less in size.

Table 7 shows the number of acres in certified surveys for three time periods during this study. In the zoned Walworth towns, the number of acres in certified surveys dropped over the study period, while in the unzoned control towns the number of acres increased. As was the case in Columbia County, it appears that adoption of exclusive agricultural zoning does reduce the number of acres of agricultural land converted for nonagricultural uses.

TABLE 7

Number of Acres in Certified Surveys in Study Areas
Walworth and Control Towns 1971-77

	1971-73 (Before Adoption of Exclusive Agricultural Use Zoning)	1974-75 (During Adoption of Exclusive Agricultural Use Zoning)	1976-77 (After Adoption of Exclusive Agricultural Use Zoning)	Total
Walworth Study Areas (Zoned)	186	131	93	410
Control Town Study Areas (Unzoned)	157	158	360	675

Source: Staff Paper #195; pp. 17 and 24.

The number of acres in certified surveys in Walworth County was reduced by approximately 1/2 from the period before adoption of exclusive agricultural zoning (1971-73) to the period after adoption of exclusive agricultural use zoning (1976-77). Meanwhile, in the control towns, the number of acres in certified surveys more than doubled from the 1971-73 period to the 1976-77 period.

In addition, the number of acres of good agricultural soils included in certified surveys dropped in the zoned towns over the study period whereas it increased in the unzoned control towns as shown in Table 8 [Staff Paper #195, p. 18]. That is, in Walworth County, as in Columbia County, exclusive agricultural use zoning appears to have reduced both the total number of acres and the number of acres of good agricultural soils lost to development, as compared to unzoned towns.

TABLE 8

Number of Acres of "Good" Agricultural Soil in Certified Surveys
["Good" Agricultural Soils Defined as Soils in the U.S. Soil Conservation Service Capability Classes I-II]

	1971-73	1976-77
Walworth Study Areas (Zoned)	103	48
Control Study Areas (Unzoned)	102	173

Source: Staff Paper #195, p. 18.

2. Preservation Agreements

Although the effect of farmland preservation agreements has not been studied as extensively as the effects of zoning in preservation of farmland, it can be noted that while there were approximately 2,100 preservation agreements in effect as of December 31, 1981, according to DATCP staff, fewer than 10 liens have been filed against land subject to an agreement and no farmers have been taken to court to collect civil penalties for conversion of farmland in violation of the provisions of an agreement. This indicates that at least to this point, farmers who have signed preservation agreements have indeed preserved the land for agricultural use.

B. DOES THE FARMLAND PRESERVATION PROGRAM AFFECT PATTERNS OF URBAN DEVELOPMENT?

From an urban perspective, perhaps the key question regarding the Farmland Preservation Program is, "Do efforts to protect farmland affect patterns of urban development?" For example, urban officials may be concerned about patterns of urban development and what these mean for providing urban services because it appears to be generally accepted that providing services to compact development is less expensive than providing the same services to scattered development.

There have been no studies directly examining the question of whether farmland preservation can affect patterns of urban development, but as part of the Columbia and Walworth County studies described above, some information pertinent to this question was gathered.

1. Columbia County

The study of the effects of the Columbia County exclusive agricultural zoning ordinance on farmland preservation was described above. This subsection of the Staff Brief will describe the findings in that study related to preservation of farmland and urban development.

Before reviewing the results of the study, it can first be noted that according to interviews conducted by the researchers, a major objective of Columbia County officials in enacting exclusive agricultural zoning in March 1973 was to help minimize the cost of providing public services to new development. That is, there was the belief in Columbia County that the location of development influenced the cost of servicing the development [Staff Paper #190, p. 10]. Two aspects of the research conducted on the effects of Columbia County zoning indicate that exclusive agricultural zoning does tend to reduce the amount of scattered development. First, the researchers determined the location of all of the

parcels of land developed in the zoned towns and the results of the researchers' analysis are reproduced below. In each pairing, the zoned town is described first and the unzoned town second. The results indicate that there was "significantly less scattered development" in the zoned towns than in the control towns [Staff Paper #190, p. 29].

1. Springvale/Scott: In Springvale, new development was clustered in the western half of the town, in six sections; three rezoning requests in eastern sections were denied. In Scott, development was more scattered, occurring in 10 sections throughout the town.

2. Arlington/Vienna: New development was considerably less scattered in Arlington, concentrated primarily in three northern sections near Poynette. Overall, the pattern of development in Vienna was scattered and most occurred outside, and at some distance from existing sanitary districts.

3. Leeds/Windsor: There was no new development on agricultural land in Leeds during the study period. In Windsor there were not only small individual parcels, but also a number of subdivisions, developed at some distance from both incorporated areas and existing sanitary districts.

4. Fort Winnebago/Pacific: New development was somewhat more concentrated in Fort Winnebago. In Fort Winnebago, 3 of 11 rezonings were adjacent to the city of Portage and 5 others were located in four adjoining sections in the western part of the town. In Pacific, new development occurred in 14 different sections (of 22 total). [Staff Paper #190, p. 28.]

Secondly, the researchers looked at the actions taken by 10 of the 11 persons whose petitions for rezoning of land in an exclusive agricultural district were denied (the 11th person could not be located). The actions taken by the petitioners after denial of their petitions were [Staff Paper #190, p. 25]:

a. One built on the same parcel after repetitioning.

b. One built a single-family residence in another county.

c. One built in a subdivision within an unzoned Columbia County township.

d. One built a single-family residence within an incorporated area of Columbia County.

e. One bought an existing house within an incorporated area of Columbia County.

f. One refurbished an existing farmhouse within a zoned Columbia County township.

g. Four had not relocated.

It can be noted that although three of the petitioners denied rezoning went ahead and built a house in what appears to have been an unincorporated area, four of the persons did not relocate and two moved into incorporated areas of Columbia County. That is, six of the 10 persons denied rezoning appear to have either not relocated or relocated in an area already receiving public services. [The 10th person denied rezoning refurbished an existing farmhouse within a zoned Columbia County township. The effect of this action on the need to provide services is unclear.]

2. Walworth County

As part of the review of the effectiveness of exclusive agricultural zoning in Walworth County, the researchers examined the distance of land surveyed for development from population centers. [A population center was defined to include both incorporated and unincorporated areas with substantial development, such as a rural subdivision.] The surveyed land was divided into land within one mile or less of the population center and land more than one mile from a population center.

The results of the analysis, as shown in Table 9, are somewhat ambiguous. In reviewing the total number of acres, Walworth towns had a greater number of acres surveyed more than one mile from a population center prior to the zoning, but only about 1/2 as many acres more than one mile from a population center after the zoning. That is, zoning seems to have led to more compact development in Walworth County than in the control towns when considering total acreage. However, the proportion of developed acres more than one mile from a population center is greater in Walworth towns than in the control towns. That is, of the development that did occur in Walworth County (on parcels of five acres or less), a greater percentage occurred more than one mile from a population center

than did in the control towns. The researchers note, however, that the proportions of development occurring at distances from population centers did not substantially change in Walworth County from before zoning to after zoning. In both cases, approximately 60% of the development that took place in Walworth County occurred more than one mile from a population center. The researchers suggest that since the Walworth County exclusive agricultural zoning ordinance is based on soil quality, efforts to protect prime agricultural soil may lead to a more dispersed pattern of development [Staff Paper #195, p. 18].

TABLE 9

Number of Acres in Certified Surveys by Distance From Population Center for Two Time Periods

	1971-73		1976-77	
	Number of Acres	Percentage	Number of Acres	Percentage of Total
Walworth Study Areas (Zoned)				
- One mile or less from a Population Center	62	36.5%	34	38.0%
- Greater than one mile from a Population Center	108	63.5%	56	62.0%
	170	100.0%	90	100.0%
Control Study Areas (Unzoned)				
- One mile or less from a Population Center	96	58.5%	226	68.5%
- Greater than one mile from a Population Center	68	41.5%	104	31.5%
	164	100.0%	330	100.0%

Source: Staff Paper #195, p. 20.

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Managing Oregon's Growth

The Politics of Development Planning

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CHAPTER 1

EXECUTIVE SUMMARY*

I. LOSS OF VALUABLE AGRICULTURAL LAND: THE PROBLEM AND ITS CAUSES

A. From 1967 to 1975, Three Million Acres of Agricultural Land were Lost Each Year

Over the last three decades, millions of acres of agricultural land have been lost as America's suburbs grew, the interstate highway system and innumerable water resource development projects were completed, and extensive surface mineral deposits were tapped. In fact, in the eight-year period from 1967 to 1975, some 23.4 million acres were converted to urban, transportation, water resource development, and other non-farm uses.

Citizens across the country and their representatives at all levels of government have shared rapidly deepening concerns over the adverse effects of this loss of agricultural land. Some feared the decline of the rural way of life, as carefully tended fields become carefully mowed lawns. Others emphasized the economic disruption that accompanies the decline of agriculture in an area. Still others were apprehensive that continued loss of farmland would lead to reduced production that, in turn, would have grave impacts on the nation's ability both to feed itself and to make significant foreign sales that earn foreign exchange. Still others pointed out that using poorer, more remote land that requires irrigation or more fertilizer increases the consumption of energy by the farming sector.

Underlying these concerns is the realization that good farmland is a finite resource which is necessary for survival. The importance of protecting the land resource has become increasingly evident because of continually growing populations which must be fed both in the United States and throughout the world, the constantly increasing price of oil on which U.S. agricultural technology is based, and uncertainty about the likelihood of major additional increases in agricultural productivity. Many realize that the nation could seriously reduce its long-run options by under-assessing the seriousness of the loss of farmland.

These concerns led to action. County after county, state after state, and Congress have taken significant steps aimed at protecting farming and reducing the rate of conversion of farmland. This Guidebook presents the story of these efforts and shows what governments can do to achieve this goal.

B. The Reasons Why Agricultural Land Is Converted to Non-Farm Uses

The conversion of agricultural land is a complex process, often taking place over a period of fifteen or twenty years. It involves such factors as farm profitability, urban growth pressures, land values, personal decisions about work and retirement, community expectations, taxes and government programs, incentives, and regulations. Urban growth pressure can be compared to a great flood, moving out slowly into the countryside raising land values as it goes. Investors begin buying land for its development potential. New farmers cannot afford to buy farms. Old farmers are less and less able to increase their holdings. At some point, the process becomes irreversible, and farm after farm is subdivided and developed.

Communities that wish to protect their agricultural lands must start early in the process to change the expectations of farmers, investors, and developers. The comunities must convince owners that they will allow development only in urban or suburban areas. In effect, they must build levees which protect farmland against the flood of urban growth pressure.

II. THE RESPONSE: AN OVERVIEW

State and local governments have adopted a remarkable variety of programs whose objective is to reduce the rate of conversion of farmland. The most important are defined in Table 1-1 and their numbers are summarized in Table 2-2.

A. The Programs

1. Incentives: Tax Relief

Legislators have long understood that the capacity to earn a reasonable living from farming is the most important determinant in a farmer's decision whether or not to keep farming. Since

* The principal author of this chapter was John C. Keene.

TABLE 1-1
SHORT DEFINITIONS

Comprehensive Planning - A process leading to adoption of a set of policies regarding land use, transportation, housing, public facilities, and economic and social issues. It may include a land use plan designating particular uses and a program for providing transportation, sewers, and other public facilities. In most states the plan in itself is not legally binding on governments or individuals, but a few states require that zoning and major public facility plans be consistent with comprehensive plans.

Agricultural Zoning - A legally binding designation of the uses to which land may be put, including the type, amount, and location of development. Agricultural zoning restricts uses to agriculture and related uses such as a farmstead. Often a large minimum lot size (20-160 acres) is stipulated in an agricultural zone.

Agricultural Districting - The designation of specific tracts of long-term agricultural uses, usually coupled with benefits and assurances which improve the conditions for farming. Generally no legally binding controls are imposed on land use.

Purchase of Development Rights - Purchase of the right to develop from owners of specific parcels, leaving the owner all other rights of ownership. The price of the rights is the diminution in the market value of the land as a result of the removal of the development rights. The remaining value of the land is the "farm use" value.

Purchase and Resale or Lease with Restrictions - Purchase of land, imposition of restrictions on use and development, and resale at market price. End result is equivalent to purchase of developing rights.

Transfer of Development Rights - Development rights on land in a designated preservation area may be purchased by a developer and transferred to a designated development area where the equivalent amount of additional development can be constructed.

Differential Assessment - Assessment for property tax purposes based on the farm use value of the land rather than on its market value. There are three major types of differential assessment: pure preferential assessment with full abatement, deferred taxation with partial or with no abatement, and restrictive agreement, under which a farmland owner contracts to maintain his land in farm uses in return for a lower assessment.

Development Permit System - Requirement that a special permit be obtained for development from designated state or regional agency. Permit is in addition to normal local zoning and building permits.

Right to Farm - Legislation stating that local ordinances cannot be enacted which restrict normal farming practices unless they endanger public health or safety, and providing farmers with some protection against private nuisance lawsuits.

taxes constitute a significant cost to farmers and are under government control it is not surprising that legislatures often turned first to tax relief as a tool for protecting farmland. They enacted laws which reshape the impact on farmers of the real property and death taxes and, in two instances, state income taxes.

Both the property tax and inheritance or estate taxes are *ad valorem* taxes and are imposed on the assessed or appraised value of property. The problem with farmland is that it often has two values: one, its agricultural use value and the other, its value as a site for residential, commercial, or industrial development. This is referred to as its fair market value. In many farming areas, especially those near large cities, the fair market value of agricultural land is much greater than agricultural use value because developers are able to make a reasonable profit from their development even if they pay high prices for the land.

Many farmers have found that their real property taxes were going up because of the rising fair market value of their land and the increased fiscal burdens which go along with suburbanization. Some farm estates have had liquidity problems that made it difficult or impossible to pay estate taxes that were measured by the fair market value of the land without selling some or all of the farm. In response to their complaints, tax incentives were enacted. They have two primary purposes: first, to reduce taxes for farmers, and second, as a consequence of that reduction, to lower the rate of conversion of farmland to non-farm uses by reducing the number of tax-motivated sales.

TABLE 1-2
NUMBERS OF EXISTING PROGRAMS
TO PROTECT AGRICULTURAL LAND

Type of Program	State	County	Municipality	Total
Differential Assessment for Property Tax				
Preferential Assessment	17			17
Deferred Taxation	28			28
Restrictive Agreement	2			2
Income Tax Credits	2			2
Farm Use Valuation for Death Tax				
Use IRC rules	16			16
Use rules similar to IRC	8			8
Special rules	5			5
Capital Gains Tax on Land Sales	1			1
Agricultural Districts	6			6
Right-to-Farm Legislation	16			16
Agricultural Zoning	1	104	166	271
Purchase of Development Rights	4	4	1	9
Transfer of Development Rights		2	10	12
Development Permits	2			2
Integrated Programs	7*	3*		10

* We lack a clear definition of the numbers of elements and interrelationships necessary to define an integrated program. Depending on the definition adopted, one could include many more than the seven state and three sub-state programs listed in this table and discussed in Chapters 9 and 10.

a. Differential Assessment

As of the end of 1980, all states except Georgia and Kansas had laws which seek to reduce the burden of real property taxes on farmers. There are two major kinds: differential assessment laws (which include preferential assessment, deferred taxation, and restrictive agreement laws) and circuit breaker tax credit laws.

Seventeen states authorize preferential assessment. Eligible land is assessed for real property tax purposes at its agricultural use value. The effect is to reduce a farmer's taxes.

Twenty-eight states have deferred taxation programs. In addition to permitting agricultural use value assessment, they require participating land owners who develop their land for ineligible uses to pay some or all of the taxes that they have been excused from paying. These 'roll-back" taxes are usually equal to the difference between what the tax on fair market value would have been and what the actual tax was for a given number of years. Seven of these states simply impose a "land use change" tax equal to a percentage of either this difference or of the fair market value in the year of development.

New Hampshire and California have restrictive agreement programs that require an owner to enter into a long-term contract in which he agrees not to develop his land, in exchange for receiving preferential assessment. It is very difficult for landowners in these states to get out of the contracts and develop their land before the end of the contract period. See Figure 1-1 which shows the program in effect in each state.

These programs clearly provide tax relief for farmers. Preferential assessment is the most effective in this regard, while restrictive agreement programs are the least. The more eligibility requirements there are, the greater the recovery of rollback taxes, and the more the farmer is re-

FIGURE 1-1
REAL PROPERTY OR STATE TAX INCENTIVES FOR LOCAL PROPERTY TAX PURPOSES

quired to restrict his land, the fewer farmers will participate and the lower the tax benefits will be.

b. Property Tax Credits

Michigan and Wisconsin allow a farmer to apply some or all of his local real property taxes as dollar-for-dollar credits against his state income tax. Income tax credit approaches are more directly relevant to alleviating the cost squeeze that farmers in urbanizing areas find themselves caught in, because they are based on the farmer's net income rather than just one element (property taxes) which affects his net income.

c. Death Tax Benefits for Farmers

In the Tax Reform Act of 1976, Congress made major changes in the federal estate tax which made estate tax preferences available to eligible farm estates. Since then, many states have followed suit by enacting similar amendments to their inheritance and estate tax laws. These changes are complicated and technical and can be discussed here only in a general way.

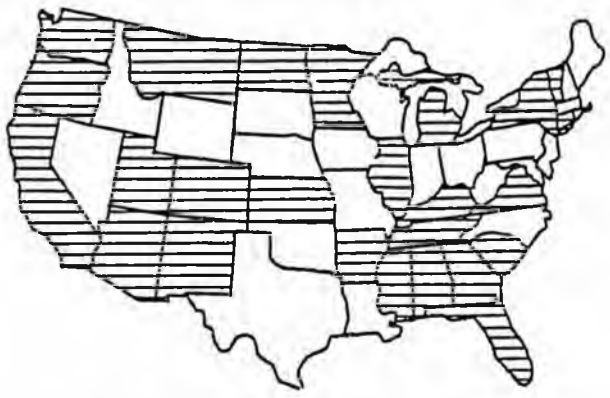
Congress raised the threshold at which estates become liable for estate taxation and increased the marital deduction so that at least 70% of farm estates are exempted from estate tax liability.

In addition, Congress enacted two new sections of the Internal Revenue Code that benefited qualifying farm estates. The first, Section 2032A, permits agricultural use valuation of eligible farmland that is left to heirs of the deceased. The second, Section 6166, gives executors of eligible farm estates the option of deferring the payment of estate taxes on farm property for five years and then paying them in equal installments over another ten years. These sections have detailed eligibility requirements that limit their availability. They require a payment of the taxes foregone if the heirs cease to farm the property or sell it to a person who is not a family member.

Section 2032A and 6166 can significantly ease the estate tax burden of farm estates that qualify for and actually elect to use them. Our calculations indicate that a relatively small number will be eligible for and elect these benefits, because of the stringent eligibility and recapture provisions. As a result, they will not reduce total farm estate taxes significantly.

A slim majority of the states have taken steps to make some form of preferential valuation available to farm estates. They are shown in Figure 1-2.

FIGURE 1-2
PREFERENTIAL VALUATON FOR STATE INHERITANCE AND ESTATE TAXATION



Six others, California, Kansas, Michigan, Minnesota, New York, and Wisconsin, have made special Section 6166 deferral procedures available for farm estates.

d. Differential Assessment and Death Tax Benefits: Effectiveness for Reducing the Rate of Conversion of Farmland

For a complex set of reasons which are discussed at length in the Guidebook, these tax incentives, if made available by themselves and not as a part of an integrated program, are largely ineffective in reducing the rate of conversion of farmland.

Despite the above characteristics, differential taxation and death tax benefits are necessary components of a comprehensive agricultural land protection program. First, as a matter of

equity, if a program prevents agricultural land from being developed, the owner should only pay taxes on its agricultural use value. Second, benefits such as these serve as incentives to encourage farmers to participate in integrated farmland protection programs.

2. Incentives: Agricultural Districting

Agricultural districts are legally recognized geographic areas whose formation is initiated by one or more farmers and approved by one or more government agencies. The districts, with their benefits and obligations, are created for fixed but renewable periods of time ranging from four to ten years. In most programs land cannot be included in an agricultural district without the owner's written permission. Agricultural districting programs are based on the idea that if farmers are given incentives to join in the voluntary creation of districts of significant size where farming would be the only activity, and if they are protected against many of the factors which might otherwise make it undesirable or unprofitable for them to farm, they will be able to keep their land in agricultural use. The formation of an organization initiated by farmland owners that is dedicated to protecting and promoting farming in a specific geographical area will, it is hoped, strengthen the position of agriculture in the districted area and in the community as a whole.

As of 1980, six states, California (1965), New York (1971), Virginia (1977), Maryland (1977), Illinois (1979), and Minnesota (1980), had enacted laws based on this idea. Minnesota's Agricultural Preserves Act is unique in that it is in effect only in the Twin Cities Metropolitan Area. The elements of the various programs are shown in Table 1-3.

TABLE 1-3
ELEMENTS OF SIX AGRICULTURAL DISTRICTING PROGRAMS

Elements	N.Y.	Va.	Ill.	Md.	Calif.	Twin Cities
1. Differential assessment	x	x			x	x
2. Protection from local government ordinances which hinder farming	x	x	x	x		x
3. Limitations on public investments promoting non-farm developments within districts	x	x			x	x
4. Limitations on the acquisition of land within districts by public agencies	x	x			x	x
5. Limitations on special assessments	x	x	x			x
6. State agency regulations and procedures supportive of agriculture within districts	x	x	x			x
7. Limitations on annexations of land in districts by municipalities						x
8. Requirements for sound conservation practices				x		x
9. Limitations on rate of tax increases						x
10. Compensation to local governments for tax losses	x				x	x
11. Zoning adjacent lands so as to reduce conflict		x				
12. Purchase of the development rights to land within districts				x		
13. Limitations on development of districted land with zoning or other restrictions				x	x	x

Agricultural districts provide a geographical and organizational framework within which certain incentives and safeguards can be made available to farmers. Their effectiveness as a way to reduce the rate of conversion of farmland depends on the particular combination of elements they include. The programs studied vary considerably in this regard, and evaluation is difficult because they are either recently enacted or part of a broader, integrated program. The program with sufficient longevity to permit evaluation is New York's. The evidence indicates that while it has been relatively ineffective in reducing farmland conversion, it has provided rural farmers with an enhanced sense of security and a modest protection against special assessments and eminent domain.

3. Incentives: Right-To-Farm Legislation

There is a basic incompatibility between many types of agricultural activity and residential use. As city people begin to move into rural areas, they object to the smells, noises, dust, pesticides, and other by-products of operating a modern farm. These complaints can take several forms. A landowner may sue the farmer, claiming that his farm operations are a nuisance. He may try to persuade the local government to pass an ordinance limiting various farm activities. He may report the farmer to a county or state agency that is responsible for enforcing air or water pollution control laws for the purpose of getting an order to end the offending farm practices.

Farmers find that defending themselves against such actions can be expensive, time consuming, and aggravating, even if they are successful. They have turned with increasing frequency to their state legislators for protection. The laws that have been passed in response have been called "right-to-farm" laws.

At least sixteen states, listed in Table 1-4, have adopted some form of right-to-farm legislation.

Some of these right-to-farm laws, such as New York's, simply prohibit local governments from enacting laws that unreasonably restrict or regulate farming structures or practices unless they are needed to protect the public health or safety. Others, such as North Carolina's, limit farmers' liability for damages in nuisance lawsuits. Still others, such as Tennessee's, exempt farm activities from certain of the state's anti-pollution laws. The laws vary considerably from one state to another. They are, by and large, of recent origin. Many of the questions of interpretation that they raise are still unanswered, and we have little evidence of their effectiveness in achieving their central goal: to protect the farmer against unnecessary and disruptive nuisance actions and government regulations, while at the same time protecting the public health and safety.

TABLE 1-4
STATES WITH RIGHT-TO-FARM LAWS*

Laws Protecting Against Local Government Regulations	
Alabama (1980)	New York** (1971)
Delaware (1980)	North Carolina (1979)
Illinois** (1979)	Oregon** (1973)
Kentucky (1980)	Tennessee (1979)
Maryland** (1977)	Virginia** (1977)
Minnesota (Twin Cities)** (1980)	

Laws Protecting Against State Regulations	
Tennessee (1979)	Oregon (1973)

Laws Protecting Against Private Nuisance Lawsuits	
Alabama (1980)	Mississippi (1980)
Delaware (1980)	North Carolina (1979)
Florida (1979)	Oklahoma (1980)
Georgia (1980)	Tennessee (1979)
Kentucky (1980)	Washington (1979)

* Some states provide more than one form of protection.
** The statute applies only in agricultural districts or, in the case of Oregon, in exclusive farm use zones.

4. Land Use Controls: Agricultural Zoning

Agricultural zoning is the most popular and common method used by local governments to prevent the use of agricultural land for non-agricultural purposes. In the last decade at least 270 jurisdictions have turned to it to protect their farmlands (See Figure 1-3). Many communities also use other tools to complement, sustain, or reinforce the agricultural zone. Agricultural zones are often combined with community plans,

FIGURE 1-3
AGRICULTURAL ZONING

urban boundary agreements, or voluntary or mandated state programs that together protect farmland. Thus, agricultural zoning must often be viewed as one part of a larger local program.

a. Types of Agricultural Zoning Ordinances

The most important characteristic of an agricultural zoning ordinance is the extent to which it limits the intrusion of new, non-agricultural uses (usually non-farm dwellings) into established agricultural areas. With this in mind, we have divided agricultural zoning ordinances into the following categories:

1. Non-exclusive agricultural zoning ordinances:

a. large minimum lot size,

b. fixed area-based allocation combined with a small building lot size,

c. sliding scale area-based allocation combined with a small building lot size, and

d. conditional use approval based on multiple, discretionary standards.

2. Exclusive agricultural zoning ordinances.

(1) Non-exclusive Zoning Ordinances

Non-exclusive agricultural zoning ordinances are by far the most popular approach to agricultural land protection. Non-farm dwellings are allowed, but agricultural uses are preferred. In these zones, non-farm dwellings may be permitted conditionally or as of right.

Large lot ordinances require a substantial minimum lot size, ranging from as little as ten acres to as much as 640 acres for one single-family dwelling.

In fixed area-based allocation ordinances, owners are allowed to build one house for each unit of land of a specified area that they own, ranging from one dwelling per ten acres to one per 160 acres. Thus, what have been called "quarter/quarter" zoning ordinances allow an owner to build one dwelling unit for each quarter of a quarter section. No units are allowed for remainders of less than the specified number of acres.

Sliding scale area-based allocation zones also allocate building rights on the basis of ownership of units of land of a given area, but the number of dwellings allocated per acre decreases as farm size increases. The advantage of area-based allocation zones as compared with large lot zones is that they allow dwellings to be built on relatively small lots, typically from one to three acres, clustered on one part of the farm, leaving the rest relatively far removed from potentially conflicting residential uses.

The fourth type of non-exclusive zoning ordinance, the conditional use zone, allows non-farm dwellings as a conditional use if they meet specified criteria based on the compatibility of the proposed dwelling with surrounding agricultural uses. No large minimum lot size requirement is imposed. Conditional use zones have the potential for producing non-farm development that is compatible with the purpose of the agricultural zone, since they do not permit non-farm dwellings as of right.

(2) Exclusive Agricultural Zoning Ordinances

These ordinances share three characteristics. Non-farm dwellings are prohibited. The communities use a performance definition of a farm or farm use rather than defining a farm by a large minimum lot size or area-based allocation. Each request to build a farm dwelling requires individualized review. The primary advantage of exclusive agricultural zoning is that the conflict between residential and farm uses is minimized because non-farm dwellings are prohibited.

b. Effectiveness: The Experience in Ten Communities

In order to see how agricultural zoning works in practice, ten communities were selected for more detailed study on the basis of length of experience, varied development pressure, varied location, and type of governmental unit. since their zoning programs do not represent a random sample, the case studies simply suggest what might happen in other communities with similar characteristics of agriculture, development pressure, and political commitment.

The case studies were done of the following jurisdictions, which adopted agricultural zoning ordinances in the year indicated:

Counties	Municipalities
Black Hawk County, Iowa (1973)	Brooklyn Park, Hennepin Co., Minnesota (1974)
DeKalb County, Illinois (1974)	Sioux Falls, Minnehaha Co., South Dakota (1978)
Marion County, Oregon (1971)	West Hempfield, Lancaster Co., Pennsylvania (1978)
Stanislaus County, California (1973)	
Tulare County, California (1975)	
Walworth County, Wisconsin (1974)	
Weld County, Colorado (1973)	

The case study communities adopted agricultural zoning ordinances to deal with one or more of the following three problems. First, farmland was being lost to premature rural subdivisions at increasing rates. Second, these rural subdivisions required increased expenditures for public services and facilities, expenditures which led to increases in local property taxes. Third, farmers and suburbanites discovered that rural subdivisions and farm operations often conflict. Farmers felt victimized by vandalism, harassment, and nuisance actions, while suburbanites complained of the smells, dust, noise, and chemicals from nearby farm operations.

The case studies permit several important conclusions to be drawn, although they must be tentative because of the relative novelty of the agricultural zoning efforts and the difficulty of separating out other causal factors such as state farmland protection programs and short-term developments in the economy. First, the new non-exclusive agricultural zoning ordinances have greatly decreased permitted residential densities in agriculture zones. Second, most of the communities now view agriculture as a long-term, permanent land use. Third, since the initial agricultural zoning ordinances were adopted, most communities have revised their approaches so as to strengthen the restrictions on non-farm uses, an indication that local approaches to agricultural zoning are enjoying good political support. Fourth, the record of communities in dealing with proposed rezonings is good. For the most part, good agricultural land is simply not being taken out of agricultural use. Rezonings are granted, but generally only to those lands which are not well-suited to agriculture. Fifth, the important role played by the planning staff in dealing with applicants for rezonings is another indicator of the consistency and coherence of local rezoning decision-making processes. Staff usually provided an informal evaluation of proposed rezonings using the same criteria applied by decisionmakers. Sixth, evidence of changes in the pattern of land speculation suggests that agricultural zoning has been producing the desired effects. In the majority of communities, speculation for non-agricultural purposes shifted from agricultural areas to designated development areas. Seventh, in most cases, local planners and officials felt that the subdivision of agricultural land had greatly decreased, while an increasing proportion of new development was being channeled into designated development areas.

Establishing and applying reasonable criteria governing the division of land in the agricultural area was the most common problem. The majority of the case study communities were faced with two additional problems. First, most of them permitted a variety of rural-oriented or community uses in their most restrictive districts. Second, a majority relied upon a large minimum lot size to protect agricultural land from non-agricultural development. This means that non-

farm dwellings could easily be built within the agricultural zone so long as the minimum lot size was maintained. Such practices are likely to generate the frictions and nuisance suits that often result when residential and agriculture uses mix.

Thus, large lot and fixed and sliding scale area-based allocation ordinances may temporarily deter non-agricultural development in agricultural areas, but in the long run, the validity of these techniques is questionable, unless permitted densities are significantly lowered. The solution to this long-term problem will most probably be found in the stringent administration of either the conditional use approach, which requires a case-by-case evaluation of proposed dwellings in the agricultural area, or of exclusive agricultural zoning premised on a performance definition of a farm dwelling.

5. Land Use Controls: Purchase of Interests in Land

a. Purchase of Development Rights

In certain situations, zoning may not be an appropriate technique for preventing the development of agricultural land. For example, it may prove politically unfeasible to enact an exclusive agricultural zoning ordinance, particularly in locations where development pressure is high and it is evident that the zoning restrictions would deprive landowners of substantial value. In addition, in many jurisdictions, experience has shown that zoning tends to be weakened in order to accommodate strong demands for development.

In response to such concerns, and reflecting a feeling that such uncompensated restrictions on development as are embodied in exclusive agricultural zoning are unfair to owners of farmland in rapidly urbanizing areas, many policy makers have turned to the idea of acquiring less-than-fee interests in land in order to control its use.

Fee simple ownership (the full ownership) of land may be defined as a set of interests or rights: the right to keep others off the land, the right to sell or bequeath it, the right to use it for farming forestry or outdoor recreation, the right to build structures on or beneath it, etc. The right to build on or beneath the land is known as the development right or rights. They are, of course, limited by restrictions embodied in health and building codes and in whatever zoning may exist. The objectives of farmland protection may be served by buying the development rights to farm property.

Purchase of Development Rights (usually known as PDR) programs have been adopted by the governments shown in Table 1-5.

New Jersey had an experimental program that was terminated before any easements were purchased.

The PDR programs have been successful in attracting landowners who wish to participate. To date, some 10,300 acres have been enrolled in PDR programs at an average cost of $1,848 per acre. There has been little emphasis on clustering the land whose development rights have been purchased so as to insure that a critical mass of farmland is protected. To date, no enforcement problems have been encountered.

b. Ways of Reducing the Cost of Development Rights Programs

While the actual purchase of an interest in land is the most permanent way to prevent its development, it is often also the most expensive. Several techniques have been proposed or tried that are designed to reduce the cost. Maryland's PDR program assigns the highest priority for purchase to those farmers whose offers are the lowest percentage of the theoretical value of the development rights. Other approaches include the right of pre-emption and land banking. Pre-emption allows a government to match an open market price and buy agricultural land only when it is actually on the market. Land banking has never been tried in the continental United States, but if found politically acceptable, has the potential for allowing a government to acquire land while its price is low and then locate and program development with a view to agricultural and other long-term resource values.

6. Land Use Controls: Techniques that Rely on Private Initiative

Another set of approaches relies on working with private landowners to retire development rights voluntarily in areas designated for agricultural production. The first technique is transfer of development rights (TDR), a way of re-

TABLE 1-5
PDR PROGRAMS FOR
FARMLAND PROTECTION

Jurisdiction	Year First Funded	Acreage under Easement (ac.)	Total Authorized Funding ($Million)
Suffolk Co., N.Y.	1976	3,214	21.0
Maryland	1977	2,400	6.3
Massachusetts	1977	1,349	15.0
Connecticut	1978	2,585	9.0
Howard Co., Md.	1978	0	1.5
Burlington Co., N.J.	1979	810	3.0
King Co., Wash.	1979	0	50.0
New Hampshire	1979	0	3.0
Southampton, N.Y.	1980	0	6.0

ducing or eliminating the public costs of acquiring development rights by shifting the responsibility for purchasing them from the government to private developers. In the classic mandatory TDR system, a preservation district is identified, as is a development district. Development rights are assigned to owners of land in the preservation district in a systematic manner. However, owners of land in the preservation district are not allowed to develop, but instead may sell their development rights to owners of land in the development district, who may use these newly acquired development rights to build at higher densities than normally allowed by the zoning. TDR systems are intended to maintain designated land in open uses and compensate the owners of the preserved land for the loss of their right to develop it. To date, only voluntary TDR systems have been used. The owner of open land has the option of either developing at low densities or selling the development rights to his land and then restricting it by covenant to open space use.

Ten municipalities and two counties have adopted TDR systems for the preservation of farmland and other open space. All twelve ordinances permit transfer to non-adjoining properties, a fundamental feature which distinguishes true TDR systems from cluster, planned residential development, or planned unit development systems.

To date, only four TDR transactions, including 184 acres, have taken place. If TDR programs are to be useful for protecting farmland, they must be designed to provide the market situations which will enable the developer to realize enough profit from the purchase and transfer of development that he will find it worthwhile to engage in the TDR process and will offer an attractive price to the farmland owner. This involves not only providing incentives for the landowners to sell their rights and providing density incentives for the developer, but also designating areas under strong development pressure as development districts and assuring the availability of water, sewer, highways, and other facilities necessary for higher density development. It is possible that large metropolitan counties will be successful in implementing TDR programs although townships have generally failed.

The second approach is the donation of development rights in perpetuity. This is made possible by Section 170(h) of the Internal Revenue Code, which permits a landowner to deduct from his income the value of land, or of interests in land, which he donates to a public body or a qualified private non-profit corporation.

A third technique involves the establishment of a private land trust: a private, non-profit, charitable (and tax exempt) entity set up to acquire and manage lands in the public interest. Trusts generally have the confidence of landowners and are able to move faster in acquiring

land than governments can, though they tend to have limited permanent funding capacity. They are able to acquire development rights either by gift or through purchase. In some cases, the land trust may act as an intermediate owner, holding the land for later sale to an appropriate public agency.

Finally, there is the farmland conservancy, proposed (but untried) as a local organization operating within a conservancy district. It would be empowered by state law to buy and sell land or rights in land for the purpose of maintaining important farmland in farm use. The conservancy could acquire land when offered for sale when it believed that the sale would be injurious to the practice of farming in its area. It might resell the land with restrictions on use to an appropriate buyer. The conservancy would have the right to intervene in any sale of land previously designated by the conservancy as important farmland.

7. Integrated Programs of Incentives and Controls: Metropolitan Growth Management Programs

In many parts of the country, the problem of agricultural protection can be addressed realistically and effectively only by considering its relation to the entire system of land use and development within a given region. In other words, the goal of protecting farmland must be balanced with other competing and supporting interests of the region, such as providing housing and jobs for current and future residents, protecting environmentally sensitive areas, providing adequate public services and facilities, and keeping fiscal expenditures at a minimum. The need to incorporate agricultural protection into an overall strategy for dealing with growth is especially apparent in metropolitan areas, where there is often intense competition for limited land resources.

The Guidebook examines comprehensive growth management programs for three metropolitan areas: the seven-county Twin Cities region, Minnesota; Lexington-Fayette Urban County, Kentucky; and Metropolitan Dade County, Florida. A coordinated regional approach to growth management can accomplish a variety of mutually complementary objectives, such as minimizing public investment costs and focusing farmland preservation efforts on areas where agriculture is most likely to remain economically viable over the long run. Therefore, ideally, a growth management strategy should consider functional and spatial interrelationships at the regional as well as the local level.

There are too many important aspects of these three programs for them to be adequately summarized here. The basic rationale of each program is to promote an orderly and efficient pattern of urban growth in the metropolitan area, and each recognizes the value of adopting a regional perspective in identifying and implementing certain goals and priorities. In addition, these programs seek not to limit the total amount of growth in the metropolitan region, either in the short or long run, but rather to guide it into appropriate areas.

The three plans share several specific objectives:

- To coordinate the provision of certain necessary public services and facilities, such as transportation, water, and sewer, so as to maximize efficiency in construction and operation.
- To promote the growth and redevelopment of already urbanized areas.
- To protect environmentally sensitive or unique areas.
- To protect prime farmland and maintain the economic viability of agriculture.

Thus, agricultural protection represents only one of a set of integrated policies designed to achieve the overall goal of rational and efficient metropolitan growth. In general, these objectives are mutually reinforcing when placed in a regional context.

The Twin Cities and Dade County programs are still young and not yet fully implemented, and historical land use data are not available for Lexington-Fayette County. But it is clear that the effectiveness of any program depends largely on the degree of authority that the metropolitan government possesses to implement the growth policy, and the extent to which this authority is exercised. The most basic tool required is some

power to control the location of public facilities, especially sewers. It is also clear, however, that facility siting is often not sufficient to keep development out of agricultural areas, because low density housing that uses septic systems may still spread, taking relatively large amounts of farmland out of production. In order to assure the protection of farmland, facility siting must be combined with other tools, such as zoning and incentive programs.

8. Integrated State Programs of Incentives and Controls

The states have the power to control the uses to which land may be put. In most states, however, most of this power has been delegated to local governments, which make nearly all decisions concerning the planning and regulation of land use.

Local governments have an intimate knowledge of local conditions, needs, and community goals, but this knowledge is often combined with a parochial outlook, and the tendency to accommodate the desires and pressures of local landowners rather than to promote the regional welfare and to achieve long-range objectives for the use of the land resource. Most states have provided only tax incentives in order to encourage the retention of agricultural land. A few have retrieved a limited number of specific powers and have linked incentives to land use controls over agricultural lands.

Without involving local government in any way, state governments can declare it a state policy to protect prime agricultural land and require its own agencies to act consistently with that objective. Illinois has issued such an executive order.

In both voluntary and mandatory state programs a variety of incentives and controls are combined. In the voluntary programs, the incentives play the preliminary role of inducing landowners to join the program and accept the restraints on land use. These restraints assure the public that their expenditures for incentives will achieve their long-term purpose of protecting land for agricultural use. Once the restraints on land use are in effect, the continuing incentives act to offset the additional costs caused by nearby urbanization and make it possible for farmers to continue to farm. Thus, the linkage of incentives and controls is equitable for both the public and the participating landowner.

a. Voluntary State Programs

The Guidebook analyzes three voluntary state programs. In California's Williamson Act program, use value assessment is the incentive for individuals to contract not to develop their farmland for ten or more years. In Maryland, the possibility of selling development rights to the state along with right-to-farm protection are the major inducements for enrolling in an agricultural district and contracting not to subdivide or build for at least five years.

The Wisconsin Farmland Preservation Program, which went into effect in December 1977, will be discussed more fully. It provides annual tax credits to farmland owners who contract not to develop their land. Landowners' credits will be continued after 1982 only if their counties adopt agricultural preservation plans or agricultural zoning ordinances. The tax credits available to owners are based on a "circuit breaker" concept that provides a credit against state income tax to the extent that property taxes are deemed excessive in relation to the owner's household income. The state establishes criteria for agricultural zoning districts and works with counties to set standards for defining agricultural land.

By March 1980, 20 counties had adopted an agricultural zoning ordinance, an agricultural preservation plan, or both. Agricultural zoning covered 2,157,000 acres.

Although there was considerable political opposition to the program in the beginning, the program has evolved from a political cost to a political asset. The only issues now related to the program concern possibilities of improving it and increasing its benefits.

Voluntary programs do not require the participation of landowners who are not willing to assume the stipulated obligations. Thus, they tend to generate relatively little political opposition and are relatively easy to enact, particularly if they consist only of tax expenditures. Voluntary programs which require the direct expenditure of public funds are more difficult to enact.

If the controls are too strong and the incentives too weak, participation is likely to be low. Conversely, if attractive incentives are coupled with weak obligations, participation is likely to be high. At the same time, the weakness of the controls is likely to reduce effectiveness. The balance between participation and effectiveness is a delicate one.

The Wisconsin program makes a bold effort to avoid the weaknesses of a voluntary program. By providing tax credits to landowner participants in the first phase, and specifying that the credits will not be paid in the second phase unless the local government adopts exclusive agricultural zoning (or in rural areas at least an agricultural preservation plan), the Wisconsin program is building a constituency favoring the imposition of land use controls. The step from individual contracts to areawide agricultural preservation plans and zoning ordinances not only increases the acreage protected but also reduces the problem of the potential for scattered development. The benefits of the Wisconsin program appear to be sufficient to result in widespread participation, and its costs are no greater than the tax expenditures made by the other states to provide an incentive for farmers to keep farming.

b. Mandatory State Programs

Four mandatory state programs were analyzed. The Vermont program requires that a permit be obtained from the state for certain types of development. The California Coastal Commission program, which is also a development permit program, requires local governments to adopt comprehensive plans and regulatory ordinances which meet criteria of the Commission. The Hawaii program involves zoning directly by the state.

The Oregon program is the most fully integrated and comprehensive in the country. It requires local planning and zoning consistent with state goals, which are mandatory statewide planning standards. The agricultural goal requires that agricultural lands be preserved and maintained for farm use. All Class I-IV soils (and in eastern Oregon, Class V and VI soils in addition) not committed to non-farm use must be zoned for agriculture according to general criteria set by the state. Cities must establish urban growth boundaries, within which new development must be contained and encouraged. Public facilities and services are to be provided at levels suitable for urban uses within urban growth boundaries, but few, if any, public services are to be provided outside the boundaries. Land in farm use zones qualifies for use value assessment for property tax and state inheritance tax purposes, is exempt from special levies of utility districts, and enjoys right-to-farm protection.

Although relatively few counties and cities have completed comprehensive plans which are in full compliance with the goals, nearly all counties have been working cooperatively with the state to revise land use plans and zoning ordinances. Sixty-seven percent of the land which is expected to be ultimately zoned agricultural has already been bought under agricultural zoning. In the Willamette Valley, where population pressure is by far the highest, 84 percent of the anticipated ultimate acreage is already in agricultural zoning.

Mandatory programs emphasizing control of land can be enacted if there is a strong consensus on the importance of protecting farmland. They treat all farmland owners uniformly and therefore avoid the central weakness of voluntary programs, that even if nearly all farmland owners join a voluntary program and remove their land from the development market, the remaining farmland may be developed, and, once developed, may result in intrusions which will cause problems for neighboring farmers and weaken the agricultural economy. Their coverage is likely to be much more complete than that of voluntary programs which rely on the initiative of landowners. If local controls are required by a mandatory state program, the burden of responsibility can be more easily borne by state or regional officials, who must treat all areas of the state in an equal manner and who are generally separated geographically, socially, and economically from individual petitioners for changes in land use.

Weaknesses in mandatory systems may result from the lack of clear legislative intent and strong political resolve to give priority to the protection of agricultural land, lack of clear and

strong criteria for granting exceptions from the general requirement to protect agricultural land, and from the relative lack of alternative sites for urban development.

Agreement is relatively easily reached on general principles or criteria which later must be interpreted for each specific case. To reach agreement on a mapped plan with clearly marked and unarguable boundaries between future land uses is much more difficult. Local participation is probably necessary, and the participation may be very time consuming, as specific details are studied and argued.

The Oregon program is most clear in its treatment of farmland as a natural resource to be preserved not only to maintain the strength of both the present and future agricultural economy, but also as an open space resource for future generations. The law is explicit that certain types of soils are to be preserved and contains no qualifying language suggesting that profitability or market demand for rural development should be a consideration.

Oregon's legislation and subsequent administrative and case law rulings have resulted in a specifically stated body of planning policies and procedures. This has relieved the courts of trying to interpret vague provisions in county or city zoning enabling legislation or "public welfare" provisions in state constitutions.

c. The Relationship between State and Local Programs

State programs are the key to agricultural protection for several reasons. A policy statement by the state legislature that agricultural land is a valuable natural economic resource which should be protected can provide a point of reference and an hospitable policy environment for local programs. In doing so, a state policy can make it possible to demonstrate the consistency of a local program with state objectives. It therefore makes the political and legal defense of local programs easier.

Second, a state program generally requires or enables some local planning to take agricultural land explicitly into account. Very often, once local people have the format for discussing the program of protecting agricultural land and the resources with which to measure and analyze their land base and develop plans, they will take effective action.

Third, even though a state program may fall far short of being a complete solution to the problem, it can provide a starting point which stimulates positive actions by local government.

Fourth, in the absence of a state program, many local jurisdictions, because of inertia, lack of leadership, or local political pressures, will not undertake agricultural protection programs. A state program can induce or require them to take action to protect farmland.

III. LEGAL AND CONSTITUTIONAL ISSUES

A. Agricultural Zoning

There are four major legal pitfalls that an agricultural zoning ordinance must avoid. First, it must be consistent with the authorization of the state enabling act. Many states limit the powers of local governments to those that are expressly delegated to them by the state legislature. Thus, it is advisable to amend state laws so as to authorize low-density agricultural zoning.

Second, most state laws require that local ordinances be in accordance with a comprehensive plan. Any municipality which is embarking on a farmland protection program should undertake a comprehensive planning study on which the program will be based. This study should analyze trends in agricultural use and the importance of farming to the municipality's economy, and include soil and open space studies and a review of state and regional policies concerning agriculture and agricultural land protection, as well as an examination of the factors such as projections of housing needs that would be considered in a traditional growth management study. The comprehensive plan should be amended to reflect the findings of these analyses and the new farmland policies.

Third, if an agricultural land regulatory program is properly authorized by enabling legislation and is in accordance with a comprehensive plan, the principal constitutional hurdle it will have to surmount is the challenge that it constitutes a taking without just compensation. Whether such a program relies on exclusive agri-

cultural zones or very large minimum lot sizes, it will often have the effect of significantly reducing the market value of the land so limited. Many states have framed the issue this way: if a zoning ordinance so restricts the uses to which land can be put that it cannot be used for any reasonably profitable purpose, it constitutes a taking and therefore violates the Fifth Amendment's command that no property shall be taken for public use without just compensation. Recently, in its decision in *Penn Central Transportation Co.* v. *New York*, the U.S. Supreme Court held that a zoning ordinance is constitutional if it is enacted pursuant to a public program adjusting the benefits and burdens of economic life to promote the common good, even though it reduces sharply the value of real property, especially where it permits the owner to continue to use the property as he has in the past. If a court finds the zoning ordinance constitutes a taking, it may enjoin it or, under appropriate circumstances, award damages to the owner for deprivation of his property rights, pursuant to Section 1983 of the U.S. Civil Rights Act.

Fourth, a municipality that seeks to prevent development of its agricultural land without making adequate provisions for all types of housing elsewhere, may run afoul of state anti-exclusionary zoning doctrines. Developed primarily in New Jersey, Pennsylvania, and New York, these principles require municipalities to take the regional welfare into account in shaping their land development regulations and to make provisions for accommodating their fair share of the regional demand for low and moderate income housing. Other state supreme courts may take similar positions, especially in the Northeast and Midwest where small, often parochial, municipalities have primary responsibility for land development regulations.

B. Tax Incentives

The principal constitutional issue that differential assessment programs raise is whether they violate the clauses found in many state constitutions that require taxes to be imposed uniformly. It has been answered both ways by the courts. At least half of the states have amended their constitutions specifically to permit differential assessment. The provisions of the various differential assessment laws vary widely from one state to the next and present a potentially rich mine for litigation, which is only beginning to be explored.

Because the estate tax incentives are of such recent vintage, there has been virtually no litigation involving them. The most probable major issue, other than statutory interpretation, will be whether or not these preferences violate the state's uniformity clause.

C. Comprehensive Growth Management Programs and Control of Public Water and Sewer Extensions

In the last twenty years many suburban municipalities have come to realize that the problems of guiding new development and protecting agriculturally and environmentally significant areas must be solved together using a comprehensive growth management program. The legal issues arising out of such programs and the use of the power of government to control the provision of water supply, sewerage, transportation, and other infrastructural systems are complex and largely unexplored. Courts in California and New York have upheld programs which either placed a limit on the total number of building permits that would be issued each year, or sought to key approval of subdivisions to the availability of sewers, schools, parks, major roads, and firehouses against attacks that they were not authorized by the enabling act, constituted a taking of property without just compensation, or interfered with the right to travel. Restrictions on water and sewer extensions have been upheld so long as they are temporary, in good faith, and seek to prevent a serious public health problem.

In summary, government officials and citizens concerned with the protection of agricultural land must remember that their primary objective must be to enable farmers to continue farming by protecting both the attractiveness of farming as a way of life and its profitability. Land development regulations and incentives deal with only a part of the overall problem and must be drafted to meet various legal and constitutional requirements. To increase their chances of success, they should be based on sound enabling legislation, developed through comprehensive planning and

policies which give appropriate recognition to low and moderate income housing, commercial and industrial development, and environmental protection objectives. At the same time, they must not contravene the fundamental safeguards accorded to private property by the due process, equal protection, and taking clauses of the United States Constitution.

IV. RECOMMENDATIONS

A. The Goals of Protecting Farmland and Guiding Urban Growth Are Best Achieved Together Through the Use of a Comprehensive Growth Management System

If a community seriously wants to protect its farmland, it must find a way to deflect development away from productive agricultural land to areas where urban growth is most appropriate. To do this the community may wish to use one of several growth management approaches, combined with several of the techniques discussed in this Guidebook.

B. Farmland Protection Programs Should Be Many-Faceted: The Loss of Farmland Is the Result of Many Factors

Some factors, such as rising real property taxes and special assessments for water and sewer lines, reduce the desire and ability of farmers to keep farming. Others, such as high offering prices for farmland, lead directly to its sale. Effective programs will address most of the major factors that lead to the conversion of farmland.

C. The States Should Provide the Key to Saving Farmland

States should declare their commitment to protect good agricultural land because it is a vital and irreplaceable resource. These declarations will provide political and legal support for the efforts of local government to protect farmland. To provide stronger programs, states should establish criteria concerning urban growth, the protection of environmentally significant areas, and the protection of agricultural lands which local governments would be required to meet in planning and regulating land use.

D. It Is Essential to Act Early

The sooner a program for protecting farmland can be started, the better. If a community waits until development pressures become strong, farmers' and developers' expectations will have risen, along with land values, and it will be much more difficult, politically, to get an effective program started.

E. Programs Should Be Based on Accurate Information

Communities need accurate, up-to-date information on natural conditions, the importance of agriculture to their economies, land use and ownership, and future trends of urbanization in order to develop a farmland protection program that is well-conceived and legally defensible.

F. Advocates of Farmland Protection Programs Should Make Sure They Have Able, Dedicated Political Leadership

Effective programs must be tailored to local conditions. They often involve unfamiliar concepts and techniques that may be difficult for many farmers to accept. It takes astute, persuasive individuals to provide the leadership needed to design, enact, and implement an effective program.

G. Farmland Protection Should Involve More than Land Use Controls

While incentives, land use controls, and comprehensive growth management programs are important for any farmland protection program, other measures are necessary to maintain the economic viability of agriculture. Farmers need adequate credit, suppliers, service businesses, labor, marketing facilities, and storage and processing facilities.

H. Farmland Protection Programs Should Be Designed So that They Are Legally Defensible

Programs should be based on sound enabling legislation, developed through comprehensive planning and policies that give appropriate recognition to low and moderate income housing, commercial and industrial development, and environmental protection objectives. At the same time, they must not contravene the fundamental safeguards accorded to private property by the due process, equal protection, and taking clauses of the United States Constitution.

CHAPTER 3

INCENTIVES: TAX RELIEF*

I. INTRODUCTION

Across the country, legislators have long understood that the capacity to earn a reasonable living from farming is the most important determinant in a farmer's decision whether or not to keep farming. Since taxes constitute a significant cost to farmers and are under government control, it is not surprising that legislatures have often turned first to tax relief as a tool for protecting farmland. In this chapter, we will examine the ways in which the real property tax, estate and inheritance taxes, and, in two instances, state income taxes, have been reshaped so as to reduce their impact on farmers.

Both the property tax and inheritance/estate taxes are *ad valorem taxes*. They are imposed on the assessed or appraised value of property, specifically here, farm real and personal property. As a general constitutional principle, the measure of property value for *ad valorem* tax purposes is fair market value. This is usually defined as the price a property would sell for in cash or terms equivalent to cash when offered for sale by a seller who is under no compulsion to sell to a buyer who is under no compulsion to buy. A central characteristic of farmland — and it is this characteristic that, more than any other, creates most of the economic, legal, and political problems which attend our efforts to protect farmland — is that it often has two values: one, its current use value as a factor in agricultural production, and the other, its exchange value as a site for residential, commercial, or industrial development. When considered as a factor for agricultural production, its value is related to its capitalized economic rent. Its economic rent is determined by such factors as soil quality, topography, accessibility to markets and transportation facilities, market conditions, and natural factors such as drought. This economic rent is capitalized at a rate which is related to capitalization rates of competing investments, property taxes, and investors' expectations concerning future farm income trends and the supply of agricultural land. When considered as a site for development, the value of agricultural land is determined by its promixity to developed areas, the availability of public water and sewer facilities, population growth and migration, topography and stability of soils, and generally by the demand for facilities of all types. The fair market value of farmland for which there is no development demand approximates its agricultural use value. In many farming areas, especially those near large cities, the fair market value of agricultural land is much greater than agricultural use value because developers are able to make a reasonable profit from their development even if they pay high prices for the land.

Many farmers have found that their real property taxes were going up because of the rising fair market value of their land and the increased fiscal burdens which attend suburbanization. Some farm estates have had liquidity problems that made it difficult or impossible to pay estate taxes that were measured by the fair market value of the land without selling some or all of the farm. In response to their complaints, the tax incentives which we will discuss here were enacted. They have two primary purposes: first, to reduce taxes for farmers, and second, as a consequence of that reduction, to lower the rate of conversion of farmland to non-farm uses by reducing the number of tax-motivated sales of farmland, and thereby keep more land in agricultural use. In the sections which follow we will analyze the general nature of the real property, income, and death tax incentives, and evaluate their effectiveness as a means for reducing the conversion of farmland to non-agricultural use.

II. PROGRAMS FOR REDUCING THE BURDEN OF REAL PROPERTY TAXES ON FARMERS

A. Types of Programs

At the present time, forty-eight states have laws which in one way or another seek to reduce the burden of real property taxes on farmers.[1] For purposes of analysis these laws are usually grouped into two major categories: differential assessment (consisting of preferential assessment, deferred taxation, and restrictive agreements) and circuit breaker tax credits.[2] Many of

* The principal author of this chapter was John C. Keene.

these states have adopted other techniques for preserving farmland as well, ranging from preferential valuation for death tax purposes to comprehensive sets of planning and zoning requirements. New York, Virginia, Illinois, and Minnesota have laws which enable qualifying farmers to create agricultural districts and receive special benefits such as protection against unnecessary regulation of farming practices and limitations on the levying of special assessments for the construction of water and sewer facilities and roads. (See Chapter 4). Others, such as California, Oregon, and Maryland, have agricultural land protection programs which are integrated with planning, zoning, and other techniques for managing urban growth. (See Chapter 10). Clearly, as the comprehensiveness and degree of integration of agricultural land protection programs increase, it becomes more and more difficult to isolate the impacts of differential assessment and income tax credits and to assess their individual contribution to protecting farmland.

1. Preferential Assessment

Seventeen states authorize preferential assessment of eligible agricultural land.[3] Under preferential assessment, eligible agricultural land is assessed for real property tax purposes at its agricultural or current use value, instead of its fair market value. Eligibility conditions are usually minimal, consisting only of the requirement that the land be in farm use. Some of the states require that land be in agricultural use for a few years in order to be eligible, and three set minimum requirements for farm income per acre. The assessor is directed to determine farm use value by capitalizing net farm income per acre, usually at a statutorily defined rate. The effect of preferential assessment is to reduce the farmer's taxes by the difference between what they would have been if based on a fair market value assessment and what they are, based on a current use value assessment.

2. Deferred Taxation

Twenty-eight states have adopted deferred taxation programs. Their principal feature is that, in addition to making current use value assessment

TABLE 3-1
STATES WITH PREFERENTIAL ASSESSMENT PROGRAMS AND YEAR OF ENACTMENT

Arizona	(1967)	Louisiana	(1976, 1979)
Arkansas	(1980)	Mississippi	(1980)
Colorado	(1967)	Missouri	(1975)
Delaware	(1968)	New Mexico	(1967)
Florida	(1959)	North Dakota	(1973)
Idaho	(1971)	Oklahoma	(1974)
Indiana	(1961)	South Dakota	(1967)
Iowa	(1967)	West Virginia	(1977)
		Wyoming	(1973)

available for eligible land, they require owners of participating land who convert it to ineligible uses to pay some or all of the taxes which they had been excused from paying as a result of that participation. This sanction is designed to deter landowners from converting their land and to recoup some of the revenue lost as a result of differential assessment. Eligibility requirements vary considerably from one state to another. Some, such as Texas, require that the owner be a natural person, not a corporation. Others require a minimum level of farm income per acre, previous agricultural use for a number of years, or a minimum length of tenure within the family applying for the tax benefit. Nebraska requires that, to be eligible, the land must be zoned exclusively for agricultural use. A few, such as Florida, terminate eligibility if the owner applies for a rezoning.

In most states, to establish the amount of taxes which are due upon termination of participation, the assessor determines both the fair market value and the agricultural use value of the land each year. If the land ceases to be eligible, the rollback taxes, which would have been imposed on the difference between the fair market value and the farm use value (the development value) for a statutorily prescribed period of years, become due. Thus, the effect is that taxes on development value are abated for the years of participation prior to the beginning of the rollback period and deferred for its length. The length of the rollback is typically between four

TABLE 3-2
STATES WITH DEFERRED TAXATION PROGRAMS

State		Rollback Period	Interest Rate	State		Rollback Period	Interest Rate
Alabama	(1978)	3	-	New York	(1971)	5	-
Alaska	(1967)	7	8%	North Carolina	(1973)	3	9%
Connecticut	(1963)	a	-	Ohio	(1974)	4	-
Hawaii 1	(1961)	-	10%	Oregon	(1963)	10	6%
Hawaii 2	(1973)	10	6,10%	Pennsylvania 1	(1966)	5	5%
Illinois	(1970)	3	5%	Pennsylvania 2	(1974)	7	5%
Kentucky	(1976)	2	-	Rhode Island	(1968)	a	-
Maine	(1971)	a	-	South Carolina	(1975)	5	-
Maryland	(1956)	a	-	Tennessee	(1976)	7	6%
Massachusetts	(1973)	4	a	Texas	(1966)	5	7%
Minnesota	(1967)	3	-	Utah	(1969)	5	-
Montana	(1973)	4	-	Vermont 1	(1969)	3	-
Nebraska	(1974)	5	6%	Vermont 2	(1971)	a	-
Nevada	(1975)	7	6%	Virginia	(1971)	5	6%
New Hampshire	(1972)	a	-	Washington	(1970)	7	10%
New Jersey	(1964)	2	-				

[a] This state has a land use change tax. See Table 3-3.

and seven years, but varies from two years in New Jersey and Kentucky to 20 years for Hawaii's dedication program. About half the states using this approach impose interest on the rollback taxes, often at below market rates. (See Table 3-2).

The six New England states and Maryland follow a somewhat different approach to deferred taxation (Table 3-3). In order to simplify administration, they have relieved assessors of the necessity of determining both fair market and agricultural land use value each year by enacting land use change taxes which simply make the deferred tax equal to a stated percentage of fair market value or the difference between fair market value and agricultural use assessed value in the year of sale. Massachusetts, Rhode Island, and Connecticut impose higher taxes on land which has been preferentially assessed for short periods of time in an attempt to deter rapid turnover of agricultural land. By contrast, Maine imposes taxes at a higher rate on land held for longer periods of time. Vermont has a capital gains tax which applies to all sales of land. This is discussed in Chapter 11.

Finally, several states charge an additional penalty if landowners fail to follow prescribed procedures. Washington, for instance, charges a penalty amounting to 20 percent of the rollback taxes due if an owner shifts the property to an ineligible use without having the statutorily required two years' notice.

3. Restrictive Agreements

New Hampshire and California have restrictive agreement programs for agricultural land. They differ from the other programs in that, as a condition of eligibility, landowners wishing to secure differential assessment must enter into enforceable agreements to keep their land in eligible use. Owners will not be released from contracts unless they meet certain stringent statutory criteria. Other states, such as Hawaii, Pennsylvania, and Washington, also require landowners to sign similar agreements but, in the event of a breach, only impose rollback taxes. Since these states do not prevent the landowner from converting his land, their programs have not been placed in the restrictive agreement category.

In addition to its deferred taxation program, New Hampshire has a discretionary easement program which relies on a type of restrictive

TABLE 3-3
STATES WITH LAND USE CHANGE TAXES

Maine: The tax is on the difference between fair market value at the date of withdrawal and agricultural use assessed value, at the rate of 10% for land in the program for 5 years or less, 20% for land in the program for more than 5 years but less than 10 years, and 30% for land in the program for more than 10 years. Me. Rev. Stat. Ann. § 1101-1118 (Supp. 1980).

Vermont: The tax is 10% of the fair market value at the time of conversion to a non-qualifying us- Vt. Stat. Ann. tit. 32, §§ 3751-3760 (Supp. 1980).

New Hampshire: Under one program, the tax is 10% of fair market value at the time of conversion. Under the restrictive agreement program, the tax is 12% of fair market value if conversion is during the first half of the contract term and 6% if in the second half. N.H. Rev. Stat. §§ 79-A:1 to 79-A:14 (Supp. 1980).

Massachusetts: The tax is on the sales price at the time of conversion at the rate of 10% if the land is converted after being differentially assessed for less than one year, and declining by 1 point a year to 1% for land differentially assessed for 10 years. The owner pays the higher of this tax or the rollback tax. Mass. Ann. Laws Ch. 61A, §§ 1-24 (Supp. 1980).

Connecticut: The tax is the same as Massachusetts' land use change tax. Conn. Gen. Stat. § 12-504a (Supp. 1980).

Rhode Island: The tax is similar to Massachusetts' except that it is at the rate of 10% for land which has been differentially assessed for up to six years and declines thereafter by 1 percentage point a year to 1% in the fifteenth year. R.I. Gen. Laws § 44-5-39 (Supp. 1980).

Maryland: The tax is a development tax equal to 10% of the difference between the agricultural assessment and the non-agricultural assessment. Md. Ann. Code art. 81, § 19 (b)(1)(B)(I)(Supp. 1980).

agreement. Owners of land which does not meet the criteria for the state's deferred taxation program may convey an easement on their land to their town or city that limits it to open space uses for at least ten years. In return, the town selectmen agree to a fixed assessment for the term of the easement which will be no greater than the highest per-acre valuation for open-space land set by the state's Current Use Advisory Board. The owner may secure release from the easement only if he can show extreme personal hardship. If he does, he must pay the land use change tax shown in Table 3-3.

California's complex, fairly well-integrated program for protecting agricultural land is analyzed at length in Chapter 10. Here we will discuss only its tax incentive features. Under the Williamson Act, which was passed in 1965, cities and counties were authorized to establish agricultural use value assessments. In return, the owners must agree to keep their land in agricultural use for at least ten years. These contracts are automatically extended for one year each year, unless one party gives the other notice of non-renewal, in which case they terminate at the end of ten years. After notice of non-renewal, the assessed value increases rapidly each year so that by the end of the seventh year, it is almost at the level where it would be if based on full market value. Over 16,000,000 acres of land, including about 44% of the privately owned farmland in the state, are now under Williamson Act contracts.

The passage of Proposition 13 has significantly reduced the attractiveness of Williamson Act incentives. Proposition 13 provides that real property shall be taxed at 1 percent of its fair market value in 1975, augmented each year by 2 percent to adjust for inflation. In recognition of the dramatic reduction in regular tax burden brought about by Proposition 13, the California legislature, in 1979, gave landowners under Williamson Act restrictive agreements the option of having their land assessed at current use value under the Williamson Act or by the method used generally pursuant to Proposition 13. There has not yet been a significant increase in the number of non-renewals for these contracts. It is possible however, that there may be fewer new contracts and more non-renewals because of the fact that Proposition 13 has decreased the tax incentives for participating in the Williamson Act program and reduced the taxes payable on notice of non-renewal.

4. Circuit Breaker Tax Credits

Michigan and Wisconsin have adopted a different approach for reducing the burden of real

property taxes on farmers. Instead of making available differential assessment of farmland and thereby reducing property taxes, they authorize an eligible owner of farmland to apply some or all the property taxes on his farmland and farm structures as a tax credit against his state income tax. These programs are called "circuit breakers" because they relieve the farmer from additional real property taxes once they exceed a given percentage of his income.

In Michigan, a farmer can credit the amount by which the real property taxes on his farm and farm buildings exceed 7 percent of his household income. If the credit exceeds his tax liability, he will receive a negative income tax payment for the difference. To be eligible, a farmer must meet certain requirements for acreage and gross annual income from agriculture and enter into a "farmland development rights agreement" restricting his land to agricultural use. The application for this agreement must be reviewed by the county and regional planning commissions and the soil conservation district agency and then be approved or rejected by the local governing body. Whatever the latter does, the State Land Use Agency may approve or reject the application. Land under agreement is protected against special assessment for sewers, water, light, and non-farm drainage facilities and may not have access to these facilities unless the full assessment is paid.

The state may relinquish the agreement if it determines that development of the land is in the public interest. The landowner pays no back taxes. The landowner may request relinquishment following the same procedures as those used to create the agreement. If the request is approved, he is liable for all income tax credits received plus 6 percent compound interest. If the agreement expires according to its terms, he is liable for the last seven years of credit without interest. If an owner knowingly converts the land to an ineligible use without first going through the procedures outlined above, he may be enjoined by the state or the local governing body, and subjected to a civil penalty for actual damages, not to exceed twice the land's fair market value at the time the application for the development rights agreement was approved.

Wisconsin's program also uses a form of real property tax credit against the state income tax. It is closely integrated with planning and zoning and the magnitude of the credit is related to the household income of the farmer, the magnitude of his real property taxes, and the extent of local zoning and planning activities. It is discussed in Chapter 10.

B. The Effectiveness of Differential Assessment

Differential assessment and circuit breaker real property tax credits were enacted to serve two principal objectives: first, to reduce the burden of real property taxes on the owners of farm property, and second, as a consequence of that reduction, to reduce the rate of conversion of farmland to non-farm uses by reducing the number of tax-motivated sales.

1. Effectiveness for Reducing Taxes of Farmers

The effectiveness of the program as a way of reducing taxes is measured by the percentage of farmers who obtain tax reductions and by the magnitude of those reductions. Differential assessment programs that have few eligibility conditions and grant agricultural use value assessment automatically to eligible farms will normally enjoy the highest rate of participation. As more and more eligibility conditions are imposed, such as application requirements, minimum gross farm income, minimum length of tenure within the family, planning and zoning requirements, and, ultimately, the requiring of entry into a stringent restrictive agreement, fewer and fewer farmers will be able and willing to participate. For instance, in Indiana, land in agricultural use is automatically assessed at current use value and all farmland participates. By contrast, the requirement of Nebraska's program that land be zoned for agricultural use has severely limited the availability of differential assessment because of the reluctance of counties to pass such zoning ordinances.[4]

The magnitude of the tax reductions enjoyed by participating farmers is determined by a complex set of interlocking factors. The greater the difference between the assessed value based on

agricultural use value and the assessed value based on fair market value and the greater the percentage which the fair market value of a farmer's land is of the total value of his land and buildings, the greater his tax reductions will be.[5]

Methods of assessment which produce relatively low current use values will generate more tax benefits than others. Assessors use one of three methods: capitalization of farm income, land value tables, and, in some states, comparable sales. If the statutory formula mandates a high capitalization rate, the current use value will be lower. If the land value tables which assign specific per acre assessed values to different kinds of farmland are set at a low level, or not adjusted periodically to take increases in land prices into account, they will produce relatively greater tax reductions. Often, comparable sales will include an element of development value, thereby producing a smaller tax reduction.

Rollback and land use change taxes reduce absolute tax benefits and therefore make deferred taxation programs less attractive. The longer the rollback period and the higher the interest rates on unpaid taxes, the lesser is the amount of tax reduction provided by a deferred taxation program for landowners who ultimately convert their land to an ineligible use.

While many states have data on the number of acres of farmland that are receiving differential assessment, few if any of those with eligibility conditions of varying degrees of stringency have determined the amount of land which theoretically could be eligible. Thus, we cannot actually measure the levels of participation for the various programs, nor is it possible in most states to determine accurately the actual magnitude of the reduction in taxes which owners of farmland are enjoying because of differential assessment. There is general agreement, however, that differential assessment does significantly reduce taxes for owners of eligible farmland.

If a county or township wishes to maintain municipal services at a steady level, it must raise the tax rate so as to compensate for lost tax revenues. The effect of this is to shift part of the burden of paying for municipal services to owners of ineligible real property within the taxing jurisdiction. California, Alaska, Vermont, and Minnesota (for the Twin Cities metropolitan area) have addressed this equity problem by authorizing state funding to local governments to cover some or all of the tax loss occasioned by differential assessment.

The tax credit approach, used by Michigan and Wisconsin, also places the burden of tax incentives on the statewide income tax base, and leaves the incidence of local real property taxes untouched. It also targets those with moderate income and relatively high property taxes as the primary beneficiaries of the program, instead of making the reduction available to all owners of farmland without regard to their need. Finally, the approach intrudes less significantly into the workings of the land market. The tax reductions provided are a function of household income and do not attach directly to the land, thereby tending to force its price up.

As a first conclusion then, differential assessment and circuit breaker tax credits are effective ways to reduce the taxes on farmland. Pure preferential assessment with no eligibility conditions except that the land be in farm use is the most effective way to achieve this objective. As more and more eligibility conditions are imposed, and as the magnitude of the tax benefit is reduced by methods of assessment, by imposition of rollback and land use change taxes, and by conditioning tax reduction on the level of household income, these approaches produce lower levels of participation and tax reduction, and therefore, become less effective means of reducing farmers' taxes.

2. Effectiveness for Preventing the Conversion of Farmland

The effectiveness of differential assessment and circuit breaker tax credit programs as means of protecting farmland is measured by the extent to which they bring about a reduction in the number of sales of farmland to buyers who will convert it to other uses. It should be noted at the outset that about 85 percent of the approximately 85,000[6] farm real estate transfers that take place each year are to buyers who expect to keep the property in agricultural or forestry use for at least five years.[7] These transfers occur in rural areas where agriculture is the primary occu-

pation and urban pressures are low. Here agricultural use value often approximates fair market value, and real property taxes are not rising rapidly.

Obviously, it is only in those areas where assessed values based on fair market value are significantly higher than those based on agricultural use value that differential assessment programs have any chance of actually reducing the number of farm sales. This differential occurs only where there is significant development pressure, and where local assessors otherwise would base their assessments on fair market value and not on farm use value. Indeed, several commentators have concluded that the rapid spread of differential assessment legislation across the country in the last two decades was intimately connected with the movement toward 100% valuation of property mandated by numerous court decisions and statutes.[8] Even today reassessment programs in states such as New York and North Carolina are inducing many farmers to enroll their properties in the state's differential assessment program.[9]

It goes without saying that tax incentives will be effective in reducing sales of farmland only in those instances where rising taxes are the principal motivation for placing a farm property on the market. They will have little impact where other reasons motivate the sale or transfer, such as transfers by estate sale, gift, or inheritance or sales by non-farmer and absentee owners. Approximately 61 percent of all transfers in recent years fell into these categories, and only 39 percent were by family farmers.[10] Of these last sales, many are made for non-tax reasons.[11] Two recent studies of the sale of farmland in New Jersey and in Baltimore County, Maryland, found that between 55 percent and 60 percent occurred between retirement and death or as part of an estate settlement.[12] These sales are motivated primarily by personal considerations such as the retirement or death of the farmer or the absence of a family member who is willing and able to take over the farm. Changes in rural areas resulting from the advance of suburbanization may make it more and more difficult to farm. Vandalism, complaints about farm odors, noise, dust, fertilizers and pesticides, and a shortage of farm labor, suppliers, and processors may all combine to force the farmers to sell out. High offering prices for farmland, especially near urban areas, may be so attractive to the farmer that he cannot let the opportunity to sell pass by.

In short, rising real property taxes are only one of many reasons why farmers sell. The consensus is that demographic considerations, high offering prices, and changing neighborhood conditions are much more important and pervasive causes for sales for non-agricultural development.[13] There are not enough data to permit an estimate of how many of the sales each year to buyers intending to convert the land to non-agricultural use are motivated primarily by excessive property taxes, but most analysts have concluded that they constitute only a small fraction of the total and occur primarily on the fringe of urbanized areas.

In order to be influenced by differential assessment, tax motivated sales must involve land which is eligible for the tax incentives under discussion. We have seen that while some state programs make all or almost all agricultural land eligible for differential assessment, others have established a variety of prerequisites which will remove varying percentages of farmland from the eligible category. No data exist on the extent to which these reduce participation. Also, some landowners involved in tax-motivated sales may not elect preferential treatment even though their land is eligible for it. In California, for instance, the evidence suggests that about half of owners of the most rapidly appreciating land, located in the rural-urban fringe, have not participated in the Williamson Act program, because they did not want to be locked in to current agricultural use.[14] (See Chapter 10.) Furthermore, real property taxes are deductible for federal income tax purposes, so that their actual economic impact on a farmer is reduced by a percentage equal to his marginal federal income tax bracket.

Finally, in most cases rollback taxes will not act as a significant deterrent to the sale of differentially assessed land. Effective tax rates on agricultural land average about one percent of fair market value,[15] although in the rural-urban fringe the rates may be somewhat higher. Rollback taxes are usually imposed only on the dif-

ference between fair market value and agricultural use value. The rollback period is typically about five years, although it varies from two to twenty years. In a situation where the effective real property tax rate is one percent and the rollback period five years, the rollback taxes would constitute five percent of the development value of the land. Even this amount is deductible for federal income tax purposes because it is classified as a tax, not a penalty.[16] In states where no interest is imposed on deferred taxes, they amount simply to an interest-free loan for the period of the rollback. Even where interest is charged on the deferred taxes, it does not constitute a penalty unless it is at a higher rate than the landowner would have to pay on a loan from customary commercial sources, and no state imposes interest at a rate equivalent to the rates prevalent in 1980.

Thus, in many cases, the net cost of the rollback tax will be small in relation to the capital gain realized from the sale of eligible land to non-agricultural uses and its deterrent effect minimal. The more soundly based rationale for deferred taxation provisions is that they increase tax equity by forcing landowners who are no longer promoting the public purpose of preserving agricultural land to pay the taxes deferred and thereby reduce the tax shift which results from differential taxation. This rationale has, however, an ironic twist: the extent to which it is served is inversely proportional to the effectiveness of deferred taxation for achieving its goal of deterring conversion of agricultural land to non-agricultural uses.

In short, differential assessment and circuit breaker tax credits are not, in themselves, effective techniques for reducing the rate of conversion of farmland to non-farm uses. Most sales are to other farmers. Many of those that are not occur in the fringes of urban areas, where other considerations such as high offering prices, demographic factors, and the disruptions of suburban development overwhelm rising property taxes as causes for the sale of farmland. Even where tax reductions may enable a farmer to keep farming, they often only postpone the sale a few years until he retires or dies.

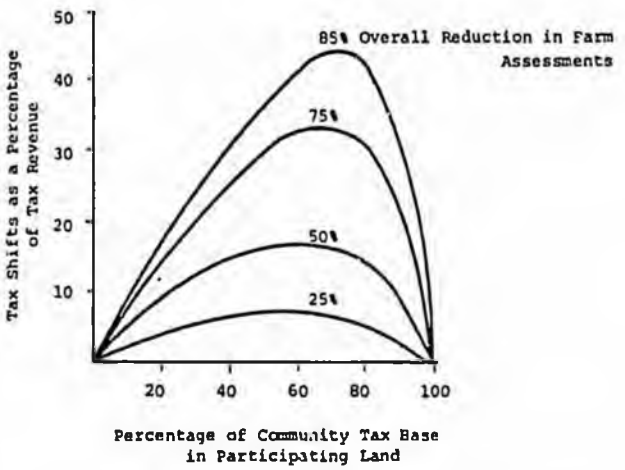
C. Broader Impacts of Differential Assessment on the Agricultural Land Market

The value of agricultural land is a function of its net farm income, real property taxes, and interest costs. If real property taxes are reduced by differential assessment, the net income increases and this increase is capitalized into a higher agricultural use value.[17] This results in a one-shot windfall to the owner at the time of reassessment. Of course, this would affect fair market value only if the adjusted agricultural use value were higher than the pre-existing fair market value. Higher land prices make it more difficult for young farmers to buy their own farms. Despite the rise in price, developers may find it economically feasible to hold land open for longer periods of time than would otherwise be possible. As a result, they may buy land earlier than they would if there were no reduction in taxes and thereby accelerate the transfer of farmland from the hands of family farmers to those of absentee owners whose primary interest is in land development, not farming.[18] To the extent that differential assessment makes it possible for some farmers to postpone selling until they retire and for developers to hold land undeveloped for a longer time, differential assessment may also encourage leap-frog development which not only accelerates the conversion of farmland in the more remote areas, but also produces a pattern of development which, in the eyes of many, is inefficient because it fails to utilize to the fullest extent existing suburban roads and water, sewer, and other public facilities.

Differential assessment is an inefficient way to soften the income squeeze that may lead some owners to sell to a developer. It benefits all eligible landowners, be they rich or poor, private citizens or corporations, farmers or speculators, in return for a supply response at the margin by a small number of prospective sellers who decide to postpone sales.[19]

In addition, differential assessment can cause significant shifts in the incidence of the real property tax. It reduces the assessed value of enrolled land. If local government expenditures are to be maintained at the same level, the local tax rate must be raised. Thus, all the other

FIGURE 3-1
RELATIONSHIP BETWEEN PERCENTAGE WHICH TAX EXPENDITURES ARE OF TAX REVENUES AND THE PERCENTAGE OF ORIGINAL COMMUNITY TAX BASE IN PARTICIPATING LAND



taxpayers—homeowners, businesses, and industries—will pay higher taxes. Figure 3-1 shows the possible magnitude of this shift. Deferred taxation will reduce the shift to the extent that back taxes are paid, as do subvention payments to local governments for tax losses. The circuit breaker tax credit approach, of course, avoids this problem completely because it involves only the state income tax and does not change the incidence of local property taxes.

Since all but a handful of states have adopted differential assessment laws, the real issue now is whether those already on the statute books should be amended, or whether this tax benefit should be made a part of a more comprehensive, integrated approach to agricultural land protection. Some states, such as Louisiana, have amended their tax laws so as to lighten the burden of real property taxes on farmers. It repealed the rollback tax and made all farm property eligible for the homestead exemption which effectively insulates farm buildings worth up to $75,000 from the real property tax.[20]

Even though tax reduction by either differential assessment and circuit breaker tax credits is not, by itself, an effective tool for reducing the rate of conversion of farmland to non-agricultural uses, it is an essential element of any comprehensive program for farmland protection. Tax reduction, by either differential assessment or tax credit, should be viewed as one of the appropriate benefits which are offered to landowners as an incentive for participation in such a program. Tax credits are preferable because, first, they can be designed to help those most likely to be experiencing an income squeeze because of rising real property taxes; second, they are not so likely to be capitalized into higher farmland values, and thus distort the agricultural land market; and third, they do not cause intra-jurisdictional shifts of the real property tax burden because they are funded from the statewide income tax.

III. DEATH TAX BENEFITS FOR FARMERS

In recent years, Congress and many state legislatures have instituted significant estate and inheritance tax reforms, many of which have benefited farmers and their families. The Tax Reform Act of 1976[21] was the most important of these, both because it made major changes in the federal estate tax law and because many states have incorporated some or all of its provisions into their own death tax laws. In this section, we will first analyze and evaluate the recent changes in federal estate tax law and then examine developments in death taxation in the states.

A. Federal Estate and Gift Tax Law

1. Recent Changes in the Law

The Tax Reform Act of 1976, as supplemented by technical corrections contained in the Revenue Act of 1978,[22] represented a major attempt by Congress to reshape many aspects of federal income, estate, and gift taxation. Of special interest here are the changes made in the estate and gift taxes.

a. Unified Credit and Marital Deduction

There was a substantial unification of the estate and gift tax provisions which had previously been treated as separate taxes. In the process of doing this, Congress raised the threshold at which estates become taxable by replacing the old $60,000 exemption with a unified credit that increased in four annual steps, so that by 1981, assets up to $175,625 can be transferred by gift or at death, free of any federal estate tax.[23] In addition, the marital deduction was raised to

allow the deduction from the adjusted gross estate of an amount equal to one half of the decedent's adjusted gross estate or $250,000, whichever is larger.[24] This means that a married person dying after 1980, who has made no taxable gifts during his lifetime and who leaves his estate to his wife, can pass an estate of up to $425,625 without having to pay any federal estate tax.[25] The unified credit and marital deduction are, of course, available to all estates, not simply those containing farm property. Taken together, they have the effect of exempting over 95% of all estates from federal estate tax liability.[26]

b. Special Estate Tax Provisions for Farm Estates

In addition to securing general tax reform, Congress also took steps to soften the impact of estate taxes on farm families. At the hearings on the Tax Reform Act, many witnesses testified that high estate taxes were forcing executors to sell part or all of farms after the death of the farmer because either the estate or his heirs did not have the liquid assets to pay death taxes.[27] Senator Mondale, for instance, emphasized the importance of the family farm and the need to protect it against the risk of non-liquidity.[28] Congress' principal response to these arguments was to enact two amendments to the estate tax, Section 2032A, which allows current use valuation of qualified farm real estate, and Section 6166, allowing deferral of the payment of taxes for five years after death and then payment of the taxes due in installments over the next 10 years, for qualifying farm estates. Since these two provisions are the heart of federal and state estate tax preferences for farmers, we will examine them in some detail.[29]

(1) Appraisal at Farm Use Value (Section 2032A)

The intended beneficiary of Congress' tax preferences in the agricultural area was the family farm. In concept, the family farm is owned by a family whose members supply a significant portion of the labor and control management decisions. A more precise and commonly accepted definition is that a family farm is any farm that annually uses less than 1.5 man-years of hired labor and is not operated by a hired manager.[30] Section 2032A contains detailed requirements which seek to limit eligibility for current valuation to *bona fide* farm families. They are:

1. The decedent must have been a citizen or resident of the United States at the time of his death;

2. The real property must be located in the United States and must have been in use as a farm at the time of decedent's death;

3. The decedent or a member of his family must have owned the property and used it for farming and must have materially participated in the operation of the farm for 5 out of the 8 years preceding decedent's death;

4. The real property must pass to a "qualified heir" (a decedent's ancestor, lineal descendant, lineal descendants of his grandparents, his spouse, the spouse of such descendants, and legally adopted children of the individuals in the above classes). Step-children are not qualified heirs.

5. Fifty percent or more of the adjusted value of the gross estate (the value of the gross estate determined without regard to Section 2032A reduced by deductions for funeral and administration expenses, claims against the estate, and unpaid indebtedness) consists of the adjusted value of farm real or personal property which was used for farming at the time of death.

6. Twenty-five percent or more of the adjusted value of the gross estate consists of the adjusted value of qualified farm real property.

7. All persons with an interest in the property must sign a written agreement making the election for preferential valuation and authorize the executor to file it.

If an estate meets all of these eligibility requirements it is then entitled to have the farm valued at farm use value according to the following formula:

$$FV = \frac{R - T}{I}$$

where,
FV = farm use value,

R = average annual gross cash rental (or, if proposed amendments pass, crop share rentals) for comparable land use for farming in the locality,

T = the average annual state and local real estate taxes for such comparable land, and

I = the average annual effective interest rate for new Federal Land Bank loans over the five most recent calendar years prior to decedent's death.

The interest rates vary from one Federal Land Bank district to another and, for 1980, ranged from 8.7 percent in the Houston, Texas district to 9.35 percent in the Sacramento, California district.[31] If rental rates are not available, other methods of valuation may be used, such as comparable sales. In no event may the reduction in the value of qualified real property in the estate exceed $500,000.

If, within 15 years of a decedent's death, the qualified heir or a member of his family fails to participate materially in the operation of the farm for a total of three years, stops using the property as a qualified farm, or sells it to a non-family member, he is liable for an additional tax which is designed to recapture the taxes saved by the application of Section 2032A. After the tenth year, the amount to be recaptured is reduced at the rate of 1 2/3 percent per month (or 20 percent a year) so that by the end of 15 years, none remains.

(2) Deferral of Payment of Taxes (Section 6166)

The Tax Reform Act of 1976 also enacted a new Section 6166 which enables the executor of an estate to defer payment of taxes attributable to the farm property for five years and then pay them in equal payments over a period of 10 years. For an estate to be eligible, the value of the decedent's interest in farm personal and real property (as reduced by Section 2032A valuation) must constitute at least 65 percent of the adjusted gross estate.[32] During the deferral period, the estate pays interest at the rate of four percent on the deferred taxes attributable to the first million dollars of farm property,[33] and interest at usual rates (now 12 percent) on the rest. This, too, was intended to assist eligible estates with problems of liquidity and is more favorable than the 10-year deferral at 12 percent interest which is available to closely held businesses under Section 6166A.

A final provision of the Tax Reform Act of 1976[34] would have changed the way in which capital gains for inherited assets would be computed by "carrying over" the decedent's cost basis to his heirs. This amendment could have inhibited the sale of inherited farm property by substantially increasing the tax on assets whose value had appreciated over many years. However, it was repealed by Section 401 of the Crude Oil Windfall Profits Tax Act of 1980.[35]

Sections 6166A, 2032A, and 6166 interact with each other and the other provisions of the estate tax in complex ways so that it is difficult to infer principles which describe the economic impact of these sections in a general way. As the value of the farm assumes a larger percentage of the adjusted gross estate, it qualifies for more tax benefits.[36]

2. The Effectiveness of Recent Estate Tax Reforms

Like differential assessment and circuit breaker tax credit programs, the provisions of the Tax Reform Act of 1976 that we are examining were enacted for two major reasons: to reduce estate taxes for families generally and for farmers specifically, and as a result of that reduction, to lower the rate at which farmland is converted to non-farm uses by reducing the number of farm estate sales caused by insufficient liquidity.

a. Effectiveness for Reducing Estate Taxes on Farms

The effectiveness of these reforms in reducing farm estate taxes is measured, first, by the number of farm estates which are enabled to reduce their federal estate tax liability and, second, by the tax savings enjoyed by those estates that are both able and willing to meet the often highly restrictive eligibility requirements of the Internal Revenue Code.

We have seen that the unified credit and marital deduction sections have the effect of exempting from the estate tax all estates below

FIGURE 3-2
STEPS IN COMPUTING ESTATE TAX

For those readers who are not familiar with the estate tax and how it is computed, the following is a simplified outline of the major steps involved.

1. Inventory the decedent's assets and determine their value. Decide whether to elect Section 2032A valuation.

2. Determine the liabilities.

3. Deduct estate administration expenses, legal fees, debts, and other deductible items to produce the adjusted gross estate.

4. Deduct the marital deduction.

5. Determine the tax on the taxable estate.

6. Deduct the unified tax credit to arrive at the taxes due.

7. Decide whether to elect to defer payment of taxes if the estate meets the requirements of Section 6166.

$175,625 and all estates below $425,625 that can take full advantage of the marital deduction. An estimated 70 percent of the nation's farms are exempted from federal estate tax liability by the operation of these two provisions.[37] Since some 28,500 estates involving farm real property are administered each year,[38] this means that about 8,500 of them will be large enough to be subject to the federal estate tax and therefore in a position to benefit from the special treatment accorded by Sections 2032A and 6166.

The next steps in evaluating the effectiveness of Sections 2032A and 6166 as a way of reducing farmers' estate taxes are, first, to estimate how many of the farm estates that would otherwise be large enough to be subject to the tax will meet the eligibility requirements of the two sections and, second, how many executors and heirs would, in fact, elect them. At the present time there are no data concerning either eligibility or election, so we can only speculate. It seems probable that a significant number of farm estates will be ineligible for these benefits because of the requirements, first, that there be material participation both by the decedent before death and by his heirs after death; second, that an heir will manage the farm; and third, that the value of the farm property exceed given percentages of the adjusted value of the gross estate. Furthermore, the prospect of having to continue farming for fifteen years in order to avoid liability for the taxes on development value may well deter many heirs from electing the tax provisions, especially those whose farms are close to urban areas where they would be increasingly subject to the adverse impacts of suburbanization.

Finally, we must consider size and significance of the tax reductions which estates may secure under the two sections. These savings can be substantial. For instance, if an estate had a value of $925,000 based on fair market value and consisted mostly of farm property, it might be able to take advantage of the maximum $500,000 reduction by use value appraisal allowed by Section 2032. If it were left to a spouse and qualified for the full marital deduction, it would escape all federal estate taxation.

The maximum tax reduction obtainable by the use of Section 2032A for one estate is $350,000. Only estates of over $5.5 million which are in the 70 percent tax bracket and take the full $500,000 reduction would enjoy a reduction of this size. It must also be noted that the estate tax on very large estates may be so high, because of the progressive nature of estate tax rates, that estates which contain farm property interests large enough to meet the requirements of Section 6166 may not contain enough liquid assets to pay the tax. For instance, if the adjusted gross value of an estate (after Section 2032A valuation) were $20 million, at least 65 percent, or $13 million, would have to be in farm property in order to qualify for Section 6166 deferral. Assuming a taxable estate of $10 million (after using the full marital deduction) we find that the tax would be about $6 million. Thus, if the farm constituted more than 70 percent of the adjusted gross estate, there would be too few liquid assets to pay taxes and either the heirs would have to pay them, or part of the farm would have to be sold.

In summary, farmers with a net worth ranging between $120,000 (the amount which could be passed tax-free to a spouse before 1976) and $425,000 will experience a significant reduction in estate taxes as a result of the unified credit and the enlarged marital deduction. A much smaller number of farm estates, probably less than 8,500

each year, will be big enough to be subject to estate tax liability and therefore potentially eligible for the benefits provided by Sections 2032A and 6166. Many would not in fact be eligible for or would not elect to take advantage of these sections, but those that would, could enjoy significant tax reductions.

b. Effectiveness for Reducing the Rate of Conversion of Farmland

As we have already indicated, one of the major arguments in support of Sections 2032A and 6166 was that farm estates were land poor—that they contain too few liquid assets which could be used to pay administration expenses and estate taxes. As a result, it is argued, many executors are forced to sell part or all of the farm, often to speculators or developers, thereby contributing to the decline in the supply of farmland and the demise of the family farmer.

Clearly, if a farm is purchased by a young farmer or by neighboring farmers, there is no loss of farmland. This occurs only when the land moves into the control of non-farmers. Furthermore, insufficient liquidity is only one of many reasons why executors sell farmland. The most important is that there is no heir able and willing to continue the farming operation. In rural-urban fringe areas, suburban development may have intruded to such an extent that it no longer appears feasible to continue the farming operation at the present location. Thus, the executor sells and the heirs use the proceeds to buy another farm farther out, if they wish to farm. Obviously, the tax benefits provided by Sections 2032A and 6166 would not have any effect on these kinds of situations.

The effectiveness of these two sections as a means of protecting farmland is measured by the extent to which they bring about a reduction in the number of estate sales of farmland that are made primarily because of insufficient liquidity to buyers who will convert the land to non-farm uses. We have already seen that only about 30 percent of farm estates are large enough to be subject to the estate tax. Those that are too small will obviously not be affected by these benefits. We have seen, too, that some 85 percent of farm sales are to buyers who expect to farm for at least five years. Such farms are not at risk of immediate conversion to non-farm use.

Next, we must estimate how many of the estates which are eligible for Sections 2032A and 6166 treatment will have liquidity problems that are serious enough so that some or all of the farm realty would be sold in the absence of the Section 2032A and Section 6166 tax preferences, but not so serious that they would be sold despite them.[39] Two studies shed some light on these questions. The first involved an analysis of 1973 estate tax returns by James D. Smith and Stephen Franklin.[40] They computed the ratio between (1) federal estate taxes and administrative costs and (2) liquid assets (not including life insurance) minus debts, which they regarded as a conservative measure of the estate's ability to pay estate taxes without forced liquidation of less marketable assets. They found that for estates in the size categories of $200,000 and over (which would be those potentially liable for estate taxes after 1976), between 80.2 percent and 84.5 percent were liquid, with ratios below 0.75. Between 11.5 percent and 14.3 percent of the estates in the various sales classes had potential liquidity problems with ratios in excess of 1.0.[41]

The second study involved an analysis of 64 large Iowa farm estates probated between 1970 and 1974.[42] This study defined insufficient liquidity as an "excess of total probate expenses and costs over total liquid assets," where total probate expenses included net indebtedness, net death taxes, and total estate settlement costs, and total liquid assets included the net value of stocks, bonds, checking accounts, promissory notes, saving accounts, certificates of deposit, and cash. The study found that 22 percent of the estates had a probate cost/liquid asset ratio in excess of 1.[43] One of the most interesting observations was that farmers take steps to increase their liquidity between the ages of 50 and 75, so that estates of older farmers are significantly more liquid than are those of working farmers in mid-career.

Neither study gave breakdowns of the data concerning estates with ratios higher than 1, so that we do not know what percentage had liquidity problems too serious to be solved by the tax preferences available under Sections 2032A and

6166. On the basis of the two studies, and in light of the various conservative assumptions made throughout this analysis, it seems reasonable to estimate that about 15 percent of large estates subject to the federal estate tax will have a serious, but not too serious, liquidity problem which can be significantly ameliorated by Sections 2032A and 6166 tax preferences. Each year some 1,300 (15 percent of 8,500) estates would fall into this category.

If the estimates are accurate that only 15 percent or so of farm estates large enough to be subject to the estate tax actually experience serious liquidity problems, it follows that for every farm estate large enough to be subject to estate tax liability that may be saved from partial or full liquidation by Sections 2032A and 6166, there are five or six others that will be able to take advantage of the significant tax savings they offer but that would continue in operation even if these benefits were not available. Death tax benefits, therefore, appear to be inefficient in solving the liquidity problems of a small fraction of our nation's large family farms, and they provide no assistance to the vast majority of smaller family farms.

In some regions, where large farms are typical, however, a substantial percentage of farm estates may benefit from the provisions of Sections 2032A and 6166. These benefits may have an effect on decisions to sell a significant number of farms in such regions. In addition, since only the large farmers are liable for federal estate taxes, the percentage of total farm acreage which is effected by the tax provisions will be larger than the percentage of farms whose estates are benefited by them.

In conclusion, Congress may have promised a lot more than it gave with Sections 2032A and 6166. Only a small fraction of the nation's family farms will be big enough to be eligible for the benefits. Only a fraction of large farm estates have the liquidity problems which Congress sought to alleviate, while the rest will be able to avail themselves of the advantages. Many of the executors of eligible estates will find the restrictions imposed by Sections 2032A and 6166 so onerous—especially the back-tax payments imposed if the farm is sold to a non-qualified heir—that they will choose not to avail themselves of them. Others, especially those with larger estates, will have such serious liquidity problems that even substantial tax reduction and deferral will not forestall partial or full liquidation. Still others would be bought by farmers for farm use. Also, tax burdens are only one of many reasons why farms are sold after the death of their owners. Tax benefits will have little impact where sales are made for non-tax reasons. In short, only a small percentage of farm estates will actually benefit from Section 2032A.[44]

3. Broader Impacts on Agricultural Land Markets and Farm Structure

While the tax preferences provided by Sections 2032A and 6166 undoubtedly will make it possible for a small number of wealthy farm families to keep their farms intact after the death of the principal farmer, they promise to have other, poorly anticipated effects which are detrimental to the continued prosperity of the family farmer. First, to the extent that these preferences do reduce forced sales by estates, they will drive up the price of farmland and restrict the supply available for purchase by young farmers desiring to enter agriculture.[45] Second, families who elect Section 2032A valuation and Section 6166 deferral are locked in for a period of 15 years by their desire to avoid the disastrous consequences of triggering the recapture of the taxes saved by Section 2032A valuation, termination of the Section 6166 or 6166A deferral option, and the greater potential capital gains tax liability.[46] This will tend to reduce further the amount of land that is being offered for sale. Third, as we have demonstrated in the analysis above, these estate tax preferences make farmland a relatively more attractive investment by providing significant tax preferences to those able to avail themselves of them, thus enticing wealthy non-farmers to invest in farm real estate, and thereby further driving up farmland prices.[47] Fourth, existing farmer-owners have a tax-subsidized advantage which enables them to bid higher for adjoining land than non-land-owning buyers such as young farmers who are trying to get started.[48] Fifth, the special valuation is not available for transfers

TABLE 3-4
ESTIMATE OF NUMBER OF FARMS WITH SERIOUS LIQUIDITY PROBLEMS THAT WOULD ELECT SECTIONS 2032A AND 6166 TREATMENT EACH YEAR

	Number	Percent of Eligible Farms	Percent of Total Number Probated
Total Number of Farm Estates Probated Each Year	28,000		100%
Farms Large Enough to Be Liable for Federal Estate Tax	8,500	100	30
Farms with Liquidity Problems Likely to Be Ameliorated by Sections 2032A and 6166	1,300	15	4.6

during lifetime, thus limiting farmers' flexibility in planning their estates.[49]

In sum, instead of assisting the "family farmer," these estate tax amendments promise to have the effect of strengthening the competitive position of the wealthy families who can take advantage of them,[50] and making it more difficult for young family farmers to get started by restricting the supply of land and raising its price both because of scarcity and the capitalization of farm estate tax preferences.[51]

B. State Death Tax Incentives for Farmers

A few states had enacted special provisions designed to soften the impact of their inheritance and estate taxes on farm estates before 1976. Oregon, for instance, permitted farms which were zoned for exclusive farm use to be appraised at their farm use value for Oregon inheritance tax purposes. Many other states authorized the state tax commissioner to agree to installment payment of death taxes if he was persuaded that timely payment would subject the estate to undue hardship, such as partial liquidation of an operating farm. In an effort to simplify the administration of estates, a few states had adopted the federal estate tax law definition of the taxable estate for state estate tax purposes and then set the state estate tax equal to the maximum state death tax credit[52] available under federal law. Finally, most states had adopted "pick-up" taxes which ensured that if the state death taxes on a particular estate were less than the allowable state death tax credit, a tax would be imposed which would pick up the balance of the credit. In most states, this would happen only for very large estates, because for smaller estates most state death tax rates are higher than corresponding federal rates.[53]

The passage of the Tax Reform Act of 1976 triggered a spate of activity across the nation as many state legislatures were pressed to make available to farmers and closely held businesses the kind of tax benefits which were provided in Sections 2032A and 6166 of the Internal Revenue Code. The movement proceeded apace to simplify the administration of estates by piggybacking the state estate tax on federal estate tax law.

1. Appraisal at Farm Use Valuation

As of late 1980, sixteen states[54] use the federal estate tax law to define the taxable estate for state estate tax purposes, and, in most cases, impose a state estate tax in the amount of the permissible state death tax credit. (South Carolina uses the pre-1976 rules for determining the taxable estate and therefore does not include Section 2032A.) For all of these states this means that farms qualifying for Section 2032A treatment

will have their state estate taxes reduced in the same way as their federal taxes are reduced. In addition, eight states added provisions to their death tax laws that were identical to or closely modeled after Section 2032A.[55] Four others and Puerto Rico permit preferential valuation of eligible farmland but do not follow either of the first two approaches.[56]

Michigan's statute ties eligibility for preferential valuation (as does Oregon's) to participation in its Farmland Open Space Preservation Program.[57] The farm must be devoted primarily to agricultural use and be eligible as farmland under the Farmland and Open Space Preservation Act, and the heir must have executed a farmland development rights agreement. The farm real and personal property must constitute 50 percent of the adjusted value of the estate and the farm real property must constitute 25 percent of this adjusted value. The decedent must have owned, and materially participated in the management of the estate for five out of the eight years immediately preceding his death. Half of the clear market value of eligible farm property is exempt from inheritance tax, and taxes on the other half can be deferred for 10 years without penalty or interest. Ten years after the heir signs an agreement, the 50 percent exemption becomes permanent if the agreement is still being satisfied.

In 1980, Puerto Rico amended its estate tax law so as to allow a deduction of 100 percent of the value of farm properties if the deceased had received more than 50 percent of his income from the farm during the three years preceding his death. The taxes which would have been imposed on the farm property constitute a first lien on the property which becomes due if the farm ceases to be an active unit of production within ten years of the decedent's death. If the land is still in active production at the end of ten years, the taxes are abated and the property becomes exempt from the payment of estate taxes.[58]

The state laws allowing preferential valuation of farm property have all been passed so recently that only fragmentary evidence is available about the frequency of use, tax savings, overall tax losses, administrative problems, and so forth, involved in the approach. What has been said of the strengths and weaknesses and the various impacts of Section 2032A at the federal level also applies to these state programs.

TABLE 3-5
STATE DEATH TAX BENEFITS FOR FARMERS

States Using Federal Definition of Taxable Estate, thus Incorporating Section 2032A

Alabama	Florida	New Mexico
Alaska	Georgia	New York
Arizona	Minnesota	North Dakota
Arkansas	Missouri	Utah
Colorado	Montana	Vermont
		Virginia

States Having Provisions like Section 2032A in their Death Tax Law

California	Kansas	Tennessee
Delaware	Kentucky	Washington
Illinois	Mississippi	

States with Other Forms of Farm Use Valuation

Connecticut	Michigan	Puerto Rico
Maryland	Oregon	

2. Deferral of Payment of Taxes

Six states, California, Kansas, Michigan, Minnesota, New York, and Wisconsin, have either incorporated Section 6166 into their state death tax laws or adopted substantially similar provisions.[59]

Many states allow extensions for all types of estates for varying periods of time simply on the basis of a finding of undue hardship.[60] For instance, Vermont's law allows the commissioner of revenue to extend payment up to five years without interest if he finds undue hardship, or with interest at the rate of 1/2 of 1 percent per month if he finds "good cause" has been shown. Tennessee's allows the commissioner to agree to payment in installments if he finds that payment of the taxes on the due date would necessitate the

sale of any portion of the estate at a sacrifice or at an inadequate price.[61]

C. Conclusions

As we have indicated in the analysis of Section 2032A, both the concept and the detailed application of preferential valuation of farmland for death tax purposes are flawed. First, it is not particularly effective in reducing the rate of conversion of farmland resulting from estate liquidity problems. Second, it has undesirable and counter-productive side effects. Thus, it would be unwise for states simply to adopt such provisions by themselves. Still, as with differential assessment, these tax incentives have a place in a comprehensive agricultural land protection program which includes effective measures for preventing the conversion of farmland. The tax benefits afforded by Section 2032A evaluation are appropriate incentives to induce participation in the programs. In fact, in creating an integrated agricultural land protection program, states should eliminate many of the present eligibility requirements and simply make the benefits available to estates which are subject to strong, lasting land use controls as a result of the program. In addition, there is considerable support across the country for making federal and state death taxes uniform by simply making state death taxes equal to the tax credit allowed by Section 2011 of the Internal Revenue Code.[62] The broader advantages achieved thereby of simplifying estate planning and administration would, in the judgment of many, more than compensate for the specific disadvantages of Section 2032A.

The option provided by Section 6166 to pay estate taxes in installments is available to closely held businesses, as well as to farms. Its focus is considerably broader than Section 2032A. Yet, if an estate has serious problems of liquidity, its executor should be allowed to pay the taxes in installments, whether or not farm property or a closely held business is involved. This would avoid giving a special tax benefit to farm property and the rise in land value which would result from the capitalization of tax advantages. It seems preferable to the Section 6166 approach.

TABLE 3-6
TAX INCENTIVE PROGRAMS WHICH ARE LINKED TO DIRECT CONTROLS OF LAND USE

1. Programs for Reducing the Impact of Real Property Taxes

Nebraska: Differential assessment is available only in areas which a county has zoned for agricultural use.

California and New Hampshire: (Program 2) An owner must enter into an enforceable restrictive agreement in order to be eligible for differential assessment.

Michigan: An owner must sign a farmland development rights agreement in order to be eligible for real property tax credits against his state income tax.

Wisconsin: An owner must enter into a restrictive agreement or land must be zoned for agricultural use (or in rural counties must be part of an agricultural preservation plan) in order for owner to be eligible for real property tax credits.

2. State Inheritance Tax Incentives

Michigan: The land must be subject to a farmland development agreement in order to be eligible for preferential valuation for estate tax purposes and deferral of estate taxes.

IV. INTEGRATION OF TAX INCENTIVES WITH OTHER APPROACHES TO FARMLAND PROTECTION

Tax incentives, like most other techniques, are not, by themselves, effective tools for reducing significantly the rate of conversion of agricultural land. However, when included as part of an integrated, multi-faceted agricultural lands program they provide economic benefits which may make the program economically attractive and equitable. Table 3-6 summarizes the steps which states have taken to link tax incentives with other elements of their farmland programs.

Citizens and policy makers who are interested in strengthening agricultural land protection programs must understand that tax incentives

should be linked with effective direct controls over land development such as restrictive agreements or exclusive agricultural zoning. The availability of these tax benefits may determine whether or not an effective protection program is politically acceptable.

CHAPTER 3 FOOTNOTES

1. Of the remaining two states, Kansas has amended its Constitution to permit differential assessment but has not enacted implementing legislation. Georgia has no program.

2. Differential assessment has been the subject of numerous books and articles. See, e.g., International Association of Assessing Officers, *Use-Value Farmland Assessment: Theory, Practice and Impact* (Chicago, IAAO, 1974); Regional Science Research Institute, *Untaxing Open Space* (Washington, D.C.: U.S. Government Printing Office, 1976); John C. Keene, "Differential Assessment and the Preservation of Open Space," 1978 *Urban Law Annual* 11 (1978); Neal Roberts and H. James Brown, eds., *Property Tax Preferences for Agricultural Land* (New York: Allanheld, Osmun & Co., 1980) (Hereafter cited as *Property Tax Preferences* (1980)); Richard W. Dunford, "A Survey of Property Tax Relief Programs for the Retention of Agricultural and Open Space Lands," 15 *Gonz. L. Rev.* 675 (1980); Steven David Gold, *Property Tax Relief* (Lexington, Mass.: Lexington Books, 1980); Earleen H. Cook, "Taxation, Urbanization, Zoning and the Vanishing Farm," Bibliography P-217 (Monticello, Ill.: Vance Bibliographies, April 1979).

3. The statutory citations for the various state laws discussed here can be found in Chapter 11, "Legal and Constitutional Issues."

4. Letter from Larry D. Worth, Property Tax Division, Nebraska Department of Revenue, Lincoln, Neb., July 7, 1980.

5. See John C. Keene, *op. cit.*, n. 2, pp. 25-38 for a more detailed analysis of these factors.

6. See Table 16, Farm Real Estate Market Developments, 1979 (U.S. Economics, Statistics and Cooperatives Service CD 84).

7. Ibid., Table 37.

8. See, e.g., John Brigham, "The Politics of Tax Preference," in *Property Tax Preferences* (1980), n. 2, pp. 77-117.

9. Letter from James F. Dunne, Division of Equalization and Assessment, New York Executive Department, Albany, N.Y., June 3, 1980; D.F. Newman and E.C. Pasour, Jr., "Agricultural Use Valuation in North Carolina, 1978-79" (North Carolina State Univ., 1980), pp. 13-20.

10. Table 24, Farm Market Real Estate Developments, 1979 (CD 84).

11. See, e.g., *Untaxing Open Space*, n. 2 at pp. 49-66 for an analysis of the various reasons for selling.

12. George E. Nagle, Jr. and Donn A. Derr, *A Preliminary Analysis of the Data on Participants in the New Jersey Farm Real Estate Market, 1966-70* (New Brunswick, N.J., 1972) and George E. Peterson, *Tax Policy and Land Conversion at the Urban Fringe* (Washington, D.C.: The Urban Institute, 1975).

13. See Robert E. Coughlin, "Differential Assessment and the Conversion of Land to Urban Uses," in *Property Tax Preferences* (1980), *supra*, n. 2, p. 55.

14. Helen F. Ladd, "The Considerations Underlying Preferential Tax Treatment of Open Space and Agricultural Land," in *Property Tax Preferences (1980), supra*, n. 2, p. 20; I. Hansen and S.L. Schwartz, "Landowner Behavior at the Rural Urban Fringes in Response to Preferential Property Taxation," 51 *Land Economics* 341-354 (1975).

15. U.S. Department of Agriculture, "Farm Real Estate Taxes" (1976) (RET-17), at 5 (1977).

16. I.R.C. § 164(a)(1).

17. See Neal Roberts, "The Big Giveaway Called Differential Assessment," in *Property Tax Preferences* (1980), *supra*, n. 2, p. 8.

18. Helen F. Ladd, *op. cit.*, n. 14, p. 19.

19. Ibid., p. 18.

20. Communication from Representative James Martin, Louisiana House of Representatives, November 1980.

21. P.L. 94-455.

22. P.L. 95-600.

23. I.R.C. § 2010.

24. I.R.C. § 2056A.

25. His estate would take the marital deduction of $250,000, leaving $175,625, the amount insulated from tax by the tax credit.

26. In the 1976 hearings before the Senate Committee on Finance several witnesses emphasized that each year less than 5% of the estates would be subject to federal estate taxation under the new rules. *Revision of Federal Estate Tax Law*, Hearings Before the Senate Committee on Finance, 94th Congress, 2nd Session 22,40,174 (1976), hereafter referred to as *Senate Hearings*. A recent Internal Revenue Service study of estate tax returns filed in 1977, *Estate Tax Returns* (Publication 764, December 1979) confirms these findings. It shows that of the 200,747 estates for which returns were filed, 4,524 exceeded $1 million, 31,772 exceeded $300,000, and 59,553 exceeded $200,000. In 1976 and 1977, there were approximately 1.9 million deaths each year. (1978 *Statistical Abstract of the United States*, Table 101.) Thus, 1/4 of one percent of those dying had estates of over $1 million, 1.67% had estates over $300,000, and 3.1% had estates of over $200,000. Since all estates of $175,625 or less and estates of $425,625 or less entitled to take full advantage of the marital deduction are exempt from estate tax, it can be conservatively stated that at least 97% of all estates are not liable for federal estate taxes. See Roland L. Hjorth, "Special Estate Tax Valuation for Farmland and the Emergence of a Landholding Elite Class," 53 *Wash. L. Rev.* 609 (1978).

27. See Senate Hearings, *supra*, n. 26, *passim*.

28. *Ibid.*, p. 2.

29. For exhaustive analyses of these amendments, see Donald H. Kelley, "Estate Tax Reform and Agriculture," 7 *U. Toledo L. Rev.* 897 (1976); Comment, "The Family Farm and Use Valuation - Section 2032A of the Internal Revenue Code," 1977 *Brig. Y. L. Rev.* 353 (1977); Comment, "An Analysis of the 'Actual Use' Valuation Procedure of Section 2032A," 56 *Nebr. L. Rev.* 860 (1977); Boyd K. Dyer, "Estate Tax Savings and the Family Farm: A Critical Analysis of Section 2032A of the Internal Revenue Code, 11 *U. Cal. D.L. Rev.* 81 (1978); Tom Normand, "Special Use Valuation of Farmland for Estate Tax Purposes: Arrangements for Material Participation," 30 *Baylor L. Rev.* 245 (1978); Stephen F. Matthews and Randall Stock, "Section 2032A: Use Valuation of Farmland for Estate Purposes," 14 *Id. L. Rev.* 341 (1978); Note, "Estate Planning for Farmers and Ranchers Under Section 2032A," 55 *Denver L.J.* 347 (1978); James D. Cox,

"Estate Planning for Farmers After the Reform Act of 1976," 14 *Wake For. L. Rev.* 577 (1978); Roland L. Hjorth, *op. cit., supra,* n. 26; T. Hayward Carter, Jr., "The Application of Section 2032A to the Valuation of Timberland for Federal Estate Tax Purposes," 29 *S.C. L. Rev.* 577 (1978); Charles A. Sisson, "Tax Reform Act of 1976 and Its Effect on Farm Financial Structure," 39 *Agric. Fin. Rev.* 83 (1979); Charles Davenport, "The Influence of Tax Policy on Agriculture, X *Tax Notes* 603 (April 28, 1980); John T. Allen, Jr., "Washington Saves the Farm? The Peculiar Remedy of I.R.C. Section 2032A," 56 *Taxes* 205 (1978); Larry B. Ward, "Planning for Farmers after the 1976 Tax Reform Act and the Revenue Act of 1978," *Thirteenth Annual Institute in Estate Planning* (New York, M. Bender, 1979) pp. 12-1 to 12-31; II *Estate Planning in Depth* (Philadelphia, American Law Institute, Fifth Ed. 1979) pp. 631-734; Hocky, 219-3rd *Tax Management*, "Estate Tax Payments and Liabilities," Wash., D.C., Tax Management, Inc., 1979); J. Streng, 11-8th Tax Management, *Estates, Gifts and Trusts - Planning* (Washington, D.C., Tax Management, Inc., 1979); Donald H. Kelley, "Valuation of Farm and Ranchland After the Tax Reform Act," 1 *Ag. L.J.* 75 (1979); Martin Begleiter, "Section 2032A: Did We Save the Family Farm?," 29 *Drake L. Rev.* 15 (1980).

30. Peter M. Emerson, *Public Policy and the Changing Structure of American Agriculture* (Congressional Budget Office Background Paper, 1978), p. 11.

31. See Rev. Rul. 80-179, 3 *CCH Fed. Est. and Gift Tax Rpts.*

32. I.R.C. § 6166; Edwin T. Hood, Linda L. Charlstrom, and Peter W. Brown, "Special Elections: The Use of Sections 6166, 6166A and 303 of the Internal Revenue Code," 47 *U.M.K.C.L. Rev.* 485 (1979).

33. I.R.C. § 6601 (j)(2).

34. I.R.C. § 1023.

35. P.L. 96-223, §§ 401 (a) and (b). It should be noted that the cost basis of property receiving § 2032A treatment is only stepped up to the agricultural use value for capital gains tax purposes. Then the difference between this value and the fair market value at death will be subject to capital gains taxation which it could escape if no § 2032A election were made. See Martin Begleiter, *op. cit., supra* n. 29, at p. 72.

36. For instance, if the value of the farm exceeds 35 percent of the gross estate or 50 percent of the taxable estate, and meets the other eligibility requirements for Section 6166A, the executor may elect to pay the estate taxes attributable to the farm interest in equal installments over ten years, while paying interest at 12 percent annually on the unpaid balance of the tax. (I.R.C. Sections 6166A, 6621). If the value of the farm real and personal property is at least 50 percent of the adjusted value of the gross estate and the value of the farm real property is at least 25 percent of the adjusted value of the gross estate, and the estate meets the other eligibility requirements for Section 2032A, the executor may elect to have the farm real property valued at farm use value instead of fair market value. If the value of the farm interest (valued at farm use value if Section 2032A treatment is elected) is at least 65 percent of the adjusted gross estate, and the estate otherwise meets the requirements of Section 6166, the executor may elect to defer payment of the tax attributable to the farm interest for five years after the date of death and then pay the tax in equal installments over a period of ten years, while paying interest at the rate of 4 percent on the unpaid taxes attributable to the first million dollars on farm interest, and 12 percent on taxes on the balance of the farm interest.

37. America's farms are divided for statistical purposes into seven classes, according to their volume of sales: Class 1A: $100,000 and over; Class 1B: $40,000 to $99,999; Class II: $20,000 to $39,999; Class III: $10,000 to $19,999; Class IV: $5,000 to $9,999; Class V: $2,500 to $4,999; and Class VI: $1,000 to $2,999. In 1978, the average proprietor's equity for each class was as follows: Class 1A: $894,422; Class 1B: $387,375; Class II: $240,098; Class III: $164,770; Class IV: $142,146; Class V: $110,296; Class VI: $89,158. *Balance Sheet of the Farming Sector, 1979 (Supplement),* Agricultural Information Bulletin No. 430 (Economics, Statistics and Cooperatives Service, February 1980), Table 32. After increasing these averages by 30 percent to account for the increase in value since 1978, I estimate that all the farms in Class 1A would be large enough to be liable for federal estate tax; three quarters of those in Class 1B, because many of the owners would be able to take advantage of the marital deduction; one half of those in Class II because, while the average value is only $240,098, some might be worth more than $425,000, and others would not be able to use the marital deduction; one quarter of those in Class III, on the assumption that some allowance should be made for farms owned by single people worth more than $175,000 and one tenth of those in Class IV. I believe these estimates are on the high side. An insignificant number of Class V and VI farms are large enough to be subject to the estate tax.

Adjusting for changes since 1978 by adding twice the average yearly change between 1974 and 1978 to the 1978 figures, I estimate that the above estimates produce the following number of farms in each category:

Class 1A:	
farms with sales over $200,000	70,500
farms with sales from $100,000 to $99,000	139,000
Class 1B	320,250
Class II	161,500
Class III	70,000
Class IV	26,500
	787,750

This represents 30.2 percent of the total farms shown in the table from which these data come. Economics, Statistics and Cooperatives Service, *Farm Income Statistics*, 1979 (Statistical Bulletin 627, October 1979, Table 1D). Thus, I estimate approximately 70 percent of American farms are too small to be subject to the estate tax.

38. See Tables 600 and 611, "Agricultural Statistics" (Economics, Statistics and Cooperatives Service, 1979). This figure covers transfers by inheritance, administrators', executors', and other sales in the settlement of estates, and gifts. It therefore overstates the number of transfers by reason of death alone. It is the average of the last four years' figures. IRS data showing actual use of § 2032A and 6166 by estates with farm property will not be available for some time.

39. A former commissioner of the Internal Revenue Service, Jerome Kurtz, and a leading tax law scholar, Stanley S. Surrey, have questioned the existence of liquidity problems for most large farm estates. See Kurtz and Surrey, "Reform of Death and Gift Taxes: The 1969 Treasury Proposals, the Criticisms and a Rebuttal," 70 *Columbia L. Rev.* 1365, 1396-1400 (1970).

40. See *Senate Hearings, supra* n. 32, pp. 28-29, 206-211.

41. *Ibid.*, p. 28.

42. Contemporary Studies Project, "Large Farm Estate Planning and Probate in Iowa," 59 *Iowa L. Rev.* 794 (1974), hereafter referred to as the Iowa Study.

43. *Ibid.*, p. 929.

44. See Martin Begleiter, *op. cit., supra,* n. 29.

45. Roland L. Hjorth, *op. cit.*, n. 26, pp. 612-613; Charles A. Sisson, *op. cit.*, n. 29, pp. 83, 89.

46. Roland L. Hjorth, *op. cit.*, n. 26, at pp. 630-639, 655-658; Charles A. Sisson, "The Tax System and the Structure of American Agriculture, Part III," IX *Tax Notes* 419, 420-421 (1979); Bruce L. Gardner and James W. Richardson, eds., *Consensus and Conflict in U.S. Agriculture* (College Station, Texas: Texas A & M Univ. Press, 1979) p. 12.

47. See also, Charles A. Sisson, *op. cit.*, n. 46, p. 420; Peter M. Emerson, *Public Policy and the Changing Structure of American Agriculture*, (U.S. Congressional Budget Office, 1978) p. 52. See Martin Begleiter, *op. cit., supra,* n. 29, for an example of how a practicing physician could arrange with the wife of his first cousin twice removed to manage a farm in Iowa and still meet the "material participation" requirement.

48. Charles A. Sisson, *op. cit.*, n. 46, *supra*, p. 420; Stephen F. Matthews, *op. cit.*, n. 29, at p. 347.

49. See Roland L. Hjorth, *op. cit.*, n. 26, *supra*, p. 613.

50. See Bruce L. Gardner, *op. cit., supra,* n. 47 at p. 12., and Martin Begleiter, *op. cit., supra,* n. 29.

51. Charles A. Sisson, *op. cit., supra,* n. 29, p. 89, and n. 46, pp. 421, Roland L. Hjorth, *op. cit., supra,* n. 26 and Boyd K. Dyer, *op. cit., supra,* n. 29, pp. 112-113; Bruce L. Gardner, *op. cit.*, n. 46, at p. 11.

52. I.R.C. § 2011. In the Revenue Act of 1926, Congress enacted provisions permitting state inheritance and estate taxes actually paid with respect to transfers of property included in the federal gross estate to be credited against any federal estate tax due on the estate. The credit was initially limited to 80 percent of what was then known as the basic tax under the 1939 Internal Revenue Code, but it is now subject to specific percentages of the federal estate tax set out in Section 2011 of the Internal Revenue Code as follows:

TABLE FOR COMPUTATION OF MAXIMUM CREDIT FOR STATE DEATH TAXES

(A) Taxable estate equal to or more than—	(B) Taxable estate less than—	(C) Credit on amount in column (A)	(D) Rates of credit on excess over amount in column (A)
			Percent
$ 40,000	$ 90,000	$	.8
90,000	140,000	400	1.6
140,000	240,000	1,200	2.4
240,000	440,000	3,600	3.2
440,000	640,000	10,000	4.
640,000	840,000	18,000	4.8
840,000	1,040,000	27,600	5.6
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	106,800	8.
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000	.....	1,082,800	16.

A credit is especially valuable for an estate because it allows a dollar-for-dollar reduction of the federal estate tax liability by an amount equal to the maximum permissible state death tax credit. The effect is to shift tax revenue from the federal government to the state without any increase in the death tax liability of the decedent's estate.

53. See "Survey of State Death Tax Systems," 14 *Real Property, Probate and Trust J.* 277-401 (1979).

54. Ala. Code tit. 51, ch. 19, §§ 432 to 499(1); Alaska Stat. §§ 43.31.011 to 43.31.430; Ariz. Rev. Stat. §§ 43.1501 to 43.1535; Ark. Stat. Ann. §§ 63-101 to 63-151; Colo. Rev. Stat. §§ 39-23.5-101 to 39-23.5-117 (Supp. 1980); Fla. Stat. Ann. §§ 198.01 to 198.44; Ga. Code, tit. 91, §§ 91A.5701 to 91A.5705; Minn. Stat. Ann. § 291.075 (Supp. 1980); Mo. Rev. Stat. §§ 145.010-145.350; Montana Session Laws of 1979, ch. 705, §§ 1 to 12 (S.B. 508); N.M. Stat. Ann. §§ 7-7-1 to 7-7-2 (Supp. 1980); N.Y. Tax Law & 954a (Supp. 1980); N.D. Cent. Code §§ 57-37.1-01 to 57-37.1-21; S.C. Code § 12-15-10 to 12-15-1670; (This law incorporates the pre-1976 federal estate tax law and as a consequence does not make § 2032A treatment available. Amendatory legislation to correct this has been introduced); Utah Code Ann., tit. 59, §§ 59-12-1 to 59-12-55; Vt. Stat. Ann., tit. 32, §§ 7401 to 7497; Va. Code §§ 58-238.1 to 58-238.16 (Supp. 1980).

55. Cal. Rev. and Tax Code, § 13311.5; Del. Code, tit. 30, § 1314. See 1 CCH State Inheritance, Estate and Gift Tax Rpts., ¶ 1805; ch. 56, Laws of 1979; Ill. Stat. Ann., ch. 120, § 385 (Smith-Hurd Supp. 1980); Kan. Stat. Ann. Art. 15. §§ 79-1501 to 79-1530, (1980 Supp.) Ky. Rev. Stat., §§ 140-300 to 140-360, as amended by ch. 138 §§ 4 to 12 (1978 Regular Session Laws); Miss. Code tit. 27, § 27-9 (Supp. 1980); Tenn. Code Ann. § 30-1621, L. 1978, ch. 731, § 11; Wash.: ch. 209, §§ 26 to 34, 46th Legis., First Extraordinary Session.

56. Conn. Gen. Stat., § 12-349 (West Supp. 1980); Md. Ann. Code, Art. 81, § 154 (Supp. 1980); Mich. Comp. Laws Ann., § 205.202d (Supp. 1980); Ore. Rev. Stat., § 118.155 (Repl. 1975), as amended by ch. 553, § 12, Ore. Laws of 1979; Laws of P.R. Ann. tit. 13, ch. 402 § 5058 (1980 Supp.).

57. Mich. Comp. Laws § 205.202b (Supp. 1980).

58. Laws of P.R. Ann. tit. 13 ch. 402 § 5058 (Supp. 1980).

59. Cal. Rev. & Tax Code, § 14181 (Supp. 1980); Kan. Stat. Ann. Art. 15 (Supp. 1980); Mich. (Supp. 1980) Comp. Laws Ann. § 205.202, § 206.203 ans § 205.221; Minn. Stat. Ann. § 291.11 Subdiv. 1 (a)(Supp. 1980); N.Y. Tax Law. Art. 26 (Supp. 1980); Wis. Stat. Ann. § 72.22 (Supp. 1980).

60. See "Survey of State Death Tax Systems," (*supra* n. 53).

61. See Tenn. Stat. Ann. § 30-1627 (Supp. 1980).

62. See "Effect of the Tax Reform Act of 1976 on State Taxation of Decedents' Estates," 14 *Real Property, Probate and Trust J.* 523-539 (1979).

The Connecticut General Assembly 04316

OLR SELECTED REPORT 80-55

JOINT COMMITTEE ON LEGISLATIVE MANAGEMENT
OFFICE OF LEGISLATIVE RESEARCH

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April 14, 1980

FROM: Office of Legislative Research
David Keith Leff, Research Attorney

RE: Oregon's Agricultural Lands Protection Program

You have asked for a background report concerning Oregon's statewide planning program as it relates to zoning for the protection of agricultural lands.

SUMMARY

Oregon has a state agency responsible for developing and enforcing statewide planning goals. State agencies and local governments must comply with these goals by incorporating them into their plans of development and by adopting appropriate zoning, subdivision and other ordinances. One of the statewide goals concerns agriculture. This goal requires that all agricultural lands, mainly defined by use of the U.S. Soil Conservation Service Soil Capability Classification System, be inventoried before decisions can be made about their ultimate use. Once inventoried, those lands suitable for agriculture must be protected through use of local comprehensive plans and exclusive farm use (EFU) zoning.

EFU zoning restricts land uses to farming and compatible nonfarm uses within the zone. Land EFU zoned must have divisions of land reviewed for compliance with statewide goals. State agencies and local governments are forbidden to restrict farming practices on EFU land, and such land is also given a differential property tax assessment.

OREGON'S LAND USE PROGRAM

State Planning and Local Power

Oregon's agricultural land protection program is an integral part of the statewide planning program. This Planning Program was established in 1973 (S.B. 100) when the Land Conservation and Development Commission (LCDC) was created to administer a statewide land use program and review the development plans of cities, counties, state agencies and special districts. The LCDC is empowered to set mandatory planning standards, known as goals, with

These goals are not used as regulations for particular parcels of property, but rather a standard against which all local land use decisions are gauged. A failure to conform local plans or decisions to the goals may lead to invalidation of the plans or decision, by LCDC or the courts. While some goals contain only generalized policy statements (energy and transportation goals), others such as the urbanization and agricultural goals contain specific procedures to be followed.

Finally, an important aspect of the program is the appeals process by which local governments, state agencies and affected citizens can appeal a local or state government action affecting land-use to LCDC if it is alleged to violate the statewide planning goals. Since November 1, Oregon has had a new three member Land Use Board of Appeals to hear land use cases. The Board acts as a court on question of interpretation of law, and as a hearing officer to LCDC on questions of land use policy interpretation. LCDC has the final word on interpretation of land use policy. Land use decisions are ultimately appealable to the Oregon Court of Appeals.

PROTECTION OF AGRICULTURAL LANDS

State Policy

Agriculture is the second largest industry in Oregon, and recorded gross sales of $1.25 billion in 1978. The agricultural lands protection policy is based on a statutorily established Exclusive Farm Use Zone (EFU) and Statewide Planning Goal 3, "Agricultural Lands." The EFU Zone provides farmers with tax and other benefits and limits activity which might be detrimental to agriculture.

Oregon law establishes an agricultural land use policy of four basic elements (Oregon Rev. Stat. § 215.143). First, agricultural land is declared an efficient means of preserving resources and a physical, social, aesthetic and economic asset to the people of the state. Second, preservation of a maximum amount of such land in large blocks is found necessary to maintain the state's agricultural economy. Third, because of conflicts in uses, increases in community services costs, and loss of open space in urban areas, expansion of development into rural areas is determined to be of public concern. Finally, EFU zoning which limits rural development, is found to justify incentives and privileges offered to owners of rural lands.

Statewide planning Goal 3 elaborates this policy by requiring that agricultural lands be preserved and maintained for farm use consistent with existing and future needs for agricultural products, forest and open space. It also requires that such lands be inventoried and protected through use of the EFU.

Definition of Agricultural Lands

Goal 3 defines agricultural lands by reference to the Soil Capability Classification System of the U.S. Soil Conservation Service as well as other lands suitable for farming based on soil fertility, climatic conditions, availability of water and other factors. Agricultural lands, as defined by the goal, must be inventoried before any decisions can be made about their ultimate use. A significant aspect of the agricultural land definition is that it is not limited to "prime farmlands," but covers virtually all agricultural land because the agricultural economy of Oregon is believed dependent on other than prime lands. The definition is based upon scientific data, not upon current trends in agricultural economics or the individual management skills of the farmer.

Once farmlands have been inventoried, it is decided whether the land is actually available for farm use or has been committed to nonfarm uses based upon surrounding development, parcelization, available services and other factors. Agricultural land is to be preserved by local comprehensive plans and EFU zoning. Exceptions for particular lands are made in the development or revision of the local comprehensive plan. Excepted from the agricultural lands goal are lands no longer available for farm use because they have been physically developed upon, or because the land has been irrevocably committed to urban or rural uses.. Also excepted are lands needed for future nonfarm uses if determined by the local comprehensive plan to be needed for either an urban or rural nonfarm use. The plan must specifically justify this type of exception.

Permitted Uses in the EFU

The EFU Zone is used in rural farm areas and allows a wide variety of nonfarm uses. EFU Zones do not limit land use exclusively to farming. The primary purpose of the EFU Zone is to insure compcompatible development and allow farming to take place free from interference. Farm uses which are encouraged in the EFU Zone are broadly defined. Farm use means the current employment of land, including lands under buildings, supporting farming practices to obtain a money profit by raising, harvesting and selling crops or by feeding, breeding, managing and selling livestock, poultry fur-bearing animals, or honeybees. Farming also includes dairying and the sale of dairy products or any other agriculture or horticultural use or animal husbandry. (Oregon Rev. Stat. § 215.203).

Several nonfarm uses may be established as of right in an EFU Zone. These include schools, churches, forestry uses, utility facilities, and farm dwellings and buildings. Several nonfarm uses may be established in an EFU Zone with approval of the local governming body or its designate. Nonfarm uses which are permitted with local approval include commercial activities in conjunction with farm use, public and private parks, golf courses, home occupations, and boarding of horses.

Single family residences not used in conjunction with a farm must also be specially approved. However, in order for the local governing body to approve such dwellings, it must make findings that the proposed dwelling is compatible with farm uses and the statutory agricultural lands policy, that it does not interfere seriously with accepted farming practices on adjacent lands, does not materially alter the stability of the overall land use pattern of the area, and is situated upon land generally unsuited for production of crops and livestock.

In considering the unsuitability of the land, the terrain, adverse soil or land conditions, drainage, vegetation, and the location and size of the tract must be taken into account. The local government is authorized to impose other conditions it considers necessary. This procedure for siting single family residences recognizes that small areas in farm zones may accommodate a rural dwelling on a small lot without affecting the basic farm character of the area. However, the strictures mandated by statute for siting such a dwelling insure that nonfarm development has a minimal impact on the farm zone.

If an existing nonfarm use in an EFU Zone is unintentionally destroyed by fire, other casualty or natural disaster, a county may allow the use to be reestablished to its previous nature and extent.

Land Divisions

The statewide Agricultural Lands goal does not establish a minimum lot size in EFU Zones. Such a requirement is believed impractical because farm acreage needs in Oregon vary from large wheat ran to small intensive farm operations. If a local minimum lot size is set, Goal 3 requires that it provide acreage needed to continue or create a viable farm unit. Thus, minimum lot size would be based upon the type of farming practiced in the area. Such lot sizes can be used to limit the amount of agricultural land lost to production, by requiring large minimum acreages for farms, and lessen the amount of land needed for nonfarm uses by allowing or requiring small lots for residences.

By statute, the governing body of a county may by ordinance or regulation require that any proposed division of land included within an EFU Zone resulting in the creation of one or more parcels of land of 10 or more acres be reviewed and approved or disapproved by the governing body of the county. If a proposed division of land would result in the creation of one or more parcels of land of less than 10 acres it must be reviewed by the county governing body. If the governing body initiates a review proceeding, it may not approve the proposed subdivision unless it finds that the parcelization is in conformity with the statutory agricultural lands use policy.

Conversion of Farmland

When land has been identified as agricultural, specific findings and procedures are necessary before the land can be designated for nonfarm residential, commercial or industrial development. This procedure is called the exceptions process.

As noted earlier, if agricultural land is already built upon or committed to nonfarm uses, it need not be zoned EFU. However, if uncommitted agricultural land is needed for nonfarm uses, a detailed justification is required. Four criteria must be considered before conversion. These criteria are:

1) need;

2) alternative locations;

3) impacts; and

4) compatibility.

Lands which are zoned EFU and later proposed for conversion to other uses require the same exceptions process findings.

According to Ron Eber at LCDC, the need criteria has been a difficult one to evaluate. However, LCDC has stated that need should not be based solely upon a continuation of growth trends or the existence of a market demand for rural nonfarm homes.

Benefits of EFU Zoning

In addition to review of subdivisions, and assuring that only compatible nonfarm uses will be allowed within the EFU Zone, two other major benefits accrue to those who farm within such zones. The first benefit is a prohibition on adoption, by the state or local governments, of laws, ordinances or restrictions affecting any farm use land within an EFU Zone which unreasonably restricts or regulates farm structures or accepted farming practices due to noise, dust, odor or other airborne materials. Also prohibited are restrictions on other conditions not extending beyond the boundaries of the EFU Zone in which they are created in such a manner as to interfere with the use of adjacent lands. However, this does not prevent state agencies and municipalities from exercising powers to protect the health, safety and welfare of its citizens. This prohibition on restrictions allows farmers to run their businesses in farm zones without being hindered by ordinances which limit the operation of equipment early in the morning or prohibit the creation of dust or odors among other things. Such limitations often restrict and discourage farm activities in areas which are becoming suburbanized.

The second major benefit is that land zoned EFU and farmed is appraised at its farm use value for property and inheritance tax

purposes. Furthermore, these lands are also exempt from certain special district and rural service assessments (i.e., sewer, water, solid waste) except for the farm dwelling and up to one acre around it. Although land outside EFU Zone may be eligible for preferential assessment, property in an EFU Zone is automatically reviewed by the assessor to determine if it is qualified for special farm use assessment, and no minimum income must be earned in three out of five preceding years in order to qualify. Furthermore, there is no requirement that farmland be used exclusively for farm use in the two years immediately preceding qualification for preferential assessment, and there is no tax penalty when land qualified for special farm use assessment is removed from the EFU Zone following an action by the governing body that was not requested or initiated by the owner of the land. These advantages are not shared by land with farm use assessment outside an EFU Zone.

Significantly, Oregon's differential assessment law links comprehensive planning and zoning with tax benefits to farmers. According to Ron Eber, the preferential tax treatment aids the farmer by helping to keep his land in production, while the zoning restrictions on nonfarm use of the land assures that the land is protected for agricultural use.

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The Connecticut General Assembly

5814

OLR Selected Report 82-56

JOINT COMMITTEE ON LEGISLATIVE MANAGEMENT
OFFICE OF LEGISLATIVE RESEARCH

July 19, 1982

FROM: Office of Legislative Research
David Keith Leff, Research Attorney

RE: Forest Land Taxation

You have asked for background information on the forest land provisions of PA 490, including discussion of problems with the law.

SUMMARY

Public Act 490 is a use value assessment law which allows farm, forest, and open space land to be valued for property taxation based on its current use without regard to development potential. It was designed to help prevent loss of these lands to development. Forest land under the Act must generally be at least 25 acres, and be approved by the state forester. About 560,000 acres out of about three million in the state are classified as forest land.

Major issues surrounding PA 490 include lack of a management plan requirement for forest land, lack of coordination with state and local development, weaknesses in the conveyance tax, ownership of PA 490 land by developers, and the relatively large minimum acreage requirement.

PREDECESSOR TO PA 490

Reduced property tax assessments for forest land has existed in Connecticut for 70 years. Public Act 58 of the 1913 legislative session (now codified as C.G.S., Secs. 12-96 to 12-103) established a system whereby owners of woodland or land suitable for forest plantings could apply to the state forester for a special classification as forest land to reduce local property tax liability. The land eligible for classification must not be less than 25 acres and not exceed in value $100 per acre exclusive of timber growing on it. Land so classified and the timber are valued separately at their actual value at the time of classification and thereafter taxed at not more than ten mills. A revaluation of both land and timber separately is made by the

local assesser 50 years from the date of original classification with the revaluation subject to a tax rate of not more than ten mills for another 50 years. At the end of this period, if classification has been continuously maintained, the land and timber are to be revalued when necessary and taxed annually at the local rate.

Whenever a cutting is made on land classified under Sec. 12-96 to 12-103, except for cutting for domestic use, the material removed is subject to a yield tax. If the owner of the land fails to follow statutory requirements or if the tree growth is removed and the land used for other purposes, classification as forest land may be cancelled by the state forester. When the classification is cancelled, a penalty tax is imposed. This tax is figured by computing the difference between the value of the land and timber and its value at the time of classification and applying to this difference a tax rate of five mills per annum for the entire number of years the land was classified. The penalty tax is in addition to any yield which may be due.

According to the State Forester's Office, there is still land classified under Sec. 1.-96, but no new land is coming under that classification because the requirement that the land be valued at no more than $100 per acre can no longer be met. The last land classified under Sec. 12-96 was in Union over ten years ago. Land cannot be switched from classification under Sec. 12-96 to PA 490 without the Sec. 12-96 penalty tax being imposed. The General Assembly did provide a grace period between October 1, 1972 and October 1, 1973, during which property under Sec. 12-96 could be switched to Sec. 12-107d without penalty. This exemption is obviously not helpful in any current situation.

PUBLIC ACT 490

Purposes and Background

Public Act 490, passed in 1963 by the General Assembly, is a use value assessment law which requires valuation of farm, forest and open space land upon its current use without regard to neighborhood land uses of a more intensive nature (C.G.S., Sec. 12-63). PA 490 reduces local property taxes on these lands where market value exceeds their value as farm, forest or open space lands. The statutory purpose of the Act is to encourage the preservation of farm, forest and open space land in order to maintain the availability of farm products and to conserve the natural resources of the state (C.G.S., Sec. 12-107a). Prevention of forced conversion of these lands to more intensive uses as the result of economic pressures caused by high assessments was declared a matter of public policy. Proponents of the act hoped that by breaking the cycle of high market value - high assessments, great pressure would be removed from farm

and forest land owners. Although PA 490 could not keep land open indefinitely, proponents believed it would buy time until other preservation tools were available.

A key point is that PA 490 does not in itself preserve land in an undeveloped condition. The Act merely attempts to make it easier for owners to hold undeveloped land longer by reducing costs. The Act assumes that real estate taxes are a major factor in land use decisions regarding open space property. The Act also assumes that the public benefit of maintaining open space outweighs the tax expenditure caused by lower assessments. Thus, to criticize PA 490 for not keeping land open on the urban fringe where development pressure is greatest is to set up a straw man. It is generally accepted that PA 490 does not necessarily discourage owners from accepting lucrative development deals. However, without the law many believe even those who wish to retain their property in an undeveloped condition could not do so.

Connecticut was among the first states in the nation to enact a differential assessment law. It was one of the suggestions William H. Whyte made in a 1962 report requested by Governor John Dempsey. Mr. Whyte proposed a comprehensive plan to protect Connecticut's natural resources, and in recommending differential assessment he stressed the importance of planning, a strong tax recapture clause, as well as augmenting lower assessments with other preservation devices. In 1963, the General Assembly enacted a law which contained neither comprehensive planning nor a tax recapture clause. Not until 1972 was the real estate conveyance tax enacted.

Although it wasn't until enactment of PA 490 that land could be assessed according to its current use, many believe that local assessors historically practiced use value taxation on open lands until sharply increasing local expenditures and insufficient resources caused them to turn to market value taxation. Thus, PA 490 justified a traditional practice which was becoming more difficult to implement. As might be expected, the greatest application activity follows a mandatory ten year municipal property tax reevaluation when market value assessments reflect inflation in land values.

Forest Land Requirements

Forest land for the purposes of P.A. 490 is any tract or tracts of land aggregating 25 acres or more in an area bearing tree growth in such quantity and so spaced as to constitute, in the opinion of the state forester, a forest area, and maintained in a state of proper forest condition. Forest land may be 25 contiguous acres, tow or more tracks aggregating at least 25 acres in which no single component tract may consist of less than ten acres, or an

tract which is contiguous to another designated parcel held by the same owner.

Before forest land may be assessed at use value, the owner must apply to the state forester who makes a determination whether or not the land qualifies for forest land classification. By law, the application must contain an adequate description of the land. Once the land is designated by the state forester, the owner may apply to the local assessor for use value classification. The law specifies a timetable for applying to the assessor which, if not met, constitutes a waiver of use value assessment on the assessment list for which the application was made. The municipality and land owner may appeal decisions by the state forester to the Superior Court.

STATUS OF FOREST LAND IN CONNECTICUT

Of Connecticut's roughly three million acres, about 560,000 are classified under the forest land provisions of Public Act 490. Forest land acreage under the program is as follows in the eight counties.

County	Total Acres	PA 490 Forest Land Acres	Average Parcel Size	Largest Parcel Size
Fairfield	403,840	42,416	78	2,253
Hartford	473,600	41,807	73	3,209
Litchfield	600,320	161,164	101	6,255
Middlesex	237,400	52,710	76	1,096
New Haven	390,400	67,244	100	4,573
New London	426,880	90,201	78	3,158
Tolland	266,240	60,202	70	3,003
Windham	330,240	43,268	74	1,794

According to Stephen Broderick, an Extension Forestry Agent at the Cooperative Extension Service in Brooklyn, these statistics may not represent all eligible forest land in the state since some may be classified as farm or open space land.

The largest parcel of PA 490 forest land held in the state is individually owned. However, many large parcels are held by

water companies, with several held by charitable or education organizations including the largest parcels in Windham and Tolland Counties which are owned by Yale University. Among owners of larger parcels are realty, construction, and development companies, and private clubs. Several Fortune 500 companies also hold land under PA 490. Among them are Combustion Engineering which owns a 450 acre parcel in Windsor, and Union Carbide Corporation which owns 548 acres in Danbury.

According to Mr. Broderick, new land is being added to the PA 490 rolls every year, although figures are unavailable. This is especially true in Windham and Litchfield counties where revaluations are now making a marked difference in assessments between classified and unclassified lands. It is almost impossible to tell how many properties are removed from forest land classification each year because assessors do not have to file cancellations with the state forester. Based on his experience, Mr. Broderick guesses that there are probably six to 10 cancellations per county each year.

There is no data as to average time forest land has been receiving the benefits of PA 490. However, classification generally follows revaluation when land values have increased to the point where the fair market value of open land is reasonably higher than its use value. Thus, in urban areas land has tended to be classified earlier than in rural jurisdictions.

Any management of forest land is purely voluntary. Mr. Broderick estimates that less than 10% of such land is now managed.

Use Value Assessments

The assessor in each town determines use value assessment rates subject to appeal to local boards of tax review and ultimately the courts. In order to aid assessors with the vexing problem of what constitutes use value, a recommended set of values was developed by Dr. Irving Fellows, formerly of the University of Connecticut. For farm land these values are based upon the capitalization of net gross rentals of various broad classes of agricultural land. The value of forest land is computed on the capitalization of the value of the annual growth of timber on the land. This is done by multiplying the yearly board foot growth by the board foot value and dividing the product by the capitalization rate ($\frac{\text{Bd. ft. growth} \times \text{bd. ft. value}}{\text{Capitalization Rate}}$). The capitalization rate is a combination of interest and taxes (10.5% when last figured in 1978). Current use values for forest land, set in 1978, are $40 an acre in Litchfield and $30 an acre in the rest of the state. These recommended values are reset every few years, and a new set is now being developed.

It must be remembered that these values are only recommended. Town assessors may derive their own values.

The Conveyance Tax and Its Intent

When PA 490 was enacted in 1963, there was no penalty when an owner who reaped the benefit of lower assessments subsequently sold his land for development. In 1972, the General Assembly established a conveyance tax on the sale of land classified as farm, forest or open space land under PA 490 (PA 72-152). This law imposes a tax on land classified under PA 490 if sold by the owner within a period of ten years from the time the land was acquired or classified whichever was earlier. The tax is also applicable if the owner changes the use of the land within ten years of classification. The tax would be 10% if sold the first year and decline by 1% a year until no tax would be collected following the tenth year. Certain transfers were excepted including transfers resulting from eminent domain proceedings, mortgage deeds, tax deeds, and transfers between immediate family. In addition, if land is sold subject to a covenant, enforceable by the town, to refrain from selling or developing the land in a manner inconsistent with its classification as farm, forest, or open space land for at least eight years, the seller need not pay the tax.

The brief floor debates in the House and Senate reveal three reasons for enacting the conveyance tax. Representative Clynes, floor manager of the bill in the House, felt the tax would serve as a deserved penalty to people who enjoyed tax shelters on large tracts of land and subsequently sell it at a profit. Another House member felt that the tax would add a note of equality among town taxpayers when those who received an advantage at one time would eventually have to pay. Finally, it was mentioned in the Senate that the tax would help restore local revenues which had been eroded by 490 classified land. The intent of the act was probably most succinctly put in an article which appeared in the Connecticut Bar Journal within a year after enactment of the conveyance tax: "It appears from the limited legislative history and from expressions of the Governor on signing the Act that it was intended to attack the problem of recovering abated taxes from those landowners who have availed themselves of the privileges of Public Act 490 and later encouraged the conversion either through sale or development of the land use farm that which the Act was intended to encourage and preserve" (47 CBJ 332 (1973)).

Criticisms and Issues

Except for enactment of the conveyance tax in 1972, amendments to PA 490 have been relatively minor. But, despite the lack of major amendments, many unsettled issues have arisen in the almost 20 years since enactment. What follows is a statement of the major issues surrounding PA 490, especially the forestland provisions, which may be of interest to the Environment Committee in evaluating potential changes to the law. These issues assume refinement of existing law, and generally do not question the validity of use value taxation itself.

1. Management Plan

PA 490 does not require forest land owners to do anything with their land. As long as it meets the technical requirements of the act, land may receive a tax break. This differs from farmland classification where an assessor must determine whether or not the land qualifies based on actual farming use, productivity and gross income. Thus, unlike farmland which must be actually farmed, forest land does not have to be actively forested.

Although it may be maintained that the public benefits from the tax break given to forest landowners through retention of open land, it has been claimed that the public benefit would be much greater if such land was required to be managed, thereby increasing the productivity of privately-held forest land. It is possible that the tax benefit discourages management because higher taxes might encourage owners to harvest timber to make the land pay for itself. The requirement of a management plan and active management of differentially assessed forest land is common in other states. Massachusetts and New York are among the states with such a requirement.

2. Zoning and Town Plans of Development

Forest and farmland assessed under PA 490 need have no relation to local zoning or a town plan of development. If land meets the definition of farm or forest land under the law, an assessor has no choice but to assess it at use value. Land which is zoned industrial or commercial, or for which the town plans a major public work or other development may be assessed at use value in the same manner as land which is desired as permanent open space. Critics have contended that towns not only give up taxes for no reason in these cases, but that land which the town wishes developed may be developed less quickly because the owner's holding costs are reduced. One example is the J.C. Penney complex along I-86 in Manchester where business zoned land that the town wished to have developed to bolster its tax base was differentially assessed for years until some of it was included in the Penney development.

3. Owner's Development Plan

PA 490 does not take into account a landowners plan for his property. A landowner who requests a zone change for purposes of development, submits a plan for subdivision approval or advertises his property as valuable commercial or industrial land may still reap the benefits of lower assessments despite clear intent to develop his land.

4. State Development Plans

Land is placed under PA 490 without regard to the State Conservation and Development Plan, highway planning or any other kind of plan.

5. Conveyance Tax

The lack of a penalty was considered by many to be a major defect of PA 490 as passed in 1963. While the tax enacted in 1972 has been considered helpful, it has been criticized for being too small to discourage development because developers usually plan more than ten years in advance, and rising real estate values minimize the amount of the disincentive. The tax has also been faulted because it bears no relation to the amount of taxes forgone by the town to an individual owner or on a particular property. Furthermore, the tax may be imposed upon sale of land, even if the property remains in an appropriate use. Strengthening of the conveyance tax has been opposed on the basis that a large number of sales and conversions would be precipitated prior to the effective date of the act.

6. Ownership of PA 490 Land

PA 490 distinguishes between types of land and does not account for differences in ownership of those lands. Because land held for farm, forest or open space purposes is believed to be a public benefit, the nature of the owner is considered irrelevant. Nevertheless, there has been criticism that wealthy landowners, large corporations, and known developers hold large tracts of PA 490 land. In fact, some have charged that the Act encourages development by reducing a major cost in land speculation through low taxes which allow developers to hold land longer and reap increasing property values while permitting them to sell off gradually and receive the increased value which the parcels sold earlier will cause those sold later to have. Among large holders of forestland assessed at use value are Fortune 500 corporations and realty and construction companies.

7. Minimum Acreage

Generally, the law now requires a minimum of 25 acres of forest land in order for a parcel to be differentially assessed. Some foresters maintain that parcels of ten acres can be beneficially managed as forest especially in light of recent price rises for wood products. Although states differ on this, Massachusetts is one which requires only ten acres.

8. Evaluative Data

The lack of any reporting requirement on acreages (except in the case of forest land which requires a state certificate), taxes abated, assessment values and land converted has made evaluation of the act difficult. Among others, the Legislative Program Review and Investigations Committee has favored state agency coordination of data.

DKL:srs

The Connecticut General Assembly

OLD Selected Report 82-57

JOINT COMMITTEE ON LEGISLATIVE MANAGEMENT
OFFICE OF LEGISLATIVE RESEARCH

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July 22, 1982

FROM: Office of Legislative Research
David Keith Leff, Research Attorney

RE: Forest Land Taxation in Surrounding States

You have asked for a discussion of features of forest land tax laws in nearby states that may be relevant to potential revisions of Connecticut's law.

SUMMARY

Laws of the following states were examined: Massachusetts (Ann. Laws Mass., Chap. 61); New Jersey (N.J. Stat. Ann., Sec. 54:4-23 et. seq.), New Hampshire (N.H. Rev. Stat. Ann., Chap. 79-A), New York (N.Y. Real Prop. Tax Law, Sec. 480a); Pennsylvania (PA. Stat. Ann., Sec. 5490.10 et. seq.); Rhode Island (1980 Public Laws, Ch. 252) and Vermont (VT. Stat. Ann., Chap. 124). These statutes are contrasted with each other and with Connecticut's law in areas that may be relevant to revision of Connecticut's Act.

Forest land definitions ranged from the very broad, to those that are specific or technical. Minimum acreage requirements ranged from 50 in New York to five in New Jersey. Management of differentially assessed land is required in all but Pennsylvania and Connecticut. Unlike Connecticut, a couple of states define what constitutes a change in use of forest land. Penalty taxes include both conveyance type taxes and rollback taxes. Connecticut is unique in applying the tax when land is sold even if an appropriate use is maintained. Two states impose heavier taxes for parcels that are subdivided. Two states abandon use value as a preferential assessment method and use a uniform percentage of fair market value. Massachusetts has a unique provision which gives municipalities a first refusal purchase option before the use of differentially assessed land can be changed.

Forest Land Definition

Under PA 490, the state forester is given discretion to determine whether the quantity of tree growth and the spacing of trees is sufficient to constitute forest land. New Hampshire similarly rests a good deal of discretion with the state forester. Pennsylvania's definition is extremely broad with forest land being that stocked by forest trees of any size and capable of producing timber or other wood products.

Some statutes are more technical, like that of Massachusetts which requires such land to be:

1) at least 16.7% stocked and contain at least 7.5 square feet of basal area per acre by forest trees of any size, or

2) formerly have had such tree cover and is not currently developed for nonforest use, or

3) be a plantation containing at least 500 trees per acre.

Some statutes are specific without being technical. In New York, forest land is that which is exclusively devoted to and suitable for forest crop production through natural regeneration or through reforestation and is stocked with a stand of forest trees sufficient to produce a merchantable forest crop within 30 years of certification.

Through definition, the land eligible for forest land classification can be regulated. Not all land supporting trees need be given a tax break.

Management of Forest Land

Connecticut does not require that forest land receiving preferential assessment under PA 490 be managed or have a management plan. Of the states surveyed, all but Pennsylvania have some requirement for management.

In Massachusetts, a forest management plan is a completed form provided by the state forester and executed by the owner and the state which establishes a ten-year program of forest management including intermediate and regeneration cuttings. Any application to the local assessor for preferential assessment must be accompanied by a forest management plan. A property must be removed from forest land classification unless there is a reapplication every ten years, including an updated management plan. The state forester may remove a parcel or part of a parcel from

classification if the management plan is not followed. He may also grant applications imposing reasonable terms and conditions.

An owner of an eligible forest land tract in New York applies to the Department of Environmental Conservation which must approve a management plan for the tract in question. The plan must, by law, contain requirements and standards deemed necessary by the Department for continuing production of marketable forest crops, including stocking, cutting and access requirements. To qualify for reduced assessments, the owner must commit the tract to forest crop production for ten years under the management plan, and annually for the next succeeding ten years. Therefore, in any year, the owner decides to pull out of the program, he is still committed to nine more years of the management plan. A parcel may be disqualified if the management plan is not followed.

In Vermont, only managed forest land is eligible for preferential assessment. Managed forest land is that which is actively managed for the purpose of growing and harvesting repeated forest crops in accordance with accepted practices. There is a presumption that land is under active forest management if at least 50% is:

1) certified as a "tree farm" under the American Tree Farm System;

2) is certified by the county forester as conforming with accepted management practices;

3) has been the subject of a federal cost-sharing forest improvement program; or

4) conforms to state agency criteria.

In order to receive use value assessment, managed forest land must be subject to a recorded management plan, signed by the owner and approved by the state environmental agency, which provides for continued forest crop production for the next ten years. An annual renewal requirement similar to New York's also exists. Furthermore, in order to obtain a use value assessment in any given year, the landowner must file an annual report of conformance with the management plan signed by the owner and approved by the state environmental agency.

By definition, forest land qualifying for differential assessment in Rhode Island must be subject to a management plan. An application to the state environmental agency for designation of a parcel as forest land must include a written forest management plan prepared by a professionally qualified forester in consultation with the landowner. The plan must include recommended

management practices. Furthermore, once classification is obtained, the property owner must submit an annual certificate confirming that the land is still managed as forest land. A state forester may examine the land during the classificaiton period and may disqualify it from use value assessment if the plan is not being followed.

New Jersey's use value assessment law was originally enacted to deal with farmland, and assessors included woodland only when part of a farm unit. One of the reasons it is difficult to qualify forest tracts is that the law has an income requirement to insure land receiving a tax break is actively devoted to its stated use. However, Goerge Lorbeck of the New Jersey Division of Taxation, states that his office has advised local assessors that woodland can be included so long as there is a forest management plan for the tract which can project appropriate income over a reasonable time.

The key elements in most of these statutes is that they require a management plan prepared by a professional forester, allow revocation of the tax benefit if the plan is not followed, and require an annual statement or report that the owner is in fact following the plan. Furthermore, Massachusetts, Vermont and New York require the plan look at least ten years into the future, with Vermont and New York requiring annually that the land will be managed for the succeeding ten years.

Contractual Arrangements

With the passage of California's Williamson Act in 1965, the concept of covenants between landowners and the government to maintain land in an undeveloped state for farm or forest purposes in exchange for reduced property assessments gained widespread recognition. In the northeast, Pennsylvania has had such a law almost as long, even though it also has a use value assessment law similar to Connecticut's that was passed in 1974. Although the penalty for leaving the use value assessment program could be higher in some instances, unlike Pennsylvania's contractual program, the property need not be planned for open space use and no binding agreement need be made.

Since a strict convenanting procedure would be a marked departure from the way in which PA 490 has operated it is not discussed fully here. However, the states of Vermont and New York have utilized contract methodology in their forest land assessment laws in a manner which is relevant to Connecticut's legislation. In order to qualify for lower assessments, forest land owners in New York must commit their tract "to continued forest crop production" for the next ten years under an approved management plan. In addition, the commitment must be renewed annually for the next succeeding ten years. Failure of the owner to make an annual commitment results in termination of forest land tax

benefits, although it doesn't constitute a conversion of the property for which a penalty tax is due. However, the owner is still committed to the management plan for the next nine years and development of the property during this period would subject the owner to the penalty tax. Vermont's law is similar.

If a goal of PA 490 and similar tax programs is to maintain land in an undeveloped condition, this contract approach has several advantages. It requires those who wish to develop such land to plan years in advance from the time they decide upon development. It puts the public and local officials on notice that development is likely for the property thus buying time for alternative preservation approaches if desired. It discourages development by imposing ad valorum taxes for nine years before development can take place without penalty.

Massachusetts also has a ten year management plan requirement although the ten years is not reaffirmed yearly. Completion of the ten year plan is encouraged by a reduced penalty tax if the land is converted.

Minimum Acreage

In order to receive use value assessment under Connecticut's PA 490, a forest land tract must be at least 25 acres. Most other states also impose minimum acre requirements. Of those surveyed, New York had the highest requirement with 50 acres. Vermont, like Connecticut has a 25 acre minimum. Massachusetts, Pennsylvania and Rhode Island require at least ten acres, and New Jersey five. New Hampshire does not specify any minimum acreage by statute, but gives a state agency power to establish acreage requirements.

What Constitutes Change in Use

The change in use of PA 490 land within ten years of acquisition of title subjects the owner to the conveyance tax. However, there is no definition of change in use. In Vermont, development which constitutes a change in use includes the construction of any building, road or other structure, or any mining, excavation or landfill activity. Development also means the subdivision of a panel of land into two or more parcels, regardless of whether a change in use actually occurs, where one or more of the resulting parcels contains less than 25 acres. However, development does not include the construction, reconstruction, structural alteration, relocation or enlargement of any building, road or other structure for farming, logging or forestry purposes.

In New Hampshire, land use is considered changed, and the penalty tax payable, when actual construction begins on the site causing

physical changes in the earth, such as building a road or installation of sewer, water, electrical or other utilities to serve existing or planned residential commercial, industrial, or institutional buildings. In addition, excavation or grading of the site for present or future construction of buildings, or "any other act consistent with the construction of buildings on the site" constitutes a change in use. Excavation of gravel, minerals or topsoil also is a change in use. Similar to Vermont, roads or buildings for agricultural, recreational, watershed or forestry purposes are exempt.

The primary difference between the two laws is that New Hampshire requires actual construction, while in Vermont mere subdivision of the land may constitute a use change. The Vermont law attempts to remove the tax benefit as soon as intent to develop is objectively manifested through the owners attainment of subdivision approval.

Penalty Taxes

A common attribute of preferential assessment laws is a penalty tax which is imposed when the use of qualified land changes. Not all these laws have such provisions, and although PA 490 was enacted in 1963, the conveyance tax was not on the books until 1972. These taxes generally fall into two categories:

1) land use change taxes which are based on a percentage of the property's fair market value at the time its use was changed; and

2) roll-back taxes which attempt to recover some of the property taxes forgone during a portion of the time which the land received preferential assessment.

Connecticut has a variation on a land use change tax which is unusual in that it is triggered not only by a change in use, but by sale of the property whether or not the use is changed. The tax lasts for ten years beginning at 10% of the property's fair market value and declining to 1% until, after the tenth year, there is no tax at all. Rhode Island has a similarly declining penalty tax which attaches to changes in use. The Rhode Island tax lasts 15 years with a 10% tax in the first six years. Beginning in the seventh year, the tax declines one percent until there is no tax beyond 15 years from its time of classification. However, with respect solely to farmland on which the owner has held title and has farmed for five years prior to classification, the tax begins at 10% and declines a percentage point each year until no tax is due beyond the tenth year. No tax is

imposed for mere change of ownership provided the land remains classified. However, computation of the period the land has been classified for the purposes of the penalty tax begins anew when ownership has changed except for inheritance or interfamily transfers. Vermont and New Hampshire have a flat 10% land use change tax applied to the full fair market value of the property at the time its use is changed.

Of the states surveyed, Pennsylvania and New Jersey are strictly rollback taxes, and Massachusetts and New York have some variations. Pennsylvania's tax is equal to the difference between the taxes actually paid under preferential assessment, and the taxes which would have been paid at fair market value in the year of change of use and the six years prior plus 6% interest. However, Pennsylvania also has a penalty provision to discourage subdivision. An owner is limited to subdividing not more than two acres yearly and up to a total of ten acres or 10% whichever is lesser and pay a penalty tax only on the divided portion. Any additional subdivision would require payment of the penalty tax on the entire property unless all the parcels qualified for differential assessment individually. Subdivided parcels could be used only for farm, forest or residential use during the period the original parcel was receiving use value assessment. In New Jersey, the rollback is computed on the basis of a total of three years.

Massachusetts requires forest land to be recertified every ten years. When land is withdrawn from classification, a penalty tax is imposed equal to the amount of taxes forgone had the land been assessed at fair market value since the last certification or from the preceding five years, whichever is longer. Interest is also charged. If withdrawal occurs at the end of a certification period, credit is given for any taxes paid during that period. This law thus has a maximum rollback of ten years, and an incentive for completing a decade of forest management.

New York has two alternative penalty taxes, with the greater applicable in any given situation. The penalty may be two times the taxes which would have been levied on the preceding assessment roll. In the alternative, the taxes may be two and one-half times the amount of taxes that would have been levied on the exempt portion of the property's value for up to ten years. Six percent compounded interest is also charged. Unique to the New York law is a provision which doubles the applicable tax when applied to only a portion of an eligible tract (ie. a subdivided parcel).

First Refusal Option

A unique provision in the Massachusetts law requires that differentially assessed forest land not be sold for, or converted to,

residential, industrial or commercial use unless the municipality in which the land is located has been notified. For a period of 60 days following notification, the municipality has, in the case of an intended sale, a first refusal option, or in the case of an intended conversion not involving sale, an option to purchase the land at fair market value determined by an impartial appraisal. No sale or conversion of the land may be consumated unless either the option period expires or the landowner has been notified that the option will not be exercised.

Yield Taxes

New York and Massachusetts impose a tax called a yield tax on forest products harvested from certified forest land. In Massachusetts, the tax is 8% of stumpage value. The tax must be paid whether cutting is for personal or commercial purposes. New York's yield tax is 6% of stumpage value. However, an owner may make intermediate noncommercial cuttings prescribed by the management plan or annually cut five cords for his own use free of the tax.

Although a tax on cutting may be thought to discourage harvesting, the fact that both these states require management plans which may call for a certain amount of cutting probably minimizes any disincentive. Under differential assessment laws, forest lands are generally assessed on an equal basis. A yield tax may be an attempt at tax equity by relating the taxes imposed to soil productivity.

Method of Assessment

Under PA 490, farm, forest and open space land is assessed based upon its current use without regard to neighborhood uses of a more intensive nature. This is what is meant by use value assessment and it is used by most states which differentially assess forest land. However, it is not the only way to assess such lands. A Connecticut statute that was a precursor to PA 490 froze forest land assessments for a period of time and limited the applicable mill rate.

Massachusetts' differential assessment law bases property taxes on 5% of the fair market value of the local rate applicable to commercial property, but no less than $10 per acre. In New York, forest land assessments are exempt based on the lesser of 80% of assessed value or a formula which takes into account a state equalization rate.

DKL:srs

REPORT OF THE
HOUSE FINANCE SUBCOMMITTEE
ON LAND USE TAXATION
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 20

COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
RICHMOND
1979

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Division of Legislative Services

Report of the

House Finance Subcommittee

On Land Use Taxation

To

The Governor and the General Assembly of Virginia

Richmond, Virginia

December, 1978

To: Honorable John N. Dalton, Governor of Virginia

and

The General Assembly of Virginia

I. INTRODUCTION AND BACKGROUND

In 1971, the Virginia General Assembly enacted legislation permitting localities to adopt a program of special assessments for agricultural, horticultural, forest and open space lands. The purpose of the program was:

To encourage the preservation and proper use of such real estate in order to assure a readily available source of agricultural, horticultural and forest products and of open spaces within the reach of concentrations of population,

To conserve natural resources in forms which will prevent erosion and to protect adequate and safe water supplies,

To preserve scenic natural beauty and open spaces,

To promote land-use planning and the orderly development of real estate for the accommodation of an expanding population, and

To promote a balanced economy and ameliorate pressures which force conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or open space purposes.

A rapidly growing population and a reduction in the quantity and quality of real estate devoted to agricultural, horticultural, forest and open space use, and the benefits that accrue to the Commonwealth from such land have caused the Commonwealth to adopt certain programs which will hopefully tend to preserve these types of land. The land use assessment program is one such program and its goal, as previously mentioned, is to assist and to aid the preservation of such real estate. Although there are reasons that have contributed to the reduction in these lands, the rapidly escalating real property tax has been one of the major factors. The intent of the land use assessment law was to provide for the classification, and permit the assessment and taxation, of such real estate in a manner that will promote the preservation of the above type of land for the public benefit. The acceptance and usefulness of land use is demonstrated by the large number of localities which have adopted land use.

Last year, the House Finance Committee heard considerable testimony concerning possible abuses of the present law as well as problems in the administration of land use taxation. To further investigate these areas, the Chairman of the House Finance Committee appointed a subcommittee to examine Virginia's Land Use Assessment law and to determine if there are sufficient abuses of the present law to necessitate modification of its provisions. Moreover, the subcommittee was to recommend changes in other areas, which would improve the administration of the land use law.

The subcommittee has received testimony and information concerning individual landowners who have received land use tax benefits for land which was never properly devoted to agricultural, horticultural, forest, and open space or was held in the above uses in anticipation of a change in use. Most of these instances have involved individuals or owners who hold land for speculative purposes, especially in the fringes of rapidly urbanizing areas, particularly Tidewater and Northern Virginia. These speculators receive tax preferences even when the five year roll back and 6 percent interest rate is applied.

The subcommittee has also heard testimony regarding the propriety of granting land use taxes to 10 acre farmettes which qualify for land use but actually constitute a residence rather than a farming operation.

In order to corroborate the extent of abuses, the subcommittee has heard testimony from a number of members of SLEAC, including W. H. Forst, State Tax Commissioner; S. Mason Carbaugh, Secretary of Agriculture; C. M. Pennock, Department of Conservation and Economic Development; Rob R. Blackmore, Commission on Outdoor Recreation; and Dr. J. Paxton Marshall, VPI & SU. All of the individuals agreed that there were abuses in land use. However, the question remained as to what types of changes were necessary to eliminate the abuses.

To further comprehend the specific problems and concerns of individuals the subcommitee held a public hearing in Leesburg where an unusually large turnout demonstrated the need for the land use program in Virginia. The individuals who appeared addressed a number of the alternatives the subcommittee was considering.

II. POSSIBLE ALTERNATIVES

To eliminate these abuses, the subcommittee has considered a number of alternatives:

1. Increase the present 5 year roll back period to provide aa greater penalty on real estate which has changed use.

An increase in the roll back would provide greater penalties for those that change use and therefore impose a greater penalty on speculators. Although this alternative would impose a greater penalty, the subcommittee notes that this will not eliminate speculators from receiving land use taxation treatment. The subcommittee has examined the roll back periods in other states and it appears that Virginia already has one of the longer roll back periods. (There are a few states that have 10 year roll back periods for specific types of land).

2. Increase the minimum acreage which is necessary to qualify for land use.

The subcommittee has received testimony regarding the minimum acreage that should be required for application to land use. The subcommittee has also heard testimony concerning primarily residential parcels of land of 5-10 acres which are also used for growing agricultural products. Although this land qualifies for land use, the subcommittee questions whether it should. However, the subcommittee does acknowledge that there are some viable farm operations which operate on 5 acres of land, particularly poultry operations.

An additional problem with a set limit of 5 acres is that this criteria must be applied throughout the diverse localities of the Commonwealth. For example, while a 5 acre farm may be viable in Augusta, does it constitute a viable farm in Dinwiddie?

3. Require the owner, as a condition for land use taxation, to sign a contract with the local government to keep the land in a particular use for a specified time period (i.e., ten years).

The subcommittee notes that a limited number of other states have adopted this approach. The

adoption of this alternative would keep land in its intended use. The subcommittee believes that this requirement, however, would lead to unnecessary conditions on the land owner and would not solve the problem of abuse. That is, land which qualifies for land use but should not. The subcommittee believes its recommendations should move in the direction of eliminating abuses, but not complicating the provisions of land use.

4. Require that land taxed on the basis of use must produce a certain amount of income or that the owner of the land must derive a certain percentage of his income from the land.

Although this alternative appears to have merit at first glance, the subcommittee can foresee numerous problems. The income amount or percentage would by necessity be arbitrary, while at the same time a figure that may be appropriate for one area may be unrealistic in another. Moreover, a speculator who holds land for development could "rent" land to another party to grow agricultural crops, for example, and in this way meet the income requirement but still hold the land for development. The subcommittee feels this approach is impractical for Virginia at the present time.

5. Require a residency requirement for owners of land qualifying for land use.

Adoption of this type of legislation would limit land use taxation only to land that is the owner's place of residence (also owner's spouse, sibling, or parents). This approach would not only eliminate the majority of abuses but would also eliminate many other parcels of land which otherwise would qualify. The subcommittee believes that this approach is too restrictive. Moreover, the subcommittee believes that land use eligibility should be judged by the actual use of the land rather than the ownership.

6. Stiffen standards for classification of land.

The standards for classification of real estate devoted to forest use, open space use, and agricultural and horticultural use are established by the Department of Conservation and Economic Development, Commission of Outdoor Recreation, and Department of Agriculture and Consumer Services, respectively. These standards are then used to determine if the land in question falls into such qualifying use.

The subcommittee has examined, as one alternative, the strengthening of these standards, particularly the standards for forest use. The subcommittee has heard considerable testimony that the standards for forest use need to be tightened. The subcommitee applauds the Department of Conservation and Economic Development for formulating and proposing more meaningful standards for forest use land. The subcommittee strongly endorses the new standards. (Please see Appendix C for copy of old standards and new.)

7. Increase the present six percent interest rate that is applied to such roll back taxes.

The 6% interest rate is applied to all roll back taxes so that the locality does not, in fact, grant a locally subsidized loan to the owner of the land which has changed use. The subcommittee has heard considerable support for an increase in this interest rate because it is simply too low. It is substantially below the interest penalties which are applied to other taxes. Moreover, the present rate is clearly out of line with other interest rates in the money market.

The subcommittee recommends that the interest rate be increased to a more realistic figure. The subcommittee notes that present law generally provides for up to a 8% interest rate on delinquent property taxes (§ 58-847) and recommends that the interest rate applicable to roll back taxes be the same interest rate that the locality charges for other delinquent taxes. (Please see Appendix A for suggested legislation.)

8. Provide that a petition by an owner or his agent for a change in zoning would be deemed to be a change in use for purposes of land use taxation.

The subcommittee has been concerned about situations where an owner of a parcel of land, presently under land use, petitions for a change in zoning. This petition for a change in zoning appears to clearly signal the intention for a change in use. The subcommittee has heard interest and support for this type of legislation in its public hearing as well as from Secretary Carbaugh and Mr. Blackmore. The subcommittee has also heard testimony against this recommendation. After

considering both sides, the subcommittee believes that this type of legislation would only solve a portion of the problem at best. The subcommittee does not recommend the adoption of this type of legislation at the present time.

9. Provide more flexibility in the land use legislation to account for local variations.

The subcommittee has been concerned with the application of one set of standards to determine if a particular piece of land qualifies for a use tax category, given the differences among Virginia localities. The subcommittee notes that the Constitution requires the General Assembly to classify and define the classes of property. For example, at the present time for agricultural land, five acre minimum acreage requirement applies to the entire Commonwealth. It appears reasonable that this number may be correct in certain instances and incorrect in others.

The subcommittee's counsel is of the opinion that perhaps a system could be fashioned that would allow the General Assembly to define and classify the categories of land, yet allow some flexibility to reflect the diversity of farming operations throughout the Commonwealth.

One of the problems the subcommittee encountered during its study was that the definition of a working farm varies by region. Although this area of study was not within the scope of the subcommittee, the issue was considered. The subcommittee believes that there is merit in a limited amount of local flexibility and suggests that an appropriate committee study this area.

Another area that was studied, but not in the original purview of the subcommittee was the question of linking the land use tax program to the goal of preserving farm land. The subcommittee acknowledges the fact that the land use program, in and of itself, cannot preserve farm land, but is only one part of such a program. The preservation of farm land question should be addresed by the appropriate committee. This subcommittee has concentrated on tax policy questions.

III. ADMINISTRATIVE MODIFICATIONS

The subcommittee has also examined the administrative procedures of the land use assessment law. The subcommittee has been concerned with ensuring that the requirements for application be as simple as possible and not cause an undue burden on the property owner. One recommendation of the subcommittee is to modify the requirement for an application whenever the use of acreage of land previously approved changes to exclude a change in acreage which occurs solely as a result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for land use taxation. (See Appendix B for the suggested legislation.)

The subcommittee has also examined the reapplication procedures for land use. The subcommittee suggests, to ease the administrative burden on land owners, a reapplication form be included with, or as part of, the tax ticket (notice) that is sent annually to the owner. This would eliminate the land owner having to make a separate reapplication in those localities which require an annual reapplication.

The subcommittee suggests that the attached legislation (see Appendix A and B) be introduced in the 1979 Session of the General Assembly to implement these recommendations.

Respectfully submitted,

David G. Brickley, Chairman *1

Lewis W. Parker, Jr.

Warren G. Stambaugh

George P. Beard, Jr.

*1 Please note supplemental concurring statement.

COMMONWEALTH OF VIRGINIA
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TWENTIETH DISTRICT
PRINCE WILLIAM, LOUDOUN
AND THE CITIES OF MANASSAS
AND MANASSAS PARK

COMMITTEE ASSIGNMENTS
FINANCE
HEALTH, WELFARE AND INSTITUTIONS
AGRICULTURE

January 12, 1979

STATEMENT OF DAVID G. BRICKLEY

I commend the Land Use Subcommittee members for their excellent work, support and long hours, and fully approve of the recommendations offered. However, I believe that certain changes should be made in the law when an owner or his agent petitions for a change in zoning. The subcommittee was divided on the question of whether a change in zoning constitutes a change in use. Presently it does not. However, as the purpose of the land use program was to preserve agricultural, horticultural, forest products and open space it must be considered that a change in zoning signals the intention to change the use of the land. If the use is changed, the question follows as to whether the land should continue to be eligible for special assessment. In light of the difference of opinion on this matter, I would suggest that as a compromise, when a change in zoning occurs on land currently under land use assessment, then the roll back period be increased to ten years rather than the present five years. This would serve to increase the penalty on real estate when the owner has every intention of developing the land. However, if the real estate was not developed until many years later, or for that matter, never developed, the property owner would also be protected.

David G. Brickley

APPENDIX A

A BILL to amend and reenact § 58-769.10 of the Code of Virginia, relating to interest rate applicable to roll-back taxes.

Be it enacted by the General Assembly of Virginia:

1. That § 58-769.10 of the Code of Virginia is amended and reenacted as follows:

§ 58-769.10. Change in use of real estate assessed under ordinance; roll-back taxes.–When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes, to a nonqualifying use, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the amount, if any, by which the taxes paid or payable on the basis of the valuation, assessment and taxation under such ordinance were exceeded by the taxes that would have been paid or payable on the basis of the valuation, assessment or taxation of other real estate in the taxing locality in the year of the change and in each of the five years immediately preceding the year of the change, plus simple interest on such roll-back taxes at the ~~rate of six per centum per annum~~ *same interest rate applicable to delinquent taxes in such locality, pursuant to § 58-847 or § 58-964* . If in the tax year in which the change of use occurs, the real estate was not valued, assessed and taxed under such ordinance, the real estate shall be subject to roll-back taxes for such of the five years immediately preceding in which the real estate was valued, assessed and taxed under such ordinance.

In determining roll-back taxes chargeable on real estate which has changed in use, the treasurer shall extend the real estate tax rates for the current and next preceding five years, or such lesser number of years as the property may have been taxed on its use value, upon the difference between the value determined under § 58-769.9 (d) and the use value determined under § 58-769.9 (a) for each such year.

Liability to the roll-back taxes shall attach when a change in use occurs but not when a change in ownership of the title takes place if the new owner continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance. The owner of any real estate liable for roll-back taxes shall, within sixty days following a change in use, report such change to the commissioner of the revenue or other assessing officer on such forms as may be prescribed. The commissioner shall forthwith determine and assess the roll-back tax, which shall be assessed against and paid by the owner of the property at the time the change in use which no longer qualifies occurs and shall be paid to the treasurer within thirty days of the assessment.

APPENDIX B

A BILL to amend and reenact § 58-769.8 of the Code of Virginia, relating to application by property owners for special use assessment.

Be it enacted by the General Assembly of Virginia:

1. That § 58-769.8 of the Code of Virginia is amended and reenacted as follows:

§ 58-769.8. Application by property owners for assessment, etc., under ordinance; continuation of assessment, etc.–Property owners must submit an application for taxation on the basis of a use assessment to the local assessing officer at least sixty days preceding the tax year for which such taxation is sought; provided, however, that in any year in which a general reassessment is being made the property owner may submit such application until thirty days have elapsed after his notice of increase in assessment is mailed in accordance with § 58-792.01, or sixty days preceding the tax year, whichever is later; provided, however, in any locality which has adopted a fiscal tax year under §58-851.6 but continues to assess as of January one, such application must be submitted for any year at least sixty days preceding the effective date of the assessment for such year; provided further, that in Franklin County, such application shall be filed for the year nineteen hundred seventy-eight within thirty days of adoption of an ordinance hereunder. The governing body, by ordinance, may permit applications to be filed within no more than sixty days after the filing deadline specified herein, upon the payment of a late filing fee to be established by the governing body. An individual who is owner of an undivided interest in a parcel may apply on behalf of himself and the other owners of such parcel upon submitting an affidavit that such other owners are minors or cannot be located. An application shall be submitted whenever the use or acreage of such land previously approved changes , *except when a change in acreage occurs solely as a result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for taxation on the basis of use assessment* ; provided, however, that the governing body of any county, city or town may require any such property owner to revalidate annually with such locality, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the locality, any applications previously approved. The governing body may also provide for late filing of revalidation forms on or before the effective date of the assessment, on payment of a late filing fee. Forms shall be prepared by the State Tax Commissioner and supplied to the locality for use of the applicants and applications shall be submitted on such forms. An application fee may be required to accompany all such applications.

The local assessing officer shall prepare and transmit to the clerk a list of all applications filed and approved hereunder and the clerk shall index the names in a book entitled "Land Use Tax Assessment Book" and file said application in the clerk's office. The local governing body shall beginning July one, nineteen hundred seventy-three, compensate the clerk at the rate of one dollar per application filed and indexed, notwithstanding any limitation provided in § 14.1-143 or any other section of the Code of Virginia.

In the event of a material misstatement of facts in the application or a material change in such facts prior to the date of assessment, such application for taxation based on use assessment granted thereunder shall be void and the tax for such year extended on the basis of value determined under § 58-769.9 (d).

Continuation of valuation, assessment and taxation under an ordinance adopted pursuant to this article shall depend on continuance of the real estate in the use for which classification is granted and compliance with the other requirements of this article and the ordinance and not upon continuance in the same owner of title to the land.

2. That the provisions of this act shall be effective for all tax years beginning on and after January one, nineteen hundred seventy-seven.

APPENDIX C

STANDARDS FOR CLASSIFICATION OF A FOREST AREA
(LAND USE TAX ACT - Title 58, Chapter 15, Section 58-769.4 through 58-769.16)

A. STANDARDS

PRODUCTIVE FOREST LAND - is real estate devoted to forest use which has existent on it, and well distributed, commercially valuable trees of any size sufficient to compose at least 10% normal stocking of forest trees, or formerly having such tree cover, and not currently developed for non-forest use. It must be growing a forest crop or be capable of growing a forest crop of industrial wood, and such crop must be accessable for harvesting.

NON-PRODUCTIVE FOREST LAND - is land devoted to forest use but which is not capable of growing a crop of industrial wood because of inaccessibility on adverse site conditions such as steep outcrops of rock and shallow soil on steep mountain sides, excessive steepness, heavily eroded areas, coastal beach sand, tidal marsh and other conditions which prohibits the growth and harvesting of a crop of trees suitable for commercial industrial use.

TREE - is a single woody stem of a species presently or prospectively suitable for commercial industrial wood products.

STOCKING - is the number of trees 3 inches and larger in diameter breast high (d.b.h. - at a point on the tree trunk outside bark 4½ feet from ground level) required to equal a total basal area (area in square feet of a cross section of the tree at d.b.h.) of 75 square feet per acre, or where such trees are not present, there shall be present tree seedlings, or tree seedlings and trees in any combination sufficient to meet the 10% stocking set forth in the following Table.

Minimum Number of Trees or Combination Thereof to Determine 7.5 Square Feet of Tree Basal Area or 10 Percent Stocking Require to be Classified as Forest Land

D.B.H. Range	D.B.H. in 2" Classes	Basal Area Per Tree	Per Acre	Per 1/5 Acre	Per 1/10 acre
up to 2.9"	Seedlings		100	20	10
3.0 - 4.9"	4	0.1257	59	12	6
5.0 - 6.9"	6	0.1964	38	8	4
7.0 - 8.9"	8	0.3404	22	4	2
9.0 - 10.9"	10	0.5346	14	3	1
11.0 - 12.9"	12	0.7466	10	2	1
13.0 - 14.9"	14	0.0690	7	1	-
15.0"+	16+	1.4845	5	-	-

Note:

(a) Area 1/5 acre: circle, diameter 105'4", square 93'4" per side
(b) Area 1/10 acre: circle, diameter 74.6"; square 66'
(c) Number of seedlings present may qualify on a percentage basis; Example, 20 seedlings would be equivalent of 1.5 sq. feet of basal area (20% x 7.5 = 1.5)

B. PRODUCTIVE EARNING POWER

The forest land productive earning power will be determined by soil series classification and current market prices for each county. The base species will be selected according to the major forest type of greatest economic value in the county.

The annual productive earning power will be computed by discounting the per acre gross dollar value of tree growth to the time of stand establishment using a 6% compound rate of interest. The cost of establishing the stand will then be subtracted, leaving a net worth of the timber crop above and beyond the 6% compound interest allowance for the cost of establishment.

Prepared By: VIRGINIA DIVISION OF FORESTRY
June 1, 1973

APPENDIX C

STANDARDS FOR CLASSIFICATION OF A FOREST AREA
(LAND USE TAX ACT - Title 58, Chapter 15, Section 58-769.4 through 58-769.16)

A. *STANDARDS*

PRODUCTIVE FOREST LAND - is real estate devoted to forest use which has existent on it, and well distributed, commercially valuable trees of any size sufficient to compose at least 40% normal stocking of forest trees, or formerly having such tree cover, and not currently developed for non-forest use. It must be growing a commercial forest crop that is accessible for harvesting.

NON-PRODUCTIVE FOREST LAND - is land devoted to forest use but which is not capable of growing a crop of industrial wood because of inaccessibility on adverse site conditions such as steep outcrops of rock and shallow soil on steep mountain sides, excessive steepness, heavily eroded areas, coastal beach sand, tidal marsh and other conditions which prohibits the growth and harvesting of a crop of trees suitable for commercial industrial use.

TREE - is a single woody stem of a species presently or prospectively suitable for commercial industrial wood products.

STOCKING - is the number of trees 3 inches and larger in diameter breast high (d.b.h. - at a point on the tree trunk outside bark 4½ feet from ground level) required to equal a total basal area (area in square feet of a cross section of the tree at d.b.h.) of 75 square feet per acre, or where such trees are not present, there shall be present tree seedlings, or tree seedlings and trees in any combination sufficient to meet the 40% stocking set forth in the following Table.

Minimum Number of Trees or Combination Thereof to Determine 30 Square Feet of Tree Basal Area or 40 Percent Stocking Require to be Classified as Forest Land

D.B.H. Range	D.B.H. in 2" Classes	Basal Area Per Tree	Per Acre	Per 1/5 Acre	Per 1/10 Acre
up to 2.9"	Seedlings		400	80	40
3.0 - 4.9"	4	0.0873	344	69	34
5.0 - 6.9"	6	0.1964	153	31	15
7.0 - 8.9"	8	0.3491	86	17	9
9.0 - 10.9"	10	0.5454	55	11	6
11.0 - 12.9"	12	0.7854	38	8	4
13.0 - 14.9"	14	1.0690	28	6	3
15.0"+	16+	1.3963	21	4	2

NOTE: (a) Area 1/5 acre: circle, diameter 105'4"; square 93'4" per side
(b) Area 1/10 acre: circle, diameter 74'6"; square 66'
(c) Number of seedlings present may qualify on a percentage basis; Example, 100 seedlings would be equivalent of 7.5 sq. feet of basal area (25% x 30 = 7.5)

B. PRODUCTIVE EARNING POWER

The forest land productive earning power will be determined by soil series classification and current market prices for each county. The base species will be selected according to the major forest type of greatest economic value in the county.

The annual productive earning power will be computed by converting the estimated acre volume yields for a rotation to dollar yields. The cost for land management and stand establishment is then subtracted from the gross income, leaving a net worth for the timber crop. The forest use value is then calculated by dividing the net worth by a determined capitalization rate.

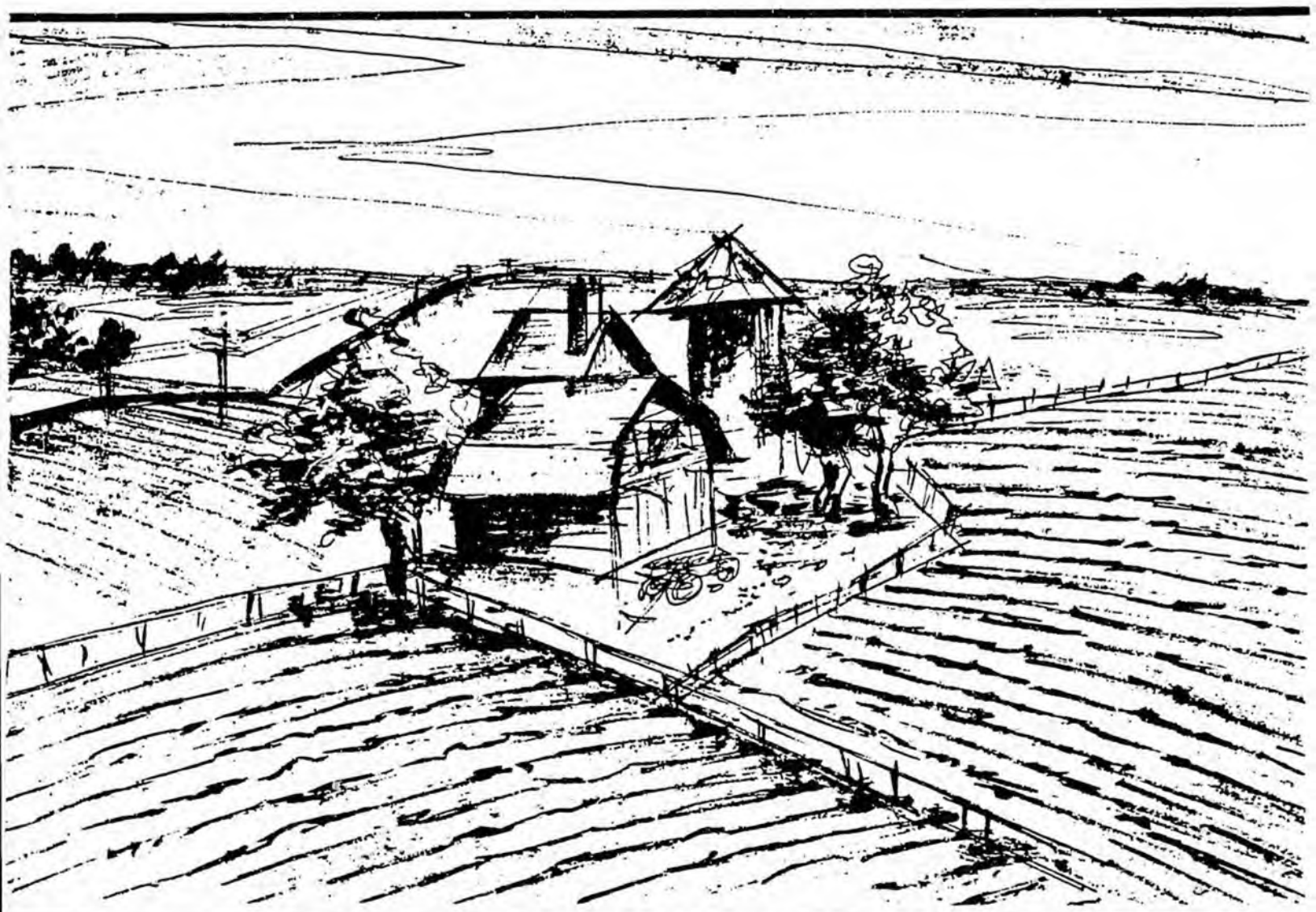
Prepared By: *VIRGINIA DIVISION OF FORESTRY*
July 1978

STUDIES IN PROPERTY TAXATION

USE-VALUE FARMLAND ASSESSMENTS

Theory, Practice, and Impact

International Association of Assessing Officers
Research & Technical Services Department



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1982 Census of Governments

Issued February 1984

U.S. Department of Commerce
Malcolm Baldrige, Secretary
Clarence J. Brown, Deputy Secretary

BUREAU OF THE CENSUS
C.L. Kincannon,
Deputy Director

Appendix C. Provisions for Assessment of Property for Agricultural, Open Space, and Associated Benefited Uses by States: 1981 and Subsequent Periods

State	Provision affecting assessed value applicable to explicitly benefited uses	Remarks
Alabama	Deferred taxation	Applies to class III property only (agricultural, forest, historic, and single-family, owner-occupied properties). Owner must request benefited use assessment. Deferred tax activates if conversion to nonqualifying use occurs within 2 years of property sale. Such tax is based on greater of sales price, or appraised market value as of October 1 in each of 3 years succeeding conversion date.
Alaska	Deferred taxation	Upon application, farmlands may be assessed at full and true value for farm use. Deferred tax is an amount equal to the additional tax at the current mill levy together with 8 percent interest for the preceding 7 years.
Arizona	Use value assessment only	Land used for agricultural purposes valued via the income approach (capitalized average annual net cash rental) without allowance for urban or other nonagricultural market influences. Such rental (excluding real property and sales taxes) determined through typical arm's length rental agreements for the preceding 5 years for comparable agricultural land.
Arkansas	Use value assessment only	Current use provision applies to agricultural, farm, or timber use land; application required. Effective March 28, 1981, such lands will be valued on the basis of productivity of soil.
California	Use value assessment only	Numerous provisions including: Land zoned for single-family homes or agricultural purposes on which is situated owner-occupied single-family dwelling valued no greater than value of its use as a site for such dwelling. Nonprofit golf courses of 10 or more acres valued for that use, plus any mines or minerals. Timberland valued on basis of "approximate grade values" plus value attributable to any compatible uses of land.
	Contracts and agreements	Historical property under agreement of at least 20 years valued using capitalization of income method. Open space land dedicated to various uses (e.g., agricultural, wetlands, recreation, wild life habitats, timberland preserves, historical, or cultural purposes) under an enforceable restriction valued using specified methods; restriction generally for minimum 10-year period. Cancellation of contract or rezoning of timberland preserve may result in deferred taxes or tax recoupment fee.
Colorado	Use value assessment only	Agricultural land (exclusive of building improvements) valued on basis of earning or productive capacity during reasonable period, capitalized at 11.5 percent.
Connecticut	Use value assessment only (sometimes classified as deferred taxation, because of conveyance tax cited).	Application required for classification as farm, forest, or open space land. Additional conveyance tax imposed if land sold or use changed within 10 years of (1) classification in case of open space or (2) initial acquisition or classification in case of farm and forest lands. Tax ranges, on sale or change of use, from 10 percent of sales price in first year, to 1 percent in 10th year; exemptions provided.
Delaware	Deferred taxation	Land of not less than 5 acres, used for agricultural, horticultural, or forest purposes for 2 previous years, valued on the basis of such use; $500 minimum sales and application required. Agricultural use land changed to nonagricultural uses subject to "roll-back taxes" equal to deferred taxes for up to 5 preceding years. Effective July 11, 1983, eligibility changed to 10 acres minimum and/or annual agricultural income of $10,000.
District of Columbia	Contracts and agreements	Current use assessment is available for designated historic buildings if such assessment is less than market value. Owners may enter into agreements of at least 20 years for continued maintenance in return for tax relief. Provides for recovery of back taxes with interest if conditions not fulfilled.
Florida	Use value assessment only	Upon application, land may be classified as agricultural land (including forestry) and assessed solely on the basis of its agricultural use. Contiguous urban development or a sales price three or more times an agricultural use assessed value creates presumption that land is not used primarily for bona fide agricultural purposes.
	Contracts and agreements	Owners of environmentally endangered lands, or lands used for outdoor recreational or parks purposes may convey their development rights to the county or an internal improvement trust fund in return for assessments incorporating such use and lack of development rights. Deferred taxes include tax differential plus 6 percent interest per year.
Georgia	Contracts and agreements	Effective April 8, 1983, property devoted to bona fide agricultural purposes (excluding residence value) is eligible for preferential assessment. Covenant for agricultural use must be for minimum of 10 years. Graduated penalties, plus interest, are specified for premature termination of agreement.
Hawaii	Deferred taxation	Applies to land classified and used for agriculture. If owner requests certain zoning changes, or subdivides to parcels of 5 acres or less, owner becomes liable for deferred tax on difference between taxes paid and taxes due on higher use assessed value, plus annual 10 percent penalty. Tax due within 60 days of conversion, unless owner dedicates land within 1 year of conversion.

See footnotes at end of table.

APPENDIX C—Continued

State	Provision affecting assessed value applicable to explicitly benefited uses	Remarks
Hawaii--Con.	Contracts and agreements.....	Applies to land dedicated to agricultural or ranching use in agricultural, rural, conservation, or urban districts, for a minimum of 10 or 20 years. Assessment is on basis of such use, or 50 percent thereof if land is within agricultural district. Failure to observe restrictions means tax liability for tax differential plus penalty of 10 percent per year. Other provisions relate to land dedicated to golf courses, single-family, owner-occupied residential use, and to land classified as "wasteland," all assessed on basis of such uses.
Idaho.....	Use value assessment only.....	Land devoted to agriculture per specified criteria may be classified as agricultural property; this excludes land used for pleasure or available as part of a platted subdivision. Upon application, lands having no commercial timber but suitable for reforestation assessed at $1 per acre. Owner-occupied residential property in area zoned for other uses is assessed on basis of residential use only.
Illinois.....	Use value assessment only.....	Upon application, land used for single-family residence, meeting specified conditions, and located in National Historic District or municipal landmark area assessed at 1979 valuation, effective January 1, 1981; local option to participate. Upon application, historic property with certificate of rehabilitation assessed no more than at prerenovation value for an 8-year period; local option.
	Deferred taxation.....	Upon application, real property used for farming or agricultural purposes and at least 10 acres in size, valued on basis of such use but no more than value as single-family residential real property. Two standards are available for qualification as agricultural for benefited use assessment. If use changes to something not qualifying, there is deferred tax on difference between benefited use value and conventional assessed value, for 3 preceding years, plus 5 percent interest. Upon application, land used for open space or for airports in 3 previous years is assessed on basis of such use. Same deferred tax as above when use changes.
	Special note.....	At least for 1981 assessed values, the homestead part of a farm, namely the home and its surrounding site, was not subject to benefited use assessment but was subject to the applicable county multiplier. Remaining parts of the property involved were eligible for benefited use assessment. See section 20-g and 20-e of the Illinois Revenue Act, as amended.
Indiana.....	Use value assessment only.....	Land is assessed as agricultural land as long as it is devoted to such use.
	Deferred taxation.....	Upon application, forest land of at least 10 acres with no dwelling is assessed at $1 per acre. Deferred tax provision applies to the lesser of (1) tax differential or (2) "withdrawal" assessment minus initial assessment augmented by any increase due to construction of ditch or levee. Upon application, land used as wildlife habitats of at least 15 acres with no dwelling assessed at $1 per acre; similar deferred tax provision.
Iowa.....	Use value assessment only.....	Productivity and net earning capacity constitute the valuation basis for agricultural lands, except that dwellings on agricultural realty are assessed on a market value basis, effective with 1961 assessments. Forest reservations of at least 2 acres are assessed at $14.82 per acre; fruit tree reservations of 1 to 10 acres assessed at same rate but for an 8-year period.
Kansas.....	Deferred taxation.....	Agricultural land may be assessed on the basis of actual or potential agricultural income or productivity. Recoupment of tax differential is possible if qualifying use ends.
Kentucky.....	Deferred taxation.....	Upon application, agricultural or horticultural lands (excluding residences) meeting minimum acreage and specified gross income levels in 3 of 5 preceding years, may be assessed according to the land's value for agricultural or horticultural use. Upon change in use, deferred taxes for current year and preceding 2 tax years become due.
Louisiana.....	Contracts and agreements.....	Agricultural, horticultural, marsh, or timber lands meeting specified conditions may be assessed on basis of use value. Sales price four times land use value assessment creates presumption that land no longer is used for such purposes. Buildings of historical architectural importance may be similarly valued on a use basis.
Maine.....	Deferred taxation.....	Upon application, cropland, farmland (any tract or tracts of at least 10 contiguous acres), farm woodland, open space land, orchard land, and pastureland may be valued on current use value for agricultural or open space purposes. A change to nonqualifying use activates a deferred tax, in the year of disqualification, on the difference between benefited use and conventional valuation, plus a penalty. In addition, forest products assessed on basis of potential productivity ("tree growth tax"). Deferred tax is based on which of 2 specified methods produces the greater liability (5-year period involved).
Maryland.....	Deferred taxation.....	Land actively devoted to farm or agricultural uses, and marshland are assessed on basis of such uses. Subdivided parcels under certain conditions are not disqualified from agricultural use assessment. Conversion to nonqualifying use subjects land to a development tax equal to 10 percent of the difference between the agricultural and nonagricultural use assessments. (Development tax on farmland rezoned for nonfarm uses was replaced by an agricultural transfer tax, effective July 1, 1981.) Upon application, land designated for development in accordance with governmentally approved plans is assessed as agricultural use land. If rezoned to other uses, deferred tax activates on difference between benefited use assessment and full cash value assessment, but will not exceed 10 percent of "full cash value" assessment.

See footnotes at end of table.

APPENDIX C–Continued

State	Provision affecting assessed value applicable to explicitly benefited uses	Remarks
Maryland--Con.	Contracts and agreements.....	Easements to a government or to the Nature Conservancy under agreement to preserve its natural open character are valued on basis which includes such limitations. Lands of at least 50 acres actively devoted to use as country club, subject to other specified qualifying conditions, for period not less than 10 years, are assessed on basis of such use. Deferred tax activates on difference between benefited use and full value assessment (for up to 10 years) upon sale or failure to meet conditions.
Massachusetts.....	Deferred taxation.....	Local option permits assessment of agricultural or horticultural lands based upon such use. Land must be at least 5 acres and have been in benefited use category for 2 immediately preceding years, application required. Conveyance tax is levied if land sold for other than benefitted use within 10 years; if land is disqualified from benefited use assessment, rollback taxes are levied. Under specified conditions, city or town has limited right of first refusal when such property is offered for sale. Upon application, recreational land of 5 or more acres is assessed on basis of such use up to 25 percent of its fair cash value. Similar conveyance and rollback taxes and first refusal rights are provided.
	Contracts and agreements.....	Specified provisions apply to land under conservation restrictions.
Michigan.....	Use value assessment only.....	Upon application, private forest reservations are assessed at no more than $1 per acre.
	Contracts and agreements.....	Specified farmland or open space development rights agreements are available with minimum 10-year term; law prescribes attachment of lien when agreements terminate.
Minnesota.....	Deferred taxation.....	Upon application, qualifying agricultural realty of more than 10 acres and qualifying realty devoted to recreational uses of more than 5 acres may be assessed on a use basis. Effective July 1, 1983, tillable agricultural land is assessed at lesser of market value or capitalization of free market gross rental rate at 5.6 percent. Deferred taxes, without interest, are payable for prior 3 years in case of agricultural land and for prior 7 years for recreational land.
Mississippi.....	Use value assessment only.....	Effective July 1, 1983, land used for agricultural purposes is appraised according to its current use.
Missouri.....	Use value assessment only.....	Available to agricultural or horticultural land in such use for 5 preceding years, with average annual gross sales of $2,500; application required.
	Deferred taxation.....	Upon application, forest croplands of at least 40 acres, with value not exceeding $125 per acre, are assessed at $3 per acre. Deferred tax provision includes interest penalty.
Montana.....	Use value assessment only.....	Specified conditions must be met regarding use, size, and income; application is required. Rollback tax provision was repealed as of March 31, 1981. It provided for deferred taxes for up to the 4 preceding years of use value assessment.
Nebraska.....	Deferred taxation.....	Land zoned for agricultural use and used exclusively for agricultural purposes may be assessed on basis of such use; application is required. If eligibility ends, deferred tax applies to any difference, between use and market-oriented values, for up to 5 years, plus applicable interest at 6 percent.
Nevada.....	Deferred taxation.....	Applies to agricultural or open space land meeting specified conditions; application required. Deferred tax provision (including penalty) may relate to back years, up to 84 months prior to change in use.
New Hampshire.....	Use value assessment only.....	Upon application, owner-occupied residences in industrial or commercial zones are assessed on basis of current use.
	Deferred taxation.....	Qualifying open space (farmland, forest land, wetland, recreation land, flood plain land, or wild land) may be assessed based on current use values established by current use advisory board; application is required. A land use change tax is levied at the rate of 10 percent of the full and true value of the land changed to other than open space use.
	Contracts and agreements.....	Benefited assessment may also be obtained for qualifying land if owner grants discretionary easement to city or town for minimum 10-year term. Release occurs only for cases of extreme personal hardship with penalties specified.
New Jersey.....	Use value assessment only.....	Owner-occupied residences in area previously zoned for such use but rezoned to commercial or industrial uses are assessed as residential property.
	Deferred taxation.....	Agricultural or horticultural land of 5 or more acres meeting minimum sales criteria and in such use for 2 preceding years may be assessed based on such use; application is required. Rollback provision may include up to 2 years of deferred taxes.
New Mexico.....	Use value assessment only.....	Land primarily for agricultural purposes may be assessed on basis of productive capacity; application is required.
New York.....	Use value assessment only.....	Assessment of forest and reforested lands of 15 or more acres limited to value of similar lands without substantial forest growth; application is required. Six percent tax on stumpage value is levied upon withdrawal of land from benefited use.
	Deferred taxation.....	Land of 10 or more acres in an agricultural district and generating $10,000 or more from agricultural products may be entitled to an agricultural assessment. Change to nonqualifying use activates deferred taxes for 5 preceding years.

See footnotes at end of table.

APPENDIX C—Continued

State	Provision affecting assessed value applicable to explicitly benefited uses	Remarks
North Carolina	Deferred taxation	Applies to agricultu: horticultural parcels of 10 acres or more; gross income from products grown there at average $1,000 or more annually for 3 preceding years. Qualifying forest land must be at least 20 acres in size; application is required. Deferred taxes are payable upon change in use and may relate back to 3 preceding years, plus interest.
North Dakota	Use value assessment only	Land classified as agricultural prior to annexation is retained in that classification until use changes. Value must be uniform with that of adjoining agricultural land not annexed. Effective for tax years beginning January 1, 1983, land platted and assessed as agricultural land before March 30, 1981, is valued on basis of such use (until changed), whether or not within corporate limits.
Ohio	Deferred taxation	Requirements for agricultural use assessment include: specified minimum sizes; agricultural use for 3 preceding years; and application. Deferred taxation may relate back to 4 preceding years of use assessment.
Oklahoma	See remarks	Unique situation, applies to more than agricultural land: State Constitution (article X) states that "no real property shall be assessed . . . at a value greater than . . . its fair cash value for the highest and best use for which such property was actually used, or was previously classified for use." (Emphasis added.)
Oregon	Deferred taxation	Agricultural land may be assessed on basis of use; specific provisions, requirements, and deferred taxes vary according to whether land is located in "farm use zone" or outside such zones but exclusively devoted to agricultural use. Application may be required. Deferred taxation does not apply when use changes to forest use or when unzoned farmland is subsequently included in a farm use zone. Upon application, open space is assessed on basis of benefited open space land use. Deferred tax provisions activate on a change to nonqualifying use, plus interest. Single-family residence used for such purpose for 5 preceding years in area zoned for industrial, commercial, or multifamily residential uses is assessed on basis of residential only. Disqualification results in additional tax of up to 10 times what deferred taxes would be for the immediately preceding year. Application is required.
	Contracts and agreements	For 15-year period, historic property is assessed at "true cash value" at time of application. Change in classification results in additional taxes equal to up to 15 times the amount of deferred taxes for the immediately preceding year.
Pennsylvania	Deferred taxation	Upon application, qualifying agricultural land, agricultural reserve, and/or forest reserve may be given preferential use assessments. Requirements include 10-acre minimum size for agricultural land, an anticipated annual gross income of $2,000, and 3 preceding years of benefited use. Rollback taxes may extend for up to 7 previous tax years, and include 6 percent interest.
	Contracts and agreements	Counties may covenant with owners of land in farm, forest, water supply, or open space use. Assessment reflects fair market value of land so restricted. Such agreements may be negotiated to conform with more recent provisions of preferential use assessment described above.
Rhode Island	Deferred taxation	Applies to farm, forest, or open space land; application is required. Effective May 15, 1980, change in use results in "land use change tax" ranging from 10 to 0 percent of fair market value, depending on length of classification.
South Carolina	Deferred taxation	Qualifying agricultural real property used for agricultural purposes or for growing timber is assessed at specified percentages of fair market value for such purposes; application is required. Rollback provision may include deferred taxes for current year and immediately preceding 5 years.
South Dakota	Use value assessment only	Land devoted exclusively to agricultural use for 5 preceding years and generating minimum sales of $2,500 in 3 of those years shall be classified and taxed as agricultural land without regard to its zoning classification.
Tennessee	Deferred taxation	Qualifying lands include agricultural (at least 15 acres), forest (at least 15 acres), and open space (at least 3 acres); application is required. Rollback taxes extend for up to 3 years for agricultural and forest lands and up to 5 years for open space lands. Special provision is made for assessment of lands with open space easements.
Texas	Deferred taxation	Upon application, land owned by natural persons and used for agricultural purposes for the 3 years immediately preceding may be assessed based on such use. Qualified "open space" land (including timberland and land devoted principally to agricultural use for 5 of preceding 7 years) is valued on basis of productive capacity; application is required. Rollback provision for agricultural land may relate back to 3 preceding years, plus interest; for open space land, 5 preceding years, plus 7 percent interest.
	Contracts and agreements	Lands restricted to recreation, park, open space, or airport may be assessed based upon such use; land must be at least 5 acres in size and restriction must be for a minimum of 10 years. If there is a change to nonqualifying use, a deferred tax activates on difference between benefited use assessed value and market value, for 5 years, plus interest at 7 percent annually.
Utah	Deferred taxation	Land actively devoted to agricultural use (25 acres or more in size, or if less, providing annual gross income from farm crops of $2,000 in 1 of 2, or 3 of 5 preceding years) may be assessed based upon such use if of at least 5 contiguous acres, generating requisite income from such use for required time; application is required. Waivers of acreage and income limitations are possible. Rollback taxes may extend up to 5 years of benefited use.
Vermont	Use value assessment only	Orchard lands are assessed on basis of similar land used for general agricultural purposes.

See footnotes at end of table.

State	Provision affecting assessed value applicable to explicitly benefited uses	Remarks
Vermont--Continued	Deferred taxation.....	Agricultural land and managed forest land meeting specified criteria are eligible for use value appraisal. Upon development, land use change tax is levied in the amount of 10 percent of the full fair market value of the changed land determined without regard to the use value appraisal. Land may be withdrawn from use value assessment and payment of land use change tax deferred until development occurs.
	Contracts and agreements.....	A municipal corporation may enter into contracts with owners of agricultural, forest land, industrial or commercial real and personal property for up to a 10-year period for the purpose of fixing and maintaining the valuation of such property on the grand list; contracts may also be made for fixed rates, fixed annual amounts, or fixed percentages of the annual tax. Municipality may also negotiate "tax stabilization contracts" with owners of farmland or forest land of at least 25 acres. Deferred taxes covering prior 3 years are due upon conversion to noncontractual uses.
Virginia.....	Deferred taxation.....	Any county, city, or town which has adopted a land use plan may by ordinance provide for the use value assessment of real estate used for agricultural, horticultural, forest, or open space purposes. Minimum size is 5 acres (except for forest land which must be at least 20 acres), and application is required. Real estate in agricultural or forest districts, with or without land use plan, is also eligible. Rollback tax provision includes current year and up to 5 immediately preceding years, plus interest.
Washington.....	Contracts and agreements.....	Open space land, farm and agricultural land, and timberland (excluding timber value) may qualify for current use assessment. Land classified on a current use basis must continue to be so classified for a period of 10 years. If the owner, after 8 years, requests withdrawal from current use assessment, rollback taxes for 7 years, plus interest at the statutory rate, are payable at the end of 2 additional years. If a change in use occurs before the end of the 10-year period, the aforementioned rollback taxes and interest are due, plus penalty of 20 percent of the rollback amount.
West Virginia.....	Use value assessment only.....	True and actual value of all farms used, occupied, and cultivated by their owners or bona fide tenants is value of property according to actual use. For the statewide reappraisal to be completed by March 1, 1985, farm property is to be appraised at "fair and reasonable value for farming purposes."
Wisconsin.....	See remarks.....	Constitutional amendment, approved April 2, 1974: Taxation of agricultural and undeveloped land need not be uniform with that of each other or with that of other realty. State legislature has elected to provide owners of farmland subject to agricultural use restrictions with income tax credits and refunds rather than use-based assessments.
Wyoming.....	Use value assessment only.....	Agricultural and horticultural land so employed for minimum of 2 previous years is assessed on basis of current use and capacity of land to produce agricultural products. Land must not be zoned for other uses.

Note: This table, though carefully compiled, is not intended as a substitute for any necessary reference to specified statutory requirements in any given circumstance. This is especially relevant to any situation where post-1981 provisions are sought.

Terms (based on review of applicable legal provisions):

Deferred taxation--This refers to the additional tax, activated by a change from benefited use to a nonqualifying use, on the difference between benefited use assessment and conventional assessment, for specified time periods and at interest rates specified by law.

Contracts and agreements--These are specific agreements authorized by law, providing for limitations on use over stated time periods, in exchange for benefited use value assessment. Such agreements generally include deferred taxation recovery provisions.

SITE VALUE TAXATION

STAFF BRIEF 82-17

Wisconsin Legislative Council Staff

State Capitol

Madison, Wisconsin

July 28, 1982

TABLE OF CONTENTS

Wisconsin Legislative Council Staff — Madison, Wisconsin

Special Committee on Interrelationship of Urban and Rural Policies — July 28, 1982

STAFF BRIEF 82-17*

SITE VALUE TAXATION

INTRODUCTION

This Staff Brief was prepared as background material for the Legislative Council's Special Committee on the Interrelationship of Urban and Rural Policies. The Special Committee was created at the May 27, 1982 Legislative Council meeting, pursuant to a May 14, 1982 letter from Representative Michael G. Kirby and 1981 Assembly Joint Resolution 32, which requested a study of certain urban and rural policies.

Included in the study charge to the Committee is a directive to:

> Examine the feasibility and advisability of authorizing incorporated municipalities to levy real property taxes on the value of land only, rather than on the value of land and improvements, to determine what effect such a tax would have on the development and improvement of land within such municipalities and adjacent unincorporated territory....

[A copy of the complete charge to the Special Committee and a list of the members of the Special Committee are contained in Appendix 1.]

As background material for the Committee study, this Staff Brief presents a general discussion of the site value taxation concept. It makes no attempt to analyze the ramifications of limiting the authority for a site value tax to incorporated municipalities only nor to evaluate its past operation in other governmental jurisdictions.

Generally, site value taxation is taxation only on the value of land. All capital improvements attached to the land are exempted from taxation. Site value taxation is also commonly referred to as land value taxation; both terms will be used interchangeably in this Staff Brief. A variation of the site value tax is the "graded" (or "differential") property tax

*This Staff Brief was prepared by Janice M. Baldwin, Senior Staff Attorney, Legislative Council Staff.

PART I

CONCEPT OF SITE VALUE TAXATION

Site value taxation is a concept based on historic doctrines related to land as a source of income and wealth. As its prime champion in the 19th Century, Henry George proposed site value taxation as the single tax to replace all other forms of taxation [Progress and Poverty, 1879]. Modern tax policy theorists, however, generally view a site value tax as only one of several forms of possible taxation, particularly for local governments in the United States.

A. CONCEPT OF SITE VALUE TAXATION

The essence of the site value tax is proportional or constant rate taxation on the assessed value of only the land surface. No taxes are levied on improvements to the land. Thus, no taxes are levied on property owners when they improve the land (such as adding water and sewer facilities) or add improvements to the land (such as constructing buildings). Similarly, there is no tax incentive to allow improvements to deteriorate or to let land lie idle to avoid increased assessments and, thus, increased taxes. The tax levied on one site is the same as that applied to another similarly located site with similar characteristics.

A variation of the land value tax is the "differential" or "graded" property tax. One rate of taxation is applied to the value of the site and another lesser rate to the improvements in or on the site. Another approach, which would secure the same results, is to allow the tax rate to remain constant, but to assess land closer to its fair market value than the assessment of the improvements on the land. Regardless of the approach, under the graded or differential property tax system, $1,000 worth of land is taxed more heavily than $1,000 worth of improvements.

B. HISTORY

Site value taxation derives from the various theories which justified governmental taxation of land alone. These commenced with the French Physiocrats' assertions in the 17th Century that all wealth starts with land and that, therefore, the income above the cost of production could be available for the needs of the state. Taxation of the "surplus" income would not interfere with production. Later economists, such as Ricardo, developed an "economic rent" concept as a measure of the difference between the marginal productivity on one site compared to that on a site with a higher degree of productivity or more favorable location. The

PART II

ECONOMIC ISSUES.

Recent theoretical and pragmatic literature focuses upon the site value tax as an alternative to the traditional real property tax. It is analyzed as being one component of an array of taxes, with the sales, income and excise taxes being other possible components.

This Part discusses some economic issues associated with site value taxation, including (a) the general economic incentives provided by the tax; (b) the adequacy of land as a tax base; (c) a brief description of which taxpayers benefit or lose in the replacement of the property tax by a land value tax; and (d) its impact upon resource allocations in the community or the economy. The discussion assumes that governments will increase the tax rate on land compared to that on real property (land plus improvements) in order to maintain their fiscal capacity.

A. GENERAL ECONOMIC INCENTIVES OF A SITE VALUE TAX

As tax rates, imposed only on land, increase to compensate for the loss of taxes on improvements, two results ensue. First, the tax cost of holding vacant or underdeveloped land increases. Secondly, since landowners must bear the increased land value tax, they are encouraged to develop the site to reduce the tax burden as a percentage of the total value of the real property (land plus improvements) or else sell it to another person willing and able to improve the income potential of the property. In other words, the site tax promotes the development of land to its "highest and best use." New construction and rehabilitation of older buildings are not penalized by the site value tax as they are in the form of increased taxes under the traditional property tax system. Thus, site value taxation provides a tax incentive for more intensive use of urban land and may reduce urban sprawl pressures.

B. ADEQUACY OF LAND AS A TAX BASE

To support the current level of municipal service, revenue from a site value tax must be approximately equal to that generated by the traditional real property tax. Land value tax proponents state this is feasible because land is now frequently and substantially undervalued in most municipalities. In addition, land values may increase naturally as economic development occurs.

The projected pattern of increases and decreases in the tax incidence for various groups of taxpayers from going to a different tax is described as the "windfalls and wipeouts" problem. It occurs during the transition period when existing buildings or improvements are displaced by a new pattern of improvements after the inauguration of a land value tax. It may also happen when the "highest and best use" of a site changes in response to other factors in the economy, such as a new technology. Alleviation of the most undesirable effects may be provided by exemptions, "grandfathering" or other legislative concessions.

D. RESOURCE NEUTRALITY

For an individual landowner, the site value tax is "neutral," in the sense that the tax repercussions of any decision to improve land can be ignored because his or her tax is not influenced by any improvements. However, the site value tax may influence resource allocation in a community by virtue of its differential impact upon various investment decisions. Positively affected are the pressures to develop land to its "highest and best use" and to develop or rehabilitate central city land. Negatively affected is the holding of vacant or underdeveloped land which decreases the attractiveness of land as an investment.

Other factors, however, may be more important than taxation policy or may mitigate the primary effects of land value taxation in investment or location decisions. For example, crime, zoning, poverty, transportation and labor cost differentials between central city and rural or suburban locations may be significantly more important for an entrepreneur than tax differentials. So too, other tax incentives may be counterproductive. These include tax incremental financing, industrial revenue bonding and low tax levels associated with smaller municipalities which provide fewer services or have lower infrastructure or welfare costs.

To the extent that site value taxation does promote the highest and best use of land, it may have the untoward result of undermining a municipality's desire to preserve older or historic buildings or to provide some low density developments associated with open and green areas in an urban setting. Moreover, the very substance of the highest and best use concept may change over time and be difficult to ascertain at any given time, which makes evaluation of its achievement difficult.

With respect to the negative effect of site value taxation upon land speculation, studies indicate that the predicted result is not clear cut, particularly when expected capital gains outweigh tax differentials. In a sense, land speculation may also be an essential element of a dynamic economy: speculators take a risk in acquiring or holding land in

PART III

LEGAL ISSUES

A variety of legal issues are associated with a valid enactment of land value taxation. This Part summarizes the principal legal factors which may affect a site value tax in Wisconsin. They include the following: (a) constitutional uniformity clause; (b) legal definition of land; (c) assessment methods; (d) tax levy limitations; and (e) constitutional debt limit clause.

A. CONSTITUTIONAL UNIFORMITY CLAUSE

Article VIII, section 1 of the Wisconsin Constitution requires that the rule of taxation be uniform, except that the Legislature may empower cities, villages and towns to "collect and return taxes on real estate" by optional methods and may designate the property subject to tax. The Uniformity Clause authorizes specific exceptions to the uniformity rule for forests, minerals, agricultural and undeveloped land, livestock and inventories of manufacturers and merchants as well as taxes on incomes, privileges and occupations. Thus, the principal tax areas where the uniformity rule applies are property, sales and excise taxes.

Wisconsin courts have interpreted the constitutional Uniformity Clause to mean that all property must be taxed uniformly for all purposes. However, certain property may be totally (but not partially) exempted from taxation, because the Legislature has the authority under the Clause to designate what property is subject to a tax [Hales v. City of Kenosha, 29 Wis. 599 (1872) and Gottlieb v. City of Milwaukee, 33 Wis. 2d 408 (1967)].

In 1965, the Wisconsin Supreme Court ruled that partial exemption of improvements to real estate (certain sewer facilities) was unconstitutional as a violation of the Uniformity Clause [Ehrlich v. Racine, 26 Wis. 2d 352 (1965)]. Again, an attempt to exempt certain home improvements completely was also declared unconstitutional in 1978, because the tax credits to be awarded to landowners for those home improvements resulting in increased property tax assessments violated the Uniformity Clause, which is intended to protect citizens against unequal or unjust taxation [State ex rel. La Follette v. Torphy, 85 Wis. 2d 94 (1978)].

In response to a request for an opinion by the Assembly Chief Clerk, the Attorney General advised the Wisconsin Assembly, on March 8, 1979, that an unintroduced site value proposal having certain specific features would be unconstitutional. The elements of the site value tax proposal

B. LEGAL DEFINITION OF LAND

Common law and most statutory laws include both the geological soil and all improvements under, in or on the soil as "land." For example, for all tax purposes in Wisconsin, the terms "real property," "real estate" and "land" include:

> ...not only the land itself but all buildings and improvements thereon, and all fixtures and rights and privileges appertaining thereto [s. 70.03, Stats.].

To avoid statutory confusion as to what precisely constitutes land and what is an improvement, statutory modification and refinement of the present statutory definition of land may be desirable if a land value tax is enacted.

Another problem related to the definition of land is the nature of the land defined. Is it an unimproved site or is it a site ready for development? Reclaimed land or land with permanent improvements (such as wells, sanitary and utility systems, roads and sidewalks) may pose problems for assessors, unless the statutory definition clearly includes or excludes such factors.

C. ASSESSMENT METHODS

In some ways, assessment practices may be simplified under a site value taxation system because only comparative land values must be determined by assessors. It would no longer be necessary to ascertain the fair market value of the very broad range of present and potential improvements which a particular parcel of land does or might sustain. On the other hand, reliance upon land alone as the principal tax base for municipalities makes accurate assessments of land values more critical for revenue generating capacity and for tax equity purposes. By contrast, errors in land valuation are likely to constitute a minor element in the assessment of land plus buildings or improvements under the current property tax mechanism, particularly in urban settings. This results because usually the improvements are significantly more valuable than the raw land -- often by several orders of magnitude.

It seems to be generally conceded by commentators that valuations of property now are often influenced by the current "use" of a particular parcel, despite statutory directions to ascertain the fair market value for its highest and best use (which implicitly ignores current use). Merely changing to a site value tax may not necessarily correct that predilection. If continued, the bias will not only undercut some of the

constitutional percentages under a land value tax system, would be legally constrained from introducing a land value tax system. Further, removal of all property improvements from the tax base in some or all municipalities may significantly curtail the potential level of permissible bonding by those local governments and school districts. In some cases, the limited tax base inherent in land value taxation may impede a municipality's capacity to borrow funds for the municipal infrastructure (such as streets or water and sewer facilities), which may be necessary to attract or retain private development projects encouraged by the site value tax itself. Bondholders of existing municipal debt may seek judicial remedies to prevent the deletion of the value of improvements from the tax base underlying the municipal debt, on the basis that such deletion would impair their security. Any statutory language proposed for the Legislature's consideration may have to grandfather a sufficient value of improvements in the tax base to cover outstanding municipal debt.

A constitutional amendment to alter the allowable percentages may respond to some of the legal issues involved in debt limits in a land value tax system -- for example, the extent of a municipality's legal authority to borrow. Whether it may adequately respond to financial market requirements for sufficient collateral (taxing power) to warrant new bonding after the conversion from a property tax to a site tax value system is not clear.

PART IV

ADMINISTRATIVE ISSUES

Inauguration of site value taxation, of course, requires a change in the assessment function. Procedures will have to be developed to isolate the value of land from the total value of an improved parcel. Secondly, appropriate review procedures and the allocation of partial interests in land must be determined.

Administratively, it is very difficult for assessors to ascertain the value of unimproved land, especially for parcels where the improvement occurred long ago with the cutting of timber or drainage of water. Therefore, it is possible that assessors will seek to compute the current market value of land in its current or recent status.

This Part only sketches several of the administrative issues which may occur with a site value tax and does not attempt to discuss them in depth. These include: (a) selection of an accurate assessment method; (b) allocation of land values to multiple landowners; (c) determination of highest and best use; and (d) modification of review and appeals procedures.

A. ASSESSMENT METHODS

Four standard methods for assessing land values are: (1) market or sales comparison, (2) land residual ("capitalization"), (3) anticipated development and (4) allocation. Sufficient sales data on unimproved land in a variety of geographic locations would be required to validate the first method under a site value taxation system. The second technique capitalizes the residual income attributable to land that is not otherwise attributable to actual or hypothetical improvements. ["Capitalization" means the determination of the present worth of a future stream of income.] This requires accurate data on income likely to be generated by the property. In the third method, site value is the present worth of a parcel if it were developed, less the cost of development under the assumption that development will occur in the near future. It requires accurate data on values of fully-developed land and in the costs of development. The fourth method of assessing assumes that a particular ratio relationship exists between the value allocated to an improvement and that to the land for each parcel. The ratio varies with the age, condition, physical characteristic and economic suitability of the improvement and requires a suitable data base.

D. REVIEWS AND APPEALS

It is quite possible that going to a new system would trigger a flurry of appeals the first few years.

However, citizen familiarity with land values is generally substantially less than with total property values. Therefore, taxpayers might be less able to detect or protest assessment errors. Moreover, sales data are likely to be unavailable or scarce, which impedes the capacity of the taxpayer to challenge an assessment of land under the site value taxation system.

One possible solution is the preparation of site value maps by the assessors. These may highlight unusual assessments, within various neighborhood areas and, thus, provide a basic tool for review and appeal procedures.

PART V

PROS AND CONS OF SITE VALUE TAXATION

This Part summarizes an extensive and detailed discussion of pros and cons of site value taxation as presented in Ch. VIII, Report Relative to Site Value Taxation, Massachusetts House Report No. 6075, prepared by the Legislative Research Council, March 12, 1980.

A. ARGUMENTS IN FAVOR

1. Economic Arguments

a. The supply, quality, rehabilitation and remodeling of buildings will increase.

b. Redevelopment of blighted urban areas will accelerate.

c. A more efficient allocation of resources will occur because the transfer of ownership to the most intensive user will be facilitated.

d. Employment opportunities will increase.

e. The increased supply of housing, office, merchandise and other units will force down rents and sale prices and, thus, make possible lower prices of products.

f. Speculative land holding will decrease.

2. Equity Arguments

a. Removing the tax on improvements eliminates an unfair tax which penalizes and discourages initiative and enterprise.

b. A tax on land is a tax on unearned income, which is more suitable for heavy taxation than a tax on improvements which are the product of labor and capital.

c. A tax on land values (or the "social surplus" or "economic rent") generally cannot be shifted from the owner whereas a tax on improvements is a taxing of social costs which can be passed on in the form of higher rents.

c. The amount of valuable land held idle will decline.

d. The level of land use with a more valuable potential will rise as the profit motive operates more effectively and brings the level of land use closer to that for which it is zoned.

e. Redevelopment of urban land will be accelerated through the economic feasibility of early and timely recycling of uses of property.

B. ARGUMENTS AGAINST

1. Neutrality of Existing System

a. The site value tax is not an ad valorem or proportional tax on the entire real estate asset. Therefore, a large segment of property value will remain untaxed.

b. A site value tax constitutes a higher percentage of the value of land-intensive real estate developments compared to those with above-average ratios of improvements to land.

c. The existing property tax system is neutral with respect to investment decisions among various alternative types of real estate investments, because the owner cannot reduce his relative tax burden by choosing a particular type of use.

2. Non-neutrality of Ad Valorem Site Tax

Land can only be productive if used. Its current and potential productivity are determined by the improvements that are or will be placed upon the land. Therefore, real estate investment decisions are decisions made with regard to land development, its nature and its timing whereas ownership of land is only part of the entire process.

3. Alleged Benefit of Capital-Intensive Use of Land

Not every case of intensive site development is a laudable activity. Whether artificial stimulation of real estate capital formation by a site value tax is a desirable objective must be decided on the basis of macro-economic public policy analyses for particular situations, rather than on a blanket policy.

c. Society already recaptures a portion of socially created values by means of the federal and state capital gains taxes and through property tax based on capital value.

d. Site value taxation will enable society to share only very slightly in the profitable activities of speculators, while taking an inordinate share from other taxpayers.

9. Control of Urban Sprawl

Site value tax advocates ignore some of the nontax reasons for urban sprawl such as larger lots, better schools or a neighborhood of young families. Business operations may seek larger lots for expansion, to be closer to transportation facilities or to escape areas with growing social problems. Moreover, labor costs are a far greater determinant in business decisions to relocate than taxes are. These factors may overwhelm the effect of the site value tax on controlling urban sprawl.

10. Control of Speculation

a. The major portion of urban land is zoned for use, not for speculation.

b. Elimination of speculation in any field largely destroys risk-taking which is a vital part of human enterprise.

c. Since speculators can be taxed only on the assessed valuation of land, the speculator's purchases and subsequent sales of land could well take place during a rapidly rising market, before reassessments are effective. Thus, speculators may evade the negative pressures of a site value tax.

JMB(DJS):kja;kjh

APPENDIX 1

THE MEMBERSHIP AND STUDY CHARGE OF THE SPECIAL COMMITTEE

INTERRELATIONSHIP OF URBAN AND RURAL POLICIES, SPECIAL COMMITTEE ON

OFFICERS

Chairperson
MICHAEL G. KIRBY
Representative
10910 West Langlade Street
Milwaukee 53225

Vice-Chairperson
HARLAND E. EVERSON
Representative
Route 3, 114 Kellogg Road
Eggerton 53534

Secretary
RICHARD KREUL
Senator
1955-12th Street
Fennimore 53809

REPRESENTATIVES

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Arlington 53911

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PUBLIC MEMBERS

LELAND MULDER
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1118 Central Avenue
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RICHARD M. SCULLION
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Highland Town Board
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Highland 53543

RICHARD SUSCHA
Mayor
828 Center Avenue
Sheboygan 53081

PROFESSOR RICHARD L. STAUBER
UW-Extension
Department of Government and
Community Development
Room 524, Lowell Hall
Madison 53706

FLORENCE WHALEN
Mayor
City Hall
P.O. Box 27
Oconomowoc 53066

Study Assignment: The Committee is directed to (1) identify and examine state programs and policies relating to preservation of agricultural lands and maintenance of urban centers to determine whether such programs are achieving their intended objectives and whether these objectives are in conflict or produce competition between urban and rural interests; (2) examine the feasibility and advisability of authorizing incorporated municipalities to levy real property taxes on the value of land only, rather than on the value of land and improvements, to determine what effect such a tax would have on the development and improvement of land within such municipalities and adjacent unincorporated territory; and (3) make recommendations for any needed modifications in the Constitution or various state programs, to assure maximum compatibility between competing or conflicting interests and to promote a consistent and coherent approach to the resolution of problems which are identified in the study. The Committee is directed to report to the Council by January 17, 1983.

Established at the May 27, 1982 Legislative Council meeting, pursuant to a May 14, 1982 letter from Rep. Michael G. Kirby and A.J.R. 32, introduced by Rep. Kirby and others.

11 Members: Appointed at the May 27, 1982 Legislative Council meeting: 4 Representatives; 1 Senator; and 6 Public Members.

Legislative Council Staff: Russ Whitesel, Senior Staff Attorney; Janice Baldwin, Senior Staff Attorney; Leslie Glustrom, Science Analyst and Kathy Annen, Secretarial Staff.

NATIONAL TAX JOURNAL

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NTA-TIA MEETINGS

Spring Symposium—Marriott Crystal Gateway Hotel
Arlington, VA, May 16–17, 1988

18th Public Utility Workshop—Wichita State University
Wichita, KS, 1988, July 24–28, 1988

81st Annual Conference—Des Moines Marriott Hotel
Des Moines, IA, September 25–28, 1988

(5) HB 475

ALASKA ASSOCIATION OF ASSESSING OFFICERS

Hon. Henry Springer, Representative
Chairman
House Commi tee, Community and Regional Affairs

CS FOR HOUSE BILL NO. 475

The Alaska Association of Assessing Officers would like to take this opportunity to inform you and the Committee of our position in regard to HB #475.

I have consulted with a majority of assessors throughout the State in regard to HB #475, and the unanimous consensus was an unqualified opposition to the bill. HB #475 contains so many problematic aspects that it is difficult to single out any one given point. Particular attention should be drawn to such ambiguities as: increases substantially, in the area, plans for, and undeveloped land. This particular language would make the implementation and administration of this bill a logistical and quantitative nightmare.

It is also felt that although the bill's intent and focus is of singular interest, it would have much further reaching and devastating impact to other areas of the assessment jurisdiction.

The bill is contradictory to State law req iring that property taxation and assessment be based on fair market value. This concept is designed for the distinct purpose of insuring the fair and equitable distribution of the local tax burden. HB #475 would destroy any semblance of equity.

Because of these concerns and other probable impacts, the Alaska Association of Assessing Officers is hereby on record as diametrically opposing HB #475 in it's entirety.

Sincerely,

Wayne Haerer, Jr.

Wayne Haerer, Jr. by (fc)
President
Alaska Association of Assessing Officers

(6) HB 475

Matanuska-Susitna Borough

P.O. BOX 1608, PALMER, ALASKA 99645-1608 • PHONE 745-9842

ASSESSMENT DEPARTMENT

APR -6 1988

APR -6 1988

April 6, 1988

TO: House Community & Regional Affairs Committee
Representative Heinrich Springer, Chairman
Committee Members - B.Cato; A.Herrmann; V.Collins; J.Zawacki

FROM: Gary A. Lewis, Borough Assessor

SUBJECT: HB475

As Assessor of a community with many rural large parcels of land, we view the exemption of property tax, based on influences of other property use, plans, or actual construction not in the public interest.

The concept presented in HB475, for a very small number of citizens, ignores important reasons for appreciation of value which are real and recognized in the market place.

Departure from the cornerstone of uniform and equitable assessment, based on market factors contained in AS29.45.110, is ominous in a state known for equity in assessment statute and practice.

This concept introduces a different standard of assessment level for classes of property. It is quite different from Farm Use Assessment where tax is partially deferred based on agricultural use and with legislative intent to maintain open space. This bill is not motivated by issues of public benefit but directed to benefit a small number of 40 acre parcel owners who can bank on increased market value resulting from adjacent development.

This bill disturbs the concept of uniformity and equity but also bases assessment on property ownership rather than market value of property. Without very strict standards defining "substantially", "plans", "major" and "time of increasing", I have professional reservation that these determinations can be made or supported. I can visualize very strong argument that a Comprehensive Land Use Plan change or proposed highway, school, resort, etc. would affect large areas and have overlapping spheres of influence which would seriously affect local governments, but, worse, increase the local effort required from those not benefitted by the major development.

For those few 40 acre plus landowners who feel threatened, opportunities exist in zoning ordinances to restrict highest and best use of property and thus affect value assessed.

cc: Wayne Haerer, President AAAO
Mike Worley - State Assessor
Scott Burgess - AML Exec. Director