

(Revised 07/28/16)

**UNOFFICIAL COPY:  
PENNSYLVANIA FARMLAND AND FOREST LAND  
ASSESSMENT ACT OF 1974**

**The "Clean and Green Law"**

The following is an unofficial copy of the Pennsylvania Farmland and Forest Land Assessment Act of 1974 (Act of December 19, 1974, P.L. 973, No. 319)(72 P.S. §§ 5490.1 - 5490.13). This statute is more commonly referred to as the "**Clean and Green Law**." The document reflects all revisions to this statute through Act 89 of 2016, which was immediately effective as of July 20, 2016. **The new language added by Act 89 of 2016 is highlighted.**

This document is "unofficial" because it has been retyped. Any discrepancies between this document and the official statute shall be resolved in favor of the official statute. This document has been prepared by the Pennsylvania Department of Agriculture, Bureau of Farmland Preservation.

Section numbers refer to the corresponding section in Title 72 of Purdon's Statutes.

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**§ 5490.1. Short title**

This act shall be known and may be cited as the "Pennsylvania Farmland and Forest Land Assessment Act of 1974."

**§ 5490.2. Definitions**

As used in this act, the following words and phrases shall have the meanings ascribed to them in this section unless the context obviously otherwise requires:

**"Agricultural commodity."** Any of the following:

- (1) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.
- (2) Pasture.

- (3) Livestock and the products thereof.
- (4) Ranch-raised furbearing animals and the products thereof.
- (5) Poultry and the products of poultry.
- (6) Products commonly raised or produced on farms which are:
  - (i) intended for human consumption; or
  - (ii) transported or intended to be transported in commerce.
- (7) Processed or manufactured products of products commonly raised or produced on farms which are:
  - (i) intended for human consumption; or
  - (ii) transported or intended to be transported in commerce.
- (8) Compost.<sup>1</sup>

**"Agricultural reserve."** Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for such use, without charge or fee, on a nondiscriminatory basis. The term includes any land devoted to the development and operation of an alternative energy system, if a majority of the energy annually generated is utilized on the tract.

**"Agricultural use."** Land which is used for the purpose of producing an agricultural commodity or is devoted to and meets the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government. The term includes:

- (1) any farmstead land on the tract;
- (2) a woodlot;
- (3) any land which is rented to another person and used for the purpose of producing an agricultural commodity; and
- (4) any land devoted to the development and operation of an alternative energy system, if a majority of the energy annually generated is utilized on the tract.

**"Agritainment."** Farm-related tourism or farm-related entertainment activities, which are permitted or authorized by a landowner in return for a fee on agricultural land for

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<sup>1</sup> "Compost" was added by Act 190 of 2012 (Effective October 24, 2012).

recreational or educational purposes. The term includes, but is not limited to, corn mazes, hay mazes, farm tours and hay rides. The term does not include activities authorized under section 8(d).

**"Alternative energy."** Electricity, heat or other usable form of energy generated from a Tier I energy source.

**"Alternative energy system."** A facility or energy system that utilizes a Tier I energy source to generate alternative energy. The term includes a facility or system that generates alternative energy for utilization onsite or for delivery of the energy generated to an energy distribution company or to an energy transmission system operated by a regional transmission organization.

**"Capitalization rate."** The percentage rate used to convert income to value, as determined by the most recent five-year rolling average of fifteen-year fixed loan interest rates offered to landowners by the Federal Agricultural Mortgage Corporation or other similar Federal agricultural lending institution, adjusted to include the landowner's risk of investment and the effective tax rate.

**"Compost."** Material resulting from the biological digestion of dead animals, animal waste or other biodegradable materials, at least fifty percent (50%) by volume of which is comprised of products commonly produced on farms.<sup>2</sup>

**"Contiguous tract."** All portions of one operational unit as described in the deed or deeds, whether or not the portions are divided by streams, public roads or bridges and whether or not the portions are described as multiple tax parcels, tracts, purparts or other property identifiers. The term includes supportive lands, such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams.

**"Contributory value of farm building."** The value of the farm building as an allocated portion of the total fair market value assigned to the tract, irrespective of replacement cost of the building.

**"County commissioners."** The Board of County Commissioners or other similar body in home rule charter counties.

**"Curtilage."** The land surrounding a residential structure and farm building used for a yard, driveway, on-lot sewage system or access to any building on the tract.

**"Department."** The Department of Agriculture of the Commonwealth.

**"Farm building."** A structure utilized to store, maintain or house farm implements, agricultural commodities or crops, livestock and livestock products, as defined in the act

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<sup>2</sup> Compost" was added by Act 190 of 2012 (Effective October 24, 2012).



of June 30, 1981 (P.L. 128, No. 43),<sup>3</sup> known as the "Agricultural Area Security Law."

**"Farmstead land."** Any curtilage and land situated under a residence, farm building or other building which supports a residence, including a residential garage or workshop.

**"Forest reserve."** Land, ten acres or more, stocked by forest trees of any size and capable of producing timber or other wood products. The term includes any land devoted to the development and operation of an alternative energy system, if a majority of the energy annually generated is utilized on the tract.

**"Income approach."** The method of valuation which uses a capitalization rate to convert annual net income to an estimate of present value. Present value is equal to the net annual return to land divided by the capitalization rate.

**"Land use category."** Agricultural use, agricultural reserve or forest reserve.

**"Net return to land."** Annual net income per acre after operating expenses are subtracted from gross income. Calculation of operating expenses shall not include interest or principal payments.

**"Recreational activity."** Includes, but is not limited to:

- (1) Hunting.
- (2) Fishing.
- (3) Swimming.
- (4) Access for boating.
- (5) Animal riding.
- (6) Camping.
- (7) Picnicking.
- (8) Hiking.
- (9) Agritainment activities.
- (10) Operation of nonmotorized vehicles.
- (11) Viewing or exploring a site for aesthetic or historical benefit or for entertainment.
- (12) Operation of motorized vehicles if the operation is:
  - (I) Over an existing lane and incidental to an activity described in paragraphs (1) through (10); or
  - (II) Necessary to remove an animal which has been hunted under paragraph (1).

**"Roll-back tax."** The amount equal to the difference between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had that land been valued, assessed and taxed as other land in the taxing district in the current tax year, the year of change, and in six of the previous tax years or the number of years of preferential assessment up to seven.

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<sup>3</sup> 3 P.S. § 901 *et seq.*



**"Separation."** A division, by conveyance or other action of the owner, of lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the provisions of this act, into two or more tracts of land, the use of which continues to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 3.<sup>4</sup>

**"Split-off."** A division, by conveyance or other action of the owner, of lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the provisions of this act into two or more tracts of land, the use of which on one or more of such tracts does not meet the requirements of section 3.

**"Tier I energy source."** A Tier I alternative energy source, as defined in section 2 of the act of November 30, 2004 (P.L. 1672, No. 213), known as the "Alternative Energy Portfolio Standards Act."<sup>5</sup>

**"Tract."** A lot, piece or parcel of land. The term does not refer to any precise dimension of land.

**"USDA-ERS."** The United States Department of Agriculture-Economic Research Service.

**"USDA-NRCS."** The United States Department of Agriculture-Natural Resources Conservation Service.

**"Woodlot."** An area of less than ten acres, stocked by trees of any size and contiguous to or part of land in agricultural use or agricultural reserve.

### **§ 5490.3. Land devoted to agricultural use, agricultural reserve, and/or forest reserve**

(a) For general property tax purposes, the value of land which is presently devoted to agricultural use, agricultural reserve, and/or forest reserve shall, on application of the owner and approval thereof as hereinafter provided, be that value which such land has for its particular land use category if it also meets the following conditions:

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<sup>4</sup> 72 P.S. § 5490.3.

<sup>5</sup> The Alternate Energy Portfolio Standards Act is at 73 P.S. §§ 1648.1 – 1648.8. As of the date of preparation of this document, the term "Tier I Energy Source" is defined (at 73 P.S. § 1648.2) as follows:

"Tier I alternative energy source." Energy derived from:

- (1) Solar photovoltaic energy.
- (2) Wind power.
- (3) Low-impact hydropower.
- (4) Geothermal energy.
- (5) Biologically derived methane gas.
- (6) Fuel cells.
- (7) Biomass energy.
- (8) Coal mine methane.

(1) Land presently devoted to agricultural use: Such land was devoted to agricultural use the preceding three years and is not less than ten contiguous acres in area, including the farmstead land, or has an anticipated yearly gross income of at least two thousand dollars (\$ 2,000).

(2) Land presently devoted to agricultural reserve: Such land is not less than ten contiguous acres in area, including the farmstead land.

(3) Land presently devoted to forest reserve: Such land is not less than ten contiguous acres in area, including the farmstead land.

(a.1) The following apply to enrollment:

(1) A landowner may enroll one tract or more than one contiguous tract for preferential assessment if the total area to be enrolled meets the minimum requirements for eligibility otherwise prescribed in this section. A landowner may not enroll less than the entire contiguous portion of land described in the deed applicable to a tract for which enrollment for preferential assessment is sought.

(2) A tract of land which is used for agricultural use, agricultural reserve or forest reserve purposes may be enrolled for preferential assessment notwithstanding that the tract itself does not meet the minimum requirements for eligibility otherwise prescribed in this section if the tract is contiguous to a tract or tracts which have been previously enrolled by the landowner for preferential assessment.

(a.2) Land area that is burdened by a public or private road, right-of-way or easement shall be included in determining whether the condition for minimum contiguous area required under subsection (a) has been met. <sup>6</sup>

(b), (c) Deleted.

(d) The county board of assessment appeals may not terminate preferential assessment of land previously determined by the board to qualify for preferential assessment without:

(1) written notice under section 4(c.1)<sup>7</sup> from the landowner expressing that preferential assessment is to be terminated; or

(2) written notice under section 5(a)(2)<sup>8</sup> from the county assessor to the landowner that preferential assessment is to be terminated, stating the reason for such termination and the opportunity for a hearing under section 9.<sup>9</sup>

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<sup>6</sup> This subsection was added by Act 89 of 2016 (effective July 20, 2016).

<sup>7</sup> 72 P.S. § 5490.4.

<sup>8</sup> 72 P.S. § 5490.5.

<sup>9</sup> 72 P.S. § 5490.9.



(e) A county assessor may not impose any requirements or conditions of eligibility for preferential assessment other than those otherwise prescribed in this section.

(f) A tract of land enrolled in either the agricultural use or forest reserve land use category and otherwise eligible for preferential assessment under this section shall not be deemed ineligible because the owner of the tract of land permits or authorizes, or has permitted or authorized, a recreational activity on the tract pursuant to section 8(f).

(g)

(1) The county commissioners may adopt an ordinance to include farmstead land in the total use value for land in agricultural reserve. Any ordinance adopted pursuant to this subsection shall be applied uniformly to all land in agricultural reserve in the county.

(2) The county commissioners may adopt an ordinance to include farmstead land in the total use value for land in forest reserve. Any ordinance adopted pursuant to this subsection shall be applied uniformly to all land in forest reserve in the county.

#### **§ 5490.4. Applications for preferential assessments**

(a) The county board for assessment appeals shall have the responsibility to accept and process applications for preferential assessments as prescribed by this act.

(a.1) A complete and accurate application for preferential assessment shall be accepted by a county board for assessment appeals or a county assessor if the provisions of section 3<sup>10</sup> are met. All applications for preferential assessment shall be processed in every county in a timely manner to become effective for the tax year of each taxing body which commences in the calendar year immediately following the application deadline.

(b) Each owner of land qualifying under this act as agricultural use, agricultural reserve and/or forest reserve, desiring preferential use assessment shall make application to the county board of assessment appeals of the county in which the land is located. Except as provided in subsection (b.1), such application must be submitted on or before June 1 of the year immediately preceding the tax year. Preferential assessment shall continue under the initial application or an application amended under subsection (f) until land use change takes place.

(b.1) In a year when a reassessment is implemented, the application must be submitted within thirty days of the final order of the county board for assessment appeals or by October 15 of the same year, whichever is sooner, regardless of whether or not judicial review of the order is sought.

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<sup>10</sup> 72 P.S. § 5490.3.



(b.2) A landowner may apply for preferential assessment for any eligible land in any county, regardless of the landowner's county of residence and whether or not the residence of the landowner is situated on the land submitted for application.

(b.3) One application may include more than one land use category.

(c) There shall be uniform application forms for preferential assessment in all counties. Such application forms shall be developed by the department. In addition to the information which the department shall deem appropriate, the following statement shall be included:

"The applicant for preferential assessment hereby agrees, if his application is approved for preferential assessment, to submit thirty days'-notice to the county assessor of a proposed change in use of the land, a change in ownership of a portion of the land or of any type of division or conveyance of the land. The applicant for preferential assessment hereby acknowledges that, if his application is approved for preferential assessment, roll-back taxes under section 5.1<sup>11</sup> of the act may be due for a change in use of the land, a change in ownership of any portion of the land, or any type of division or conveyance of the land."

(c.1) A landowner receiving preferential assessment under this act shall submit 30 days' notice to the county assessor of a proposed change in use of the land, a change in ownership of any portion of the land, or any type of division or conveyance of the land.

(d) The approved application for preferential assessment shall be recorded by the county board for assessment appeals in the office of the recorder of deeds for the county in a preferential assessment docket. A breach of the preferential assessment shall also be recorded by the county board for assessment appeals in the office of the recorder of deeds. The recorder shall charge a fee for the recordings in accordance with the acts relating to the imposition of fees by recorders of deeds. The recorder of deeds may not impose a fee unless an application for preferential assessment is approved by the county board for assessment appeals. The fee for recording the breach of the preferential assessment shall be added onto the total of the roll-back taxes due and shall be paid by the owner of the property.

(e) The county board for assessment appeals may impose a fee for processing applications for preferential assessment of no more than fifty dollars (\$ 50).

(f) Amendments to initial application shall be as follows:

(1) When a landowner receiving preferential assessment changes a deed as a result of a split-off, separation, transfer or change of ownership, the county board for assessment appeals shall adjust the initial application to reflect the deed change. Such change shall be recorded in accordance with subsection (d).

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<sup>11</sup> 72 P.S. § 5490.5a.

Recording fees shall be paid by the landowner and the county assessor may not impose any additional fees for amending an application.

(2) Preferential assessment on land which continues to meet the provisions of section 3 shall not lapse and shall continue at the same rate previously established under section 4.2.<sup>12</sup>

#### **§ 5490.4a. Responsibilities of department**

(a) By June 30, 1999, and by May 1 of each year thereafter, the department shall establish and provide to all county assessors county-specific use values for land in agricultural use and agricultural reserve in accordance with this section.

(b) When establishing county-specific use values for land in agricultural use and agricultural reserve, the department shall consult with the Department of Agricultural Economics and Rural Sociology of the College of Agricultural Sciences at The Pennsylvania State University, the Pennsylvania Agricultural Statistics Service, USDA-ERS, USDA-NRCS and other sources as the department deems appropriate and shall use the income approach for asset valuation.

(c) By June 30, 1999, and by May 1 of each year thereafter and in consultation with the Bureau of Forestry of the Department of Conservation and Natural Resources, the department shall establish and provide to all county assessors **county-specific**<sup>13</sup> use values for land in forest reserve.

#### **§ 5490.4b. Responsibilities of county assessor in establishing use values**

(a) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use, including farmstead land, and for land in agricultural reserve by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS Agricultural Land Capability Classification system and other information available from USDA-ERS, The Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings shall be used.

(b) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve by considering available evidence of capability of the land for its particular use. Contributory value of farm buildings shall be used.

**(b.1)**

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<sup>12</sup> 72 P.S. § 5490.4b.

<sup>13</sup> The phrase "county-specific" was added by Act 89 of 2016 (effective July 20, 2016).



(1) Except as provided in paragraph (2) and subject to the provisions of subsections (c), (c.1), (c.2), (c.3) and (c.4), for any county in which preferential assessment of land enrolled in forest reserve is based on county-specific values established by the department under section (4.1)(c), a county assessor may apply a use value for land enrolled in forest reserve that equals the average of all subcategories of forest reserve use values established by the department.

(2) Subject to the provisions of subsections (c), (c.1), (c.2), (c.3) and (c.4), if a landowner provides a statement defining the predominate forest classification type on the enrolled land, the county assessor shall apply to that land the value established for that forest type.<sup>14</sup>

(c) A county assessor may establish use values which are less than the values provided by the department under section 4.1,<sup>15</sup> but lesser values shall be applied uniformly to all land in the county eligible for preferential assessment.

(c.1) A county assessor shall apply the use values in effect on the effective date of this subsection until such time as a countywide reassessment of real property values is implemented.<sup>16</sup>

(c.2) Subject to the limitation in subsection (c.4), a county assessor shall recalculate and apply for the year in which a countywide reassessment of real property values is being implemented use values for land in each land use category using the criteria established under subsections (a), (b) and (c). The use values determined by the county assessor under this subsection in the year that a countywide reassessment of real property values is implemented shall be applied as follows:

(1) to all properties enrolled in preferential assessment in the year of the countywide reassessment;

(2) to each application for preferential assessment filed with the county assessor in the year of the countywide reassessment; or

(3) to all land enrolled in preferential assessment for the years following a countywide reassessment until a subsequent countywide reassessment of real property values is implemented.<sup>17</sup>

(c.3) The use value applied to land under subsection (c.1) or (c.2) may not be changed for any property until such time as a subsequent countywide reassessment of real property values is implemented, unless there is a reclassification of land or portion of land to a different land use category as otherwise provided for under this act, in which

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<sup>14</sup> This subsection was added by Act 89 of 2016 (effective July 20, 2016).

<sup>15</sup> 72 P.S. § 5490.4a.

<sup>16</sup> This subsection was added by Act 89 of 2016 (effective July 20, 2016).

<sup>17</sup> This subsection was added by Act 89 of 2016 (effective July 20, 2016).



case the use value to be applied to that land or portion of land shall be the use value applicable to the particular land use category for which the land was reclassified.<sup>18</sup>

(c.4)

(1) A county assessor may not, under any circumstances, establish or apply a use value to any land enrolled as agricultural use, agricultural reserve or forest reserve:

(i) that is greater than the assessment value that would apply to the land if the land were not enrolled in preferential assessment; or

(ii) that is greater than the county-specific use value applicable to that land established by the department under section (4.1).

(2) A county assessor shall apply the lower of the values under clause (i) or (ii), or a value established under subsection (c).<sup>19</sup>

(d) For purposes of this section:

(1) Farmstead land located within an area enrolled as agricultural use shall be assessed at agricultural use value.

(2) Farmstead land located within an area enrolled as agricultural reserve or forest reserve shall be assessed at agricultural use value if either:

(i) A majority of land in the application for preferential assessment is enrolled as agricultural use land; or

(ii) In the circumstance that noncontiguous tracts of land are enrolled under one application, a majority of land on the tract where the farmstead land is located is enrolled as agricultural use land.

**§ 5490.5. Responsibilities of the county assessor in general**

(a) In addition to keeping such records as are now or hereafter required by law, it shall be the duty of the county assessor:

(1) To indicate on property record cards, assessment rolls, and any other appropriate records, the fair market value, the normal assessed value, the land use category and the number of acres enrolled in each land use category, the use value under section 4.2<sup>20</sup> and the preferentially assessed value of each parcel granted

<sup>18</sup> This subsection was added by Act 89 of 2016 (effective July 20, 2016).

<sup>19</sup> This subsection was added by Act 89 of 2016 (effective July 20, 2016).

<sup>20</sup> 72 P.S. § 5490.4b.

preferential use assessments under this act; and annually, to record on such records all changes, if any, in the fair market value, the normal assessed value, the land use category and the number of acres enrolled in each land use category, the use value under section 4.2 and the preferentially assessed value of such properties.

(2) To notify in writing the appropriate taxing bodies and landowner of any preferential assessments granted or terminated for each parcel, including the land use category and the number of acres enrolled in each land use category, within their taxing jurisdiction and of the reason for termination within five days of such change. There shall be a right of appeal as provided by section 9.

(3) To notify in writing the owner of a property that is preferentially assessed under this act, and the taxing bodies of the district in which such property is situated, of any changes in the fair market value, the normal assessed value, the land use category and the number of acres enrolled in each land use category, the use value under section 4.2 or the preferentially assessed value within five days of such change. There shall be a right of appeal as provided for in section 9.<sup>21</sup>

(4) To maintain a permanent record of the tax rates, in mills, levied by each of the taxing authorities in the county for each tax year.

(5) By January 31 of each year, to report to the department for the previous year the number of acres enrolled in each land use category, the number of acres terminated in each land use category, the dollar amount received as roll-back taxes and the dollar amount received as interest on roll-back taxes.

(b) It shall be the duty of the county assessor, as set forth under section 8(c),<sup>22</sup> to calculate roll-back taxes, give notice of the amounts due to landowners and interested parties and to file liens for unpaid roll-back taxes.

(b.1) With respect to the development of an alternative energy system which continues to meet the definition of agricultural use, agricultural reserve or forest reserve, the land devoted to that development and operation shall retain the same land use category for preferential assessment as was approved for the land before the devotion took place.

(c) The preferential use assessments granted under this act shall be considered by the State Tax Equalization Board in determining the market value of taxable real property for school subsidy purposes. The State Tax Equalization Board shall not reflect the individual school district market value decrease, as it relates to agricultural land, when certifying the Statewide market value to the Department of Education.

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<sup>21</sup> 72 P.S. § 5490.9.

<sup>22</sup> 72 P.S. § 5490.8.



#### **§ 5490.5a. Penalty for ineligible use**

If a landowner removes land from preferential assessment under section 8.1, if a landowner changes the use of any tract of land subject to preferential assessment under the act to one which is inconsistent with the provisions of section 3<sup>23</sup> or if for any other reason the land is removed from a land use category under section 3, except for a condemnation of the land, the land so removed and the entire tract of which it was a part shall be subject to roll-back taxes plus interest on each year's roll-back tax at the rate of six percent (6%) per annum. After the first seven years of preferential assessment, the roll-back tax shall apply to the seven most recent tax years.

#### **§ 5490.5b. Civil penalties**

(a) The county board for assessment appeals may assess a civil penalty of not more than one hundred dollars (\$100) upon a person for each violation of this act or any regulation promulgated under this act.

(b) If a civil penalty is assessed against a person under subsection (a), the county board for assessment appeals must notify the person by certified mail of the nature of the violation and the amount of the civil penalty and that the person may notify the county board for assessment appeals in writing within ten calendar days that the person wishes to contest the civil penalty. If, within ten calendar days from the receipt of that notification, the person does not notify the county boards for assessment appeals of intent to contest the assessed penalty, the civil penalty shall become final.

(c) If timely notice of the intent to contest the civil penalty is given, the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. Ch. 5 Subch. B (relating to practice and procedure of local agencies) and Ch. 7 Subch. B (relating to judicial review of local agency action).

#### **§ 5490.6. Split-off, separation or transfer; Leasing for Wireless Service; Utilization of Land or Conveyance of Rights for Exploration or Extraction of Gas, Oil or Coal Bed Methane; Utilization of Land for Commercial Alternative Energy Generation; Death of Landowner; Temporary Leases.**

(a.1)

(1) The split-off of a part of land which is subject to preferential assessment under this act shall subject the land so split off and the entire tract from which the land was split off to roll-back taxes as set forth in section 5.1,<sup>24</sup> except as provided in this subsection. The landowner who conducts the split-off shall be

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<sup>23</sup> 72 P.S. § 5490.3.

<sup>24</sup> 72 P.S. § 5490.5a.



liable for payment of roll-back taxes. If one of the following provisions apply, roll-back taxes under section 5.1 shall only be due as provided in this subsection:

(i) The tract or tracts split off do not exceed two acres annually, except that a maximum of the minimum residential lot size requirement annually may be split off if the property is situated in a local government unit which requires a minimum residential lot size of two to three acres; the tract or tracts split off are used only for agricultural use, agricultural reserve or forest reserve or for the construction of a residential dwelling to be occupied by the person to whom the land is conveyed; and the total tract or tracts so split off do not exceed the lesser of ten acres or ten percent (10%) of the entire tract subject to preferential assessment.

(ii) The split-off occurs through a condemnation.

(2) Each tract which has been split off under and meets the provisions of paragraph (1)(i) shall be subject to roll-back taxes for such a period of time as provided in section 5.1. The landowner who conducts the split-off shall be liable for payment of roll-back taxes, which shall only be due with respect to the split-off portion of land. If the owner of the tract which has been split off under paragraph (1)(i) subsequently changes the use of that land to an ineligible use, the owner of the original tract which continues to be eligible for preferential assessment shall not be liable for any roll-back taxes triggered as a result.

(2.1) No roll-back taxes shall be due for a split-off described in paragraph (1)(ii).

(3) The split-off of a tract of land which meets the provisions of paragraph (1) shall not invalidate the preferential assessment on any land retained by the landowner which continues to meet the provisions of section 3.<sup>25</sup>

(4) Payment of roll-back taxes by the liable landowner shall not invalidate the preferential assessment on any land which continues to meet the provisions of section 3.

(5) Any person may bring an action in equity to enjoin use of the land inconsistent with the use provided in this subsection.

(6) Land which has been split off shall be deemed to be used for residential use, agricultural use, agricultural reserve or forest reserve unless it is demonstrated that the owner of the split-off parcel is actively using the tract in a manner which is inconsistent with residential use, agricultural use, agricultural reserve or forest reserve.

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<sup>25</sup> 72 P.S. § 5490.3.

(a.2) The owner of land subject to preferential assessment may separate land. If a separation occurs, all tracts formed by the separation shall continue to receive preferential assessment unless, within seven years of the separation, there is a subsequent change of use to one inconsistent with the provisions of section 3. Such subsequent change in use shall subject the entire tract so separated to roll-back taxes as set forth in section 5.1. The landowner changing the use of the land to one inconsistent with the provisions of section 3 shall be liable for payment of roll-back taxes. After seven years from the date of the separation, only that portion of land which has had its use changed to one which is inconsistent with the provisions of section 3 shall be subject to roll-back taxes as set forth in section 5.1. Payment of roll-back taxes shall not invalidate the preferential assessment on any land which continues to meet the provisions of section 3.

(a.3) If ownership of land subject to a single application for preferential assessment is transferred to another landowner, the land shall continue to receive preferential assessment, and no roll-back taxes shall be due unless there is a subsequent change of use to one inconsistent with the provisions of section 3. The landowner changing the use of the land to one inconsistent with the provisions of section 3 shall be liable for payment of roll-back taxes. Payment of roll-back taxes shall not invalidate the preferential assessment on any land which continues to meet the provisions of section 3.

(b.1) The owner of property subject to preferential assessment may lease land covered by the preferential assessment to be used for wireless or cellular telecommunication when the following conditions are satisfied:

- (1) The tract of land so leased does not exceed one-half of an acre.
- (2) The tract of land does not have more than one communication tower.
- (3) The tract of land is accessible.
- (4) The tract of land is not sold or subdivided. A lease of land shall not be considered a subdivision under this paragraph.

(b.2) Use of land under this section for wireless services other than wireless telecommunications may only qualify if such wireless services share a tower with a wireless telecommunications provider as provided for in subsection (b.1). Roll-back taxes shall be imposed upon the tract of land leased by the landowner for wireless or cellular telecommunications purposes and the fair market value of that tract of land shall be adjusted accordingly. The lease of such a tract of land shall not invalidate the preferential assessment of the land which is not so leased, and such land shall continue to be eligible for preferential assessment if it continues to meet the requirements of section 3.

(b.3) The wireless or cellular communications provider shall be solely responsible for obtaining required permits in connection with any construction on a tract of land which it leases pursuant to the provisions of this section for telecommunications purposes. No permit requested pursuant to this section shall be denied by a municipality for any reason



other than failure to strictly comply with permit application procedures.

(c) Deleted.

(c.1) The following apply:

(1) Land subject to preferential assessment may be leased or otherwise devoted to the exploration for and removal of gas and oil, including the extraction of coal bed methane, and the development of appurtenant facilities, including new roads and bridges, pipelines and other buildings or structures, related to exploration for and removal of gas and oil and the extraction of coal bed methane.

(2) Portions of land subject to preferential assessment may be used for exploration for and removal of gas and oil, including the extraction of coal bed methane, and the development of appurtenant facilities, including new roads and bridges, pipelines and other buildings or structures, related to those activities.

(3) Roll-back taxes shall be imposed upon those portions of land actually devoted to activities set forth in paragraph (2), excluding land devoted to subsurface transmission or gathering lines, which shall not be subject to roll-back tax. The portion of land subject to roll-back tax shall be the well site and land which is incapable of being immediately used for the agricultural use, agricultural reserve or forest reserve activities required under section 3, as determined when a well production report is first due to the Department of Environmental Protection as required by section 212 of the act of December 19, 1984 (P.L. 1140, No. 223), known as the "Oil and Gas Act," and 25 Pa. Code § 78.121 (relating to annual production report) or its subsequent version. A copy of this report shall be provided by the Department of Environmental Protection to the county assessor within ten days of its submission. The fair market value of the well site and land which is incapable of being immediately used for the agricultural use, agricultural reserve or forest reserve activities required under section 3 shall be adjusted retroactively to the date a permit was approved under section 201 of the "Oil and Gas Act." The tax calculated based on the adjusted fair market value shall be due and payable in the tax year immediately following the year in which a production report is provided to the county assessor. Roll-back taxes shall become due upon the receipt of a well production report by the county assessor. The utilization of a portion of land for activities set forth in paragraph (2) shall not invalidate the preferential assessment of the land which is not so utilized and the land shall continue to receive preferential assessment if it continues to meet the requirements of section 3.<sup>26</sup>

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<sup>26</sup> These are the specific changes that were made to this paragraph by Act 35 of 2011 (Effective July 7, 2011):

(3) Roll-back taxes shall be imposed upon those portions of land actually devoted to activities set forth in paragraph (2), excluding land devoted to subsurface transmission or gathering lines, which shall not be subject to roll-back tax. The portion of land subject to roll-back tax shall be the [restored] well site and land which is incapable of being immediately used for the agricultural use, agricultural reserve or forest reserve activities required under section 3, as [measured from the]



(4) Notwithstanding paragraph (3), no roll-back tax shall be imposed upon a landowner for activities related to the exploration for or removal of oil or gas, including the extraction of coal bed methane, conducted by parties other than the landowner that hold the rights to conduct such activities pursuant to an instrument, conveyance or other vesting of the rights if the transfer of the rights occurred:

(i) before the land was enrolled for preferential assessment under this act; and

(ii) before the effective date of this section.

(c.2) The following shall apply:

(1) Portions of land subject to preferential assessment may be leased or otherwise devoted to a wind power generation system.

(2) Roll-back taxes shall be imposed upon those portions of the land actually devoted by the landowner for wind power generation system purposes and the fair market value of those portions of the land shall be adjusted accordingly. The wind power generation system shall include the foundation of the wind turbine and the area of the surface covered by the appurtenant structures, including, but not limited to, new roads and bridges, transmission lines, substations and other buildings or structures related to the wind power generation system. The utilization of a portion of the land for a wind power generation system shall not invalidate the preferential assessment of land which is not so utilized, and such land shall continue to receive preferential assessment if it continues to meet the requirements of section 3. An owner who is subject to roll-back taxes under this subsection shall submit a notice of installation of a wind power generation system to the county assessor no later than thirty days following the commencement of

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determined when a well ~~[site restoration]~~ production report ~~[approved by]~~ is first due to the Department of Environmental Protection as required by section 212 of the act of December 19, 1984 (P.L. 1140, No. 223), known as the "Oil and Gas Act," and 25 Pa. Code ~~[78.65 (relating to site restoration)]~~ § 78.121 (relating to annual production report) or its subsequent version. A copy of this report shall be ~~[submitted]~~ provided by the Department of Environmental Protection to the county assessor within ten days of its ~~[approval]~~ submission. The fair market value of the ~~[restored]~~ well site and land which is incapable of being immediately used for the agricultural use, agricultural reserve or forest reserve activities required under section 3 shall be adjusted retroactively to the date a permit was approved under section 201 of ~~[the act of December 19, 1984 (P.L. 1140, No. 223), known as]~~ the "Oil and Gas Act." The tax calculated based on the adjusted fair market value shall be due and payable in the tax year immediately following the year in which a production report is provided to the county assessor. Roll-back taxes shall become due upon the ~~[filing of the approved well site restoration]~~ receipt of a well production report ~~[with]~~ by the county assessor. The utilization of a portion of land for activities set forth in paragraph (2) shall not invalidate the preferential assessment of the land which is not so utilized and the land shall continue to receive preferential assessment if it continues to meet the requirements of section 3.

electricity generation at the wind power generation system.

(c.3) The owner of property subject to preferential assessment may temporarily lease a portion of the land for pipe storage yards, provided, however, that roll-back taxes shall be imposed upon those portions of land subject to preferential assessment that are temporarily leased or otherwise devoted for pipe storage yards, and the fair market value of those portions of land shall be adjusted accordingly. The imposition of roll-back taxes of portions of land temporarily leased or devoted for pipe storage yards shall not invalidate the preferential assessment of land which is not so leased or devoted, and that land shall continue to be eligible for preferential assessment if it continues to meet the requirements of section 3. Only one lease under this subsection is permitted to a landowner, and a copy of the lease shall be provided to the county assessor within ten days of its signing by the landowner. The lease shall not exceed two years and shall not be extended or renewed. Following the expiration of the lease, the land shall be restored to the original use which qualified it for preferential assessment.

(c.4) The following apply:

(1) The owner of property subject to preferential assessment may lease or otherwise devote land subject to preferential assessment to small noncoal surface mining, as provided for under the act of December 19, 1984 (P.L. 1093, No. 219), known as the "Noncoal Surface Mining Conservation and Reclamation Act."<sup>27</sup>

(2) Roll-back taxes shall be imposed upon those portions of land leased or otherwise devoted to small noncoal surface mining and the fair market value of those portions of the land shall be adjusted accordingly. Roll-back taxes on those portions of the land shall not invalidate the preferential assessment of the land which is not leased or devoted to small noncoal surface mining and the land shall continue to be eligible for preferential assessment if it continues to meet the requirements of section 3.

(3) Only one small noncoal surface mining permit may be active at any time on land subject to a single application for preferential assessment.<sup>28</sup>

(d) Upon the death of a landowner receiving preferential assessment under this act, if land subject to preferential assessment is divided among the beneficiaries designated as class A for inheritance tax purposes and, as a result of such division, one or more tracts no longer meet the provisions of section 3, no roll-back tax shall be due on any of the land which previously qualified for preferential assessment. A subsequent change in the use of one such beneficiary's portion of the divided land shall not subject any other beneficiary's portion of the divided land to roll-back taxes. Roll-back taxes shall be due only in accordance with the provisions of section 5.1 on the tract held by the beneficiary who changes the use of any portion of his or her inheritance.

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<sup>27</sup> 52 P.S. § 3301 *et seq.*

<sup>28</sup> This subsection was added by Act 34 of 2011 (Effective July 7, 2011).



(e) Any change in use of land subject to preferential assessment shall be in compliance with the zoning ordinances of the local municipality, if in effect.

#### **§ 5490.7. Contiguous land in more than one taxing district**

Where contiguous land in agricultural use, agricultural reserve, and/or forest reserve in one ownership is located in more than one taxing district, compliance with the minimum area requirement under section 3<sup>29</sup> shall be determined on the basis of the total area of such land and not the area which is located in the particular taxing district.

#### **§ 5490.8. Roll-back taxes; special circumstances**

(a) Deleted.

(b) Unpaid roll-back taxes shall be a lien upon the property collectible in the manner provided by law for the collection of delinquent taxes. Roll-back taxes shall become due on the date of change of use or on the date a well site restoration report is filed with the county assessor under section 6(c.1)(3), or with regard to a wind power generation system under section 6(c.2), on the date the notice of installation of the system is received by the county assessor, or any other termination of preferential assessment and shall be paid by the owner of the land at the time of change in use, or any other termination of preferential assessment, to the county treasurer or to the tax claim bureau, as the case may be, whose responsibility it shall be to make proper distribution of the taxes to the taxing bodies wherein the property is located. Nothing in this section shall be construed to require the taxing body of a taxing district in which land enrolled in preferential use is situated to accept the roll-back taxes due and payable to that taxing district if the use of the land is changed for the purpose of granting or donating such land to:

(1) a school district;

(2) a municipality;

(3) a county;

(4) a volunteer fire company;

(5) a volunteer ambulance service;

(6) a not-for-profit corporation, tax exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 501(c)(3)), provided that, prior to accepting ownership of the land, such corporation enters into an agreement with the municipality wherein the subject land is located guaranteeing that it will be used exclusively for recreational purposes, all of which shall be

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<sup>29</sup> 72 P.S. § 5490.3.

available to the general public free of charge. In the event the corporation changes the use of all or a portion of the land or charges admission or any other fee for the use or enjoyment of the facilities, the corporation shall immediately become liable for all roll-back taxes and accrued interest previously forgiven pursuant hereto; or

(7) a religious organization for construction or regular use as a church, synagogue or other place of worship, including meeting facilities, parking facilities, housing facilities and other facilities which further the religious purposes of the organization.

(b.1) Any accrued interest on roll-back taxes shall become due on the date of change of use or any other termination of preferential assessment and shall be paid by the landowner liable for roll-back taxes, at the time of change in use or any other termination of preferential assessment, to the county treasurer. The county treasurer shall make proper distribution of the interest to the county commissioners and the county comptroller, as the case may be, who shall properly designate all of the interest for use by the county board of the eligible county under the act of June 30, 1981 (P.L. 128, No. 43),<sup>30</sup> known as the "Agricultural Area Security Law." The interest shall be in addition to other local money appropriated by an eligible county for the purchase of agricultural conservation easements under section 14.1(h)<sup>31</sup> of the "Agricultural Area Security Law." If the county where the interest is collected is not an eligible county under the "Agricultural Area Security Law," the county treasurer shall forward all of the interest to the Agricultural Conservation Easement Purchase Fund.

(b.2) Interest on roll-back taxes distributed in accordance with subsection (b.1) to the county commissioners and the county comptroller, as the case may be, for use by the county board of the eligible county under the "Agricultural Area Security Law" shall be segregated into a special roll-back account, and, notwithstanding any other provisions of the "Agricultural Area Security Law," the eligible county board in distributing moneys from the special roll-back account shall, in its discretion, give priority to the purchase of agricultural conservation easements from agricultural security areas located within the municipal corporation in which the land subject to the roll-back taxes is situate.

(c) Within five working days after receipt of a notice from the owner of a property, which is preferentially assessed, of a proposed change in the use of the land, to one not meeting the requirements of section 3,<sup>32</sup> or a split-off of a portion of the land, the county assessor shall:

(1) Calculate by years the total of all roll-back taxes due at the time of change and shall notify the property owner of such amounts. In the case of a conveyance of all or part of said land, he shall notify the prospective buyer, if known, of such amounts.

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<sup>30</sup> 3 P.S. § 901 *et seq.*

<sup>31</sup> 3 P.S. § 914.1.

<sup>32</sup> 72 P.S. § 5490.3.



(2) With respect to the roll-back taxes for the current year, he shall notify the taxing bodies of the district in which the property is located of the additional amount of assessment upon which taxes shall be levied and collected. In the case of county property taxes, he shall notify the tax collector of the appropriate district of additional county tax to be collected.

(3) With respect to roll-back taxes for years prior to the current year which the assessor has determined to be due, he shall file a claim for such amounts with the tax claim bureau or the county treasurer, as the case may be, which upon said filing shall constitute a lien having the same force and effect as if filed by the taxing bodies.

(d)

(1) A landowner may apply a maximum of two acres of a tract of land subject to preferential assessment toward direct commercial sales of agriculturally related products and activities or for a rural enterprise incidental to the operational unit without subjecting the entire tract to roll-back taxes, provided that:

(i) The commercial activity is owned and operated by the landowner or his beneficiaries who are designated as class A for inheritance tax purposes.

(ii) An assessment of the inventory of the goods involved verifies that it is owned by the landowner or his beneficiaries.

(iii) The rural enterprise does not permanently render the land incapable of producing an agricultural commodity.

(2) Roll-back taxes shall be imposed upon that portion of the tract where the commercial activity takes place and the fair market value of that tract shall be adjusted accordingly.

(3) Notwithstanding the provisions of paragraph (2), no roll-back taxes shall be due and no breach of a preferential assessment shall be deemed to have occurred if the direct commercial sales of agriculturally related products:

(i) take place on no more than one half of an acre;

(ii) are of at least fifty percent (50%) of products produced on the tract;  
and

(iii) require no new utilities or buildings.<sup>33</sup>

(e)

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<sup>33</sup> This paragraph was added by Act 190 of 2012 (Effective October 24, 2012).

(1) Notwithstanding the provisions of subsection (a), no roll-back taxes shall be due and no breach of a preferential assessment shall be deemed to have occurred if:

(i) the land transferred from a preferential assessment is conveyed to a nonprofit corporation for use as a cemetery and at least ten acres of land remain in the preferential use after removal; or

(iii)<sup>34</sup> the land transferred from a preferential assessment, or an easement or a right-of-way in that land, is conveyed to a nonprofit corporation and:

(A) the subject land does not exceed twenty feet in width;

(B) the subject land is used as a trail for nonmotorized passive recreational use;

(C) the subject land is available to the public for use without charge; and

(D) at least ten acres of land remain in preferential assessment after conveyance.

(2) Any acquisition or subsequent resale or change in use of any of the removed land for use other than as a cemetery under paragraph (1)(i) or as a trail under paragraph (1)(iii) shall subject the nonprofit corporation to payment of roll-back taxes and interest due on the entire tract of land removed.

(f) No roll-back taxes shall be due and no breach of preferential assessment shall be deemed to have occurred if the owner of a tract of land that is subject to preferential assessment permits or authorizes, or has permitted or authorized, to be performed on the tract or any portion of the tract any recreational activity, regardless of whether or not the landowner imposes a fee or charge to perform the recreational activity, provided that:

(1) The tract of land in question is enrolled in either the agricultural use or forest reserve land use categories; and

(2) The recreational activity performed does not render the land incapable of being immediately converted to agricultural use on agricultural use land and does not permanently render the land incapable of producing timber or other wood products on forest reserve land.

#### **§ 5490.8a. Removal of Land From Preferential Assessment**

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<sup>34</sup> So in original.



(a) A landowner receiving preferential assessment under this act may remove land from preferential assessment if:

(1) the landowner notifies in writing the county assessor by June 1 of the year immediately preceding the tax year for which the removal is requested;

(2) the entire tract or tracts enrolled on a single application for preferential assessment is removed from preferential assessment; and

(3) the landowner pays rollback taxes on the entire tract or tracts as provided for in section 5.1.

(b) Land removed from preferential assessment under this section shall not be eligible to be subsequently reenrolled in preferential assessment by the same landowner.

(c) Nothing in this section shall be construed to prohibit a landowner whose land was terminated from preferential assessment under other sections of this act from reenrolling the land in preferential assessment.

#### **§ 5490.9. Appeals**

(a) The owner of a property which is subject to preferential assessment or for which preferential assessment is sought, and the political subdivision in which said property is situated, shall have the right of appeal in accordance with existing law.

(a.1) In the event a change relating to composting in this act becomes effective during an active appeal and is applicable to the active appeal, no rollback tax shall be due or collected and the rollback tax shall be reimbursed if already paid for such activities to which rollback taxes were applied.<sup>35</sup>

(b) When roll-back taxes for prior years are to be collected as provided above, no person and no political subdivision shall be permitted to question any assessment of any prior year before the Board of Assessment Appeals unless a timely appeal was filed pursuant to the requirements of the acts of Assembly relating to assessment appeals during the time period for which appeals for that year would normally be taken.

#### **§ 5490.10. Renegotiation of open space agreements**

Any county which has covenanted with landowners of farm or forest land as to assessments and open space use of such land under the act of January 13, 1966 (1965 P.L. 1292, No. 515), entitled "An act enabling certain counties of the Commonwealth to covenant with land owners for preservation of land in farm, forest, water supply, or open

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<sup>35</sup> This subsection was added by Act 190 of 2012 (Effective October 24, 2012).

space uses," may, at the landowner's option, renegotiate such agreements so as to make them conform to the provisions of this act as to preferential assessments.

**§ 5490.11. Rules and regulations**

The department shall promulgate rules and regulations necessary to promote the efficient, uniform, Statewide administration of the act.

**§ 5490.12. Applicability**

This act shall apply to all counties of the Commonwealth of Pennsylvania.

**§ 5490.13. Severability; inconsistent laws**

If any section, provision, or clause of this act shall be declared invalid or inapplicable to any persons or circumstances, such action shall not be construed to affect the rest of the act or circumstances not so affected. All laws or portions of laws inconsistent with the policy and provisions of this act are hereby repealed to that extent.

END