

Preferential Property Tax Treatment of Land

Jane Malme
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Abstract

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Preface

This research project on preferential property tax treatment of land was undertaken on behalf of the Policy Developments in the Property Tax Study Group whose members are primarily senior state and provincial property assessment administrators in the United States and Canada. Sponsored and supported by the International Association of Assessing Officers and the Lincoln Institute of Land Policy, the Group seeks to develop comparative, up-to-date information that will assist administrators and policymakers in evaluating and improving property tax policies and administrative practices.

Preferential property tax programs for various land uses have been adopted throughout the United States as an economic incentive to owners to preserve land in its current use. Several decades old, these tax relief programs are receiving renewed public attention in the current economic climate. Yet there is a dearth of recent research on the subject, and no literature which has compared the various approaches taken to providing tax relief to different land uses.

This report provides a comparative analysis of the key legal and administrative features of preferential property tax treatment of agricultural, forest, open space, and recreational land uses in the United States. The information on individual state programs for various land uses were drawn from state statutes, and supplemented, in some cases, by state regulations and publications. *Assessment Administration Practices in the United States and Canada*, a publication of the International Association of Assessing Officers based on annual surveys, served as a general resource.

A selected bibliography of published research and commentary on the subject is included, and extensive notations to sources are provided in the text to make further inquiry easier.

The purpose of this study is not to recommend a model system, or to establish an ideal generic policy. Political, economic and geographical differences among the states would make such an attempt of little merit or use. However, various approaches and system features are reviewed in the context of land and tax policy objectives, in order to offer a framework for evaluation and future deliberation.

This project was supported by the Lincoln Institute of Land Policy. The opinions expressed in this report are those of the author, and do not necessarily represent the views of the Lincoln Institute of Land Policy, Inc. or any other organization or person.

Preferential Property Tax Treatment of Land

Introduction

The use of the property tax as an instrument of land use policy is now well established throughout the United States. Rising real estate prices combined with concerns about the patterns of urban growth, the adequacy of food supply for a growing population, the quality of the natural environment and the changing social fabric placed pressure on the public sector to prevent the increasing loss of agricultural, forest and open lands. In rapid succession, beginning in 1956 in Maryland, state legislatures adopted preferential property tax programs for various land uses in answer to these concerns. This report reviews the objectives of these programs, summarizes the literature commenting on the effectiveness of preferential taxation to achieve its intended goals, and describes the current preferential tax programs for agricultural, forest, open space, recreational and other vacant land uses in the United States. It is hoped this information will serve to strengthen the administration of these programs and form a basis for their reexamination to reflect the changing conditions since these measures were first adopted.

1. Policies Underlying Preferential Property Taxation

Why Preferential Treatment?

Programs of tax relief for preferred land uses have been universally adopted by state governments to further land use policies and to address the perceived inequities of the property tax. Forty-eight states provide for preferential assessment or taxation of agricultural land, and the states of Michigan and Wisconsin provide income tax credits for property taxes paid on farmland. All but four States provide preferential treatment to forest land,¹ and nearly half of the States provide special treatment to a variety of open space or recreational uses.² Although these programs differ in significant ways, they all provide property tax relief for owners of eligible land.

Declarations of intent included in legislation establishing preferential taxation generally declare that the purposes for which preferential tax laws are enacted are to preserve land for agricultural and timber production, to discourage conversions of land for more urbanized uses, and to protect ecological, recreational and scenic resources for the benefit of the general public. This is to be achieved by relieving the economic pressures caused by property taxes based on values incompatible with the preferred uses.³

The widespread support for these laws, which in many cases required amendments to state constitutions by popular vote,⁴ indicates, however, that they address both broader and more subtle social and economic concerns that attract various constituencies. Preservation of agricultural land promises aesthetic, environmental, food supply and economic benefits which include protecting community character and the rustic way of life, slowing haphazard development, curbing pollution and environmental degradation, maintaining regional self-sufficiency in food supply, and providing an economically healthy farm industry.⁵ Similar aesthetic and environmental claims are made for special

tax treatment of forest, open space, and recreational lands in addition to the economic benefits of greater quality and quantity of timber products for commercial sale and increased income from tourism and recreation.⁶ These perceived public benefits have attracted and retained the support of citizens whose taxes provide relief to the owners of these lands.

This public support is based on the assumption that reduced property taxes will offer an economic incentive to landowners to retain their land in the preferred use. Advocates argue that this incentive is necessary for preservation of agricultural and forest lands because of the specific nature of farm and timber business enterprises, and the increased tax burden resulting from appreciating land values related to urban growth. Taxes based on fair market values of land in areas of urbanization may in some cases exceed the income generated from farm or forest production.

The rationale is that income from agricultural and forest production is low relative to the capital value required for the enterprise, making owners “land rich and income poor.” Farmers have high outlay costs, and high taxes on their lands further reduce meager profits, making farming economically infeasible.⁷ Preferential tax treatment makes it possible for farming to continue by providing a shield against rising taxes that result from appreciating land values due to surrounding growth and development.⁸ Forestland must be held for long periods before crop production, and capital costs of reforestation are not recovered for many years. Lower annual property taxes are an incentive to good forest management, relieving pressures for early harvesting of trees, and are a deterrent to destruction of forests from conversion to more intensive uses.⁹

To counter the concerns about loss of revenue for government services and the shift of the tax burden to other property owners, proponents of preferential tax treatment also assert that undeveloped land requires fewer public services on a per acre basis than most residential and commercial land uses, and thus should bear a lower tax burden for equitable reasons.¹⁰ Rapid growth and development brings with it a demand for more public services and may result in higher taxes for the general public than slower growth and retention of open land requiring minimal services.

How Effective is Property Tax Relief in Achieving Intended Objectives?

There is no dearth of commentary on preferential property taxation. Academics, attorneys, economists, public administrators, tax and land use professionals, among others, have written on the subject. The more recent literature which was reviewed for this report included extensive reference lists citing research conducted over more than two decades. A lengthy bibliography on use-value assessment is currently available from the U.S. Department of Agriculture.¹¹ This substantial body of literature includes research based on hypothetical models and empirical studies, legal and political history and general tax and land use policy analysis. The bulk of the research was done during a period of increasing land values, economic growth and assessment administrative reform. Much of the interest in the subject appears to have subsided after the mid-1980s, however, and it seems clear that it is time for a new examination of these policies in light of changing conditions.

Preservation of Farmland

Not surprisingly, most of the attention has been focused on farmland tax relief programs, the land use most extensively and universally benefited by preferential taxation. There is general consensus in published research that the economic incentive offered by lower property taxes has had minimal effect in preventing conversion of farmland to more intensive uses. In urbanizing areas, the tax reductions have not matched the profits available from subdivision or development.¹² At best, tax reduction may retard or delay development and make ownership less burdensome for those who wish to continue in farming or retain substantial land holdings. Advocates of preferential tax treatment, while acknowledging tax reduction has a marginal role in retarding conversion, nevertheless maintain that it is a necessary component of a range of programs to protect agricultural and open space lands from being permanently lost to development.

Some would argue that loss of farmland and open space is not really a problem; that the market provides the most efficient mechanism for determining land use. However, others believe that current development patterns are inefficient, and acknowledge that some government intervention is necessary to account for market failures.¹³

Critics of preferential tax programs contend that property tax relief is inefficient and ineffective as an instrument of land use intervention, and has adverse effects that should be recognized.

Property tax liabilities have been found to be one of the least important determinants of farm real estate values compared with other factors such as farm size and productivity and measures of urban influence, and thus only marginally affect the decisions owners make on the use of their land.¹⁴ It is generally accepted that reduced taxes are capitalized into land value, increasing farmland values which may deter farmers from expanding their holdings or new owners from entering agriculture, and may require ever-increasing tax expenditures to offer even marginal tax reductions.¹⁵ This effect may actually increase land speculation on the urban fringe and encourage landowners to abandon farming for the higher profits to be gained from the development of their land.

Preferential taxation is seen as an expensive method of preserving land if viewed as a public tax expenditure that compensates owners for maintaining socially desirable land uses. The public is, in effect, renting or leasing development rights of the land with a reduction in property taxes, the equivalent of making a direct payment to the owner while assessing his land at market value. The cost of the tax expenditure is hidden and subsidizes speculation by landowners who determine when conversion occurs. It is argued that exclusive zoning or outright purchase of development rights or easements are actually more effective and less expensive means of preserving desirable lands. The public sector can select and “bank” the lands it considers most suitable to the desired land uses, and retains the right to decide when and whether to sell them.¹⁶ This argument is bolstered by evidence that preferential tax programs appear to be more effective in some States in maintaining marginal farm operations and less productive land in farm use than in preventing loss of prime farmland to urban expansion.¹⁷

Recent developments in land use planning, such as non-exclusive agricultural zoning and installment purchase financing of development rights, may be more cost-effective, politically acceptable and legally defensible means of retaining farmland in areas under development pressure.¹⁸

If preferential tax programs have been generally ineffective in influencing farmer's land use decisions, they have granted significant property tax relief to farm owners. The instrument of preferential property taxation was selected in part because of the public's view that property taxes place an unfair burden on agricultural enterprises, and that reducing that burden will help farmers stay in business. The extent of tax relief gained from preferential taxation varies considerably, based upon the reliance placed on property taxes as a source of government revenue, the tax reductions provided by the State's preferential program, the market value of the land and its appreciation over time, and whether taxes are recaptured or penalties imposed when usage changes. In areas where urban encroachment has driven up values, tax savings based on current use assessment may be considerable.¹⁹

In reducing the regressivity of the property tax, the "circuit breaker" approach which offers a credit for property taxes on the state income tax, has demonstrated its effectiveness.²⁰ While no such general claim may be made for use-value programs, where assessment is based on the property's current use rather than its highest and best economic use, there is evidence that regressivity of the tax is increased for the majority of farm owners, who have little or no non-farm income.²¹

Even with the substantial reduction in taxes, however, farm income may be insufficient to maintain viable agricultural operations in some urban fringe areas.²² Proponents of various farmland protection programs have also recognized that tax relief is insufficient to shore up ailing farm enterprises and that measures that promote agriculture as a business are equally necessary.²³

Loss of farm acreage continues, and property tax relief programs have not stemmed the tide of farmland conversions. If retention of farmland continues to be considered as in the public's interest, then preferential tax treatment should be evaluated among a range of options. Reliance on preferential property taxation may prevent the use of other more direct and cost-effective measures, and incur public expenditures which could be spent more productively.

Forest Protection

There has been far less attention paid to preferential tax treatment of forestland during the past decade, although the USDA Forest Service has conducted a number of studies on use valuation of forestland. Their former Chief economist, Clifford Hickman has widely published their findings.²⁴

Special tax treatment of forestland and timber products have a long history, and the methods of valuation and taxation have evolved over time. The earliest programs to link property tax relief with land use policies were adopted in the 19th century in recognition that *ad valorem* taxation discouraged the long-term investment required for forest

retention and management. Unlike agriculture, with primarily annual crops, the harvest of timber growth does not occur for many years. Annual property taxes, therefore, pressure forestland owners to shorten rotations or convert land to other uses. These earlier programs generally exempted forestland and/or timber from property taxation.²⁵

Reforestation tax laws were enacted in a number of states in the first half of this century to promote regeneration of forests which had been extensively cut-over or burned-over.²⁶ Here the purpose was to encourage new timber growth on private lands in order to restore the long-term economic viability of an important state industry, which would, as a byproduct, also provide a source for future state and local tax revenues.²⁷ These laws often combined a yield tax, in which timber value was severed from land value and not taxed until time of harvest, with a legally prescribed minimal per acre tax rate, or a partial or full exemption from property taxes on the land.²⁸ Preferential tax treatment was often combined with requirements for forest management, restrictions on cutting, and long term contracts.

Administrative reforms to improve assessment uniformity and the adoption of current-use valuation for agricultural property prompted some states to move away from the use of exemptions or flat tax rates, and to incorporate use-value methods of productive capability for assessing both forest and agricultural lands. During this period state governments assumed a greater role in qualifying and valuing forestlands.

Although the significance of the role played by tax policy is unclear, reforestation efforts have been generally successful, and full forest rotations have been achieved over more than half a century. Forests comprise nearly one-third of the land area in the United States, and some states have experienced growth in timberland acreage.²⁹ In the Northeast some of this growth has been attributed to farm abandonment, with the vacated land regenerating tree growth. Nationally forest loss has been significantly less than loss of farmland.³⁰

Current commentary on taxation of forestland, however, focuses on the threat of development, and whether the policies on which forest tax laws have been based are still relevant. In recent studies conducted in Michigan, enrollment by nonindustrial private forestland owners in its preferential forest tax program increased substantially beginning in the late 1970s, at the same time withdrawals of industry-owned forestland were occurring. A 1989 survey indicated that the main motivations for enrollment by nonindustrial landowners “were preserving nature, viewing wildlife and enjoying scenery and aesthetics...producing commercially salable wood ranked fifth out of ten motivations.”³¹ In contrast, forest product companies found it more profitable to sell off parts of their lands for recreational or residential use. Yet even with the reduction in timber land, a net growth in standing timber occurred.³²

Thus tax laws and other measures designed as incentives to reforestation and production of forest crops may need to be reexamined relative to their effect on forest land preservation for aesthetic, ecological and recreational purposes. “Public access” requirements included in some preferential forest tax programs reflect a policy that the public is entitled to receive a direct benefit in return for the decreased taxes paid by the land owner.³³ Growth in the numbers of recreation seekers and changes in recreational

activities may come into conflict with forest management objectives and the willingness of land owners to subject their land to undesirable side-effects of public access. Conversely, conservation-minded citizens may object to timber harvesting that affects wildlife habitats or causes ecological damage.

What seems clear from the foregoing discussion is that preferential property tax programs for agricultural and forest lands were devised to address multifaceted concerns of various and distinct constituencies. The effectiveness of property tax relief programs may be judged differently by farm and timber owners who seek more profitable businesses with a minimum of regulation, than by other constituencies who seek aesthetic, environmental, recreational and social benefits for their tax investments. Taxpayer dissatisfaction with increasing property taxes and local governments' struggles to maintain services with declining revenues may compel politicians and policymakers to take a closer look at the actual costs and benefits of these programs. Funding for other, more effective land use tools may depend, in these times of fiscal austerity, on analyzing honestly the tax expenditure costs of tax relief in contrast to other more direct expenditures.

In addition, taxpayers have been willing to treat farm and timber businesses differently from other commercial enterprises in return for the various aforementioned public benefits.³⁴ In part this has been because of the generally held view that the property tax is inherently unfair as a measure of ability to pay for those who make their living from the land. In less secure economic times, however, taxpayers begin to scrutinize whether their tax dollars are being well spent, and whether there is fairness in the tax structure.³⁵ If they perceive that their extra tax burden is giving "tax breaks" to "undeserving" land owners, who either use the tax benefit to avoid less economically efficient methods of operation or to retain accumulated wealth, they may be less supportive of preferential tax programs or insist upon more restrictions in their application.

Open Space and Recreational Land Preservation

More recent beneficiaries of preferential tax treatment have been lands which are defined as having the public benefit of enhancing natural or scenic resources, protecting fragile ecological systems or offering recreational opportunities. The use and effectiveness of these programs have received little attention in research literature, but have posed problems for assessing officials in determining eligibility and value.³⁶ These issues have also been fertile ground for litigation and have confronted the courts with some troublesome questions.³⁷

Preferential taxation of open space lands is generally limited to lands which are under a restrictive covenant or zoning or which have been specially designated by a public agency.³⁸

The titles given such laws are generally not good indicators of what land uses are included. "Recreational" and "Open Space" lands may be defined similarly, or may be a catch-all for a variety of vacant land uses. The language defining the use is often broad and open to wide discretion in its interpretation.

Open space classifications were generally adopted as part of laws providing for current use valuation of farm and/or forestland. Owners of recreational land, specifically golf courses, and advocates of land conservation were the prime movers behind the extension of preferential taxation to recreational uses.³⁹ In a few states, golf courses are the only recreational land use given special treatment, and in others golfing or golf courses are specifically named as eligible for tax preference.⁴⁰ These laws are criticized as serving special interests,⁴¹ but have been enacted with general public support to maintain a popular recreational activity in populated areas where development pressures are strong.

In comparison with land in agricultural or forest uses, there are relatively few open space and recreational land parcels that receive preferential treatment. Enrollment is generally low.⁴² Whether these tax incentives are protecting land from development is unknown; no statistics or research have been found in the published literature. Nonetheless, it is likely that the economic incentives offered by lower property taxes have a minimal effect on preventing the conversion of open space lands to more intensive uses, as has been found in the case of farmland, and most often are used by land owners who wish to retain their land holdings.

The extension of preferential tax treatment to open space and recreational lands reflects the growth in public interest in environmental protection and land conservation, an interest that is unlikely to decline. Matters of public access, eligibility and the extent of restrictions and penalties for conversion are more probable subjects of future debate than abandonment or weakening of these programs.

Tax Policy and Revenue Issues

Revenue loss has been the greatest concern of local officials in the adoption of preferential tax programs. Property taxes are the major source of revenue for local governments throughout the United States. Their concerns have gone largely unheeded, largely because of the recognition that most taxing units are able to raise the tax rate and shift the loss of value to other property owners. A few states have been persuaded to reimburse localities for loss of taxes due to preferential taxation of one or more property classes.⁴³ Michigan and Wisconsin are the only states to bear the full burden of tax reduction on farmland, by funding the income tax credits for property taxes paid to municipalities based on the land's market value. The current fiscal constraints on state governments make it improbable that more jurisdictions will provide funding. Fiscal Year 1991 wreaked havoc on state finances, according to the National Conference of State Legislatures (NCSL) which predicts that slow economic growth will continue to depress tax collections.⁴⁴ Indeed, Iowa, Maine and Vermont have failed to fully fund their reimbursement accounts in the past year.

In addition, diminished state revenues make it less likely that other land preservation measures such as purchase of land, development rights or easements will be expanded. In fact, in Northeastern states from Pennsylvania to Maine that have had active PDR programs, purchases are few and a number have nearly depleted their funding, although existing programs are still on the books.⁴⁵

Zoning measures would seem to provide the least expensive public means to protect land were it not for the chilling effect of recent Supreme Court decisions that have ruled against restrictive zoning without compensation to the owner.

Under these circumstances, local governments will bear the main burden of land preservation measures through preferential property taxation. The level of property taxation varies substantially across the United States, but over-all the property tax burden grew faster than personal income in the 1980s.⁴⁶ This trend is expected to continue, as local governments attempt to fund increasing public service costs without growth in aid payments from higher levels of government and without appreciation in real estate values and development to expand the tax base.

There is general agreement that a diversified revenue system is desirable, with a balance of funding from taxes on income, consumption and wealth so that tax rates on each object of taxation may be kept at a reasonably low level.⁴⁷ Although excessive property taxes may be especially burdensome to those who derive their income from the land or wish to retain land in a non-productive use, preferential tax programs increase the burden of property taxes on all property owners, raising “fairness” and “ability to pay” issues, which are the main criticisms leveled at the property tax. A long-range fiscal perspective on the comparative costs and revenues from development versus retention of open space, as well as a current analysis of relative tax burdens should be included in any public deliberations on these issues.

While the various tax relief measures have contributed to the public’s acceptance of the property tax,⁴⁸ current economic conditions are likely to increase local government’s reliance on the property tax and bring demands for greater scrutiny of preferential tax programs. Therefore, a review of the features of these programs may be useful in leading to recommendations for improvement.

2. Features of Preferential Property Tax Programs

This report describes the specific features of each state’s preferential tax programs and includes a summary table on:

1. the major land uses benefited;
2. the requirements for qualification;
3. the penalties, if any, applied when use of the land is changed to a non-preferred use;
4. the means by which preferential tax treatment is provided;
5. the levels of government that have primary administrative responsibility for implementation of the tax laws;
6. the state’s replacement or reimbursement, if any, of local tax revenues lost to local government as a result of preferential tax programs.

This information is found in the Appendix to the report.

The Major Land Uses Benefited

Preferential tax programs for farmland have now been adopted in some form in every state in the Union. All but four states also give preferential tax treatment to forestland. In the past twenty years, a number of states have also adopted preferential programs for open space and recreational lands. Seventeen states now include open space provisions either in conjunction with agricultural or forest land programs, or as separate and distinct laws. Four states have special provisions for recreational land. Golf courses and wetlands are given special treatment in a few cases.

The Requirements for Qualification

Definition of Preferred Land Uses

The land uses benefited by preferential taxation are defined in the statutory provisions adopted by each of the states. In most states assessors make the determination whether individual properties qualify and what portions of an owner's property are to be included. This is the first level at which uniformity among the various assessing districts is affected. The specificity by which the statutes define the property to be benefited varies considerably. Generally the laws require that the land be actively and currently devoted to the preferred use, and in the case of agricultural and forest lands, to bona fide commercial production of crops or timber. The state law may specify that the land be "solely" or "exclusively" or only "primarily" devoted to the use. Most statutes describe the types of uses which are included, such as growing crops, raising and breeding animals, dairying, producing timber, etc., and a number of laws list specifically the crops and products to which these activities must be devoted. Non-productive land, such as wasteland and woodland, and land set aside and enrolled in a federal land conservation program is generally included.

The states differ in whether land under farm buildings and residences in the farm unit and the structures themselves are eligible for preferential treatment. Most states simply define as eligible all land devoted to the preferred use, but Oregon's and West Virginia's statutes specifically state that the land under buildings used in the farm operations is included. Several states define agricultural land as including all improvements; others specifically exclude all structures.⁴⁹ Georgia and South Dakota exempt a portion of the value of agricultural buildings. Land under farm dwellings is included in Colorado and Nevada, and Hawaii and Illinois include the entire dwelling unit. South Carolina includes property used to provide free housing for farm laborers located on the qualifying land.

Few statutory definitions are sufficiently precise to ensure uniformity throughout a state in determining what portions of an owner's real estate should properly be included or excluded. Compare, for example, Maryland's exclusion of a "homesite" with West Virginia's exclusion of "one acre surrounding the principal residence" from agricultural land classification. State-issued regulations or guidelines are vehicles for interpreting the statutory provisions to avoid inconsistencies in application from one assessing unit to

another. Another approach has been to involve government agencies with particular expertise in agriculture or forestry in determining whether the land qualifies. A prerequisite to eligibility for forestland in many states is certification by the State Forester.⁵⁰

Lack of definitional clarity is even more pronounced for open space and recreational uses. A few statutes set forth criteria that the assessor must take into consideration in determining eligibility.⁵¹ But words such as “unique” or “environmentally sensitive”, and criteria such as “enhancing natural or scenic resources” or “of benefit to the public” place a substantial burden on assessors in determining what land should be included.⁵² When it is unclear what land will qualify, assessors may be disinclined to publicize the program and landowners discouraged from applying. When a decision on eligibility must be made, assessors may be faced with political pressures and the threat of litigation, or left to devise their own interpretation of the law.

Definitions that are obscure will result in a lack of uniformity and equity in the application of the law. The legislation may have been intentionally drafted broadly in order to gain wider acceptance for its passage. If so, state agencies need to provide regulations or guidelines with more detailed criteria. The very nature of the criteria may lend itself to clearer interpretation by those most familiar with the land use, rather than by assessors alone. It seems appropriate to assign some role in the development of state guidelines or in the determination of eligibility to a public entity concerned with land use planning, conservation or environmental protection, as a number of states have done.⁵³ Local or regional, rather than state, agencies may be better suited to the role of determining eligibility for individual properties. Greater communication, cooperation and accountability among public bodies within a taxing jurisdiction can be more easily achieved at the local level, and state agencies may not have the resources to perform this responsibility adequately.⁵⁴

Application by Owner

One of the most important features of preferential programs with implications for land use policy is whether the land owner chooses to enroll in the program. In thirty-four states, the owner of agricultural land must make application to receive preferential tax treatment. In the remaining states, the assessing official for the district in which the land is located determines the land’s eligibility, and as a result all qualified lands are given preferential treatment.⁵⁵ In all of the states where enrollment is non-discretionary, farm owners have no restrictions on or penalties for converting their lands to other uses. Preferential assessment, it would seem, is primarily a tax relief measure for farmers.

Voluntary enrollment is generally the rule for non-agricultural property, except in cases where lands are specially designated by a public agency.⁵⁶ The extent of enrollment in preferential programs varies among states and within states, and is dependent upon a number of factors. Periodic empirical studies of enrollment are essential to evaluate a program’s effectiveness in achieving a state’s objectives, and to improve its administration.

For example, a study of the initial impact of current-use assessment in Alabama found that participation rates varied widely among counties.⁵⁷ The authors found the major determinant for enrollment was the amount of tax savings, and that low enrollment rates in some areas were due to lower market value appraisals, and the potential of roll-back taxes when annual savings were small. The amount of publicity concerning the program was found to be an important factor. Proximity to urban centers and their influence on land values was not a primary determinant in the level of participation. Eligibility requirements were not interpreted and applied uniformly, resulting in less enrollment of passively managed timberland in counties where assessors believed the law required active use of the land for agriculture or timber production. Studies of this type are valuable for policymakers.⁵⁸

Other studies have linked enrollment to revaluation frequency. Infrequent reassessment cycles result in expanded enrollment when revaluation occurs. The reasons, however, may differ. Revaluation activity may spur increased municipal spending, may shift tax burdens due to land value appreciation near urban centers, or may diminish the discretion of local assessors in favoring certain land uses. An analysis of enrollment patterns must take these factors into consideration.

The application itself can offer administrative benefits. In most states the form and content of the application is prescribed by the state assessment agency. A well-designed form which collects consistent and complete information will improve uniformity both in determining eligibility and in recording information for analysis. Inadequate and inconsistent data hampers the research efforts needed for program evaluation.⁵⁹

States differ in how frequently an owner needs to submit information. In eighteen states, the owner need only apply for initial qualification of the land. Thereafter, classification is automatically renewed unless the owner notifies the assessor that the land is no longer eligible for preferential treatment, or the land is sold. A new owner must reapply.

Eleven states require the owner to make an annual submission, but in some cases the renewal form requests less information than the original application. Five states have a periodic renewal process, in most cases related to the length of restrictive agreements.

Assessors generally have the authority to request any information necessary to determine eligibility, and several states impose penalties on owners who fail to report changes of usage or make material misstatements of fact.⁶⁰ Annual or periodic filings, particularly if simplified renewal forms are mailed by the assessors, would seem to place a small burden on benefited landowners in exchange for accurate, up-to-date information. The data collected, under oath, would verify the continuing qualification of the land, as well as aid in its appropriate classification and valuation. Providing for confidentiality of the contents of the application increases the information owners are willing to supply.

Minimum Acreage

The information needed by the assessors depends upon the state's requirements for eligibility, and the methods by which preferential taxation is provided. Even if the property is devoted to a preferred use, it may not be eligible for preferential treatment in

many states if it does not meet minimum acreage, productivity or prior usage requirements. These requirements are generally intended to set a minimum threshold for bona fide commercial use as agricultural or forest lands. Acreage requirements are also imposed on open space and recreational lands in some cases.

Thirty states require a minimum number of acres to qualify as land in agricultural use. In a number of these states, however, the assessor is permitted to qualify land of lesser acreage based on information submitted by the land owner that would establish bona fide commercial use. Compared to the average farm size of 462 acres,⁶¹ the qualifying acreage is very low, ranging from three to forty acres. California sets a 10 acre minimum for prime agricultural land and 40 acres for non-prime land. A few states set a lesser minimum for land in horticultural use than in general agricultural use.

Several states which have no statutory minimum authorize the assessor to consider size in determining eligibility or vest in the state assessment agency the authority to establish such criteria. South Dakota has a statutory minimum, but authorizes the County Commissioners to increase the minimum up to 160 acres. This local flexibility would seem to be desirable, since a single state-wide minimum acreage cannot take into consideration the different land area needs of specific crops, nor regional variations in soil conditions.

Minimum acreage requirements for forestland are included in 29 states' laws, and range from two to fifty acres, with ten acres being the most common. Acreage requirements for open space and recreational land are established by law or left to local determination, and may vary according to the use of the property.

Fifteen states have some minimum requirement. Three states also limit the number of acres within the state for which an owner can receive preferential treatment.⁶²

Productivity

Minimum productivity requirements are included in the preferential taxation legislation for agricultural land in thirty states. In a number of these states, farm income requirements must only be met by owners with lesser land area than the minimum acreage requirement.

Most states have set by law a minimum dollar amount of annual income that must be earned from the sale of products derived from the land. The amount may be for the total farm unit or on a per acre basis. In several cases, the income is measured over a period of years, either to establish continuity of bona fide commercial use or to recognize the fact that income derived from the land may be cyclical.⁶³ If income is measured on a per acre basis, a few states establish incremental increases in income as the size of the farm unit increases. For example, Kentucky has established six categories of acreage ranges, with a different minimum total income plus a per acre minimum for each.⁶⁴

Eight states establish their productivity thresholds based on a minimum percentage of the annual gross income derived from the land. For example, Alaska law prescribes that at least 10% of the owner's or lessee's income must be derived from the land to be

benefited. Minnesota combines the two measures by requiring either that a percentage of the total family income be derived from agriculture or that the total income produced by the farm unit meet the minimum requirement. Michigan and Wisconsin base the amount of tax credit on household income of farmers rather than on farm income.

The income requirements vary considerably from state to state, but are a small fraction of the \$65,000 average per farm market value of agricultural products sold, as reported in the 1987 Census of Agriculture. Income requirements may be waived for land that has been qualified in prior years as a result of circumstances beyond the farmer's control, and in some states, as a result of retirement or disability of the farmer. Some state laws also permit owners with no history of agricultural income to initially qualify if the owner provides evidence of producing the requisite income in the future.

There are some important issues in regard to use of productivity measures that have not been addressed in current research literature. Agricultural activities and productivity differ significantly among states, as well as within each state, and empirical research at the state-level is needed to determine whether these requirements currently achieve a state's intended objectives, and are relevant to current business conditions. What are the purposes for which these requirements were enacted? What is the impact of using farm income versus household income as a measure?⁶⁵ How does the statutory state-wide application of a single measure relate to actual productivity in different geographic areas and for different agricultural crops and products? If such measures are desired, how should they best be determined? Would the establishment of the threshold amount be better performed periodically by a state agency or advisory group which develops agricultural land values, than by legislation that is seldom amended?

Since annual income requirements are not appropriate as measures for all forestlands, especially for those being reforested, a number of states rely on forest management plans as a means of ensuring bona fide use of the benefited lands. Owners of forest land in sixteen states must submit a forest management plan which incorporates accepted forest practices, as determined by professional foresters or the state forestry agency, in order for their land to be eligible for special taxation.⁶⁶

Several other states set statutory productivity standards based on the capability of the land to produce timber, through minimum stocking or planting requirements.⁶⁷ Adherence to management plans or sound forestry practices must be monitored, and land removed from classification when non-compliance occurs. Hyldahl noted that monitoring all enrolled forestlands in Michigan was difficult, if not impossible, with state forester staffing levels. If these measures are to be effective in furthering sound forestry practices and in preventing abuse of the tax laws, adequate supervision must be maintained.

Prior Time in the Preferred Use

Requiring prior usage of the property before land is eligible for preferred treatment is presumably meant to deter landowners from making short term changes in the use of their properties in order to gain tax benefits. Twenty-four states require a period of years in agricultural use before the land is qualified; two or three years immediately preceding enrollment is the usual period. Colorado requires the longest period of prior usage - ten

years. Kentucky and Maine link prior usage to productivity requirements in specifying that annual gross income must be earned over a multiple year period. Minnesota requires that qualifying land must have been in possession of the applicant or his/her immediate family for at least seven years to receive the additional benefit accorded to family farms. Illinois and Texas are the only states that also require prior years' use for open space eligibility, and both require longer periods for these uses than for agricultural land. Texas also requires forestland to have been in forest use for five out of the seven preceding years.

There is no discussion in any of the current literature regarding this requirement although it is a part of the laws of nearly half of the states. An appropriate balance between encouraging participation of new farm enterprises and discouraging enrollment of "tax farmers" is difficult to achieve. A two to three year period of prior use is likely to be too short to serve as an effective deterrent to abuse of the system.

Penalties for Change of Use

Preferential programs can be categorized into three basic types: pure preferential, preferential with deferred taxation, and preferential with restrictive agreements or exclusive zoning and deferred taxation.⁶⁸ Pure preferential programs provide for special treatment so long as the land is devoted to the preferred use, but extract no penalty when the land use changes. When the land no longer qualifies, it is valued and taxed as all other property. Pure preferential assessment is applied to agricultural property in twenty states. In a number of these states timber production is considered an agricultural use, but in most states non-agricultural lands receiving preferential treatment are subject to restrictions on change in use and/or deferred taxation.

Preferential programs with deferred taxation attempt to prevent conversion of benefitted land by prescribing a penalty if the land is developed or changed to a non-preferred use. The landowner, just as those under a pure preferential program, determines whether and when to change the land's use or sell it for development. Preferential treatment with restrictive agreements or exclusive zoning places limitations on the owner's ability to change the use of the benefitted property. Preferential taxation is only available to owners whose use of the property is restricted by zoning or who have voluntarily entered into an agreement with a public agency to retain their land in the preferred use for a period of years. Penalty taxes are imposed if the restriction or contract is breached, usually by conversion of the land to an ineligible use.

Therefore, some or all land categories are subject to penalties for changing benefitted land to a non-preferred use in forty-two states, under all but pure preferential tax programs.

Thirty-five states impose "roll-back" taxes, based on the difference for a specified number of years between the taxes paid and the taxes that would have been payable without preferential treatment. Seven impose "conveyance" or "development" taxes based on a percentage of the sale price or market value of the land at the time of conversion or sale.

Chipman describes the challenge of striking

a permissible balance between affording the property owner an adequate tax incentive and deterring conversion after special assessment treatment is granted... A mild sanction may not preclude the taxpayer from changing the use of the land, especially if a more profitable use will compensate for the sanction. However, the threat of a truly punitive measure may discourage full participation in the preservation program, in which case the primary objective of the legislation is clearly frustrated.⁶⁹

He concludes that the Illinois roll-back tax imposed on open space for only the three years immediately preceding conversion is not an effective deterrent to development because it does not reflect appreciation in land value, and poses little threat to the developer's profits.⁷⁰

Penalty taxes differ among states, as well as among preferred land uses, in the number of years they are imposed, and the extent of the penalty. The period of time ranges from two years to the entire period the land has been under preferential assessment. For agricultural land, 3, 5 and 10 year periods are most commonly specified for recovery of "roll-back" taxes. For forest, open space and recreational lands, many states impose penalty taxes for longer periods than for agricultural land. If the change in use occurs in the first year or two after classification or restriction, some states impose a greater penalty than if the land has been held in the preferred use for a longer period.⁷¹ Pennsylvania assesses the full penalty against the entire tract even though only a portion has been converted or sold to another use and the remaining unchanged part would still qualify.⁷²

Penalties based on a percentage of market value of the property are imposed by California, Maryland and five New England states. California imposes a "cancellation fee" equal to 12 1/2% of the market value of the property for cancellation of a restrictive contract. The maximum penalty charged by the New England states is 10%, but in Connecticut, Massachusetts⁷³ and Rhode Island, the percentage declines 1% a year for each year the land is held. Maryland's agricultural land transfer tax is based on 5% of the sales price for land that is twenty acres or more, with a lesser percentage for smaller tracts. Maine uses a roll-back tax for disqualified farmland that has received preferential treatment for more than 5 years, but imposes a penalty equal to 40% of the land's market value if the land is removed from the program during the first 5 years.

Nearly all states charge interest on the deferred taxes based on a statutory rate, or on the rate charged for delinquent taxes, and place a lien on the property until all penalties are fully paid.

Pure preferential programs in several states impose a penalty for failing to report a change in use, or for submitting fraudulent information. For example, Louisiana collects a penalty equal to five times the amount of roll-back taxes for the entire period that land has been preferentially assessed if use-valuation was attributable to false certifications or failure to timely notify the assessor of loss of eligibility. There is no recapture of taxes, however, for change of land use.

Penalty provisions provide an incentive for retaining land in a preferred use only if they are stringent enough to prevent profiteering by speculators. In times of rapid appreciation

in real estate values, such penalties are ineffective because it is nearly impossible to attain the balance between the tax incentive and the deterrent. In a period of slower growth, it may be possible to create that balance. States would benefit from an evaluation of the impact of their state's penalty provisions on enrollment in preferential tax programs and on retention of enrolled land in its preferred use.

Methods of Preferential Treatment

The predominant method of reducing the tax burden on all of the preferred land uses is by valuing the land based on its current use, rather than on the basis of its highest and best economic use. For purposes of preferential assessment, the highest and best use of the land is considered to be its present use. In essence the speculative value of land for other more intensive uses is exempted from taxation.

Agricultural Land

Only Georgia, Michigan and Wisconsin require that agricultural land be appraised at its full market value. Even in these states, the current use of the land is generally taken into consideration.⁷⁴ Tax relief is primarily provided, however, by other means. Georgia assesses agricultural property at 75% of the value at which all other property is assessed, and Michigan and Wisconsin provide "circuit breaker" tax credits for property tax relief to qualified farmers.

State laws provide for various methods for determining the value of land in agricultural use. The predominant appraisal approach is the capitalization of income. Valuation of land according to its earning capacity is consistent with the policy of linking taxation to income derived from the land as opposed to the land's speculative market value. A few states still authorize consideration of comparable sales for farm use in the determination of value, but others have prohibited the use of any sales data.⁷⁵

A summary and critical review of the various capitalization of income approaches used for farmland in the United States by Dunford, Chicoine and Ervin⁷⁶ indicates the general approach is to use enterprise budgets to generate typical net residual income for different soil groupings differentiated by intrinsic productivity. Yield, prices and costs are commonly averaged over a period of years (e.g. 5 years) to reduce fluctuations due to economic or weather conditions. Averaging, however, can cause counter-cyclical assessment behavior, resulting in rising values when income is declining or vice-versa. Illinois uses actual farm-level data to estimate residual net income.⁷⁷ Some states use rental rates as a proxy for land income or use a combination of estimated net income and rental rates. The lack of the detailed data needed to arrive at accurate income estimates is a common problem.

The determination of the capitalization rate also varies from state to state. Most states base the rate on the average interest rates for Federal Land Bank mortgages over a five or ten year period. Other states prescribe the rate or the components to be included in determining the rate, or set a minimum rate.⁷⁸ The result of all of these methods is to establish a capitalization rate for farmland higher than the market rate, thus reducing the

value. In general, methods used for calculating the value of farmland by the capitalized income approach were found to understate actual farm use values in the mid-1980s.⁷⁹

Although Dunford, Chicoine and Ervin find a number of weaknesses in the application of the approach, they conclude that the capitalization of income approach has administrative and policy advantages. Generally, they found that use of the income approach results in higher-quality farmland receiving a higher assessment than lower-quality farmland, similar lands receiving similar values, (if administration is consistent across assessing jurisdictions), and farmland owners receiving effective tax relief.

Improved collection and computerization of data, greater state involvement to facilitate data collection and analysis and increase uniformity, and recognition of the shortcomings of the methods used can lead to the development of an accurate and equitable current-use system.

Forestland

There is considerable variation among states in the methods used for valuing forest and timber lands. Twenty-two states include forestland within their agricultural classification, using the same or similar valuation methods for both. Current use value based on capitalization of income is the preferred approach. Methods used by other states may include partial or complete exemption of land from property taxation, a statutory per acre rate of value or taxation, the imposition of severance or yield taxes based on stumpage value of cut timber, or a combination of these methods. Multiple methods are generally used in states with extensive timber industries.

Several states provide separate categories for commercial timber land and for forest plantations or preserves. The latter category may be exempt from taxation or assessed at a minimal value.⁸⁰

Forest taxation is generally approached by one of two alternative methods, known as the “bare land” and the “sustained yield” techniques.⁸¹ The “bare land” approach conceives the land as the asset, implicitly exempting the timber from taxation. The timber is taxed separately, usually through a yield tax, assessed on a percentage of the stumpage value of the harvested crop. The “sustained yield” approach values both the land and timber planted on it as a unit. The State of Idaho offers a choice of these two approaches to landowners with between five and 2,000 acres of forestland. Land over 2,000 acres must be valued under the productivity option which utilizes the “sustained yield approach”. Idaho’s experience is that owners seem to prefer the latter method.⁸² Part of its appeal to taxpayers may be its simplicity; the owner pays only an annual property tax. Under the “bare land” approach, the owner pays a property tax, a yield tax of 3% of the stumpage value of harvested timber, and is subject potentially to deferred taxation if the land is developed or changed in use. Since the taxes are low in either case, the less complicated option has greater appeal.⁸³

The level of taxation determines whether the sustained yield approach undermines the intent of preferential treatment by encouraging short rotations and early harvesting of timber. Hickman finds that the valuation methods used by states to arrive at sustained

yield values have moderated the potential for a higher tax burden from this approach.⁸⁴ However he questions whether this method complies with laws that specifically exempt growing timber in a number of states where it is used.

The “bare land/yield tax” approach imposes a minimal annual tax on the land, and yield taxes are collected only at the time of timber harvest when there is income to pay them. This approach would seem to provide the desired deterrent to premature harvesting of timber. Its major drawback is the fluctuation in revenues which offers a less stable source of income to local governments.⁸⁵ There are also administrative difficulties in enforcement and collection of the yield taxes.

In addition to property and yield taxes, twelve states impose mandatory severance taxes that are in the nature of an occupation or privilege tax. The tax is generally paid by the severer and is assessed at a per unit rate or as a percentage of the value of the timber severed. At least a portion of the receipts must be used to benefit forestry activities.⁸⁶

Open Space and Recreational Lands

In nearly every case, states require classified open space and recreational land to be valued in its present use. The income capitalization approach used for other preferred land uses is not generally applicable to the valuation of open and natural lands which are constrained from an economic use.⁸⁷ Several state laws specify that sales of comparable property in the same use may serve as a basis for assessment. Preferential treatment of these lands is usually tied to restrictive covenants so that the appraiser must also take into consideration the effect of the restriction on the land’s value. The dearth of sales of comparable restricted property makes the assessor’s job particularly difficult. Although Adams and Mundy make the case that natural lands may be valued in accordance with traditional market value principles and may have value greater than alternative economic uses because of their unique natural characteristics,⁸⁸ assessors will find little helpful guidance from their approach in arriving at values for preferential assessment purposes.

To establish a uniform standard for assessment of these lands, some states prescribe an upper limit on the value or establish the value to be used. Massachusetts law, for example, instructs assessors to value recreational land solely on the basis of its use, but in no event shall the valuation exceed 25% of the property’s fair cash value. Indiana sets the value of windbreak, wildlife habitat and riparian land at \$1 per acre. Tennessee law requires that open space lands be valued the same as the least productive category of agricultural land. These are arbitrary standards with only the virtues of certainty and uniformity to recommend them.

The valuation of golf courses has created some special problems. Recent cases decided by Illinois courts determined that improvements such as golf greens, fairways and tees must be included in the preferential open space assessment and not separately assessed, and that sales prices of wetlands and marshes were more indicative of open space value than golf course sales.⁸⁹ In the latter case the Court concluded that the legislative purpose was to establish a single class with a uniform method of valuation that achieves a lower assessed value for open space. The Court reasoned that wetlands and marshes of little

value “more clearly reflect the type of valuation intended by the legislature.” The opinion states:

This is not to say, as the intervenors suggest, that a golf course would sell for the same amount as a bog or swamp. Rather this is the value at which golf courses and other open space properties are to be assessed. The lower tax bill on these properties is to provide an incentive for property owners to continue using these properties for open space purposes.

This opinion may serve as some guidance to assessing officials in other states who are faced with establishing uniform criteria for assessing lands of significantly different characteristics which are included in the open space category. The need for such criteria has been expressed by assessors, taxpayers and others concerned with implementation of these policies. Although state assessment agencies are the logical sources for guidelines, they may find it difficult to gain consensus on the criteria to be used. Sixteen years after the Maine Legislature ordered the State Assessor to prepare valuation guidelines for open space, and more than two years after a strong legislative reminder of the order, no agreement has yet been reached on what the guidelines should be. Nonetheless, a thoughtful approach to developing criteria is clearly needed for this expanding class of land receiving preferential treatment.

Assessment and Taxation

Tax relief for owners of preferred land uses may be provided by other means than reduced valuations. Tax credits for property taxes, favorable assessment ratios, and exemptions from other types of assessments may be used.

Tax credits are provided by three states and are of two different types. Michigan and Wisconsin use what are known as “circuit-breakers” in which the amount of relief is inversely related to the income of the farm owner. In Michigan owners of farmland covered by a development rights agreement may claim a credit against the state income tax for the amount by which property taxes on the land and structures used in the farming operation, including the homestead, exceed 7% of household income. In addition, any farm owner who has lived on the land as a farmer for ten years or more, may claim a homestead credit for the entire farm property if the gross receipts of agricultural operations do not exceed household income. The credit is equal to 60% of the amount by which property taxes exceed 3.5% of the claimant’s household income.

Wisconsin’s Farmland Preservation Tax Credit provides “circuit-breaker” relief to farmers whose land is in an exclusive agricultural zone or who have entered into preservation contracts. The amount of the credit is determined on the basis of a formula that considers household income, property taxes, and the type of preservation restriction. The maximum credit is received by low-income farmers located in counties that have adopted county exclusive zoning and a farmland preservation plan. In addition, any farm owner whose land is under restriction may claim a Farmland Tax Relief Credit of 10% of the property taxes paid up to \$1000, regardless of income. This latter credit, which was added to offer some compensation for those who restricted their land, has reduced the progressive effect.

Barrows' and Bonderud's research on Wisconsin's program found that farm households with little or no off-farm income received the highest tax credits. The use of household income rather than farm income as the measure of ability-to-pay targets help to farm families that devote most of their labor to the farm operation. Net farm income was found to be lowest for those groups with the highest household income.⁹⁰ The linkage between strong land use measures and substantial property tax relief to those who are most likely to continue in farming would seem to be an effective means to achieve farm preservation objectives. Gold cites a number of other advantages to the tax credit approach.⁹¹ Its cost is explicit and easy to calculate, the tax expenditure is out in the open, it is state-financed, is less administratively cumbersome than use-value assessment, and more easily controlled and targeted. Gold, however, prefers tax credits that are not in the form of "circuit-breakers" since the year-to-year fluctuations of farm income, he believes, are not reliable indicators of a farmer's over-all economic well-being.

Iowa provides non-circuit breaker tax credits for owners of farmland. Iowa added a family farm tax credit in 1991 to the existing agricultural land tax credit which has been available for nearly 50 years. Owners who occupy and farm their land can claim both. The funds appropriated are apportioned among tracts of eligible agricultural land in which the levy for the local school fund exceeds \$5.40 per \$1000 of assessed value. Thus the relief is targeted to farmers in high tax districts, regardless of their income. There is some evidence that pressure on property taxes is more related to higher tax rates than to higher land values.⁹² If so, then the non-circuit-breaker credit may be the appropriate instrument. Minnesota, however, recently shifted state funding from individual tax credits to direct aid to local governments for property tax relief.⁹³ A comparative study of the costs and impacts of the former and current programs would be useful.

Even with its tax policy advocates, little interest has been shown by other states in changing from preferential assessment programs. The general public perception that the value of real estate is unrelated to income and the ability-to-pay probably accounts in part for the popularity of the use-value remedy.

The level and distribution of financial gain may also be a factor. A comparative simulation of the effect of circuit-breaker and use-value assessment systems on farm financial conditions found that use-valuations generally provided greater benefits to all but landlords with no non-farm income.⁹⁴ Notwithstanding the general satisfaction with tax credit programs within their respective states, no other states have followed their example. The greatest deterrent for state lawmakers is no doubt the state assumption of the costs of the program. The tax credit seems, nevertheless, to offer a finer instrument to influence land uses especially when linked with strong land use measures, as in Wisconsin.

In determining what influences landowners' decisions concerning the use of their property, it is important to look at all of the tax costs and benefits. In addition to preferential valuation, a number of states also apply a more favorable assessment ratio or tax rate to the classified property, which further reduces the tax burden.⁹⁵ Others assess all property at the same level, but provide for different tax rates to be applied to various classes of property. Minnesota is the only state that has built progressivity into its property classification system by using tax capacity measures based on property value.⁹⁶

Exemptions from taxation for growing crops and timber and from payments of special assessments for public improvements are also provided to farm and forest owners in many states. New York exempts for a period of ten years any increase in value due to construction or renovation of agricultural structures.

Although not within the scope of this report, the structures of other taxes, public grants and subsidies and other economic incentives should not be ignored in designing land use policies and in analyzing what factors influence landowners' decisions.

Responsibilities of Various Levels of Government

The administration of preferential tax laws is shared by state and local governments in most states. Since the 1970s, legislative efforts for property tax reform have placed increasing authority and responsibility in state-level agencies to improve state-wide uniformity and equity in tax assessment.⁹⁷ State agencies perform equalization functions, conduct training programs, publish valuation manuals and provide technical assistance for local assessing officials. In many states these agencies have substantial oversight authority over local assessing practices.⁹⁸

The efforts to achieve uniformity which spawned property revaluations across the country during this period were partly responsible for the adoption of preferential tax laws in some states. Use-value laws in many cases simply codified prior extra-legal local assessing practices in order to prevent tax shifts resulting from these revaluations.⁹⁹

Therefore, it is not surprising that preferential assessment laws enacted during this period vested in state agencies responsibilities that would further the uniform application of these laws throughout the state. Responsibilities include prescribing the form and contents of the applications used by landowners to apply for special classification of their land, developing soil productivity classes, soil categories, rental and income data, capitalization rates, and other technical information, and in many cases publishing the valuation schedules to be used by the assessors.

Nineteen states provide for specially constituted advisory groups to oversee use-value programs.¹⁰⁰ These boards are composed of public officials and private citizens with particular expertise or interests in the various land uses. A representative from the state agricultural college is usually included. These groups may serve in an advisory capacity to the state assessment agency or may be vested with independent authority to establish productivity and soil grouping and/or determine the values.¹⁰¹ In some states, county advisory boards assist county assessors in agricultural valuation.¹⁰² State assessment administrators generally retain rulemaking authority and administrative oversight responsibilities relative to local assessment performance, even when advisory boards determine valuations.

Official advisory boards offer a number of benefits. They are a source of up-to-date information and special expertise, they represent various constituencies whose views and interests must be considered, and their decisions are often more generally accepted by local officials and the public.

The use by local assessing officials of values determined by state-level agencies or advisory boards may be mandatory or optional. Although state-level calculations offer uniformity and equity across local government boundaries, they may not accurately reflect special local conditions.¹⁰³

A mechanism should be available for local assessing officials to override state-determined values. For example, municipal assessors in Maine and Massachusetts are not required to use state-recommended value ranges, but have the burden in any appeal of justifying their assessments. In New Jersey, assessors are required to consider, but are not required to use, values determined by the State Farmland Evaluation Advisory Committee. However, in the event the assessor decides not to use the state values, he must submit his alternatives to the Director of the Division of Taxation for review. This flexibility ensures equity within the taxing unit without abandoning state-wide uniformity.

State Reimbursement to Local Governments for Loss of Tax Revenue

Only a few states reimburse local governments for loss of revenues from preferential taxation.¹⁰⁴ In recent years, several states have not appropriated sufficient monies to fully fund these reimbursement programs.¹⁰⁵ Only in Michigan and Wisconsin which provide tax relief to farmers through “circuit-breaker” tax credits, is revenue loss to local governments eliminated. In Wisconsin, the cost to the state was \$26 million for tax credits to approximately 23,900 farmers in 1990.¹⁰⁶

The argument for states making financial contributions to local governments for state-mandated programs that further state-wide land use objectives is compelling. Nonetheless the current economic climate has had a negative impact on the broad-based taxes collected by state governments. With decreased federal contributions to state governments and rising social welfare and employee benefit costs, state legislatures are cutting back on local revenue sharing and local assistance programs, as well as reducing state payrolls.¹⁰⁷

These conditions, likely to continue for some time due to the predicted slow economic recovery, will place greater pressure on the property tax as a major source of local revenue. Rising property taxes, ever unpopular, are again spawning taxpayer revolts and tax limitation referenda.¹⁰⁸ In states with dominant agricultural and timber economies, taxpayers receiving the benefits of preferred assessment are a substantial constituency which will not easily assent to programmatic reductions in those benefits. Non-benefited taxpayers, however, may force a reexamination of the preferential assessment programs.

3. Summary and Conclusion

Programs to provide property tax relief for preferred land uses have been universally adopted by state governments as a means of preserving agricultural, forest and open space lands. Considerable attention has been paid to the effect of these programs on farmland retention. There is general consensus from extensive research over a twenty year period that the economic incentive offered by lower property taxes has had minimal

effect in preventing conversion of farmland to more intensive uses. In urbanizing areas, the tax reductions have not matched the profits available from subdivision and development, and in some areas may have fueled land speculation.

Much of the research was done in a time of appreciating land values and economic growth. Even during this period, it was found that preferential assessment may retard development in areas where development pressure is less strong. In a time of slower growth, these programs merit another look to determine if they can be more effectively used as instruments of land use policy.

Abandonment of farms, however, has not been due primarily to land costs. Other factors have influenced the profitability of agricultural enterprises to a much greater degree than land values and property taxes, but property tax relief continues to be viewed as a necessary component of a wide range of programs to help farmers stay in farming. In many states, especially those with pure preferential programs that have no restrictions or penalties for conversion, tax relief for farmers is the primary effect. If it is to serve in this role, then it would seem appropriate to link tax preferences with requirements that will enhance the long-term viability of agriculture.

Property tax relief measures appear to have had a positive influence in reforestation efforts in the first half of the century. Long term restrictive agreements and adherence to approved forest management practices were requirements to attain special tax treatment, and State Foresters monitored compliance. This combination of conversion restrictions, management plans and oversight would seem to be a better model for preferential tax programs, in order to protect the land resources for the future.

As policies to sustain agricultural land resources are put forward, it would be useful to consider linking preferred tax treatment for farmland with desirable land conservation practices. The American Farmland Trust's Strategic Conservation Initiative recommends that "All future farm policy should have stewardship of the land as its principle objective. Participation by U.S. farmers in government farm programs should be linked to their practice of conservation." Noting that current farm policy rewards total yield at the expense of sustainability of the land base, AFT asserts that expansion of farm productivity has come at the expense of the nation's most important renewable natural resources causing soil erosion, wetlands loss and water pollution. If the purpose of preferential tax treatment of farmland is indeed to preserve the land in its agricultural use, then tax relief should be contingent on management practices that sustain the soil, water and natural resources needed for food production. Finding the right balance between economic and ecological realities in the 1990's is the challenge.

As a public expenditure, preferential taxation is an expensive method of preserving land unless it is targeted specifically to clear land use goals. Linking tax relief with exclusive zoning or farmland preservation master plans, such as Wisconsin and California have done, is desirable.

Development of other more effective land use measures are likely to be less expensive and more effective in the long term. Recent adaptations of land use planning measures, such as non-exclusive agricultural zoning and installment purchase financing of

development rights, may be more cost-effective, politically acceptable and legally defensible. Funding for more effective land use tools will depend upon an honest analysis of the tax expenditure costs of tax relief in comparison with other choices.

Tax expenditures for property tax relief are hidden and non-benefited taxpayers are usually unaware of the portion of their tax dollars that provide tax relief to others. With the property tax burden rising in many states, taxpayers are entitled to have their taxes invested wisely. At the least, tax relief should be coupled with restrictions on conversion and recapture of taxes when the land is developed.

Preferential property tax programs, notwithstanding their detractors, are likely to remain a fixture in state law for the foreseeable future. Heightened concerns among the general population related to environmental quality and conservation of natural resources will continue to provide a broad constituency in support of programs to prevent the loss of open land. The property tax is widely perceived to place an unfair burden on land owners that make their living from the land or want to retain land for a “non-economic” use. And from a pure political perspective, in states with large agricultural and timber economies, farmers and foresters will be effective opponents of any efforts to reduce their benefits.

Therefore, tax administrators and policymakers can benefit from evaluating and refining their existing programs while land use planners explore more effective measures for land preservation. From the perspective of property tax policy, the predominant goals are to achieve uniformity and equity in the implementation of state policies.

To achieve consistency in the application of preferential programs, definitions of what and qualifies must be clear to both assessors and landowners. There is a need for state agencies to clarify eligibility standards by providing written guidelines or regulations that provide more detailed criteria than is usually found in legislation. The participation of those with knowledge of the particular land use would be helpful in developing these guidelines.

Moreover, assessors should not bear the sole responsibility for determining eligibility. Land use planning professionals, foresters, agriculture or conservation officers at the local or regional level may be better suited to evaluating qualifications of particular land uses. Their assistance should be incorporated into the approval process.

Applications by landowners for classification should be required in all states. The collection of consistent and complete information on forms developed by state assessment administrators will improve uniformity both in determining eligibility and in recording information for analysis. Annual or periodic filings, particularly if simplified renewal forms are mailed by the assessors, place a small burden on benefited landowners in exchange for accurate, up-to-date information. Confidentiality of the contents of the application should assured.

Minimum acreage, productivity or prior use requirements, intended to ensure bona fide use and deter abuses, are too broad and not sufficiently stringent in most states to achieve their objectives. Although such requirements may be useful, they should be evaluated to ensure their relevance and effectiveness.

At a minimum, preferential programs should require the recapture of taxes when the benefited land is developed or converted to a non-preferred use. Increasing the number of years to which the penalty is imposed is recommended to prevent short-term land speculation. In this period of slower economic growth, it should be possible to develop a penalty provision that strikes the right balance between the tax incentive and the deterrent. This is an opportune time to re-evaluate and strengthen penalty provisions.

As a matter of principle, students of tax policy would prefer that decisions related to taxation be separated from property valuation so that property could be valued uniformly at market value, and that tax relief, where desired, be accomplished by tax measures such as preferential tax rates or tax credits. This separation provides for greater uniformity in assessment by relieving the assessor from considerations other than the accurate appraisal of property. However, the traditional principles of appraisal based on highest and best economic use conflict with the social and political notions that the highest and best use of agricultural, forest and open space lands are their present uses. Current-use valuation resolves this conflict, and if performed according to professional standards, retains assessment independence and integrity.

If uniformity is to be achieved in the application of appraisal methods, state-level agencies must play an active role. State agencies are best able to collect and analyze the extensive data needed for the capitalization of income approach which is best suited to the valuation of agricultural and timber producing lands, especially when expertise is available to them from state universities and/or advisory boards. Valuation manuals and training for assessors are as necessary for use-value assessment as they are for market appraisals. If valuations are established at the state level, there should be a means by which local assessing officials can adjust the state values to reflect special local circumstances.

States should carefully evaluate the impact of using the bare land or sustained yield approach in valuing forestland both in terms of the effect on long-term forest management and on local revenue stability. Minimal per acre fixed values or taxes, when established by statute, lack adaptability, and widen the gap between forest owners and other taxpayers support of local government, as well as limit the revenue available to meet rising costs.

There is a particular need for state-level guidelines and criteria for open space and recreational land valuation. Arbitrary standards have been legislated in some states to provide certainty and uniformity, but they are poor substitutes for well-conceived criteria.

State property tax administrators have an important role in promoting the critical evaluation of preferential programs, as well as in administering them. Establishing a data base of state-wide information is now possible through the use of computers. The fiscal constraints on state and local governments make it necessary to increase the level of cooperation between various agencies and functions in order to make the best use of limited resources and expertise. The opportunity should not be missed to improve communication and share information among land use and tax professionals, commercial agricultural and timber interests, and non-profit public interest organizations. Broad

participation is essential if preferential tax policies are to receive thoughtful reexamination, and if new policies are to achieve public acceptance.

Endnotes

1. All but Alaska, Iowa, Nebraska, Oklahoma either have specific statutory provisions providing for special treatment of forestlands or including timber production within the definition of agricultural land qualifying to special assessment.
2. See the Summary Table for the categories of land uses included under Open Space and Recreational provisions. Special treatment of wetlands and golf courses are also included.
3. See, e.g., Declaration of Purpose for the California Land Conservation Act of 1965; the Declaration of Policy in Connecticut Gen Stat. Sec. 12-107a; the Declaration of Intent in N.H. Rev. Stat. Sec. 79-A:1; the Tennessee Agricultural, Forest and Open Space Land Act of 1976.
4. Preferential tax treatment was found to be in violation of provisions which required uniformity in taxation of property in the Constitutions of a number of states. Referenda to amend these constitutional provisions to allow for separate classification and taxation of these property classes have been universally successful. See D. Myers, "Open Space Taxation and State Constitutions", *Vanderbilt Law Review*.
5. See F. Schnidman, *Retention of Land in Agriculture*, in which he notes at 47 that the threat to the family farm in New England is seen as a threat to the entire community and that programs for farm preservation have been supported by nonfarm urban dwellers even in the more urbanized states. For example, the amendment to the Massachusetts Constitution in 1972 which allowed differential taxation of agricultural land was approved by a three-to-one vote and "carried every precinct in the Commonwealth, urban and well as rural.." at 69. See also S. Hoffman "Farmland and Open Space Preservation in Michigan" *Journal of Law Reform* at 1109; P. Miller "A Review of Recent Strategies for the Preservation of Farmland," *Assessment Digest*, at 24 ; R. Wagner, "A New England Case Study and Bibliography," Presentation Notes, September 24, 1991.
6. See C. Hydahl, "Michigan's Commercial Forest Act: An option for the Future," *Assessment Digest*, at 14, 16; State of Idaho, *Forest Tax Report 1990*, at 2; S. Hoffman, "Farmland and Open Space Preservation in Michigan: An Empirical Analysis," *Journal of Law Reform*, at 1109.
7. J. Anderson, "Agricultural Property Tax Relief" *Land Economics*, at 14. B. Johnson, "Nebraska's Mysterious New Valuation System" *Creighton Law Review* at 628. Schnidman, *supra*, at 34.
8. Wagner, n. 5, *supra*.
9. D. Walker, "Local Revenue Effects of Preserving Timberlands: An Application to Michigan," *Assessment Digest*, (November/December 1991), at 4; C. Hyldahl, *supra*, n. 6 at 15.
10. F. Schnidman, *supra*, at 73. R. Wagner, *supra*. The American Farmland Trust has conducted a number of fiscal impact studies to support their premise that open

farmland requires very little in services compared to developed land. “Cows don’t need to go to school” sums up their position.

11. Michos, John P., “The Literature of Use-Value Assessment,”(mimeo) USDA-ERS, Washington, D.C. Bibliography presented at the Land Ownership, Tenure and Taxation Seminar, Washington D.C., October 4, 1991. The Michos Bibliography is being updated periodically and is available upon request.
12. Most of the current research simply acknowledges earlier studies which have reached this conclusion. The most recent 1987 Census of Agriculture reports continuing declines in the number of farms (-6.8%) and acreage in farmland (-2.3%) in the United States during the five year period since the 1982 Census.

Rates of conversion of farmland using a time-series analysis applied to four counties in Virginia were evaluated for the ten year period after adoption of use-value in 1972. The author found that there was no change in the trend toward conversion in the three counties near the Washington D.C. metropolitan area, but did find a lower conversion rate in the Virginia Beach coastal area. He concluded that the use-value program was ineffective in stemming farmland conversions in areas where development pressure is increasing, but may help preserve farmland at least for a period of time where development pressure is less strong. J. Ferguson, “Evaluating the Effectiveness of Use-Value Programs”, *Property Tax Journal* (June 1988).

The first two years of required reporting on conversion of farms under Agricultural Assessment in New York State found the number of conversions increased by nearly 80% from 1989 to 1990, although the acreage converted was almost 40% less. The conversions were most prevalent in areas of the State which are coming within the expanding reach of the New York City metropolitan area, with the land primarily being converted to residential subdivision. State of New York, *Conversion of New York Farmland Under Agricultural Assessment to Non-Farm Use*.

13. Hoffman, *supra*, includes a discussion of the economics of land conversion in “Farmland and Open Space in Michigan” at 1118-1128. She notes three areas of the failure of markets in the valuation and transfer of farmland and open space to urban use: (1) the failure to account for external costs and benefits because of the “public” nature of the goods and benefits provided by these land uses, (2) the failure to reflect accurately the current demand for land resources and products, and (3) the failure to accommodate uncertainty in future demand for land resources.
14. N. Bills “Real property Taxes Related to land Value and Use” at 20.
15. See J. Anderson and H. Bunch “Agricultural Property Tax Relief,” *Land Economics*; N. Bills, *supra*, at 20; D. Chicoine, S. Sonka and R. Doty, “The Effects of Farm Property Tax Relief programs on Farm Financial Conditions”, *Land Economics* at 521.
16. R. Blewett makes this argument in “Development Rights and the Differential Assessment of Agricultural land”, *American Journal of Economics and Sociology* on the basis of a simple theoretical model tested on farmland conversion before and after implementation of differential assessment in Indiana.

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17. Reports by the States of California and New York on enrollment and conversion of land in farmland assessment programs offer support for this view. See California, *Land in the Balance* and State of New York, *supra*. See also Hoffman, *supra* at 1145-1147. However, she finds Michigan's program is successful in attracting high quality farmland in areas where there is a lack of development pressure. These separate findings are interesting since these three states each have different approaches to preferential tax treatment of farmland. California provides current use valuation based on capitalization of rental income to eligible landowners who elect to place their land under restrictive agreements. Michigan adopted the first "circuit breaker" program which grants income tax credits for property taxes to land owners who agree to limit development to uses consistent with farm operations. The land is valued at its fair market value. New York values eligible lands in designated agricultural districts or under 8-year commitments to agricultural use based on the capitalization of net farm income.
18. R. Coughlin, "Formulating and Evaluating Agricultural Zoning Programs" *Journal of American Planning*: 183-192. He concludes that more flexible zoning measures, such as non-exclusive area based agricultural zoning which allows for a limited amount of non-farm development on a sliding scale, are capable of protecting extensive land bases in semi-rural areas, can be accepted politically and withstand legal challenges.
- R. Servary, Jr and D. Neubert, "An Agricultural Land Preservation Program that Developers Can't Match", *Government Finance Review*: 17-21. An installment purchase financing plan that raises seed money for preserving agricultural lands in Howard County, Maryland received an Government Finance Officers Association's Award for Excellence in 1990. It replaced a traditional PDR program when land values exceeded what the county could pay for easements.
19. For example, New York State's most recent compilation of statistics reported that 1989 tax savings averaged \$11.58 per acre, ranging from \$520.14 per acre in Nassau County, Long Island within the metropolitan New York City area, to \$1.81 in rural Jefferson County. State of New York, *Agricultural Assessment Program Impact: 1986 Through 1989*. J. Anderson, *supra*, at 124 lists three Michigan counties in which "circuit breaker" credits offset between 40% and 50 % of agricultural property taxes. Alabama's current use law resulted in enrollees on average paying between 45.4% and 44.9% less per acre of property taxes, according to the study's sample. Kreitemeyer, "The Initial Impact of Current-Use Assessment in Alabama", *Assessment Digest* at 18. A 1979 study cited by J. Ferguson, *supra*, at 157 reported agricultural property tax savings throughout the United States usually ranged from 40% to 60%.
20. R. Barrows and K. Bonderud, "The Distribution of Tax Relief Under Farm Circuit Breakers: Some Empirical Evidence", *Land Economics*. This study analyzed actual data of Wisconsin farm households that received circuit-breaker tax relief in 1983. The population of tax credit filers (42% of those qualified) which was analyzed is not necessarily the same as the population of all farmland owners.

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21. See Chicoine, Sonka and Doty, for a comparison of the effect of circuit-breaker and use-value methods on farm landlords and operators.
 22. *Id.*, at 520 which suggests that even with property tax relief, the dismal cash situation of farm owners and operators would require liquidation of part of the land base to continue operations in urban fringe areas.
 23. See generally M. Duncan, "Agriculture as a Resource: Statewide Land Use programs for Preservation of Farmland," *Ecology Law Quarterly*; Schnidman, *supra*; Wagner, *supra*.
 24. See Reference List. Hickman has written or co-authored numerous articles and research papers. The most recent paper was published in 1991.
 25. J. Greenwood "Evaluating the Effectiveness of Use Value Programs" at 23, and C. Hickman "Current Status of Modified Rate and Non Productivity-Based Modified Assessment Laws" Proceedings Reprint at 15.
 26. Idaho's 1929 Reforestation Law states that forestlands comprised two-fifths of the entire area of the state, and that 52% of these lands had been cut-over or burned-over. When Michigan's Commercial Forest Act was enacted in 1925, the state's resource of softwood forest was essentially depleted from sixty years of forest industry cutting. C. Hyldahl, *supra*.
 27. *Id.*, Idaho Report. The 1929 law stated that "Cut-over and burned-over forestlands have but little, if any, value and produce but little tax revenue to the state while in that condition, but, if reforested and protected, such lands will reproduce for future generations valuable and recurring forest crops." C. Hyldahl, *Id.*, notes that after the primary timberland had been nearly eliminated in Michigan, some private lands reverted to public ownership for unpaid taxes, thus reducing the tax base. Michigan's 1925 Act coincided with the general increase in tax delinquencies in the 1920s.
 28. A comparison of the various approaches to forestland taxation is included later in this report. See J. Greenwood *supra* at 23 and C. Hickman at 15 for brief general histories of property taxation of forestlands.
 29. U.S. Department of Agriculture, *Forest Inventory, Economics and Recreation Research*, 1987, table 2 indicates growth in privately-owned timberland acreage in Maine and several Rocky Mountain states, although nationally 25.5 million acres have been lost since 1952, and nearly 8 million lost between 1977 and 1987. Timberland comprises 66% of forest acreage in the United States.
 30. Compare survey statistics from the Forest Service and the 1987 Census of Agriculture which state that between 1978 and 1987, there was a loss of 50.3 million acres of land in farms and only a loss of 8 million acres of timberland.
 31. Hyldahl *supra*, at 13.
 32. *Id.*
 33. See Hyldahl at 14 for a discussion of Michigan's and Wisconsin's "public access requirements". Wisconsin's 1985 new Managed Forest Law bases the rate of the

annual acreage tax on the level of public access. Landowners who choose to enroll their lands as open to the public are taxed at less than half the per acre rate of “closed” lands.

34. Most state laws provide for higher taxes on commercial and industrial real estate than for other property uses either by assessing it at higher percentages of value or at higher tax rates, or providing exemptions to non-commercial properties.
35. The U.S. Advisory Commission on Intergovernmental Affairs has reported for the last three years that Americans believe the property tax is the “least fair”, replacing the income tax which had been the most disliked tax for a decade. This was particularly true for respondents to the annual survey from the Northeast and North Central States which have had rising tax bills. West Coast taxpayers have followed California’s lead by instigating “tax revolt referenda” in Idaho, Oregon, and Washington.
36. Difficulties in determining whether land meets a “public benefit” test for eligibility for open space classification have been noted by assessing officials in Maine and in Massachusetts. Recent legislation in Maine requires the assessor to determine that preservation of the open space land provides a public benefit. Owners of previously classified land were required to reapply in 1990 for a redetermination of their eligibility based on the “public benefit” test. Chapter 748 of the laws of 1989, amending Maine Rev. Stat. Ch. 36 §1102 (6), 1109.

A perceived lack of uniformity in the current use valuation of open space land prompted the Maine Legislature in the 1989 Act, above, to require the development of valuation guidelines by the State Assessor, working with representatives from municipalities, appraisers and conservation organizations. The report, for which the legislature in 1991 set a deadline as of February 1, 1992, has yet to be written due to an inability of the participants to agree on the guidelines.

37. See J. Chipman, “Illinois’s Open Space Statute: An Administrative Review of the Country Club Relief Act,” *Journal of Property Tax Management* (January 1991) for a review of Illinois court cases, which he notes are one of the more troublesome areas confronting tax appeal boards.
38. *eg.* States of California, Connecticut, Florida, Georgia, Indiana, Michigan, Nevada, New Hampshire, Oregon, Tennessee, Virginia, Washington.
39. Many open space taxation provisions include golf courses within the definition of qualifying land. In Massachusetts, golf course owners actively recruited land conservation organizations and advocates to draft the constitutional amendment and enabling legislation that provided preferential tax treatment to recreational lands, including golf courses. Their support was necessary to achieve its passage. Recreational land is defined as “land retained in a substantially natural, wild or open condition, or in a landscaped condition in such a manner as to allow to a significant extent the preservation of wildlife and other natural resources...and land which is devoted primarily to recreational use and which does not materially interfere with the environmental benefits which are derived from said land, and is available to the

general public or to members of a non-profit organization including golf courses.”
Mass. Gen. Laws Ch. 61B.

40. Golf courses are the only recreational land use eligible for preferential taxation in Arizona, Hawaii, and Maryland. Golfing or golf courses are specifically included within the definition of eligible recreational or open space uses in Florida, Illinois, Massachusetts, Minnesota, New Hampshire, Oregon.
41. J. Chipman, *supra*.
42. See J.Eckert and J. Malme, *Assessment Administration Practices in the U.S. and Canada*, Question 142, section 19 for the number of land parcels which receive preferential treatment in each state.
43. California, Iowa and Vermont provide partial reimbursement for agricultural lands. Maine, Oregon and Vermont provide payments for forestland tax programs.
44. S. Mackey, *State and Local Finance Levels: Fiscal Year 1991*, NCSL. This annual report analyzes the most recent data available from the U.S. Census Bureau on the level and composition of state and local government tax revenue, comparing changes in tax revenues per \$100 of personal income.
45. “PDR Status Check” in *Northeastern Farmland Update*, Spring 1992, the Newsletter of the American Farmland Trust’s Northeastern Office.
46. S. Mackey, *supra* at 13.
47. Principles of a High Quality Revenue System, Lincoln Institute of Land Policy.
48. R. Dunford, in “Farmland Use-Value Assessment in the United States: A Summary and Critical Review,” *Assessment Digest* (May/June 1986) at 21, notes that use-value assessments, like other tax relief measures to accommodate a particular group of taxpayers, can be criticized for moving the property tax away from historical principles of uniform *ad valorem* taxation, but have contributed to its continuing acceptability.
49. Arkansas, Colorado, Hawaii, Illinois, Kentucky, Missouri, Oklahoma and West Virginia include both land and improvements. Arkansas, Iowa, Massachusetts, Nebraska, and Vermont exclude all buildings.
50. Landowners must make initial application to or receive a certification from the State Forester or other agency with forestry responsibilities to have their land assessed as forestland in Colorado, Connecticut, Delaware, Indiana, Massachusetts, Michigan, Missouri, New York, North Dakota, Ohio, Rhode Island, Tennessee, West Virginia and Wisconsin. In some other states, the state forest agency prepares guidelines for forestland classification or supervises forest management of qualified lands. In Rhode Island, an owner of farmland as well as forestland must initially apply and receive certification from the State Director of Environmental Management.
51. See e.g. Connecticut’s definition of Open Space and Maine’s criteria that the assessor must use in determining whether to approve an application for open space classification.

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52. J. Chipman, writes “Inevitably, legislation that is phrased in general, rather than specific, terms will produce improbable applications.” As an example, he cites the difficulty assessors might have in determining whether a golf driving range is eligible as land which “...conserves landscaped areas, such as public or private golf courses...”in Illinois’ open space law.
 53. In California, Connecticut, Indiana, Michigan, Nevada, New Hampshire, North Dakota, Oregon, Tennessee, Virginia and Washington, land use planning, conservation or environmental agencies at one or more levels of government have the responsibility for determining eligibility, or for establishing zoning, exclusive districts or other land use plans in which land must be located to be eligible for preferential tax treatment. in Florida and Georgia, environmentally sensitive areas are certified by state environmental agencies.
 54. It is a common criticism by assessors that state-level natural resource agencies are too liberal in granting eligibility. Whether it is true or not is undocumented, but it is possible that an understaffed state agency may not be able to devote the attention needed to determine eligibility, and may be inclined to include rather than exclude properties under those circumstances.
 55. Arkansas, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Mississippi, Missouri, Montana, North Dakota, Oklahoma, South Dakota and Wyoming.
 56. In Florida, lands qualified as environmentally endangered, lands subject to a development moratorium, to certain conservation easements or development restrictions, or coastal protection plans by local or state agencies are entitled to preferential assessment.
 57. S. Krietemeyer, “The Initial Impact of Current-Use Assessment in Alabama,” *Assessment Digest*: 18-24. The study, conducted after the first year of implementation, examined participation rates and extent of tax savings. Enrollment ranged from none in Washington County to 82% in Houston County.
 58. See also Hoffman, *supra*, State of New York, *supra* and *Agricultural Assessment Program Impact: 1986-1989* for other enrollment studies.
 59. See e.g, N. Bills *supra* who discusses research issues and the need for more consistent data.
 60. Arizona, Arkansas, Louisiana, Nevada, New Mexico, North Carolina, Ohio, South Carolina, and Virginia provide such penalties.
 61. U.S. Department of Commerce, Bureau of the Census, *1987 Census of Agriculture*, Vol 1 at 1.
 62. Georgia, Maine and Tennessee limit an owner to 2000, 15,000 and 1500 acres, respectively within the state.
 63. E.g., contrast Louisiana’s law, which requires that land produce at least an annual gross income of \$2000 from agricultural, horticultural or timber production for each of the four preceding years, with Wisconsin’s requirement for eligibility to enter into

an agricultural preservation agreement which qualifies the owner for property tax credits. In Wisconsin, the land must have produced not less than \$6000 in the year or \$18,000 over the three years immediately preceding the agreement.

64. The smallest land area category is between ten and thirty acres for which an annual gross income of \$1000 plus \$60. per acre, or a fraction thereof over 10 acres, is required. The largest category is for land over 250 acres for which \$5900 plus \$5. per acre, or a fraction thereof over 250 acres, is required.
65. Hoffman, at 1152-1153 notes studies have criticized the use of household income rather than on-farm income in Michigan's determination of tax credits for property taxes paid on agricultural land as not providing adequate incentive to farm owners with significant off-farm income to enroll. Michigan's program appears to be most attractive to farmers who derive a high percentage of income from on-farm activities in counties with predominantly agricultural economies, rather than to owners of farms near urban areas where more off-farm employment is available to family members.
66. Colorado, Delaware, Idaho, Indiana, Maine, Maryland, Massachusetts, Missouri, N. Carolina, Rhode Island, Tennessee, Vermont, Virginia, Washington, West Virginia and Wisconsin.
67. California, New York, Oregon, Texas and West Virginia.
68. See Appendix for Summary Chart. Blank sections under Restrict and Penalty denote a pure preferential program; Preferential programs with deferred taxation are noted under Penalty, and programs which also restrict land use by exclusive zoning or restrictive covenants or easements are noted under Restrict. These three categories are used throughout the literature on use-value assessment.
69. J. Chipman, *supra* at 42. He quotes from Henry "Preferential Property Tax Treatment of Farmland and Open Space under Michigan Law" 8 *U. Mich. J.L. Ref.* 428 (Winter 1975) in describing the purpose of the two common themes in preferential property tax legislation, "to structure incentives and penalties to encourage entry and discourage exit from the program."
70. *Id.* at 46.
71. For example, Connecticut's "Conveyance Tax" on farm forest and open space lands is 10% of the sale price or market value of the land if sold or converted in the first year after enrollment, declining 1% a year until the tenth year, after which no penalty is imposed. Georgia multiplies the amount by which preferential assessment reduced taxes by a factor of 5 if the restrictive covenant for agricultural land is breached in its first year; the factor declines to 2 for the seventh, eighth, ninth and tenth year. Maine imposes a penalty equal to 40% of the land's fair market value at the time farmland is removed from the program, if it has been enrolled for less than 5 years. If removed between 5 and 10 years, the penalty is the full recapture of the taxes that would have been paid on the land at full value for all of the years, and if removed after 10 years, the penalty is the recapture of taxes for the preceding 5 years.

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72. Pennsylvania distinguishes between a “split-off” of a part of the land which does not exceed 2 acres and is converted to certain specified uses, which is not subject to roll-back taxes, from removal of a portion of land which triggers roll-back taxes on the entire tract of which it is part.
 73. Massachusetts calculates both a roll-back tax and a conveyance tax and imposes whichever results in the higher amount.
 74. Both Georgia’s and Michigan’s laws specify that the assessor must consider the existing use and zoning of the property in arriving at its market value. Wisconsin assessors interviewed by author in 1991 indicated that their appraisals of farmland generally reflected the lands’ value in agricultural use.
 75. Minnesota authorizes the use of sales data obtained from comparable agricultural lands located outside metropolitan counties, but within the region. Oregon allows the use of sales for bona fide farm use, but requires the income approach when comparable sales cannot be found. South Dakota relies on the use of comparable agricultural land sales within 2 years of the assessment. Illinois, New York and North Dakota amended their use-value assessment laws to mandate the capitalization of income approach. See D. Chicoine, “Agricultural Use-Valuation Using Farm-Level Data,” *Property Tax Journal* at 3.
 76. R. Dunford, *supra*.
 77. See D. Chicoine *supra*, for an evaluation of Illinois method.
 78. R. Dunford, *supra*, n. 74 at 23.
 79. *Id.* at 26.
 80. Connecticut, Delaware, Indiana, Michigan and North Dakota have such forest preserves. The annual tax for Connecticut’s forest plantations may not exceed ten mills, based on a value determined every 50 years. Delaware provides for a 30 year exemption from county property taxes on forest plantations. Native forestland and forest plantations in Indiana and forest reservations in Michigan are assessed at \$1 per acre. North Dakota assesses a fifty cents per acre tax on forest stewardship land in lieu of property taxes.
 81. C. Hickman, “Inconsistent Forest Property Tax Policies within Selected Southern States,” Research Paper SO-253 at 4, referencing prior published works of Klemperer, Teeguarden, Williams and Canham.
 82. R. Brevig, the Forest Tax Administrator for Idaho State Tax Commission reports that initially about half chose each option, but since 1982 the preference of new enrollees has been for the productivity or sustained yield option. “Forest Property Taxes in Idaho”, *Northwest Woodlands* at 22.
 83. *Id.* In 1989 for comparable forestland, the tax was \$1.39 per acre under the productivity (sustained yield) option compared to a total tax of \$1.31 under the bare land option.

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84. C. Hickman, *supra*, n. 81 at 6. Using actual rather than potential growth in estimating annual yields, ignoring inflation in establishing stumpage values, and using higher than market interest rates for capitalization are practices generally used to keep values low.
 85. D. Walker *supra*, at 2. Michigan exempts commercial forestland from property taxation, and instead assesses an annual fixed per acre tax on the land, adjusted every ten years based on the state equalized value for timber cut-over land. In 1990, the rate was 38 cents per acre. The Department of Natural Resources grants approval to cut timber, establishes the stumpage value of each of the classes of forest products to be cut, and issues a permit indicating the values to be used in computing a yield tax for 10% of the stumpage value.
 86. C. Hickman, "Timber Severance Taxes: Current Status and Changing Role," *Forest Products Journal*: 31-34.
 87. V. Adams and B. Mundy, MAI, "The Valuation of High-Amenity Natural Land" *Appraisal Journal* at 48.
 88. *Id.*, 48-53.
 89. J. Chipman, *supra*, 40-42. In regard to providing preferential assessment to golf course ground improvements, the Court focused on the language and legislative history of the Illinois open space tax law which describes open space as "land used actually and exclusively for maintaining or enhancing natural or scenic resources.... for conserving landscaped areas, such as public or private golf courses..." The court concluded that such improvements enhanced and conserved the natural scenic beauty of the land.
 90. R. Barrows and K. Bonderud, *supra*, at 25.
 91. S. Gold, *Property Tax Relief* at 111-112. In this major 1979 work, Gold reviews the various agricultural property tax relief measures in Chapter 5.
 92. J. Anderson and H. Bunch, *supra* at 20.
 93. S. Mackey, *State Property Tax Relief programs for Homeowners and Renters*, Denver, CO, National Conference of State Legislatures, February 1992 at 21.
 94. D. Chicoine, Sonka and Doty, *supra*. The simulation used Michigan's circuit breaker credit and the Ohio use-value assessment system applied to a hypothetical cash grain operation in east central Illinois with an operator owning half of 600 acres and leasing the remaining acres on a 50% crop share basis. The study analyzed the effect of the two approaches on the farm operator and the farm owner, and found that farm operators and landlords with non-farm income received higher benefits from use-value assessment.
 95. Alabama, Arizona, Hawaii, Illinois (Cook County only), Louisiana, Minnesota, Missouri, South Carolina, Tennessee, and Wyoming assess various classes of property at different percentages of their value. Residential property and specially assessed property are assessed at lower percentages than other property classes. Kansas, however, assesses agricultural property at the same ratio as commercial and

industrial property, providing a lesser ratio only to residential property, and Maryland assesses agricultural property at a higher percentage than other property classes.

96. Hawaii allows each county to determine the tax rates, and some set a lower rate for agricultural property. Iowa sets a limit on taxes levied on land and improvements used for agricultural and horticultural purposes. Massachusetts provides municipalities the option of setting a lower tax rate on open space property, which is valued at its full value, but agricultural and recreational land is classified as commercial property which may by local option be taxed at a higher rate. Minnesota and Ohio provide additional tax reduction benefits to owner-occupied agricultural properties. Minnesota's tax capacity classification system increases the percentage of property taxes that can be levied according to the market value of the property. In South Dakota, agricultural property pays one-half of what is paid by non-agricultural property on any levy above \$4.80 per \$1000 of value, and its rate may not exceed \$14.40. Local governments in Virginia are authorized to apply different tax rates to different property classes. West Virginia provides reduced rates for agricultural personal and real property.
97. J. Malme, "Policies and Practices that Promote Assessment Equity," Working paper, Lincoln Institute of Land Policy.
98. J. Eckert and J. Malme, *Assessment Administrative Practices in the U.S. and Canada*, IAAO.
99. J. Bowman and J. Mikesell, "Uniform Assessment of Agricultural Property for Taxation: Improvements from System Reform," *Land Economics* at 2.
100. See Summary Chart.
101. Compare, for example, Montana's advisory committee, appointed by the Department of Revenue, which reviews agricultural land data prepared by the state university to be used by the Department in developing values with New Hampshire's Current Use Board, appointed by the Governor, which establishes annually a range of use values that must be applied by assessors in assessing all preferred properties.
102. Illinois and Texas, for example.
103. See Dunford, Chicoine and Ervin, *supra*, for their discussion of horizontal and vertical equity, at 25.
104. California, Iowa, Maine, Minnesota, Missouri, New York, North Dakota, Oregon, and Vermont provide various levels of reimbursement for one or more of the benefited land categories.
105. The \$10 million appropriated for Iowa's Family Farm Tax Credit in 1991 was inadequate to fully fund the amounts claimed. Vermont's Use Tax Reimbursement Program was only funded to the extent of 80% of tax reduction in 1992, and a one-year moratorium on new enrollments in current-use programs was enacted by the legislature for fiscal year 1993.
106. State of Wisconsin, *Farmland Preservation Program*, January 1991.

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107. The 1992 responses to the IAAO survey of state property tax administrators report reductions in state assessment agency budgets and personnel.
 108. Property tax limitation measures have been passed in Florida and Oregon. The Supreme Court decision upholding California's Proposition 13 may encourage similar measures in other states.

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Appendix: Abbreviations Used in Summary Table

In the first column, the Summary Table lists vertically in alphabetical order the fifty states, and in the second column the categories of land uses for which specific preferential tax programs have been enacted into law in each state.

The U.S. Postal Service abbreviations are used for the names of the states. For example, AL refers to Alabama.

The land use categories are abbreviated as follows:

- AG Agricultural and horticultural land; in some states referred to as farmland.
- FO Forest land; in some states referred to as timberland.
- OS Open Space land which may include conservation land, environmentally endangered land, and/or land with natural or scenic resources.
- RC Recreational land, which may include golf courses.
- GC Golf Courses
- PD Land designated for planned development
- RT Residential land in transition; land in residential use located in a non-residential zone.
- WT Wetland, which may be also identified as marshland.
- A/F Agricultural land category which includes forest or timber land.
- A/OS Agricultural land which includes open space land.
- F/OS Forest land which includes open space land.
- AG1,2 Agricultural land for which there are two distinct statutory programs.

The categories listed horizontally across the top of the table include:

- REQUIRED Selected requirements for eligibility:
- AP Application by the landowner.
- AC Minimum acreage.
- PR Minimum productivity in terms of income or management plan.
- PT Prior time period in use category.
- RESTRICT Land use is restricted by exclusive zoning, or restrictive covenant or easement.
- PENALTY Additional taxes are imposed for change in use of land under a preferential property tax program.
- RB Rollback taxes or deferred taxes based on the difference between taxes paid under preferential land use and taxes otherwise payable.

C	Conveyance, cancellation or land use change taxes based upon a percentage of sale price or market value.
METHODS	The means by which preferential treatment is provided.
VA	Valuation
AS	Assessment; property taxes are based on a percentage of value that benefits the specific land use.
TX	Taxation; the owner or the land receives a benefit based on tax credits or special tax treatment.
EX	Exemption in whole or in part from property taxes.
ADMINIST	Administration.
ST	A State agency is responsible for providing a specific component of the means by which preferential treatment is provided; such as determining all or a part of the valuations, or administering tax credits. More than general supervision or guidance is required.
LO	Local government, which may mean county or municipal government, has general responsibility for key components of administering the program.
AD	An advisory group at the state or local level of government is established by statute to assist assessing officials in carrying out preferential tax programs.
PAY	State government reimburses local governments for loss of taxes from preferential taxation or funds tax credits.

Appendix: Summary Table

PREFERENTIAL PROPERTY TAX TREATMENT OF LAND USES IN THE UNITED STATES

ST	LAND	REQUIREMENTS				RES	PENALTY		METHODS				ADMINIST			PAY
		AP	AC	PR	PT		RB	C	VA	AS	TX	EX	ST	LO	AD	
AL	A/F	X					X		X	X			X	X		
AK	AG	X		X			X		X					X		
AZ	A/F	X	X		X				X	X				X		
	GC	X				X	X		X					X	X	
AR	A/F								X				X	X		
CA	A/OS	X	X	X		X		X	X				X	X		X
	FO			X		X	X		X				X	X	X	
CO	A/F			X	X				X				X	X		
CT	AG	X						X	X					X		
	FO	X	X						X	X				X		
	OS	X				X		X	X					X		
DE	A/F	X	X	X	X		X		X			X		X	X	
	AG2	X	X			X	X					X	X			
FL	A/F	X							X					X		
	OS					X	X		X					X		
	RC					X	X		X					X		
GA	A/F	X		X	X	X	X			X				X		
	OS	X				X	X		X					X		
	RT	X				X	X		X					X		
HI	A/F				X				X					X		
	AG2	X				X	X		X	X				X		

ST	LAND	REQUIREMENTS				RES	PENALTY		METHODS				ADMINIST			PAY
		AP	AC	PR	PT		RB	C	VA	AS	TX	EX	ST	LO	AD	
	GC	X				X	X		X					X		
	RT	X				X	X		X					X		
ID	AG		X	X	X				X				X	X		
	FO	X	X				X		X		X		X	X	X	
IL	A/F				X				X				X	X	X	
	OS	X	X		X		X		X					X		
IN	AG								X					X	X	
(IN)	FO	X	X				X			X				X		
	OS	X	X				X			X			X	X		
IA	AG		X						X		X			X		X
KS	A/F								X				X	X		
KY	A/F	X	X	X	X		X		X					X		
LA	A/F	X	X	X					X	X			X	X		
	WT	X	X						X	X				X		
ME	A/OS	X	X	X	X		X		X				X	X		
	FO	X	X				X		X				X			X
MD	AG		X	X				X	X				X			
	FO	X	X				X		X				X			
	GC	X	X				X		X				X			
	PD		X				X		X				X			
	RT	X			X				X				X			
MA	AG	X	X	X	X		X	X	X					X	X	
	RC	X	X				X	X	X					X		
	FO	X	X			X	X		X		X			X		
	OS										X			X		

ST	LAND	REQUIREMENTS				RES	PENALTY		METHODS				ADMINIST			PAY
		AP	AC	PR	PT		RB	C	VA	AS	TX	EX	ST	LO	AD	
MI	A/OS	X	X	X		X	X				X	X		X		
	FO	X					X				X	X		X		X
MN	AG	X	X	X	X		X		X		X		X	X		X
	RC	X	X				X		X					X		
	FO	X	X			X	X		X		X		X			
MS	A/F								X					X		
MO	AG								X	X			X	X		
	FO	X				X	X		X				X	X		X
MT	AG		X	X					X				X	X	X	
	FO		X								X		X	X		
NE	AG	X	X	X			X		X				X	X	X	
NV	A/F	X	X	X	X		X		X				X	X		
	OS	X				X	X		X					X		
NH	A/F/O S	X	X	X				X	X					X	X	
(NH)	OS2	X				X		X	X					X	X	
NJ	A/F	X	X	X	X		X		X					X	X	
NM	A/F	X							X				X	X		
NY	AG	X	X	X	X	X	X		X				X	X	X	X
	FO	X	X	X		X	X			X		X	X	X		
NC	A/F	X	X	X	X		X		X					X	X	
ND	AG		X						X				X	X		
	FO	X	X			X					X	X		X		
	WT	X					X					X		X		X

ST	LAND	REQUIREMENTS				RES	PENALTY		METHODS				ADMINIST			PAY
		AP	AC	PR	PT		RB	C	VA	AS	TX	EX	ST	LO	AD	
OH	AG1	X	X	X			X		X		X		X	X	X	
	AG2	X	X	X	X	X	X		X		X		X	X	X	
	FO	X									X	X		X		
OK	AG								X				X	X		
OR	AG	X		X	X	X	X		X				X	X	X	
	FO	X	X	X			X		X		X		X	X		X
	OS	X				X	X		X					X		
PA	AG	X	X	X	X		X		X					X		
	OS	X	X				X		X					X		
	FO	X	X				X		X					X		
	A/O/ F2/W	X	X			X	X		X					X		
RI	AG	X						X	X					X		
	FO	X	X					X	X					X		
	OS	X	X					X	X					X		
SC	A/F	X					X		X	X			X	X		
SD	A/F		X	X	X				X		X	X		X		
TN	AG	X	X				X		X	X			X	X		
	FO	X	X				X		X	X			X	X		
	OS	X	X			X	X		X	X			X	X		
TX	AG	X		X	X		X		X				X	X	X	
	FO	X		X	X		X		X				X	X		
	RC	X	X		X	X	X		X				X	X		
UT	A/F	X	X	X	X		X		X				X	X	X	
VT	AG	X	X	X		X	X	X	X		X		X	X	X	X

ST	LAND	REQUIREMENTS				RES	PENALTY		METHODS				ADMINIST			PAY
		AP	AC	PR	PT		RB	C	VA	AS	TX	EX	ST	LO	AD	
	FO	X	X			X		X	X				X	X	X	X
VA	AG	X	X			X	X		X					X	X	
	FO	X	X			X	X		X					X	X	
	OS	X	X			X	X		X					X	X	
WA	AG	X	X	X			X		X				X	X	X	
	FO	X	X				X		X		X		X	X		
	OS	X				X	X		X					X		
WV	AG	X	X	X	X				X	X			X	X		
	FO	X	X	X					X				X			
WI	AG	X	X	X	X	X	X				X		X			X
	FO	X	X	X		X	X				X		X			X
WY	A/F				X				X	X			X			