



When you can't find the SunShine, be the SUNSHINE!

ALWAYS DO YOUR BEST – YOUR BEST IS GOING TO CHANGE FROM MOMENT TO MOMENT; IT WILL BE DIFFERENT WHEN YOU ARE HEALTHY AS OPPOSED TO SICK. UNDER ANY CIRCUMSTANCE, SIMPLY DO YOUR BEST, AND YOU WILL AVOID SELF-JUDGEMENT, SELF-ABUSE, AND REGRET. ~O MgwEwE

Administration of Act-319 Preferential Assessment

PLEASE REMEMBER

**THE ANSWERS TO THE SCENARIOS PRESENTED
IN THIS CLASS TODAY, ARE MY/OUR OPINIONS
AND SHOULD NOT BE TAKEN AS LEGAL ADVICE.
YOU SHOULD ALWAYS CONTACT YOUR
SOLICITOR IF YOU HAVE QUESTIONS OR
CONCERNS ABOUT ANY ACT-319 REGULATION.**

WHAT IS CLEAN & GREEN?

Clean & Green is a preferential tax assessment program, that bases property taxes on use values rather than fair market values. This ordinarily results in a tax savings for landowners. The Pennsylvania General Assembly enacted the program in 1974 as a tool to encourage protection of the Commonwealth's valuable farmland, forestland and open spaces.

Chronological History

Table of Statutes, Laws, Decisions and Rules of Court Affecting Act 319 of 1974

Provision Affected	How Affected	By Law, Decision or Rule
1974		
<u>P.L.973, No.319</u>		
<u>Sec. 2 defs. of "roll-back tax," "separation" and "split-off"</u>	Added	Mar. 24, 1980, P.L.45, No.15
<u>Sec. 2 def. of "forest reserve"</u>	Constitutional	461 A.2d 333, Cmwlth (1983)
<u>Sec. 2</u>	Amended	<u>Dec. 21, 1998, P.L.1225, No.156</u>
<u>Sec. 2 defs. of "forest reserve" amended and "agritainment," "county commissioners" and "recreational activity" added</u>	Amended or added	<u>Dec. 8, 2004, P.L.1785, No.235</u>
<u>Sec. 2 defs. of "agricultural reserve," "agricultural use" and "forest reserve" amended and "alternative energy," "alternative energy system," and "tier I energy source" added</u>	Amended or added	<u>Oct. 27, 2010, P.L.866, No.88</u>
<u>Sec. 2 defs. of "agricultural reserve," "agricultural use" and "forest reserve" amended and "alternative energy," "alternative energy system" and "tier I energy source" added</u>	Amended or added	<u>Nov. 23, 2010, P.L.1095, No.109</u>
<u>Sec. 2 defs. of "agricultural commodity" amended and "compost" added</u>	Amended or added	<u>Oct. 24, 2012, P.L.1499, No.190</u>
<u>Sec. 3</u>	Amended	<u>Dec. 21, 1998, P.L.1225, No.156</u>
<u>Sec. 3 (f) and (g)</u>	Added	<u>Dec. 8, 2004, P.L.1785, No.235</u>
<u>Sec. 3 (a.2)</u>	Added	<u>Jul. 20, 2016, P.L.811, No.89</u>

Sec. 4 (d)	Added	Mar. 24, 1980, P.L.45, No.15
Sec. 4 (b) and (d)	Amended	May. 9, 1984, P.L.234, No.51
Sec. 4	Amended	Dec. 21, 1998, P.L.1225, No.156
Sec. 4.1	Added	Dec. 21, 1998, P.L.1225, No.156
Sec. 4.1 (c)	Amended	Jul. 20, 2016, P.L.811, No.89
Sec. 4.2	Added	Dec. 21, 1998, P.L.1225, No.156
Sec. 4.2	Amended	Dec. 8, 2004, P.L.1785, No.235
Sec. 4.2 (b.1), (c.1), (c.2), (c.3) and (c.4)	Added	Jul. 20, 2016, P.L.811, No.89
Sec. 5 (c)	Amended	May. 21, 1976, P.L.143, No.68
Sec. 5	Amended	Dec. 21, 1998, P.L.1225, No.156
Sec. 5	Amended	Dec. 8, 2004, P.L.1785, No.235
Sec. 5	Amended	Oct. 27, 2010, P.L.866, No.88
Sec. 5.1	Added	Dec. 21, 1998, P.L.1225, No.156
Sec. 5.1	Amended	Nov. 23, 2010, P.L.1095, No.109
Sec. 5.2	Added	Dec. 21, 1998, P.L.1225, No.156

Sec. 6	Amended	Mar. 24, 1980, P.L.45, No.15
Sec. 6 (b.1), (b.2) and (b.3)	Added	May. 31, 1996, P.L.334, No.51
Sec. 6	Amended	Dec. 21, 1998, P.L.1225, No.156
Sec. 6 (a.1)(1) and (2)	Constitutional	976 A.2d 1226, Cmwlth (2009)
Sec. 6 hdg. and (a.1) amended and (c.1), (c.2)(Reserved) and (c.3) added	Amended or added	Oct. 27, 2010, P.L.866, No.88
Sec. 6 (c.4)(Reserved) and (c.5)	Added	Nov. 23, 2010, P.L.1095, No.109
Sec. 6 (c.4)	Added	Jul. 7, 2011, P.L.212, No.34
Sec. 6 (c.1)	Amended	Jul. 7, 2011, P.L.213, No.35
Sec. 7	Amended	Dec. 21, 1998, P.L.1225, No.156
Sec. 8 (c)	Amended	Mar. 24, 1980, P.L.45, No.15
Sec. 8 (d)	Added	May. 13, 1983, P.L.9, No.4
Sec. 8 (b) amended and (e) added	Amended or added	Dec. 12, 1994, P.L.942, No.133
Sec. 8	Amended	Dec. 21, 1998, P.L.1225, No.156
Sec. 8 (f)	Added	Dec. 8, 2004, P.L.1785, No.235
Sec. 8 (b)	Amended	Oct. 27, 2010, P.L.866, No.88
Sec. 8 (b)	Amended	Nov. 23, 2010, P.L.1095, No.109

DEFINITIONS

AGRICULTURAL COMMODITY

Any of the following:

- ❖ Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.
- ❖ Pasture.
- ❖ Livestock and the products thereof.
- ❖ Ranch-raised furbearing animals and the products thereof.
- ❖ Poultry and the products of poultry.
- ❖ Products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.
- ❖ Processed or manufactured products of products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.
- ❖ Compost.

AGRICULTURAL RESERVE

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

* See "Land For Recreation – Limiting Liability Of Owner

Agricultural Use

Land which is used for the purpose of producing an agricultural commodity or is devoted to and meets the requirements and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

- The term includes any farmstead land on the tract.
- The term includes a woodlot.
- The term includes land which is rented to another person and used for the purpose of producing an agricultural commodity.
- The term includes land devoted to the development and operation of an alternative energy system, if a majority of the energy annually generated is utilized on the tract.

AGRITAINMENT

- (i) Farm-related tourism or farm-related entertainment activities which are permitted or authorized by a landowner in return for a fee on agricultural land for recreational or educational purposes.
- (ii) The term includes corn mazes, hay mazes, farm tours and hay rides.
- (iii) The term does not include activities authorized under section 8(d) of the act (72 P. S. § 5490.8(d)).

ALTERNATIVE ENERGY SYSTEM

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

ASSESSMENT RATIO OR COUNTY'S ESTABLISHED PREDETERMINED RATE

The ratio established by a taxing body that determines on what portion of the assessed value the millage rate is to be levied, as prescribed by assessment law.

CAPITALIZATION RATE

The percentage rate used to convert income to value, as determined by the most recent 5-year rolling average of 15-year fixed loan interest rates offered to landowners by the Federal Agricultural Mortgage Corporation or other similar Federal agricultural lending institution, adjusted to include the landowner's risk of investment and the effective tax rate.

CHANGE OF USE

- (i) The alteration of enrolled land so that it is no longer agricultural use, agricultural reserve or forest reserve land.
- (ii) The term does not include:
 - (A) The act of subdividing enrolled land if the subdivided land is not conveyed.
 - (B) The act of conveying subdivided enrolled land to the same landowner who owned it immediately prior to subdivision.

CLASS A BENEFICIARIES FOR INHERITANCE TAX PURPOSE

The following relations to a decedent: grandfather, grandmother, father, mother, husband, wife, lineal descendants, wife, widow, husband or widower of a child. Lineal descendants include all children of the natural parents and their descendants, whether or not they have been adopted by others, adopted descendants and their descendants and step descendants.

COMPOST

Material resulting from the biological digestion of dead animals, animal waste or other biodegradable materials, at least 50% by volume of which is comprised of products commonly produced on farms.

CONTIGUOUS TRACT

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

CONTRIBUTORY VALUE OF FARM BUILDING

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

COUNTY

The county assessor, the county board of assessment or other county entity responsible to perform or administer a specific function under the act.

COUNTY COMMISSIONERS

The board of county commissioners or other similar body in home rule charter counties.

CURTILAGE

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

DEPARTMENT

The Department of Agriculture of the Commonwealth.

DIRECT COMMERCIAL SALES

Retail or wholesale sales of agriculturally related commodities to customers who are physically present onsite to make purchases.

DIVISION BY CONVEYANCE OR OTHER ACTION OF THE OWNER

(i) When used in the context of a separation or a split-off, the term refers to either:

- (A) A conveyance, a subdivision, a land development plan or comparable plan required by a local government unit.
- (B) An owner-initiated process that produces a metes and bounds description of the separated or split-off land and a calculation of the acreage of that separated or split-off land.

(ii) The term does not include:

- (A) The act of subdividing enrolled land if the subdivided land is not conveyed.
- (B) **The act of conveying subdivided enrolled land to the same landowner who owned it immediately prior to subdivision.**

Enrolled land—Land eligible for preferential assessment under an approved application for preferential assessment filed in accordance with the act.

Fair market value—The price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is under no obligation to buy would pay for the property.

Farm building—A structure utilized to store, maintain or house farm implements, agricultural commodities or crops, livestock and livestock products, as defined in the Agricultural Area Security Law (3 P. S. § § 901-915).

Farmstead land—Any curtilage and land situated under a residence, farm building or other building which support a refence, including a residential garage or workshop.

FOREST RESERVE

Land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products. The term includes land devoted to the development and operation of an alternative energy system if a majority of the energy annually generated is utilized on the tract.

INCOME APPROACH

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

Ineligible land- Land which is not used for any of the three eligible uses (agricultural use, agricultural reserve or forest reserve) and therefore cannot receive use value assessment.

Land use category- Agricultural use, agricultural reserve or forest reserve.

Land use subcategory- A category of land in agricultural use, agricultural reserve or forest reserve established by the Department and assigned a particular use value in accordance with sections 3 and 4.1 of the act (72 P. S. §§ 5490.3 and 5490.4a). A land use subcategory of agricultural use or agricultural reserve land may be based upon soil type, soil group or any other recognized subcategorization of agricultural land. A land use subcategory of forest reserve land may be based upon forest type or other recognized subcategorization of forest land, and may be a county-specific average timber value.

Net return to land- Annual net income per acre after operating expenses are subtracted from gross income. The calculation of operating expenses does not include interest or principal payments.

Noncoal Surface Mining Conservation and Reclamation Act-52 P. S. §§ 3301-3326.

Normal assessment- The total fair market value of buildings and ineligible land, as of the base year of assessment, on a tract multiplied by the assessment ratio.

Oil and Gas Act-58 Pa.C.S. §§ 3201-3274 (relating to development).

OUTDOOR RECREATION

- (i) Passive recreational use of land that does not entail the erection of permanent structures or any change to the land which would render it incapable of being immediately converted to agricultural use. Examples include picnicking, hiking, wildlife watching and hunting, subject to the restrictions in § 137b.64 (relating to agricultural reserve land to be open to the public).
- (ii) The term does not include the operation of motor vehicles other than under either of the following circumstances:
 - (A) When necessary to remove an animal which has been hunted.
 - (B) When the motor vehicle is operated over an existing lane and is incidental to hunting, fishing, swimming, access for boating, animal riding, camping, picnicking, hiking, agritainment activities or the operation of nonmotorized vehicles.

Pasture Land- Other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes for consumption by livestock.

Person- corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Preferential assessment- The total use value of land qualifying for assessment under the act.

RECREATIONAL ACTIVITY

The term includes, but is not limited to:

- (i) Hunting.
- (ii) Fishing.
- (iii) Swimming
- (iv) Access for boating.
- (v) Animal riding.
- (vi) Camping.
- (vii) Picnicking.
- (viii) Hiking.
- (ix) Agritainment activities.
- (x) Operation of nonmotorized vehicles.
- (xi) Viewing or exploring a site for aesthetic or historical benefit or for entertainment.
- (xii) Operation of motorized vehicles if the operation is either of the following:
 - A. Over an existing lane and incidental to an activity in subparagraphs (i) (x).
 - B. Necessary to remove an animal which has been hunted under subparagraph (i).

Roll-back tax- The amount equal to the difference between the taxes paid or payable on the basis of the valuation and the assessment authorized under the act and the taxes that would have been paid or payable had that land not been valued, assessed and taxed as other land in the taxing district in the current tax year, the year of change, and in 6 of the previous tax years or the number of years of preferential assessment up to 7.

Rural enterprise incidental to the operational unit—A commercial enterprise or venture that is all of the following:

- i. Owned and operated by the landowner or by the landowner's beneficiaries who are Class A beneficiaries for inheritance tax purposes.
- ii. Conducted within 2 acres or less of enrolled land.
- iii. When conducted, does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of the enrolled land that is not subject to roll-back taxes under section 8(d) of the act as a result of that commercial enterprise or venture.

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

Silvicultural products-

- (i) Trees and tree products produced from Christmas tree farms, tree nurseries, tree greenhouses, orchards and similar actively-cultivated tree or tree product production operations.
- (ii) The term does not include trees and tree-derived products produced from forest land regardless of whether the trees or tree-derived products are harvested from forest land in accordance with a timber management plan.

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

Tier I energy source- A Tier I alternative energy source as defined in section 2 of the Alternative Energy Portfolio Standards Act (73 P. S. § 1648.2).

Tract

- (i) A lot, piece or parcel of land.
- (ii) The term does not refer to any precise dimension of land.

Transfer- A conveyance of all of the enrolled land described in a single application for preferential assessment under the act.

USD- The United States Department of Agriculture.

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

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

Woodlot- An area of less than 10 acres, stocked by trees of any size and contiguous to or part of land in agricultural use or agricultural reserve.

IMPORTANT DATES

Deadline for submission of applications.

(a) *General.* A landowner seeking preferential assessment under the act shall apply to the county by **June 1**. If the application is approved by the county assessor, preferential assessment shall be effective as of the commencement of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

Example 1: A landowner applies for preferential assessment on or before June 1, 2024.

The application is subsequently approved. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2025.

Example 2: A landowner applies for preferential assessment on or after June 2, 2024, but not later than June 1, 2025. The application is subsequently approved. The application deadline is June 1, 2025. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2026.

- (a) Exception: years in which a county implements countywide reassessment. In those years when a county implements a countywide reassessment, or a countywide reassessment of enrolled land, the application deadline shall be extended to either a date 30 days after the final order of the county board for assessment appeals or by **October 15** of the same year, whichever date is sooner. This deadline is applicable regardless of whether judicial review of the order is sought.

REMOVAL OF LAND FROM PREFERENTIAL ASSESSMENT

- (1) A landowner receiving preferential assessment under the act may remove land from preferential assessment if:
- (i) The landowner provides the county assessor written notice of this removal by **June 1** of the year immediately preceding the tax year for which the removal is sought.
 - (ii) The entire tract or tracts enrolled on a single application for preferential assessment is removed from preferential assessment.
 - (iii) The landowner pays rollback taxes on the entire tract or tracts as provided for in section 5.1 of the act (72 P. S. § 5490.5a).
- (2) Land removed from preferential assessment under this subsection or under section 8.1 of the act (72 P. S. § 5490.8a) is not eligible to be subsequently re-enrolled in preferential assessment by the same landowner.
- (3) Nothing in this subsection or section 8.1 of the act prohibits a landowner whose land was terminated from preferential assessment under authority other than this subsection or section 8.1 of the act from re-enrolling the land in preferential assessment.

TIME PERIOD WITHIN WHICH ROLL-BACK TAXES ARE TO BE CALCULATED AND NOTICE MAILED.

- (a) General. A county assessor shall calculate the roll-back taxes and interest, and mail notice of these roll-back taxes to the affected landowner, within **5 days** of learning of a change in status triggering liability for roll-back taxes. The county assessor shall also mail a copy of the notice to the other taxing bodies of the district in which the land is located.
- (b) Notice of change of application. If a county assessor receives a "notice of change of application" described in § 137b.63 (relating to notice of change of application), and that notice triggers liability for roll-back taxes, the 5-day period described in subsection (a) shall commence as of receipt of that notice.

Notification of change in preferential assessment status.

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of an approval, termination or change with respect to preferential assessment status. This written notice shall apprise the land-owner and the taxing body of the right to appeal the action in accordance with section 9 of the act (72 P. S. § 5490.9). The written notice shall be mailed within **5 days** of the change of status. If the written notice terminates or changes preferential assessment status it shall set forth the reasons for the change or termination.

Notification of change in factors affecting total assessment.

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of any change in the base year fair market value, the normal assessment, the use value or the preferential assessment. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9 of the act (72 P. S. § 5490.9). The written notice shall be mailed within **5 days** of the change.

NOTICE BY LANDOWNER

Where a regulation mandates that a landowner provide notice of split-off from enrolled lands, the failure to do so relieves the chief assessor from its obligation to give notice within 5 days of deed recordation, and leaves the assessor free to assess roll-back taxes. The landowner's notice requirement must be strictly construed to prevent the unreasonable result of avoiding roll-back taxes simply by not giving the required notice. *Moyer v. Berks County Board of Assessment Appeals*, 803 A.2d 833 (Pa. Cmwlth. 2002), appeal denied 812 A.2d 1232 (Pa. 2002).

SUBMISSION OF INFORMATION TO THE DEPARTMENT.

A county assessor shall, by **January 31** of each year, compile and submit the information required by the Department under § 137b.3(b) (relating to responsibilities of the Department). This includes the following information:

- (1) The cumulative number of acres of enrolled land in the county, by land use category, at the end of the previous year.
- (2) The number of acres enrolled in each land use category during the previous year.
- (3) The number of acres of land, by land use category, with respect to which preferential assessment was terminated within the previous year.
- (4) The dollar amount received as roll-back taxes within the previous year.
The dollar amount received as interest on roll-back taxes within the previous year.

RESPONSIBILITIES OF THE DEPARTMENT

- (a) General. The Department's responsibilities are to provide the use values described in section 4.1 of the act (72 P. S. § 5490.4a) by **May 1** of each year and to provide the forms and regulations necessary to promote the efficient, uniform Statewide administration of the act.
- (b) Information gathering. The Department will collect information from county assessors for each calendar year to ensure that the act and this chapter are being implemented fairly and uniformly throughout this Commonwealth. This information will be collected through a survey form to be provided to county assessors by the Department no later than **December 15** each year, and which county assessors shall complete and submit to the Department by **January 31** of the following year.

ALLOWABLE FEES

Duty to record

A recorder of deeds shall record approved applications for preferential assessment in a preferential assessment docket, and record changes of land use triggering the imposition of roll-back taxes.

A recorder of deeds may charge a landowner whose application for preferential assessment is approved a fee for filing the approved application in a preferential assessment docket. This fee may also be charged with respect to the filing of an amendment to a previously-approved application. A recording fee may not be charged unless the application or amendment has been approved by the county board for assessment appeals. The maximum fee for recording approved preferential assessment applications and amendments thereto shall be in accordance with laws relating to the imposition of fees by recorders of deeds.

FEES OF THE COUNTY BOARD FOR ASSESSMENT APPEALS; RECORDING FEES; PROCESSING FEES.

- (a) Application processing fee. A county board for assessment appeals may impose a fee of **no more than \$50** for processing an application for preferential assessment under the act. This fee may be charged regardless of whether the application is ultimately approved or rejected. This fee is exclusive of any fee which may be charged by the recorder of deeds for recording the application.
- (b) Circumstances under which initial application shall be amended without charge. A county board for assessment appeals **may not** charge a fee for amending an initial application for preferential assessment.
- (c) Recording fees. A recording fee may not be assessed if an application for preferential assessment is not approved.

SPLIT-OFF, SEPARATION OR TRANSFER

(a.1)

(1) The split-off of a part of land which is subject to preferential assessment under this act shall subject the land so split off and the entire tract from which the land was split off to roll-back taxes as set forth in section 5.1,24 except as provided in this subsection. The landowner who conducts the split-off shall be liable for payment of roll-back taxes. If one of the following provisions apply, roll-back taxes under section 5.1 shall only be due as provided in this subsection:

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

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

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

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

(3) The split-off of a tract of land which meets the provisions of paragraph (1) shall not invalidate the preferential assessment on any land retained by the landowner which continues to meet the provisions of section 3.25

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

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

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

See next slide

ENFORCEMENT AND EVIDENCE GATHERING

The evidentiary burden shall be on a county assessor to produce evidence demonstrating that a split-off tract is actively being used in a manner which is inconsistent with residential use, agricultural use, agricultural reserve or forest reserve.

The total tract split off does not exceed the lesser of 10 acres or 10% of the **entire tract of enrolled land**. In calculating the total tract split off, the total includes the acreage of the tract that was split-off from the enrolled tract **since enrollment**.

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

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

APPLICATION PROCESS

1. Uniform Application. (DOA required language)
2. Land use determination. (one application may include more than one land use category)
3. Inclusion of Farmstead land and Road Right of Way. (RRROW – Act89-2016)
4. Inclusion of all contiguous land described in the deed to the tract with respect to which enrollment is sought.
5. Exclusion of noncontiguous tract described in a single deed.
6. Residence not required.
7. Multiple tracts on a single application. Include or exclude from application tracts described on separate deeds.
8. Common ownership required.
9. Land located in more than one tax district.
10. Ineligible Land.
11. County Assessor to determine use value.

Important Resources

- Recorded of Deed
 - ✓ Deeds
 - ✓ Mining Permits
 - ✓ Oil & Gas Leases
 - ✓ Cell Tower Leases
- DEP Website
 - ✓ Mining Permits
 - ✓ Natural Gas Wells
 - ✓ Production Reports
- Antenna Search
 - ✓ FCC Cell Tower Search
 - ✓ Cell Towers within your county

County-imposed eligibility requirements.

A county assessor may not impose eligibility requirements or conditions other than those prescribed in section 3 of the act (72 P. S. § 5490.3).

Example: A county may not require an owner of contiguous—but separately deeded—tracts of land to consolidate the tracts in a single deed or require any alteration of existing deeds as a condition of eligibility for preferential assessment.

Some counties issue blank applications to the landowners and some type the applications with the known information such as landowner(s) name(s), address etc..

Just remember all landowners listed on the deed MUST sign the application.

You may charge no more than fifty dollars (\$50.00) for the processing of the application.

What Gets Recorded

- ❖ All approved applications shall be recorded.
- ❖ A breach of the preferential assessment shall be recorded.
- ❖ Amendments to initial application shall be recorded.
 - For example split-off, separation, transfer or change of ownership. (The initial application shall be adjusted to reflect the change.)

OBLIGATIONS OF THE OWNER OF ENROLLED LAND

- When enrolled land is transferred to a new owner, the new owner shall file an amendment to the original application for the purposes of providing the county assessor with current information and to sign the acknowledgments required under section 4(c) of the act (72 P. S. § 5490.4(c)).
- Demonstration of anticipated yearly gross income from agricultural production. If a landowner has a contiguous tract of less than 10 acres of enrolled agricultural use land, the county assessor may require the landowner to demonstrate each year that the anticipated yearly gross income from the production of agricultural commodities on the enrolled land is at least \$2,000. A landowner may not be required to demonstrate more than once per year that the enrolled land has sufficient anticipated yearly gross income from the production of agricultural commodities to continue to receive preferential assessment. A county assessor requiring additional information shall notify the landowner in writing and shall clearly state in the notice the reasons why the information or documentation submitted by the landowner fails to demonstrate sufficiency of income, and shall identify the particular information the county assessor requests to demonstrate sufficiency of income.
 - Annual requirement; circumstances beyond the landowner's control. The \$2,000 anticipated annual gross income requirement referenced in this section shall be met each year, unless circumstances beyond the landowner's control are the cause of the requirement not being met.

Notice of change of application

(a) *Landowner's responsibility to provide advance notice of changes.* An owner of enrolled land shall provide the county assessor of the county in which the land is preferentially assessed at least 30 days' advance written notice of any of the following:

- (1) A change in use of the enrolled land to some use other than agricultural use, agricultural reserve or forest reserve.
- (2) A change in ownership with respect to the enrolled land or any portion of the land.

Contents of notice. The notice described in subsection (a) shall include the following information:

- (1) The name and address of any person to whom the land is being conveyed, granted or donated.
- (2) The date of the proposed transfer, separation or split-off
- (3) The amount of land to be transferred, separated or split-off.
- (4) The present use of the land to be transferred, separated or split-off
- (5) The date of the original application for preferential assessment under the act.
- (6) The tax parcel number.

(b) *Contents of notice.* The notice described in subsection (a) shall include the following information:

- (1) The name and address of any person to whom the land is being conveyed, granted or donated.
- (2) The date of the proposed transfer, separation or split-off
- (3) The amount of land to be transferred, separated or split-off.
- (4) The present use of the land to be transferred, separated or split-off
- (5) The date of the original application for preferential assessment under the act.
- (6) The tax parcel number.

NOTE: Any type of division, conveyance, transfer, separation or split-off of the enrolled land. Where a regulation mandates that a landowner provide notice of split-off from enrolled lands, the failure to do so relieves the chief assessor from its obligation to give notice within 5 days of deed recordation, and leaves the assessor free to assess roll-back taxes. The landowner's notice requirement must be strictly construed to prevent the unreasonable result of avoiding roll-back taxes simply by not giving the required notice. *Moyer v. Berks County Board of Assessment Appeals*, 803 A.2d 833 (Pa. Cmwlth. 2002), appeal denied 812 A.2d 1232 (Pa. 2002).

AGRICULTURAL RESERVE LAND TO BE OPEN TO THE PUBLIC

- (a) **General.** An owner of enrolled land that is enrolled as agricultural reserve land shall allow the land to be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty without charge or fee, on a nondiscriminatory basis. Enrolled land that is in agricultural use or forest reserve is excluded from this requirement.
- (b) **Actual use by public not required.** Enrolled land that is enrolled as agricultural reserve land need not actually be used by the public for the purposes described in subsection (a) to continue to receive a preferential assessment. It shall, however, be available for use for those purposes.
- (c) **Reasonable restrictions on use allowed.** A landowner may place reasonable restrictions on public access to enrolled land that is enrolled as agricultural reserve land. These restrictions might include limiting access to the land to pedestrians only, prohibiting hunting or the carrying or discharge of firearms on the land, prohibiting entry where damage to the land might result or where hazardous conditions exist, or other reasonable restrictions.

- (a) Entry upon the agricultural reserve land. A person shall, whenever possible, notify the landowner before entering upon enrolled land that is enrolled as agricultural reserve land. The landowner may deny entry when damage to the property might result. The landowner can prohibit entry to areas of the agricultural reserve land upon prior notification to the county assessor of the existence of a hazardous condition on that land. The landowner's reasons to deny entry to the land shall be based upon fact and be acceptable to the county assessor.
- (b) **County assessor's discretion.** A county assessor may establish reasonable guidelines by which an owner of enrolled agricultural reserve land may identify the conditions under which the land shall be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty, and by which the county assessor may maintain an up-to-date summary of the locations of agricultural reserve land within the county and the public uses to which these agricultural reserve lands may be put. A county assessor may disseminate this information to the public

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

1. Wireless or cellular telecommunications facilities.
2. Gas, oil and coal bed methane.
3. Temporary leases for pipe storage yards.
4. Small noncoal surface mining.
5. Wind power generation systems.
6. Direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit.

County assessor to determine total use value.

- (1) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use, including farmstead land, and for land in agricultural reserve, by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS Agricultural Land Capability Classification system and other information available from USDA-ERS, the Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings, as calculated in accordance with § 137b.54 (relating to calculating the contributory value of farm buildings), shall be used. With respect to agricultural reserve land, the total use value includes farmstead land if at least one of the qualifications for preferential assessment in subsection (g)(2) has been met.
- (2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve by considering available evidence of the capability of the land for its particular use. Contributory value of farm buildings, as calculated in accordance with § 137b.54 shall be used. The total use value includes farmstead land if at least one of the qualifications for preferential assessment in subsection (g)(3) has been met.

(d) *Determining preferential assessment.* The preferential assessment of land is determined by multiplying the number of acres in each land use subcategory by the use value for that particular land use subcategory, adding these products and multiplying the total by the county's established predetermined ratio. The Department will establish land use subcategories as part of the procedure to establish use values.

(e) *Option of county assessors to establish and use lower use values.* A county assessor may establish use values for land use subcategories that are less than the use values established by the Department for those same land use subcategories. A county assessor may use these lower use values in determining preferential assessments under the act. Regardless of whether the county assessor applies use values established by the Department or lower use values established by the county assessor, the county assessor shall apply the use values uniformly when calculating or recalculating preferential assessments, and shall apply these use values to the same land use subcategories as established by the Department. Calculation and recalculation of preferential assessments shall be made in accordance with § 137b.53 (relating to calculation and recalculation of preferential assessment). A county assessor may not, under any circumstances, establish or apply use values that are higher than those use values established by the Department.

- (f) *Option of county assessors to select between county-established use values and use values provided by the Department.* When a county assessor has established use values for land use subcategories, and the use values for some—but not all—of these land use subcategories are lower than those provided by the Department, the county assessor has the option to apply the lower use value with respect to each individual land use subcategory, without regard to whether it was provided by the Department or established by the county assessor.

Multiple land use categories on a single application.

An applicant for preferential assessment under the act may include land in more than one land use category in the application. A county assessor shall allow the applicant to submit an application that designates those portions of the tract to be assessed under each of the different land use categories.

Ineligible land.

A landowner seeking preferential assessment under the act shall include ineligible land on the application if the eligible land is part of a larger contiguous tract of eligible land, and the use of the land which causes it to be ineligible exists at the time the application is filed. Although this ineligible land may not receive preferential assessment, the applicant shall specify the boundaries and acreage of the ineligible land, and may not expand the boundaries beyond those identified in the initial application. A landowner will not be required, as a condition of county acceptance or approval of the application, to survey or re-deed the tract so as to exclude the ineligible land.

Example: A landowner owns a 100-acre tract of land, 90 acres of which is productive farmland and 10 acres of which is occupied by an auto salvage yard. If the landowner seeks preferential assessment of the 90 acres of farmland, the application shall describe the entire 100-acre tract. If preferential assessment is granted, it will apply to the 90 acres of farmland. The 10-acre tract would continue to be assigned its fair market value and assessed accordingly.

(f) Valuation of farmstead land.

- (1) Farmstead land on agricultural use land. Farmstead land that is located on land enrolled as agricultural use land shall be assessed at agricultural use value.
- (2) Farmstead land on agricultural reserve land. Farmstead land that is located on land enrolled as agricultural reserve land shall receive normal (fair market value) assessment, rather than assessment at agricultural use value, unless one of the following is true:
 - (i) The county commissioners have adopted an ordinance to include farmstead land in the total use value for land in agricultural reserve, as permitted in section 3(g)(1) of the act (72 P. S. § 5490.3).
 - (ii) A majority of the land in the application for preferential assessment applicable to that farmstead land is agricultural use land.
 - (iii) Noncontiguous tracts of land are included in the application for preferential assessment applicable to that farmstead land and a majority of the land on the contiguous tract where the farmstead land is located is enrolled as agricultural use land.

- (3) Farmstead land on forest reserve land. Farmstead land that is located on land enrolled as forest reserve land shall receive normal (fair market value) assessment, rather than assessment at forest reserve use value, unless one of the following is true:
 - (i) The county commissioners have adopted an ordinance to include farmstead land in the total use value for land in forest reserve, as permitted in section 3(g)(2) of the act.
 - (ii) A majority of the land in the application for preferential assessment applicable to that farmstead land is agricultural use land.
 - (iii) Noncontiguous tracts of land are included in the application for preferential assessment applicable to that farmstead land and a majority of the land on the contiguous tract where the farmstead land is located is enrolled as agricultural use land.

HOT TOPICS

Death of an owner of enrolled land.

- (a) Inheriting a tract that does not meet minimum requirements for preferential assessment. Upon the death of an owner of enrolled land, if any of the enrolled land that is divided among the beneficiaries designated as Class A for inheritance tax purposes no longer meets the minimum qualifications for preferential assessment, preferential assessment shall terminate with respect to the portion of the enrolled land that no longer meets the minimum requirements for preferential assessment, and no roll-back tax may be charged on any of the land that no longer meets the requirements for preferential assessment.
- (b) Inheriting a tract that meets the minimum requirements for preferential assessment. If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and the tract continues in agricultural use, agricultural reserve or forest reserve, preferential assessment shall continue. If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and subsequently changes the use of that tract so that it does not qualify for preferential assessment, that beneficiary shall owe roll-back taxes and interest with respect to the portion of the enrolled land he inherited, but no roll-back taxes are due with respect to any other portion of the enrolled land inherited by another beneficiary.

Option to accept or forgive principal on roll-back taxes. The taxing body of the taxing district within which a tract of enrolled land is located may accept or forgive rollback taxes that are otherwise due and payable if the use of some portion of the land is changed for the purpose of granting or donating some portion of the land to one of the following:

- (1) A school district.
- (2) A municipality.
- (3) A county.
- (4) A volunteer fire company.
- (5) A volunteer ambulance service.
- (6) A nonprofit corporation that qualifies as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)), if prior to accepting ownership of the land, the corporation enters into an agreement with the municipality wherein the subject land is located guaranteeing that the land will be used exclusively for recreational purposes, all of which shall be available to the general public free of charge. If the corporation changes the use of all or a portion of the land or charges admission or any other fee for the use or enjoyment of the facilities, the corporation shall immediately become liable for all roll-back taxes and accrued interest previously forgiven.
- (7) A religious organization, if the religious organization uses the land only for construction or regular use as a church, synagogue or other place of worship, including meeting facilities, parking facilities, housing facilities and other facilities which further the religious purposes of the organization.

(b) *No option to forgive interest on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located **may not** forgive interest due on roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the entities or for any of the uses described in subsection (a)(1)—(7). That interest shall be distributed in accordance with section 8(b.1) of the act (72 P. S. § 5490.8(b.1)).

CONDITIONS WHERE NO ROLL-BACK APPLY

1. Condemnation of a portion of the land.
2. If any portion of a tract of enrolled land is—in lieu of requiring the condemnation process to proceed—voluntarily conveyed by a landowner to an entity that possesses the lawful authority to acquire that portion through condemnation.
3. Conveyance of enrolled land for use as a cemetery. (non-profit, 10 acres remaining on retained land)
4. Conveyance of enrolled land or conveyance of an easement or right-of-way across enrolled land for use as a trail. (**restrictions – nonprofit, nonmotorized passive recreational use only, width cannot exceed twenty feet (20’), public use with no charge, 10 acres of remaining lands.**)
5. Termination of preferential assessment on erroneously-enrolled land. If a county assessor erroneously allowed the enrollment of land that did not, at the time of enrollment, meet the minimum qualifications for preferential assessment, the county assessor shall, in accordance with section 3(d)(2) of the act provide the landowner written notice that preferential assessment is to be terminated. The notice shall state the reasons for termination and afford the landowner the opportunity for a hearing. If the use of the land was not an eligible use at the time it was enrolled, and preferential assessment is terminated for that reason, no roll-back taxes shall be due from the landowner as a result.

DISCUSSION
TIME ☺

WE THINK YOU'RE AWESOME



Thank you for joining us!

