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State Laws Relating to Preferential Assessment of Farmland

Kimberly A. Grillo
David A. Seid

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ABSTRACT

Forty-nine States have laws directed at preferential assessment of farmland. These laws vary greatly from State to State. Eighteen States have laws solely on preferential assessment. Twenty-seven States have laws on preferential assessment and deferred taxation. Six States have laws on restrictive agreements.

Keywords: Agriculture, assessment, current use, deferred tax, open space land, State laws, valuation

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* community outside the U.S. Department of Agriculture. *
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State Laws Relating to Preferential Assessment of Farmland

Kimberly A. Grillo
David A. Seid

INTRODUCTION

[The following material is intended to be a guide for persons interested in examining State laws on preferential tax assessment of farmland. Previous reports on this topic were written in 1961, 1963, 1967, and 1974.^{1/} Our objective is to present a summary of State laws as they appear in the statute books through December 31, 1985.] The report does not take into account possible ambiguities within the statutes or include court decisions concerning these laws. Although these summaries provide a comprehensive survey of State statutory laws, they are not intended to be a substitute for copies of the State law. Taxpayers wanting to know how the laws in their State apply to their property should consult State or local tax officials.

The general focus of this report is preferential assessment of farmland. Therefore, other State programs designed to preserve farmland (such as purchase or transfer of development rights) are not included here.

Some States have laws specifically limited to preferential assessment of farmland, while other States have laws designed to include other types of land (such as open space land or forest land) under preferential assessment. These other types of land are included in this report for States that have passed comprehensive legislation. Some State summaries, however, include only farmland because special assessment for other types of land, if it exists, falls under sections of the State codes that are unrelated to the sections that pertain to farmland. A search of these separate codes was outside the scope of this report.

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^{1/} Previous reports on this topic include: AER-256 (1974), State Programs for the Differential Assessment of Farm and Open Space Land, by Thomas F. Hady and Ann Gordon Sibold; AER-119 (1967), Taxation of Farmland on the Rural Urban Fringe, by Thomas F. Hady and Thomas F. Stinson; Selected Legislative and Other Documents on the Preferential Assessment of Farmland (1963, working data); and ERS-13 (1961), State Action Relating to Taxation of Farmland on the Rural Urban Fringe, by Peter House.

Summaries are presented for each State, and each State summary is divided into two categories: applicable State statutes and a description of the State laws. The category titled "Applicable State Statutes" includes the State's relevant code sections. However, not every statute listed in this section is used in the description of the State laws.

The description of State laws is organized in three steps. First, there is a classification of the type of program that the State has. The program is classified as either preferential property tax assessment, preferential property tax assessment with deferred taxation, or preferential tax assessment with restrictive agreements and deferred taxation. Second, within each of these classifications, the State laws are subdivided into four sections: definitions, valuation, eligibility, and rollback taxes. Third, some States have related laws, which are contained in a miscellaneous section.

The section titled "Definitions" contains a description of the keywords for the State's program. Depending on the State, these words may include: agricultural land, current use, and farmland. The section titled "Valuation" describes how land qualifying for the State preferential assessment program is valued. When applicable, this section starts with the legislative purpose in enacting the program. The value of the land is determined through its current use as opposed to market value. This value is based on the land's current production value in some States and on the land's potential production in its current use in other States. The assessor, depending on the State law, is given a varying amount of discretion when assessing the land. A capitalization of income method is used to determine use value in some States.

The section titled "Eligibility" describes the State's application procedure, including relevant dates and the amount of time involved for a decision to approve or reject the application. Many States have lengthy procedures once an application is filed. The specific procedures generally are not examined unless it helps show the amount of time involved for a decision to be reached or the applicant is directly affected by the procedure used, such as optional public hearings on the application. This section includes requirements on what type of land is eligible. Most States have one or more of the following requirements: the landowner must receive a certain percentage of his income from the land, the land must be in its qualifying use for a certain number of years before application for special assessment is made, and the land must meet acreage specifications. The section also contains, when applicable, a reference to appeal procedures when an application is rejected. The specific procedure is generally not outlined, but reference is made to the applicable State statute(s).

The section on "Rollback Taxes" describes what happens when land no longer qualifies for special assessment. Most States require that land stay in its current use for a certain amount of time. When land use changes, a tax is levied in an amount equal to the difference between the current tax bill and the amount that would have been paid if there were no special assessment. The number of years in the rollback period varies by State, and many States will also charge an interest payment on this tax.

SUMMARY

As of December 31, 1985, 49 States had laws on preferential assessment of farmland, and in Kansas, such legislation was pending. With preferential assessment, land devoted to a qualifying use is assessed on the basis of its value in that use. State requirements for participation in preferential assessment programs vary. Some States (such as Delaware) have a minimum acreage requirement or a requirement that the land be in its qualifying use for a certain number of years or both. Other States (such as Alaska) require that the landowner receive a certain percentage of his yearly gross income from the land. Eighteen States have laws pertaining only to preferential property tax assessment (table 1). The landowner, therefore, will pay no penalty when the property is converted to a nonqualifying use.

States with only preferential assessment laws are Arizona, Arkansas, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, West Virginia, and Wyoming.

There are 27 States that have both preferential assessment laws and deferred taxes (rollback tax). A rollback tax is imposed when the land is converted to a nonqualifying use (table 1). The deferred tax is equal to the amount of taxes that would have been paid if there were no preferential assessment. The rollback period varies by State, with many States (such as Alabama) using a 3-year rollback period. Alaska and some other States also charge interest on the rollback tax. Connecticut has a conveyance tax, which is similar to a rollback tax, except that the tax is based on the sale price of the land. New Hampshire has a provision similar to Connecticut's, and for the purpose of this report, the provisions are classified as deferred taxes.

States that have preferential assessment with deferred taxation are Alabama, Alaska, Connecticut, Delaware, Georgia, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, and Washington.

Six States, in addition to having laws on preferential assessment, have laws involving restrictive agreements. In a restrictive agreement, the landowner enters into an agreement with a State or local governing body to restrict the use of the land in exchange for tax concessions. The penalty for breaking an agreement is essentially a deferred tax and in most States (such as Hawaii) the statute specifically refers to the penalty as a deferred tax.

The six States that have preferential assessment with restrictive agreements and deferred taxation are California, Hawaii, Michigan, New Hampshire, Pennsylvania, and Wisconsin.

There are 51 State programs for preferential assessment. Kansas had no such program as of December 31, 1985, and New Hampshire and Pennsylvania each have two, one based on preferential property tax assessment with deferred taxation and the other on restrictive agreements.

Table 1--Summary of state preferential tax assessment laws

State	Preferential tax assessment only	Preferential tax assessment with deferred taxation	Preferential tax assessment with restrictive agreements and deferred taxation
Alabama		x	
Alaska		x	
Arizona	x		
Arkansas	x		
California			x
Colorado	x		
Connecticut		x	
Delaware		x	
Florida	x		
Georgia		x	
Hawaii			x
Idaho	x		
Illinois	x		
Indiana	x		
Iowa	x		
Kansas	No Program Implemented		
Kentucky		x	
Louisiana	x		
Maine		x	
Maryland		x	
Massachusetts		x	
Michigan			x
Minnesota		x	
Mississippi	x		
Missouri	x		
Montana	x		
Nebraska		x	
Nevada		x	
New Hampshire		x	x
New Jersey		x	
New Mexico	x		
New York		x	
North Carolina		x	
North Dakota	x		
Ohio		x	
Oklahoma	x		
Oregon		x	
Pennsylvania		x	x
Rhode Island		x	
South Carolina		x	
South Dakota	x		
Tennessee		x	
Texas		x	
Utah		x	
Vermont		x	
Virginia		x	
Washington		x	
West Virginia	x		
Wisconsin			x
Wyoming	x		

ALABAMA

I. Applicable State Statutes:

Ala. Code §§ 40-7-25.1 to -27, 40-8-1 to -4 (1985).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Current use value" shall be the value of eligible taxable property based on the use being made of that property on October 1 of any taxable year. Id. § 40-7-25.1(a).
2. "Agricultural and forest property" shall be all real property used for:
 - a. Raising, harvesting, and selling crops;.
 - b. Feeding, breeding, managing, raising, selling, or producing livestock, sheep, swine, horses, ponies, mules, poultry, fur-bearing animals, honeybees, and fish;
 - c. Dairying and dairy products;
 - d. Growing and sale of timber and forest products; or
 - e. Any other agricultural or horticultural use or animal husbandry or any combination thereof.

Id. § 40-8-1(b)(3).

B. Valuation:

1. All taxable property is to be assessed at the ratio of assessed value to the current use value of the property and not the fair and reasonable market value. Id. § 40-7-25.1(a). The ratio of assessed value to the current use value for agricultural property is 10 percent, compared with 30 percent for utility properties, 15 percent for private automobiles, and 20 percent for unclassified property. Id. § 40-8-1(a).
2. Individual counties may increase or decrease the ratio of assessed value for purposes of local taxation as long as certain criteria are met. Id. § 40-8-4(a).
3. In determining the current use value of property, the tax assessor shall follow the standard value method of current use valuation outlined in the statute.

Ala.

- a. To utilize the standard value method of current use valuation, the assessor shall first determine the character of the property. Id. § 40-7-25.1(b). Included in the different classes of property is Class III: agricultural, forest, and residential properties and historic buildings and sites. Id. § 40-8-1(a). The specific character of agricultural property is then specifically defined. See II.A.2. supra.
- b. The assessor shall then use specific formulas and methods to determine the assessed value of the agricultural and forest properties at their current use valuation. Ala. Code § 40-7-25.1(d)(1), (2) (1985). One formula determines the productivity rating of the property by utilizing soil groups, and another states the method that is to be used to arrive at the current use standard value. Id. § 40-7-25.1(c).
- c. Using the standard values, the assessor shall enter the determined standard value per acre, multiplied by the number of acres of agricultural property of each productivity rating included in the property, on his records and proceed to assess the property at that value for tax purposes utilizing the assessment ratio applicable to agricultural property, which is 10 percent. Id. § 40-7-25.1(d)(1). See II.B.1. and 2. supra.

C. Eligibility:

1. Any owner of eligible property may apply to have such property assessed at the appropriate ratio of assessed value to the current use value by filing an application between October 30 and January 1 in any taxable year with the tax assessor for the county in which such property is located. The application form requires a description of the use to which the property is being put and whatever other information the assessor may require to aid him in determining whether the property qualifies for assessment based on its current use value. Ala. Code § 40-7-25.2(a)-(c) (1985).
2. If an owner of Class III property fails to file an application and requests appraisal at current use value, the property shall be valued at its market value. Id. § 40-7-25.1(a).
3. A right to appeal a denial of an application for current use assessment does exist. Id. § 40-7-25.2(d).
4. When an application for current use assessment is granted by the tax assessor, the owner of the property is not required to repeat the application procedure for subsequent years. When the property is sold, the new owner must apply for current use valuation for the property. Id. § 40-7-25.2(e).

5. When an owner of agricultural property has elected current use valuation with respect to his land and the property is 5 acres or less, the tax assessor may require the owner to submit additional data, as necessary, to establish that the property is indeed being used for agriculture. Id. § 40-7-25.1(b).

D. Rollback Taxes:

1. If property that qualifies for current use value assessment is converted to another use and no longer qualifies for special assessment, the owner of the property will be subject to additional taxes.
2. The owner of the converted property shall notify the tax assessor of the county where the property is located of the change in use. The tax assessor shall be notified between October 1 and January 1 of the taxable year following conversion.
3. The rollback period shall be 3 years.
4. Additional taxes shall be equal to the amount of taxes that would have been payable if the sales price or the fair and reasonable market value of the property at the time of its conversion, whichever is greater, had been used instead of the current use value of the property.
5. If a portion of a parcel of land that qualifies for current use assessment is converted to another use, the tax assessor shall apportion the assessment of the parcel and only that portion of the parcel so converted shall be subject to additional taxes.

Id. § 40-7-25.3.

ALASKA

I. Applicable State Statutes:

Alaska Stat. § 29.53.035 (1984).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

"Farm use" means the use of land for raising and harvesting crops; for feeding, breeding, and management of livestock; for dairying; or any other agricultural use for profit. Id. § 29.53.035(c).

B. Valuation:

Farm or agricultural land being used for farm purposes shall be assessed at its full and true value for farm use. Id. § 29.53.035(a).

C. Eligibility:

1. An application for special assessment must be filed with the tax assessor before May 15 of each year. Id. § 29.53.035(b).
2. The owner or lessee of farm use land must be actively engaged in farming and derive at least 10 percent of his yearly gross income from the land. Id. § 29.53.035(c).
3. In the event of crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past 3 years was from farming. Id. § 29.53.035(d).
4. A separate eligibility procedure is available for a property owner who desires farm use classification, but who has no history of farm-related income. He may submit a declaration of intent at the time of filing the application with the assessor by setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor, before February 1 of the following year, a notarized statement of the percentage of gross income attributable to the farm-use land. Failure to make this required filing will forfeit the exemption. Id. § 29.53.035(c).

D. Rollback Taxes:

1. If an owner converts farm-use land to a use that is incompatible with farm use, the owner is subject to an additional tax as though the land had not been assessed for farm use purposes. The additional tax shall be at the current mill levy.
2. The rollback period is 7 years, plus 8-percent interest.

Id. § 29.53.035(a).

ARIZONA

I. Applicable State Statutes:

Ariz. Rev. Stat. Ann. §§ 42-141, -162, -201, -227 (Supp. 1985).

II. Preferential Property Tax Assessment:

A. Definitions:

1. "Assessed valuation" means the value derived by applying the applicable percentage specified in § 42-227 to the full cash value or limited property value, whichever is applicable, of the property. Id. § 42-201(1).

2. "Current usage" means the use to which property is put at the time of valuation by the assessor. Id. § 42-201(3).

B. Valuation:

1. The full cash value of all taxable property in Arizona shall be determined at market value. The State uses a property classification system and different percentages of the full cash value of property as a basis for determining the assessed valuation for the different classes. Agricultural property is given a maximum assessed value of 16 percent of its full cash value, compared with valuations of 10 percent for residential property and 25 percent for commercial and industrial property. Id. § 42-227(A), (B).
2. The State tax department has the power and duty to adopt standard appraisal methods and techniques to be used by the county assessors in determining property value. In the standard appraisal methods and techniques adopted, current usage shall be included in the formula for reaching a determination of full cash value. Land used for agricultural purposes shall be valued using the income approach to value without any allowance for urban or market influences. The income of the property shall be determined using the capitalized average annual net cash rental for such property. Id. § 42-141(A)(5) (renumbered from § 42-123(A)(5), effective July 1, 1986).
3. The average annual net cash rental is determined through an analysis of typical arm's-length rental agreements collected for a 5-year period prior to the year of the valuation for comparable agricultural land used for agricultural purposes. Id.
4. The capitalization rate shall be 1.5 percentage points higher than the average long-term annual effective interest rate for all new Federal land bank loans for the 5-year period prior to the valuation. Id.
5. Any person not satisfied with the valuation of his property, as determined by the county board of equalization, may appeal to the superior court of the State Board of Tax Appeals. Id. § 42-245.

C. Classification of Property:

1. Arizona divides its property into classes for taxation purposes. Class IV includes: all real property and improvements on such property used for agricultural purposes, and property that is primarily used for agricultural purposes in the production of trees (other than trees intended for use as standing timber), vines, rose bushes, ornamental plants, or other horticultural crops whether or not such crops are grown in containers, soil,

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or any other medium. Id. § 42-162(A) (amending and renumbering from § 42-136(A), effective July 1, 1986).

2. There are provisions to appeal any land classification. See II.B.5. supra.

ARKANSAS

I. Applicable State Statutes:

Ark. Stat. Ann. §§ 84-480, -493.5 (1980 & Supp. 1985).

II. Preferential Property Tax Assessment:

A. Definition:

"Agricultural lands" shall include dairy, livestock, poultry, and all forms of farm products and farm production. Id. § 84-480 (1980).

B. Valuation:

Valuation of agricultural, pasture, and timber land for taxation purposes is based on soil productivity. Id. § 84-493.5(b) (Supp. 1985). The State Assessment Coordination Division of the Public Service Commission shall develop and publish tables and other guidelines based on the typical or most probable use of the soils in the region. These tables and guidelines shall be used by the county assessors for assessing agricultural land. Id. § 84-493.5(b),(e). The specific details and procedures to implement this use productivity assessment are found in the Arkansas State Administrative Register.

C. Eligibility:

1. The county equalization board may reclassify lands upon proof of a change in use of such lands or upon proof that such lands are not eligible for this special classification. Id. § 84-493.5(d).
2. The owner of property may appeal the assessor's and equalization board's decisions. Id.
3. If the owner of property qualifies for use valuation or productivity and converts the property to another use, he must immediately, in writing, notify the county assessor of such change in use. Id. § 84-493.5(f).

D. Penalty:

An owner who fails to give written notice of a change in use of the land shall be subject to a penalty equal to 3 years of taxes on the property at the value of the new use. When proper notice is given, the land will be taxed based on its new use and no penalty will be imposed. Id. § 84-493.5(f), (g).

CALIFORNIA

I. Applicable State Statutes:

Cal. [Gov't] Code §§ 51200 - 51285 (West 1983 & Supp. 1986), Cal.
[Rev. & Tax] Code §§ 401 - 430.5 (West Supp. 1986).

II. Preferential Property Tax Assessment with Restrictive Agreement and
Deferred Taxation:

A. Definitions:

1. "Agricultural commodity" means any plant and animal products produced for commercial purposes. Cal. [Gov't] Code § 51201(a) (West 1983).
2. "Agricultural use" means use of land for producing an agricultural commodity for commercial purposes. Id. § 51201(b).
3. "Prime agricultural land" means any of the following:
 - a. Land that rates as class I or II in the Soil Conservation Service land use classification.
 - b. Land that rates 80 through 100 in the Storie Index Rating.
 - c. Land that supports livestock used for producing food and fiber and has an annual carrying capacity equal to at least one animal unit per acre as defined by the U.S. Department of Agriculture.
 - d. Land planted with fruit- or nut-bearing trees, vines, bushes, or crops that have a nonbearing period of less than 5 years and normally return not less than \$200 per acre on an annual basis from the production of unprocessed agricultural plants.
 - e. Land that returned, from the production of unprocessed agricultural plant products, an annual gross of not less than \$200 per acre for 3 of the previous 5 years.

Id. § 51201(c).
4. "Agricultural preserve" means an area devoted to agricultural, recreational, or open space use. Id. § 51201(d), (n), (o).
5. "Open space land" means any of the following:

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- a. Land within an agricultural preserve and subject to a contract or an agreement;
- b. Land subject to a scenic restriction; and
- c. Land subject to an open space easement.

Cal. [Rev. & Tax] Code § 421(d), (e), (g) (West Supp. 1986).

6. "Enforceably restricted" applies to open space land subject to a contract, agreement, scenic restriction, open space easement, or wildlife habitat. Id. § 422.

B. Valuation:

1. Every assessor shall assess all property subject to general property taxation at its full value. Id. § 401.
2. When valuing enforceably restricted open space land, except land used for producing timber for commercial purposes and as provided by § 423.7 (relating to the valuation of open space land subject to wildlife habitat contract), the county assessor shall not consider sales data on lands, whether or not enforceably restricted, but shall value such lands by the capitalization of income. Id. § 423.
3. Income shall be determined as follows:
 - a. Where sufficient rental information is available, income shall be the fair rent which can be imputed to the land being valued based on rent actually received for the land by the owner and on typical rentals received in the area for similar land in similar use. The owner pays the property tax.
 - b. Where sufficient rental income is not available, the income is that which the land being valued reasonably can be expected to yield under prudent management and subject to the applicable provisions under which the land is enforceably restricted.
 - c. Notwithstanding any other provisions herein, if the parties to an instrument which enforceably restricts the land stipulate an amount which constitutes the minimum annual income per acre to be capitalized, the income to be capitalized shall not be less than the amount stipulated.

Id. § 423(a).

4. Capitalization rate shall be the sum of the following components:
 - a. An interest component determined by the board and announced no later than September 1 of the year preceding the assessment year and which was the yield rate for the long-term U.S. Government bonds, as most recently published by the Federal Reserve Board, rounded to the nearest 0.25 percent;
 - b. A risk component which shall be a percentage determined on the basis of the location and characteristics of the land, the crops grown thereon, and the provisions of any lease or rental agreement to which the land is subject;
 - c. A component for property taxes which shall be a percentage equal to the estimated total tax rate applicable to the land for the assessment year times the assessment ratio; and
 - d. A component for amortization of any investment in perennials over their estimated economic life when the total income from land and perennials other than timber exceeds the yield from other typical crops grown in the area.

Id. § 423(b).

5. The value of land shall be the quotient for income determined as provided in subdivision (3) divided by the capitalization rate as provided by subdivision (4). Id. § 423(c). See II.B.3., 4. supra.
6. Unless either party expressly prohibits such a valuation, the valuation resulting from the capitalization of income method shall not exceed the valuation that would have resulted by calculation under § 110.1, as though the property was not subject to an enforceable restriction in the base year. Cal. [Rev. & Tax] Code § 423(d) (West Supp. 1986).
7. If the parties to an instrument that creates an enforceable restriction expressly provide therein, the assessor shall assess improvements that contribute to the income of the land. Id. § 423(e).
8. Notwithstanding provisions of § 423, if any party to a contract, agreement, scenic restriction, or open space easement serves notice of nonrenewal, the assessor shall value the land pursuant to the provisions set forth in § 426.

Id. § 426.

Cal.

9. Prior to any action by the board or council giving tentative approval to the cancellation of any contract, the county assessor shall determine the full cash value of the land as though it were free of contractual restrictions. Cal. [Gov't] Code § 51283(a) (West Supp. 1986).
10. No land shall be valued pursuant to II.B.2. - 7. supra unless an enforceable restriction meeting the requirements of § 422 (II.A.6. supra) is signed, accepted, and recorded on or before the lien date for the fiscal year to which the valuation would apply. Cal. [Rev. & Tax] Code §430.5 (West Supp. 1986).
11. To assure that counties and cities have time to meet the requirements of § 430.5, the land subject to a contract shall be included in a proposal to establish an agricultural preserve and be submitted to the planning commission or planning department on or before December 15 preceding the lien date to which the contract is to apply. Id.

C. Eligibility:

1. The legislature declares that it is in the public interest for local officials and landowners to retain agricultural lands subject to contracts in parcels large enough to sustain agricultural uses permitted under the contracts. Agricultural land shall be presumed to be in parcels large enough to sustain their agricultural use if the land is at least 10 acres in the case of prime agricultural land, or at least 40 acres in the case of land that is not prime agricultural land. Cal. [Gov't] Code § 51222 (West Supp. 1986).
2. Any city or county may by contract limit the use of agricultural land for the purpose of preserving the land. The contract can provide for restrictions, terms, and conditions more restrictive or in addition to those required by the State. Cal. [Gov't] Code § 51240 (West 1983).
3. If such a contract is made with any landowner, the city or county shall offer such a contract under similar terms to every other owner of agricultural land within the agricultural preserve in question. Id. § 51241.
4. No city or county may contract with respect to any land unless the land:
 - a. Is devoted to agricultural use; and

- b. Is located within an area designated by a city or county as an agricultural preserve.

Id. § 51242.

- 5. Every contract shall be for an initial term of no less than 10 years. Annually, a year shall be added automatically to the initial term unless notice of nonrenewal is given. Id. § 51244.
- 6. Either the landowner or the city or county may decide not to renew the contract. Notice must be served within the provisions set forth in the statute. Id. § 51245.
- 7. The landowner may petition the board or council for cancellation of any contract. The board or council may grant tentative approval for cancellation of a contract if it makes findings set forth in the statute. Id. § 51282.

D. Rollback Provisions:

- 1. Prior to giving tentative approval to the cancellation of any contract, the board or council shall determine and certify to the county auditor the amount of the cancellation fee that the landowner shall pay the county treasurer as deferred taxes upon cancellation. The fee shall be equal to 12.5 percent of the cancellation valuation of the property. Id. § 51283(b) (West Supp. 1986). See II.B.9. supra.
- 2. The board or council, in the public interest, may waive any payment or extend the time for making payment, contingent on the future use of the land and its economic return to the landowner, for a period of time not to exceed the unexpired period of the contract, had it not been canceled, if all of the following occur:
 - a. The cancellation is caused by an involuntary transfer or change in the use of the land, and the land is not immediately suitable for a purpose that produces a greater economic return to the owner;
 - b. The board or council has determined it is in the best interest of the program to conserve agricultural land use; and
 - c. The waiver or extension of time is approved by the Secretary of the Resources Agency.

Cal. [Gov't] Code § 51283(c) (West Supp. 1986).

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3. In addition to the fee provided in D.1., payment of additional deferred taxes shall be determined in the following manner:

a. The county assessor shall determine the following values:

- (1) The unrestricted assessed value, which is the assessed value of the land as though it were free of the contractual restriction. The value shall be arrived at by considering what other uses may be made of the land after the contract is no longer in effect;
- (2) The current restricted assessed value, which is the assessed value of the land as enforceably restricted by the contract; and
- (3) The base-year restricted and unrestricted assessed values, with varying procedures depending on the length of the contract.

Id. § 51283.1(a).

b. The assessed values determined in subdivision (a) shall be averaged by:

- (1) Subtracting the current restricted assessed value from the unrestricted assessed value;
- (2) Subtracting the base-year restricted assessed value from the base-year unrestricted assessed value; and
- (3) Averaging the figures determined in paragraphs (1) and (2).

Id. § 51283.1(b).

c. The average assessed value determined in subdivision (b) shall be multiplied by the current tax rate. Id. § 51283.1(c). See II.B.4. supra.

d. The amount determined in subdivision (c) shall be multiplied by a factor corresponding to the year of the contract. Cal. [Gov't] Code § 51283(d) (West Supp. 1986).

e. From the amount computed in subdivision (d) there shall be subtracted the amount of the fee provided for in D.1., but in no event shall the result be less than zero. Id. § 51283(e).

- f. If the board or council find that it is in the public interest, it may waive payment of the additional deferred tax or any portion thereof. Id.

COLORADO

I. Applicable State Statutes:

Colo. Rev. Stat. §§ 39-1-102, -103 (1982 & Supp. 1985).

II. Preferential Property Tax Assessment:

A. Definitions:

1. "Agricultural land" means a parcel of land that was used the previous 2 years and is presently used as a farm or ranch or is in the process of being restored through conservation practices. Agricultural land includes land underlying any residential improvement located on such agricultural land and the land underlying other improvements if such improvements are an integral part of the farm or ranch and if such other improvements and the land area dedicated to such other improvements are typically used as an ancillary part of the operation. Id. § 39-1-102(1.6)(a) (Supp. 1985).
2. "Farm" means a parcel of land used to produce agricultural products that originate from the land's productivity primarily for obtaining a monetary profit. Id. § 39-1-102(3.5).
3. "Ranch" means a parcel of land used for grazing livestock primarily for obtaining a monetary profit. Id. § 39-1-102(13.5).
4. "Land used for open space-residential purposes" means land of up to 35 acres, part of which is used for residential and related purposes and part of which is used for open space. Id. § 39-1-102(7.5).
5. "Portion of land used for open space" means that portion of land used for open space-residential purposes not used for residential and related purposes and which:
 - a. Produces a gross income of less than \$1,000 per year;
 - b. Is not primarily used as agricultural land; and
 - c. Is left unimproved, or if improved, the improvements maintain or enhance the natural or scenic aspects of said portion of land.

Colo.

Id. § 39-1-102(12.3) (1982 & Supp. 1985).

B. Valuation:

1. The actual value of agricultural lands, exclusive of building improvements, shall be determined by consideration of the earning or productive capacity of such lands during a reasonable period of time, capitalized at a rate of 13 percent. In comparison, the actual value of residential real property shall be determined solely by the cost approach and the market approach to appraisal. Id. § 39-1-103(5)(a) (Supp. 1985).
2. The actual value of land used for open space-residential purposes shall be determined as follows:
 - a. For the portion of land used for residential and related purposes, not to exceed 1 acre, such value shall be determined in the same manner as is the actual value of nonagricultural land; and
 - b. For each acre or fraction of an acre of land used for open space:
 - (1) Up to and including 4 acres, the actual value of each acre shall be equal to 50 percent of the actual value of the acre of land used for residential and related purposes;
 - (2) Up to (but less than) an additional 30 acres, the actual value of each acre shall be equal to 25 percent of the actual value of the acre of land used for residential and related purposes; and
 - (3) If a fraction of an acre, a proportional value shall be calculated.

Id. § 39-1-103(7)(a),(b) (1982).

C. Eligibility:

1. Agricultural land must have been classified or eligible for classification as agricultural land during the 10 years preceding the year of assessment. Colo. Rev. Stat. § 39-1-102(1.6)(a) (Supp. 1985).
2. The land must continue to have actual agricultural use. Id.

3. All other agricultural property not meeting the requisite definition of agricultural property shall be classified as all other property and shall be valued using appropriate consideration of the other approaches to appraisal based on its actual use on the assessment date. Id. § 39-1-102(1.6)(b).

CONNECTICUT

I. Applicable State Statutes:

Conn. Gen. Stat. Ann. §§ 12-63, -107a to -107f, -504a to -504h (West 1983).

Connecticut's preferential assessment statutes include a conveyance tax. This conveyance tax is not a true deferred tax but is a new tax collected when differentially assessed land is sold or changed to a higher use. Because the conveyance tax is intended to discourage the conversion of land and the result, therefore, resembles a deferred tax, it has been classified as a deferred tax here.

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Farmland" means any tract or tracts of land, including woodland and wasteland, constituting a farm unit. Id. § 12-107b(a).
2. "Forest land" means any tract or tracts of land aggregating 25 acres or more in area bearing tree growth in such quantity and so spaced as to constitute, in the opinion of the State forester, a forest area and maintained in a state of proper forest condition. Such land shall consist of:
 - a. One tract of land of 25 or more contiguous acres, which acres may be in contiguous municipalities,
 - b. Two or more tracts of land aggregating 25 acres or more in which no single component tract shall consist of less than 10 acres, or
 - c. Any tract of land contiguous to a tract owned by the same owner and is designated as forest land by the State forester.

Id. § 12-107b(b).
3. "Open space land" means any area of land, including forest land, wetland, and farmland, the preservation or restriction of the use of which would:

Conn.

- a. Maintain and enhance the conservation of natural or scenic resources;
- b. Protect natural streams or water supply;
- c. Promote conservation of soils, wetlands, beaches, or tidal marshes;
- d. Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open spaces;
- e. Enhance public recreation opportunities;
- f. Preserve historic sites; or
- g. Promote orderly urban or suburban development.

Id. § 12-107b(c).

B. Valuation:

1. The Connecticut Legislature declared that it is in the public interest to encourage the preservation of farm, forest, and open space land. Also, it is in the public interest to prevent the forced conversion of such land to more intensive uses as the result of economic pressures caused by the assessment of the land at property taxation values incompatible with preserving the land. Id. § 12-107a.
2. The present, true, and actual value of land classified as farm, forest, or open space land shall be based upon its current use without regard to neighboring land use of a more intensive nature. Id. § 12-63.
3. In no event shall the present, true, and actual value of open space land be less than it would be if such open space land constituted a part of a tract or tracts of land classified as farmland. Id.

C. Eligibility:

1. An owner of land included in any area designated as open space land by the planning commission of any municipality and approved by the legislative body of such municipality may apply for open space land classification. Id. § 12-107a.

2. An owner of forest land may file a written application with the State forester for forest land designation. The State forester shall examine the land. If he determines that the land is indeed forest land, he shall issue a triplicate certification, thus notifying the owner and assessor of the designation. The State forester has the right to review the status of the land and to cancel the forest land designation if he finds it no longer forest land. Id. § 12-107d(a)-(c).
3. An owner with land designated as forest or open space may apply for classification as forest or open space land on any assessment list of a municipality by filing a written application with the assessor of the municipality. The application shall be filed not earlier than 30 days before nor later than 30 days after the date of the assessment list. Id. § 12-107c(a). However, if it is a year in which a revaluation of the property is occurring, the application may be filed not later than 90 days after the assessment date. Id. §§ 12-107c(b), -107e(b).
4. A landowner applying for classification of land as farmland shall follow the requirements of II.C.3. supra, but the land does not first have to be designated as farmland. Conn. Gen. Stat. Ann. § 12-107c (1983).
5. The assessor shall determine if there has been any change in the area designated as open space land in the plan of development which would adversely affects its essential character as an area of open space land. If the assessor determines that there has been no such change, he shall grant the open space land classification. Id. § 12-107e(b).
6. Land designated as forest land will be classified as forest land if, on the date of the assessment, the land is still designated as forest land. § 12-107d(c).
7. The assessor shall determine whether the land is eligible for farmland classification by taking into account, among other things, the acreage of the land, the portion that is actually being used for farming or agricultural operations, the productivity of the land, the gross income derived from the land, the nature and value of the equipment used in connection with the land, and the extent to which the tracts comprising such land are contiguous. Id. § 12-107c(a).
8. A right to appeal exists for any person aggrieved by the denial of any application for farm, forest, or open space land classification. Id. §§ 12-107c(d), -107d(g), -107e(d).

9. Any farm, forest, or open space land classified as such shall remain so classified without the filing of any new application until either of the following occurs:
 - a. The use of the land is changed to a use other than that designated in the application for the existing classification; or
 - b. The land is sold by the owner.

Id. § 12-504h.

D. Conveyance Tax:

1. See I. supra.
2. Any land classified as farm, forest, or open space land shall be subject to a conveyance tax if sold within 10 years from the initial classification of the land. The conveyance tax shall be applicable to the total sales price of the land and is in addition to the realty transfer tax. Conn. Gen. Stat. Ann. § 12-504a(a), (b) (1983).
3. An owner of specially classified land who changes its use within 10 years to one that does not qualify for special classification shall be subject to the conveyance tax as if there had been an actual conveyance. Id. § 12-504e.
4. The conveyance tax shall be at the following rates: 10 percent of the total sales price if sold within the first year of classification, 9 percent if sold within the second year, 8 percent if sold within the third year, and so on, until 1 percent if sold within the 10th year. No conveyance tax is due after the 10th year. Id.
5. Several land transfers are excepted from the conveyance tax, including transfers resulting from eminent domain and mortgages. Id. § 12-504c.

DELAWARE

I. Applicable State Statutes:

Del. Code Ann. tit. 9, §§ 8329 - 8337 (1974 & Supp. 1984).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Agricultural use land" means land devoted to the production for sale of plants and animals useful to man including, but not limited to, forages and sod crops; grains and feed crops; dairy animals and products; poultry and poultry products; livestock, including the breeding and grazing of such animals; bees and apiary products; fur animals; trees and forest products; or when devoted to and meeting the requirements for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government.. Id. § 8330 (1974).
2. "Horticultural use land" means land devoted to production for sale of fruits of all kinds including grapes, nuts, and berries; vegetables; nursery, floral, ornamental, and greenhouse products; or when devoted to and meeting the requirements for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government. Id. § 8331.
3. "Forest use land" means land devoted to tree growth in such quantity and so spaced as to constitute, in the State forester's opinion, a forest area. Id. § 8332.

B. Valuation:

1. For general property tax purposes, including school tax purposes, the value of agricultural, horticultural, and forest land shall be that value which such lands have for agricultural, horticultural, or forest use. Provided, however, that in the case of school taxes where such land is located in a public school district situated in two counties, the value of such land shall be that value arrived at by multiplying the value determined by the lower of the two general percentage rates of assessment in force in the counties for the tax year in issue. Id. § 8329 (Supp. 1984).
2. The assessor shall consider only those indicia of value which the land has for its designated use, as established by the State Farmland Evaluation Advisory Committee. Id. § 8335(a).
3. The State Farmland Evaluation Advisory Committee shall annually determine and publish a range of values for each of the several classifications of land in agricultural, horticultural, or forest use in the various areas of the State. The committee shall determine the ranges in fair value of such land based on its productive capabilities when devoted to its specified use. The committee shall consider available evidence of capability derived from soil surveys, along with other pertinent evidence. On or

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before February 1 or each year, these ranges of fair value shall be made available to the assessing authority in each of the taxing districts. At least every 2 years, the committee shall review the procedures to determine the ranges of fair value. Id. § 8337(b).

4. All structures located on specifically assessed land, together with the additional land used in conjunction with the structure, shall be valued and assessed by the same standards and methods as other taxable structures and other land in the taxing district. Id. § 8335(c) (1974).

C. Eligibility:

1. Land actively devoted to agricultural, horticultural, or forest use shall be eligible for special assessment when it meets the following qualifications:
 - a. It has been so devoted for at least 2 successive years immediately preceding the tax year for which valuation is requested; and
 - b. The area of such land is not less than 10 acres; or
 - c. The gross sales of agricultural, horticultural, or forestry products produced thereon, combined with payments or sales through government programs, averaged at least \$10,000 per year in the 2 years preceding the tax year in issue; or
 - d. There is clear evidence of anticipated yearly gross income and payments of at least \$10,000 within 2 years (in computing anticipated yearly gross sales, the maximum amount compared with future sales of forestry products is \$2,000 per year); and
 - e. Application by the owner of such land is submitted by February 1 of the year immediately preceding the tax year to the assessor of the taxing district where the land is located, along with evidence in writing of the required sales, payments, and anticipated sales and payments.

Id. § 8334 (1974 & Supp. 1984).
2. The definition of land actively devoted to agricultural, horticultural, or forest use repeats the language of II.C.1(b)-(d) supra. Del. Code Ann. tit. 9, § 8333 (Supp. 1984).
3. Land used in connection with the farmhouse shall be excluded when determining the total area of land actively devoted to agricultural, horticultural, or forest use. Id. § 8335(b) (1974).

4. Eligibility for special assessment shall be separately determined for each tax year. Id. § 8336 (Supp. 1984).

D. Rollback Taxes:

1. When land in agricultural use is being specially assessed as agricultural land and is applied to a use other than agriculture, it shall be subject to additional taxes in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the special valuation and the taxes that would have been paid had the land been valued as other land in the taxing district.
2. If, in the tax year in which land use changes, the land was not specially assessed but had been previously assessed, such land shall be subject to rollback taxes for the 5 years immediately preceding the year when the land was so assessed.
3. In determining the amounts of the rollback taxes chargeable on land that has changed in use, the assessor shall ascertain:
 - a. The full and fair value of the land under the valuation standard applicable to other land in the taxing district;
 - b. The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment determined by the assessing authority; and
 - c. The amount of the rollback tax for that year by multiplying the amount of the additional assessment determined under (b) by the general property tax rate of the taxing district for that year.

Id. § 9335(d).

FLORIDA

I. Applicable State Statutes:

Fla. Stat. Ann. § 193.461 (West Supp. 1986).

II. Preferential Property Tax Assessment:

A. Definitions:

1. "Bona fide agricultural purposes" means good faith commercial agricultural use of the land. Id. § 193.461(3)(b).

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2. "Agricultural purposes" include horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, pisciculture (when the land is used principally for the production of tropical fish), and all forms of farm products and farm production. Id. § 193.461(5).

B. Valuation:

1. On an annual basis, the property appraiser shall classify all lands either as agricultural or nonagricultural. The assessment of agricultural land shall be based solely on its agricultural use. Id. § 193.461(1), (6)(a).
2. The following use factors shall be considered by the appraiser to determine agricultural use:
 - a. The quantity and size of the property;
 - b. The condition of the property;
 - c. The present market value of the property as agricultural land;
 - d. The income produced by the property;
 - e. The productivity of land in its present use;
 - f. The economic merchantability of the agricultural product; and
 - g. Such other agricultural factors as may from time to time become applicable.

Id. § 193.461(6)(a).

C. Eligibility:

1. No land shall be classified as agricultural land unless an application is filed by March 1 of each year. Failure to make timely application shall constitute a waiver of the agricultural assessment for 1 year. The owner of land that was classified agricultural in the previous year and whose ownership or use has not changed may reapply on a short form. Id. § 193.461(3)(a).
2. Any landowner whose land is denied agricultural classification may appeal to the Property Appraisal Adjustment Board. Id. § 193.461(2).

3. Only lands used primarily for bona fide agricultural purposes shall be classified agricultural. Id. § 193.461(3)(b).
4. To determine whether the land is being used for bona fide agricultural purposes, the following factors may be considered:
 - a. The length of time the land has been so used;
 - b. Whether the use has been continuous;
 - c. The purchase price paid;
 - d. Size as it relates to specific agricultural use;
 - e. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted, commercial agricultural practices (that is, fertilizing, tilling, mowing, and other accepted agricultural practices);
 - f. Whether such land is under lease; and
 - g. Such other factors as may from time to time become applicable.

Id. § 193.461(3)(b).

5. The sale of land for a purchase price three or more times the agricultural assessment placed on the land shall create a presumption that such land is not used for bona fide agricultural purposes. The landowner must demonstrate special circumstances to rebut the presumption. Id. § 193.461(4)(c).
6. Agricultural land may be reclassified when there is a contiguous urban or metropolitan development and the county commissioners find that the continued use of such land for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community. Id. § 193.461(4)(b).
7. The following lands shall be considered nonagricultural:
 - a. Land diverted from an agricultural to nonagricultural use;
 - b. Land no longer used for agricultural purposes;
 - c. Land that has been zoned to a nonagricultural use at the request of the owner; and
 - d. Land for which the owner has recorded a subdivision plot.

Id. § 193.461(4)(a).

Ga.

GEORGIA

I. Applicable State Statutes:

Ga. Code Ann. §§ 48-5-7, -7.1 (Supp. 1985).

Georgia uses the fair market value method to determine the value of the agricultural land, not the current use value method. The Georgia courts, however, have stated that current use must be a factor in arriving at the fair market value. Therefore, Georgia's preferential assessment law results in a 25-percent tax break for eligible agricultural landowners. Information received from Sewell Brumby, Office of Legislative Counsel, by Kimberly Grillo.

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definition:

"Tangible real property which is devoted to bona fide agricultural purposes" means real property where the primary use is good faith commercial production of agricultural products, including horticultural, floricultural, forestry, dairy, livestock, poultry, apiarian products, and all other forms of farm products. Id. § 48-5-7.1(a)(1).

B. Valuation:

1. Property that meets the other requirements stated in the statute and is devoted to bona fide agricultural purposes shall be assessed at 75 percent of the value at which other tangible real property is assessed. Id. § 48-5-7(b).
2. The entire value of any residence on the agricultural property shall be excluded from the special valuation. Id. § 48-5-7.1(a)(3).
3. Bona fide agricultural property shall include only the value that is \$100,000 or less of the fair market value of the property devoted to the storage or processing of agricultural products. Id. § 48-5-7.1(a)(2).

C. Eligibility:

1. The agricultural property must be:
 - a. Owned by one or more natural or naturalized citizens; or

- b. Owned by a family farm corporation, the controlling interest of which is owned by individuals related to each other within the fourth degree by civil reckoning, and such corporation derived 80 percent or more at its gross income from bona fide agricultural pursuits carried out on the property for at least 1 year preceding the special assessment.

Id. § 48-5-7.1(b).

- 2. A landowner who devotes his land to agricultural purposes may be eligible for special assessment for up to 2,000 acres of land.
Id. § 48-5-7.1(c).
- 3. No property shall qualify for special assessment unless the property owner agrees by covenant to maintain the eligible property in bona fide agricultural purposes for at least 10 years. After the covenant period expires, the property shall not qualify for further special assessment until the property owner enters into a renewal covenant for an additional 10 years. Id. § 48-5-7.1(d).
- 4. No property shall maintain its eligibility for preferential assessment unless a valid covenant remains in effect and the property is continuously devoted to bona fide agricultural purposes during the entire period. Id. § 48-5-7.1(e).
- 5. If any ownership of the property changes during the covenant period, the new owner must again meet all qualification requirements before the property is eligible for special assessment. No breach of the covenant, however, shall be deemed to have occurred and the original covenant may be continued for the remainder of the term if the property is acquired during a covenant period by the following:
 - a. A person qualified to enter into an original covenant;
 - b. A newly formed corporation, the stock of which is owned by the original covenantor or others related to him; or
 - c. The personal representative of an owner who was a party to the covenant.

Id. § 48-5-7.1(f).

- 6. All applications for special assessment, including the covenant agreements, shall be filed before January 1 of the tax year for which the assessment shall be applicable. The applications shall be filed with the county board of tax assessors. Id. § 48-5-7.1(k).

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7. The following shall not constitute a breach of a covenant:

- a. Transfer of part of the property, but the part transferred must be used for single-family residential purposes; the residence must be occupied by a person who is related to the owner of the property subject to the covenant; and no more than 3 acres may be transferred during the covenant period. Id. § 48-5-7.1(n).
- b. Use or lease of the property for mineral exploration, if the primary use of the property continues to be the good faith commercial production of agricultural products; or if all or part of the property is fallow for a land conservation program, a Federal agricultural assistance program, or for other agricultural management purposes. Id. § 48-5-7.1(o).

D. Rollback Taxes:

1. A penalty shall be imposed if the covenant is breached during the first 9 years of the original covenant, excluding renewals. The amount of the penalty shall be computed as follows:
 - a. If the property has received special assessment for fewer than 5 years, multiply the total amount by which such special assessment has reduced taxes otherwise due for those years times:
 - (1) A factor of 5 if the property has received special assessment for 1 year;
 - (2) A factor of 2.5 if the property has received special assessment for 2 years;
 - (3) A factor of 1.66 if the property has received special assessment for 3 years; or
 - (4) A factor of 1.25 if the property has received special assessment for 4 years.
 - b. If the property has received special assessment for 5 or more years, total the amount by which such special assessment has reduced taxes which would have otherwise been due for:
 - (1) The 5 tax years for which special assessment was granted if the property has received special assessment for 5 years;
 - (2) The 4 most recent tax years for which special assessment was granted if the property has received special assessment for 6 years;

- (3) The 3 most recent tax years for which special assessment was granted if the property has received special assessment for 7 years;
 - (4) The 2 most recent tax years for which special assessment was granted if the property has received special assessment for 8 years; or
 - (5) The 1 most recent tax year for which special assessment was granted if the property has received special assessment for 9 years;
- c. Multiply the amount determined under paragraph (a) or (b) times a factor of 3.

Id. § 48-5-7.1(g).

- 2. Interest shall be imposed along with the penalty. Id. § 45-5-7.1(h).
- 3. The penalty shall not be imposed if the covenant is breached solely as a result of:
 - a. The acquisition of part or all of the property under the power of eminent domain,
 - b. The sale of part or all of the property to a public or private entity that would have had the authority to acquire the property under the power of eminent domain, or
 - c. The death of an owner who was a party to the covenant.

Id. § 48-5-7.1(j).

- 4. If the covenant is breached solely as the result of the foreclosure of a deed to secure a debt, the penalty specified by paragraph (1)(b) shall apply, as long as the other stated conditions in the statute are met. Id. § 48-5-7.1(q).

HAWAII

I. Applicable State Statutes:

Hawaii Rev. Stat. §§ 205-2, -5, 246-10, -12 (1976 & Supp. 1984).

II. Preferential Property Tax Assessment with Restrictive Agreement and Deferred Taxation:

Hawaii

A. Definition:

"Agricultural districts" include activities or uses characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, game and fish propagation, and aquaculture; wind generated energy production for public, private, and commercial use; and services and uses accessory to the above activities such as storage and processing facilities, roadside stands, and open area recreational facilities. Id. § 205-2 (Supp. 1984).

B. Valuation:

1. Landowners in Hawaii may obtain special assessment if they agree to restrict or dedicate their property to agricultural use. Land not dedicated, however, is also entitled to special assessment. The value of nondedicated agricultural land is the value that such land has for agricultural use without regard to any value that the land may have for other purposes. The land shall be classified according to its highest and best use. Id. § 246-10(a) (1976).
2. In determining the value of lands classified and used for agriculture, whether such lands are dedicated or not, consideration shall be given to rent; productivity; nature of actual agricultural use; the advantage or disadvantage of factors such as location, accessibility, transportation facilities, size, shape, topography, quality of soil, water privileges, availability of water and its cost, easements, and appurtenances; and the opinions of persons who may have special knowledge of land values. Id. § 246-10(f)(2) (Supp. 1984).
3. There are four major land use districts in which all the lands in the State must be placed: urban, rural, agricultural, and conservation. The owner of any parcel of land within any one of these districts may choose to restrict or dedicate the land to agriculture and the land will be assessed at its value in such use. Certain activities are allowed within the four types of districts. Dedicated land within an agricultural district shall be taxed at 50 percent of its assessed value in such use. Id. §§ 205-2 (Supp. 1984), 246-12(b) (1976).

C. Eligibility:

1. Land dedicated or restricted to agriculture within an urban district must be used for the cultivation of crops such as sugar cane, pineapple, truck, orchard, or ornamental crops, or the like for the 5-year period immediately preceding the dedication. Id. § 246-12(a) (1976).

2. Land may be dedicated for a minimum period of 10 years. Land within an agricultural district may be dedicated for up to 20 years if the owner agrees to restrict the use of the land to agriculture for one of these periods. Id.
3. Owners of land seeking a dedication must petition the county director of taxation. The owner must declare in a petition that the land can best be used for the purpose stated in the petition and that if the petition is approved, the land will be used for this purpose. Approval depends on the suitability of the land for such a use, on the economic feasibility of the use, and a finding that a dedication would not be in conflict with the State's overall development plan. Id. § 246-12(b).
4. If the director approves the owner's petition to dedicate land, this constitutes a forfeiture on the part of the owner to change the use of his land for the agreed upon period. The agreement is automatically renewable and subject to cancellation as follows:
 - a. In the case of a 10-year dedication, the owner may, after the ninth year, give notice of cancellation to the director by April 9 to be effective as of January 1 of the following year;
 - b. In the case of a 20-year dedication, the owner may, during or after the 19th year, give notice of cancellation as provided above;
 - c. In the case of a change in major land use that is not the result of a petition filed by the owner, the owner may cancel the dedication within 60 days.

Id. § 246-12(c).
5. Upon any conveyance or change in ownership during the period of dedication, the land shall continue to be subject to the terms and conditions of the dedication unless the director has issued a release. Id.
6. Failure by the owner to observe the restrictions on the use of the dedicated land shall cancel the dedication and special tax assessment retroactive to the date of the dedication. The difference in the amount of taxes paid and those that would have been paid from assessment in the higher use category shall be payable with a 10-percent per-year penalty. Failure to observe the restrictions on the use means failure for a period of 12 consecutive months to use the land in the manner requested. Id. § 246-12(d) (Supp. 1984).

E. Rollback Taxes:

1. See II.C.6. supra.
2. A deferred or rollback tax shall be imposed on the owner of agricultural land assessed according to its agricultural use in the event of a change in land use classification or upon the subdivision of the land into parcels of 5 acres or less. The tax, however, shall not apply if the owner dedicates the land to agricultural use within 3 years from the date of the change in land use classification and fulfills all requirements of the dedication.
 - a. Where the owner changes the land use classification, the deferred tax shall be due at the end of the third year following the change in land use classification, provided that the land shall continue to be used for agriculture during this period. The deferred taxes shall be computed commencing at the end of the third year following the change in classification where the land has been continuously used for agriculture. Where the land has been put to a higher use prior to the expiration of the 3-year period, however, the amount of deferred taxes shall be computed commencing at the end of the year in which the land has been put to the higher use and shall be retroactive to when the special assessment was made. The owner is also subject to a 10-percent per-year penalty.
 - b. Where the owner has subdivided his land into parcels of 5 acres or less, the deferred tax shall commence from the date the conversion was made, retroactive to the date the special assessment was made, but for not more than 10 years. The tax shall be due within 60 days of the conversion and is subject to a 10-percent per-year penalty.
 - c. Where a change in classification is initiated by a governmental agency or instrumentality, the deferred tax shall not be imposed. Also, the tax shall not apply to land owned by a person who had not petitioned for a change in classification, provided that the owner shall continue to use the land in its agricultural use for a period of 3 years after the classification change.

Hawaii Rev. Stat. § 246-10(f)(3) (Supp. 1984).

IDAHO

I. Applicable State Statutes:

Idaho Code §§ 63-105C, -112, -202 (Supp. 1985).

II. Preferential Property Tax Assessment:

A. Definitions:

1. "Land devoted to agriculture" means land used to produce field crops including, but not limited to, grains, feed crops, fruits, and vegetables; land used for grazing; or land in a cropland retirement program. Id. § 63-112(1)(a).
2. "Speculative portion" means the portion of the value of agricultural land that represents the excess over the actual use value of such land established by comparable sales data, compared with value established by capitalization of economic rent or long-term average crop rental at the capitalization rate. Id. § 63-105CC (c).
3. "Capitalization rate" shall be the rate of interest charged by the Spokane Federal Land Bank District averaged over the past 5 years, plus a component for the local tax rate. Id.

B. Valuation:

1. The State Tax Commission shall prepare and distribute to each county assessor regulations presenting and directing the manner in which market value is to be determined for taxation purposes. The actual and functional use shall be a major consideration when determining value of commercial and agricultural properties. Id. § 63-202.
2. The speculative portion of the value of land devoted to agriculture is exempt from taxation. The difference between the assessor's value and the selling value equals the speculative value that is exempt. Id. § 63-105CC(a),(c). See II.A.2. and 3. supra.

C. Eligibility:

1. Land actively devoted to agriculture shall be eligible for appraisal assessment and taxation as agricultural property each year it meets one or more of the following qualifications:
 - a. The area of such land is more than 5 contiguous acres and it is actively devoted to agriculture. See II.A.1. supra.

- b. The area of land is 5 acres or less and the land has been actively devoted to agriculture during the past three growing seasons; and
 - (1) The area agriculturally produces for sale or home consumption the equivalent of 15 percent or more of the owner's annual gross income; or
 - (2) The area agriculturally produced gross revenues in the immediately preceding year of \$1,000 or more.

Idaho Code § 63-112(1)(b) (Supp. 1985).

- 2. Land that is part of a platted subdivision with restrictions prohibiting agricultural use shall not be classified or valued as agricultural land. Id. § 63-112(2).
- 3. Grazing land for horses or other animals kept primarily for personal use or pleasure shall not be considered land actively devoted to agriculture. Id. § 63-112(3).

ILLINOIS

I. Applicable State Statutes:

I11. Ann. Stat. ch. 120, §§ 482, 501e, 501f-1, 621.02 (Smith-Hurd Supp. 1986).

II. Preferential Property Tax Assessment:

A. Definition:

"Farm" means any tract of land used solely for growing and harvesting crops; for feeding, breeding, and managing livestock and poultry; for dairying; or for any other agricultural or horticultural use or combination thereof including, but not limited to, hay, grain, fruits, vegetables, floriculture, nurseries, orchards, forestry, fur farming, bees, fish, and wildlife farming. Id. § 482(21).

B. Valuation:

- 1. The Department of Revenue shall issue guidelines and recommendations for the valuation of farmland to achieve equitable assessment of farmland within and among counties. Id. § 501e.
- 2. A five-person Farmland Assessment Technical Advisory Board shall be appointed by the Director of Revenue to assist in the

achievement of equitable assessment. This board shall advise and provide technical information regarding the determination of data and guidelines to be issued to the counties. Id.

3. The Department of Revenue by May 1 of each year shall certify to each county assessor the following:
 - a. The equalized assessed value per acre of harvested cropland which is calculated by the department from data supplied by the farmland board on a per-acre basis by soil productivity index based on moving averages for the most recent 5-year period. Such data include gross income which is estimated by using yields per acre as assigned to soil productivity indexes, the crop mix for each soil productivity index, production costs other than land costs, and the net return to land. The net return to land shall be the difference between gross income, crop mix, and production costs.
 - b. A proposed average equalized assessed value per acre of cropland for each county, weighted by the distribution of soils by productivity index in the county.
 - c. A proposed average equalized assessed value per acre for all farmland in each county, weighted (1) to consider the proportion of all farmland acreage in the county that is cropland, permanent pasture, and other farmland and (2) to reflect that cropland shall be valued at the full amount determined in (a). Permanent pasture shall be valued at one-third of its productivity index, and other farmland shall be valued at one-sixth of its productivity index.

Id.

4. Cropland shall be assessed in accordance with the equalized assessed value of its soil productivity index and shall be "debased" to take into account factors including slope, drainage, ponding, flooding, and field size and shape. Id.
5. Wasteland shall be assessed on its contributory value to the farmland parcel. Id.
6. For 1984 and subsequent assessment years, any increase or decrease in the aggregate equalized assessed value of all farmland in any county shall not exceed 10 percent of the aggregate equalized assessed value of all farmland in such county for the immediately preceding assessment year. Id.

III./Ind.

7. Structures on the land shall have an equalized assessed value on one-third of their value, based on the current use of the buildings and their contribution to the productivity of the farm. Id.

B. Eligibility:

1. Farmland assessments in each county shall be subject to review by the department to determine whether such assessments are being made. Id. § 621.02.
2. The equalized assessed value of each tract of real property constituting a farm shall be assessed as such as long as the farm has been in agricultural use for the 2 preceding years. Id. § 501e.

INDIANA

I. Applicable State Statutes:

Ind. Code Ann. § 6-1.1-4-13 (Burns 1984).

II. Preferential Property Tax Assessment:

A. Definitions:

1. "Open tillable land" means land capable of row cropping or producing small grain each year with a slope of less than 18 percent. Information obtained by Kimberly Grillo from Robert Burns, The State Board of Tax Commissioners, Indiana's Real Property Assessment Book (August 1984).
2. "Open non-tillable land" means land exceeding an 18-percent slope or land not continuously row cropped. Id.
3. "Wood or wasteland" means land not cleared of trees and brush and, therefore, not suitable for cultivation or land incapable of being used economically. Id.
4. "Soil productivity" means the capacity of a soil to produce crops. Id.

B. Valuation:

1. A basic rule of valuation is that the value of agricultural land is directly related to its capacity to produce crops and income. Following this premise, it is fundamental that productivity be a prime consideration in the valuation of farmland. Id.
2. County assessors shall be given soil survey data by the State Board of Tax Commissioners. The assessors shall use the data as guidelines for determining the true cash value of agricultural land. Ind. Code Ann. § 6-1.1-4-13(c) (Burns 1984).
3. The State Board of Tax Commissioners shall provide a true cash value of each type of soil classification shown on the soil survey maps. The commissioners shall also provide a method for determining the true cash value of each parcel of agricultural land, including any productivity factors not considered in the soil maps. Id. § 6-1.1-4-13(d).
4. In making a general reassessment of agricultural land, the county assessor shall appoint a committee of five competent persons (the county land advisory committee) to help determine land values. The indicators of value determined by the committee shall be submitted to the tax commissioners' agricultural advisory council as guides for ascertaining the value of agricultural land. Id. § 6-1.1-4-13(b).

C. Eligibility:

1. Land shall be assessed as agricultural land only when it is devoted to agricultural use. Id. § 6-1.1-4-13(a).
2. Land purchased for industrial, commercial, or residential use shall not be entitled to this special assessment. Id. § 6-1.1-4-13(e).

IOWA

I. Applicable State Statutes:

Iowa Code Ann. §§ 384.62, 426.1 to .8, 441.21 (West Supp. 1986).

II. Preferential Property Tax Assessment:

A. Definition:

"Market value" means the fair and reasonable exchange of property in the year that the property is listed and valued between a willing

buyer and a willing seller. Neither the buyer nor seller shall be under any compulsion to buy or sell, and each must be familiar with all the facts relating to the particular property. Id. § 441.21(b).

B. Valuation:

1. The actual value of agricultural property shall be determined on the basis of productivity and net earning capacity of the property. This productivity test shall be based on the property's use for agricultural purposes and capitalized at a rate of 7 percent and shall be applied uniformly among counties and classes of property. Any formula or method employed to determine productivity and net earning capacity of property shall be adopted in full by rule. Id. § 441.21(e).
2. If a soil survey is available, the assessor must consider such information in determining the productive and earning capacity of such agricultural property. Id. § 441.21(f).
3. Agricultural dwellings located on agricultural land shall be valued at their market value as rural residential property and shall be assessed at the same percentage of actual value as in other residential property. Id. § 384.1.

III. Miscellaneous

- A. Two statutes directly address the tax problems of agricultural land within cities. One statute provides that a city's annual assessment of agricultural or horticultural land may not exceed \$3.00375 for each \$1,000 of assessed value. See generally, id. § 384.1. Another statute directs that any special assessment for public improvement will not be due against agricultural property until such property is no longer used for farming. See generally, id. § 348.62.
- B. Iowa does have laws regarding land preservation and use, but they do not involve tax incentives or penalties. The incentives to enter into an agricultural area, as created by statute, involve nuisance restrictions and water rights. See generally, id. §§ 93A.1 to .11 (West 1984 & Supp. 1986)

KANSAS

As of December 31, 1985, Kansas did not have a preferential assessment program. The Kansas Constitution authorizes use value assessment for agricultural land. Kans. Const. art. II, § 12. Constitutional amendments, however, are not self-executing. In November 1986, Kansas voters passed a legislative joint resolution for use value assessment of agricultural land. 6 Farmland Notes No. 1, p. 2 (January 1987).

KENTUCKY

I. Applicable State Statutes:

Ky. Rev. Stat. Ann. §§ 132.010, .450, .454 (Bobbs-Merrill 1982 & Supp. 1984).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Deferred tax" means the difference in the tax based on agricultural or horticultural value and the tax based on fair cash value. Id. § 132.010(12) (Supp. 1984).
2. "Agricultural land" means any tract of land (including all income-producing improvements but excluding all residences) of at least 10 contiguous acres used for producing livestock, poultry, livestock and poultry products, tobacco growing, or other crops, including timber. Agricultural land also includes land that meets the requirements for payments pursuant to agricultural programs under an agreement with the State or Federal Government if such activities produce an average annual gross income, including payments under the program, according to the specified amount of acres and income designated in the statute. The annual gross income amounts must be achieved in 3 of the 5 years preceding the tax year, or there must be an annual gross income of these amounts within 2 years of purchase. Land devoted exclusively to the growing of timber or woodland is excluded from the gross income provisions. Id. § 132.010(9).
3. "Horticultural land" means any tract of land (including all income producing improvements but excluding all residencies) of at least 5 contiguous acres in area commercially used for cultivating a garden or orchard or raising fruits, nuts, vegetables, flowers, or ornamental plants. These activities must produce an average annual gross income per acre as designated by a scale prescribed in the statute. The annual gross income amounts must be achieved in 3 of the 5 years preceding the tax year, or there must be evidence of anticipated annual gross income of these amounts. Land devoted exclusively to growing merchantable timber or nonincome-producing woodland is excluded from the gross income provisions. Id. § 132.010(10).

B. Valuation:

1. The valuation of agricultural and horticultural land shall be its agricultural or horticultural value. Id. § 132.450(2)(g).

Ky.

2. The use value of agricultural and horticultural land shall be based on its income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value. Factors that inflate the farm use value, such as farm expansion and better accessibility, shall not be considered. Id. § 132.010(11).
3. The following factors may be considered in determining the valuation of agricultural or horticultural land:
 - a. Relative percentages of tillable land, pasture land, and woodland;
 - b. Degree of productivity of the soil;
 - c. Risk of flooding;
 - d. Improvements to and on the land that relate to the production of income;
 - e. Row-crop capability, including allotted crops;
 - f. Accessibility to all-weather roads and markets; and
 - g. Factors affecting the general agricultural or horticultural economy (such as interest, price of farm products, cost of farm materials and supplies, labor, or any other economic factors) that would affect net farm income.

Id.

C. Eligibility:

1. The owners of agricultural or horticultural land may file an application for agricultural or horticultural valuation by March 1 of any year with the property-valuation administrator where the land is located. The application shall be valid until the property is transferred or the land use is changed. Id. § 132.450(2)(a).
2. The landowner may elect to have the subject property assessed as other than agricultural or horticultural land for any year or years by filing a statement to that effect with the property-valuation administrator prior to the close of the 5-day period beginning on the first Monday in June. Id.
3. Land area devoted to family recreation (such as lawns, flower gardens, swimming pools, and land used in connection with dwelling houses) shall not be used in determining the total area of land in agricultural or horticultural use. Id.

4. Where contiguous land in agricultural or horticultural use is owned by one person but located in more than one county, compliance with the minimum requirements shall be determined on the basis of the total area and income of such land and not the area located in a particular county. Id.
5. Property devoted to agricultural or horticultural use by any corporation other than one organized primarily for agricultural or horticultural purposes is excluded from special valuation. Id.
6. When part of a tract of agricultural or horticultural land use is changed, the remaining land may be retained in the agricultural or horticultural classification, provided that it continues to meet the requirements of the classification. Land with systematic pattern of change in use over a 2-year period, however, is excluded. Id. § 132.450(2)(d).
7. An appeals procedure is available for a property owner whose application for agricultural or horticultural valuation has been denied. Id. § 132.450(2)(h).

D. Rollback Taxes:

1. When a change in land use occurs, the owner of such land shall be subject to deferred taxes for the preceding 2 years in which the land was valued and taxed for agricultural or horticultural purposes. Id. § 132.454(1) (1982).
2. The deferred tax bill shall be due and payable within 30 days after the date of issue. If unpaid within 30 days, a penalty of 6 percent will be added to the bill. Id. § 132.454(2).
3. A landowner shall not be liable for deferred taxes for any year in which the land was not assessed for agricultural or horticultural use. Id. § 132.450(e) (Supp. 1984).
4. See II. A. 1. supra.

LOUISIANA

I. Applicable State Statutes:

La. Rev. Stat. Ann. §§ 47:2301 to :2309 (West Supp. 1986).

II. Preferential Property Tax Assessment:

A. Definitions:

La.

1. "Use value of bona fide agricultural, horticultural, and timber lands" means the highest value of such land when used by a prudent agricultural, horticultural, or timber operator for the sole purpose of continuing the enterprise commercially in its designated agricultural, horticultural, or timber use. Id. § 47:2301.
2. "Use value of bona fide marsh lands" is the highest value of such land for the sole purpose of continuing the traditional use of the marshlands for hunting, fishing, trapping, or various types of aquaculture by a prudent manager of marshlands. Id.
3. "Bona fide agricultural land" means land devoted to the production for sale, in reasonable commercial quantities, of plants and animals or their products useful to man, and agricultural land under a contract with a State or Federal agency restricting its use for agricultural production. Id. § 47:2302(A).
4. "Bona fide horticultural land" means land devoted to the production for sale, in reasonable commercial quantities, of fruits, vegetables, flowers, or ornamental plants, and horticultural land under a contract with a State or Federal agency restricting its use for horticultural production. Id. § 47:2302(B).
5. "Bona fide timberland" means land stocked with forest trees of any size and species; land formerly having such tree cover within the last 3 years and not currently developed or being used for nonforest purposes and that is devoted to producing timber and timber products in reasonable commercial quantities; and timber land under a contract with a State or Federal agency restricting its use for timber production. Id. § 47:2302(D).
6. "Bona fide marsh land" is wetland other than bona fide agricultural, horticultural, or timberland. Id. § 47:2302(C).

B. Valuation:

1. Agricultural, horticultural, and timber lands shall be valued at their use value. The use value of such lands shall be established without reference to any other particular criteria, such as fair market value or value to the public in general. Id. § 47:2301.
2. The use value of agricultural and horticultural lands shall be determined through the following formula: value equals net income divided by capitalization rate. To assist the assessors in the application of this formula and to determine the net income factor to be used in the formula, the tax commission shall prepare and publish a table defining the different classifications of

land, the range of production costs, and gross returns based on 4-year averages. In preparing this use-value table for agricultural and horticultural lands, the following factors shall be considered:

- a. Classification;
- b. Range of productivity; and
- c. Cost of production and gross returns-weighted average.

The tax commission shall also determine a capitalization rate for use in determining use value by considering the following factors:

- a. Physical and economic risk;
- b. Effect of relative marketability of agricultural and horticultural lands on liquidity of investments;
- c. Competition with other investments and prevailing interest rates; and
- d. Any other appropriate factors.

The capitalization rate shall not be less than 12 percent. Id. § 47:2307(A).

- 3. The use value of timber land shall be determined through the same formula described in II.B.2. supra. There are, however, two differences in the way this formula is applied to timber land. First, the tax commissioner shall consider the factor of net income instead of the cost of production. Second, the capitalization rate shall not be less than 10 percent. La. Rev. Stat. Ann. § 47:2307(C) (West Supp. 1986).
- 4. In determining the use value of marshland, the assessor shall consider the following factors:
 - a. Income derived from the traditional use of such marshland;
 - b. Physical and economic risks attendant thereto;
 - c. Prevailing interest rates;
 - d. Liquidity of investments; and
 - e. Federal and State regulatory authorities governing use of such marshland.

Id. § 47:2307(B).

La.

C. Eligibility:

1. Land shall be assessed and valued at its use value if it meets the requisite definition of bona fide agricultural, horticultural, marshland, or timber land. Id. § 47:2303.
2. Agricultural, horticultural, and timber lands must:
 - a. Be at least 3 acres in size or have produced an average gross annual income of at least \$2,000 for the 4 preceding years; and
 - b. The landowner must sign an agreement stating that the land will be devoted to one or more of the designated uses.

Id. § 47:2303.
3. The landowner must file an application with the assessor in the district where the property is located certifying that the property is eligible for use-value assessment. Id. § 47:2304(A).
4. Applications must be filed at least every 4 years except when the property is sold. Then the purchaser must sign a new application within 60 days from the date of purchase. Id. § 47:2304(B).
5. If land assessed at its use value ceases to meet the eligibility requirements, the owner shall be obligated to notify the assessor within 60 days following the effective date of loss of eligibility. Upon notification of loss of eligibility, the assessor shall reassess the property immediately so that the assessment will be effective the following tax year. Id. § 47:2305(A).
6. If land assessed at its use value is sold for a price four times greater than its use value assessment, the land shall be presumed to be no longer eligible for agricultural, horticultural, marshland, or timber land classification. The purchaser may file an application and shall be given the opportunity to demonstrate that:
 - a. The sales price paid includes things of value susceptible of appraisal, including standing crops or timber, improvements, equipment, and other items; or
 - b. The land is actually in bona fide agricultural, horticultural, marshland, or timber land use and meets all of the other eligibility requirements.

Upon such demonstration, the landowner shall be entitled to a use value classification. Id. § 47:2305(B).

D. Miscellaneous

Louisiana does not have deferred taxation. A penalty, however, does exist if a landowner obtains a use-value assessment by false certifications on the application or if the owner fails to timely notify the assessor of loss of eligibility for use-value assessment. The penalty shall be equal to five times the difference between the tax under a market-value assessment and the tax under a use-value assessment for the tax years in which the use-value assessment was attributable to the false certifications or failure to timely notify the assessor of loss eligibility. Id. § 47:2306.

MAINE

I. Applicable State Statutes:

Me. Rev. Stat. Ann. tit. 36, §§ 1101 - 1118 (1978 & Supp. 1985).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Cropland" means acreage within a farm unit of land in tillage rotation, open land formerly cropped, and land in bush fruits. Id. § 1102(3) (1978).
2. "Farmland" means any tract or tracts of land, including woodland and wasteland, of at least 10 contiguous acres on which farming or agricultural activities have produced a gross income per year in 1 of the 2 or 3 of the 5 calendar years preceding the date of application of at least:
 - a. \$1,000 for 10 acres; and
 - b. \$100 per acre for each acre over 10, with the total income required not to exceed \$2,000.

Gross income includes the value of commodities produced for farm household consumption. Id. § 1102(4).

3. "Farm woodland" means the combined acreage within a farm unit of forested land. Id. § 1102(5).
4. "Orchard land" means the combined acreage within a farm unit of land devoted to the cultivation of trees bearing edible fruit. Id. § 1102(7).
5. "Pasture land" means the combined acreage within a farm unit of land devoted to producing forage plants used for annual production. Id. § 1102(8).

Me.

6. "Open space land" means any area of land, including State wildlife and management areas, sanctuaries, and preserves, the preservation of which would:

- a. Conserve scenic resources;
- b. Enhance public recreation opportunities;
- c. Promote game management; or
- d. Preserve wildlife.

Id. § 1102(6).

7. "Current use" means the valuation per acre that the land would command if it were required to remain in an open space qualifying use. Id. § 1106.

B. Valuation:

- 1. With the passage of the Farm and Open Space Tax Law, the legislature declared that it is in the public interest to encourage the preservation of farm and open space land. The purpose of the statute is to prevent the forced conversion of such land to more intensive uses as the result of economic pressures caused by the assessment of the property at values incompatible with the preservation of the land. Id. § 1101.
- 2. The assessor shall establish the 100-percent valuation per acre for good cropland, good orchard land, good pasture land, and open space. The 100-percent valuation per acre shall be based on the current use value of farmland used for agricultural purposes and open space land used for open space purposes. The valuations shall not reflect development potential nor value due to shore or road frontage. Id. § 1105.
- 3. The 100-percent farmland valuation shall be adjusted by ratios to reflect the value of very good, good, and poor farmland. The ratios for farmland (which includes cropland, orchard land, and pasture land) are 1.2 for very good, 1.0 for good, and 0.8 for poor. Id.
- 4. Areas other than woodland, pasture land, orchard land, cropland, or open space land located within any parcel of farmland or open space shall be valued on the basis of just value. Id.

C. Eligibility:

- 1. The farmland owner must submit a signed schedule by April 1 of the year in which the land will be subject to special taxation. Id. § 1109(1) (Supp. 1985).

2. In determining whether or not land is farmland, the following factors may be taken into account:
 - a. The acreage of the land;
 - b. The portion actually being used for farming or agricultural operations;
 - c. The productivity of the land;
 - d. The gross income derived from the land;
 - e. The nature and value of the equipment used in connection with the land;
 - f. The extent to which the tracts of land are contiguous; and
 - g. Other relevant factors.

Id.

3. No person can apply for special classification for more than an aggregate total of 15,000 acres. Id. § 1114 (1978).
4. The sale of a portion or a parcel of land being specially assessed shall not affect the taxation of the resulting parcels unless they do not meet the minimum acreage requirements. Id. § 1115.
5. The assessor shall annually determine whether classified land continues to meet the requirements. Id. § 1109(6).
6. The landowner is obligated to report to the assessor any change in use or change in classification of the land and, by April 1, to annually file a determination of the gross income realized the previous year from farmland. If the owner fails to meet these obligations, the assessor shall collect the taxes that should have been paid on the property, the recapture penalty, and an additional penalty of 25 percent of the recapture penalty amount. Id. § 1109(5). See II.D. infra.
7. An appeals procedure is available to property owners who have been denied special classification. Me. Rev. Stat. Ann. tit. 36, § 1118 (Supp. 1985).
8. The owner of a parcel of land, including woodland and wasteland, of at least 10 contiguous acres on which farming or agricultural activities have not produced the gross income requirement stated in II.A.5. supra, may apply for a 2-year provisional classification as farmland by submitting a signed schedule to the assessor by April 1 of the year in which a provisional classification is requested. The land shall be provisionally classified as farmland

Me./Md.

and specially assessed. The owner shall pay a penalty if at the end of the 2-year period the land does not qualify as farmland. The penalty shall be an amount equal to the taxes that would have been assessed had the property been assessed at its fair market value on April 1 for the 2 preceding tax years, less the taxes paid on the property, and interest. Me. Rev. Stat. Ann. tit. 36, § 1109(2) (1978).

D. Rollback Taxes:

1. Maine's rollback statute or recapture penalty shall be assessed when any change in use disqualifies land for special classification. Id. § 1112 (Supp. 1985).
2. The penalty equals the amount that the fair market value of the property exceeds the 100-percent valuation of the specially classified property times the following rates: 10 percent for land that has been taxed under the Farm and Open Space Tax Law for 5 years or less, 20 percent for land so taxed for more than 5 years, and 30 percent for land taxed under the act for 10 or more years. Id.
3. Starting April 1, 1988, the penalty shall not be less than 20 percent, and beginning April 1, 1993, the penalty shall not be less than 30 percent. Id.
4. If the land has been valued under the Farm and Open Space Tax Law for more than 10 years prior to withdrawal, the rate, whether calculated under II.D.2. or .3, shall be adjusted by deducting 1 percent from 30 percent for each full year beyond 10 years until a rate of 20 percent is reached. The penalty shall not be less than the minimum required by Maine Const. art. IX, § 8. Me. Rev. Stat. Ann. tit. 36, § 112 (Supp. 1985).
5. See also II.C.7. and 9. supra.

MARYLAND

I. Applicable State Statutes:

Md. [Tax & Prop.] Code Ann. §§ 8-209 to -240, 13-303 to -308 (1986).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Actively used" means land actually and primarily used for a continuing farm or agricultural use. Id. § 8-209(g)(1)(i).

2. "Average gross income" means the average of the 2 highest years of gross income during a 3-year period. Id. § 8-209(g)(1)(iii).
3. "Family farm unit" means not more than one parcel of land of less than 20 acres for each immediate family member for land that is contiguous to land receiving the farm or agricultural use assessment and is owned by a member or members of the immediate family of the owner of the farm or agricultural use land. Id. § 8-209(g)(1)(iv).
4. "Gross income" means the actual income received in a calendar year that directly resulted from the farm or agricultural use of the land. Id. § 8-209(g)(1)(v).
5. "Homesite" means the area of land reasonably related to the dwelling. Id. § 8-209(h)(1)(iii).

B. Valuation:

1. The Maryland Legislature declares that it is in the general public interest to encourage farming to preserve open space as an amenity necessary for human welfare and to prevent forced conversion of open space land to more intensive uses as a result of economic pressures caused by the assessment of the land at a level incompatible with its practical use for farming. Id. § 8-209(a).
2. Land actively used for farming or agriculture shall be valued on the basis of that use and may not be valued as if subdivided. Id. § 8-209(c).
3. Land valued for farming or agriculture shall be assessed on the basis of 50 percent of its use value. Id. § 8-209(d).

C. Eligibility:

1. The State Department of Assessments and Taxation is responsible for establishing criteria to determine whether or not land is actually being used for farm or agricultural purposes and qualifies for special assessment. The criteria include:
 - a. The zoning of the land;
 - b. The present and past use of the land;
 - c. The productivity of the land; and
 - d. The gross income derived from the agricultural activity.Id. § 8-209(e).

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2. Exclusions:

a. Subject to paragraph b. of this subsection, the following land does not qualify for special assessment:

(1) Land zoned for industrial, commercial, or multifamily use;

(2) Land used as a homesite;

(3) Parcels of land of less than 3 acres under the same ownership, excluding the homesite, unless:

(a) The land is owned by an owner of adjoining land that is receiving the special assessment and is actively used,

(b) The owner receives at least 5 percent of the gross income from the active use, or

(c) The parcels are part of a family farm unit;

(4) If part of a subdivision plot, parcels of land of less than 10 acres owned by an owner of 5 other parcels of less than 10 acres each, located in the same county, and receiving the farm or agricultural use assessment; or

(5) Parcels of woodland of less than 5 acres, excluding the homesite.

b. No more than two parcels of less than 3 acres under the same ownership may qualify for special assessment.

Id. § 8-209(h).

3. There are special rules for land of less than 20 acres:

a. The department, in determining active use, may require the landowner to affirm that the use of the land results in an average gross income of at least \$2,500.

b. If the affirmation is required, it must be filed before January 1 of the taxable year that the special assessment is requested.

c. If the land appears to be actively used but does not yield an average gross income of \$2,500, the director can waive the gross income requirement if any one of a variety of exceptions provided by the statute are met.

Id. § 8-209(g)(2)-(7).

4. If the assessment changes from an agricultural use to a non-agricultural use assessment, the department shall notify the landowner. Id. § 8-401(a).

D. Agricultural Land Transfer Tax:

1. The agricultural land transfer tax is imposed when agricultural land is transferred. Payment is a prerequisite for recording and filing the transfer document. Id. § 13-302.
2. The rate of the agricultural transfer tax is:
 - a. Five percent if the land transferred is 20 acres or more;
 - b. Four percent if the land transferred is less than 20 acres; or
 - c. Three percent if the land transferred is less than 20 acres and is assessed as improved land or land with site improvements.

Id. § 13-303(a).

3. When the transfer is subject to different tax rates, II.D.2. supra, the tax due is compared separately for each portion of the land in which a different rate applies. Md. [Tax & Prop.] Code Ann. § 13-303(b) (1986).
4. The tax, as determined under II.D.1. and 2. supra, will be reduced by 25 percent for each consecutive full taxable year before a transfer in which property tax on the agricultural land was paid on the basis of any assessment other than the farm or agricultural use assessment. Md. [Tax & Prop.] Code Ann. § 13-303(c) (1986).
5. The tax is imposed on the consideration payable for the instrument of writing less:
 - a. The total value of any improvements on agricultural land; and
 - b. The total value of any agricultural land not subject to the agricultural land transfer tax.

Id. § 13-304(a).

6. The agricultural land transfer tax is not applicable in the following situations:
 - a. If property tax on the land has been paid for 5 full consecutive taxable years before the transfer on the basis of

an assessment other than farm or agricultural use assessment. Id. § 13-305(a).

- b. If the amount of agricultural land transferred is not greater than the applicable residential minimum zoning size in effect at the time of the transfer and is for the residential use of the owner of the agricultural land or the owners immediate family. Id. § 13-305(b).
 - c. If the transfer is 20 acres or more of agricultural land that is eligible for farm or agricultural use assessment and the transferee files a declaration of intent that the land will stay in farm or agricultural use for at least 5 full consecutive taxable years and applies for a farm or agricultural use assessment. If there is a failure to comply with the declaration of intent, the tax will be payable without any rate reduction. Id. § 13-305(c)(1).
 - d. If the transfer is less than 20 acres of agricultural land that is eligible for farm or agricultural use assessment and the transferee files a declaration of intent to farm the land, specifying that all the agricultural land will remain in farm or agricultural use for at least 5 full consecutive taxable years and the nature of agricultural activity on all the agricultural land is reasonably expected to produce an average annual gross income of \$2,500. The transferee must also apply for a farm or agricultural use assessment for all the land that is transferred. If either of these provisions are not met, the tax due shall be the agricultural land transfer tax that would have been payable at the date of the transfer plus a 12-percent annual interest. The \$2,500 average gross income requirement has statutory exceptions. Id. § 13-305(d).
7. It is the seller's obligation to notify the buyer in writing that the land being transferred may be subject to the tax. If the seller fails to notify the buyer, the seller is liable to the buyer for the amount of tax paid by the buyer. Id. § 13-308.

III. Planned Development Land:

The Maryland Legislature finds that it is in the public interest to provide for the development of lands in a planned manner. For land to be assessed as planned development land, the owner must apply to the supervisor and meet a variety of statutory requirements. Any land meeting these statutory requirements will be assessed at a rate equal to the rate for farm or agricultural land. See II.B.2. and 3. supra. If any part of the land is rezoned, at the request of the owner, to a zoning classification no longer meeting the requirements of this section, the special assessment shall end and the land will be assessed at a higher value. A deferred property tax, not to exceed 10 percent, is due on the difference, if any, between the new assessment

and special assessment for each year of the special assessment. Md. [Tax & Prop.] Code Ann. §§ 8-220 to -224 (1986).

MASSACHUSETTS

I. Applicable State Statutes:

Mass. Ann. Laws ch. 61A (Michie/Law. Co-op. 1978 & Supp. 1986).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Agricultural use" means land directly and primarily used in raising cattle, poultry, sheep, swine, horses, ponies, goats, bees, and fur-bearing animals in the regular course of business, or land used in directly related activities. Id. § 1 (Michie/Law. Co-op. 1978).
2. "Horticultural use" means land directly and primarily used in raising fruits, nuts, vegetables, berries, other food for human consumption, feed for animals, flowers, sod, trees, tobacco, nursery or greenhouse products, ornamental plants, and shrubs for sale in the regular course of business; raising forest products under a program certified by the State forester for sale in the regular course of business; or in directly related activities. Id. § 2.

B. Valuation:

1. The value of agricultural or horticultural land shall be that value which such land has for agricultural or horticultural purposes. Id. § 4.
2. The Farmland Valuation Advisory Commission shall, prior to January 1 of each year, determine the range of values on a per-acre basis for land classified as being in agricultural or horticultural use. A list of value ranges shall be mailed to each assessor no later than February 1 of each year. In determining value ranges, the commission shall consider evidence of agricultural or horticultural land use capability available from soil surveys and other pertinent documentation. Id. § 11 (Michie/Law. Co-op. Supp. 1986).
3. The assessor shall consider only those indicia of value which such lands have for agricultural or horticultural use. Id.

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4. In establishing the use value of agricultural or horticultural land, the assessor shall be guided by the list of value ranges supplied by the commission, along with his personal knowledge, judgment, and experience. Id. § 10.

C. Eligibility:

1. Agricultural and horticultural land must be at least 5 acres in area. Id. § 3 (Michie/Law. Co-op. 1978).
2. The gross sales of agricultural or horticultural products must be at least \$500 per year. If the agricultural or horticultural land is more than 5 acres in area, the gross sales shall be increased at the rate of \$5 per acre, except the increase shall be at the rate of 50 cents per acre for woodland or wetland. Id.
3. Agricultural or horticultural land must have been devoted to such use for the previous 2 years to become eligible for special assessment. Id. § 4.
4. Where contiguous land in agricultural or horticultural use is under the same ownership but is located in more than one town, compliance with the 5-acre minimum requirement shall be determined on the basis of the entire area of the land and not on the basis of the land area that falls within the bounds of any particular town. Also, land under the same ownership shall be deemed contiguous if it is connected by an easement for water supply. Such contiguous land, however, shall not exceed 100 percent of the acreage devoted to agricultural or horticultural use. Id. §§ 4, 5 (Michie/Law. Co-op. 1978 & Supp. 1986).
5. The eligibility of agricultural or horticultural land for special assessment shall be determined separately for each tax year. Id. § 6 (Michie/Law. Co-op. Supp. 1986).
6. Applications shall be submitted to the board of assessors in the town where the property is located by October 1 of the year preceding each tax year for which special assessment is sought. Id.
7. The applicant must notify the board of assessors of any subsequently developing circumstance within his control or knowledge that may cause a change in use. Id.
8. If land use changes between October 1 and December 31, the assessors shall nullify the application and tax the agricultural or horticultural land as though it had not been eligible for special assessment. This assessment shall not affect the conveyance or rollback tax provisions. Id. § 7 (Michie/Law. Co-op. 1978).

9. The board of assessors of the city or town in which the land is located shall accept or reject the application within 3 months of its filing. The board, within 10 days of their approval or rejection of the application, shall send the landowner a statement explaining its decision and alert the applicant of his right to appeal. Id. § 9.
10. Agricultural and horticultural lands specially assessed shall not be sold for or converted to residential, commercial, or industrial use unless the town has been notified of such intent. The town has 60 days to exercise a first refusal option to meet a bona fide offer to purchase, or if no offer, to meet the full and fair market value determined by appraisal. Specific use of the land for the owner, family, or full-time help is exempt. Id. § 14.
11. Farm buildings and houses that are located on specially assessed land shall be assessed as other similar property in town. Id. § 15.
12. The continuance of special valuation shall depend on the land's use, not on the continuance of the land in the same ownership. Id. § 16.
13. A portion of land may be removed from the specially assessed agricultural or horticultural land tract without affecting the remaining tract, providing that the remaining land continues to qualify. The portion removed shall be subject to the applicable conveyance or rollback tax. Id. § 17.

D. Conveyance Tax:

1. Land will be subject to a conveyance tax if classified as agricultural or horticultural land and sold for another use within 10 years from the date of its acquisition or within 10 years from the date of its uninterrupted use by the owner. The conveyance tax shall be due at the time the land is conveyed. No conveyance tax will be payable by the seller if an affidavit by the purchaser is filed with the board of assessors stating that such land is being purchased for agricultural or horticultural use. If the land is not continued in its special use, the purchaser shall be liable for any conveyance tax that would have been payable on the sale as if it were a sale for another use. Id. § 12.
2. A change by the owner to another use within 10 years of the acquisition date will be subject to a conveyance tax at the time of the change in use as if there had been an actual conveyance. The value of the land, for determining a total sales price, shall be the fair market value. Id.
3. The conveyance tax for agricultural or horticultural land shall be determined by applying the appropriate conveyance tax rate to the total sales price of the land. The applicable conveyance tax

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rates are as follows: 10 percent if the land is sold within the first year of ownership, 9 percent if sold within the second year of ownership, 8 percent if sold within the third year of ownership, and so forth, with the rate declining by 1 percent per year until the rate is 1 percent in the 10th year of ownership. Id.

4. The conveyance tax is imposed only if the amount of the conveyance tax exceeds the amount of the rollback tax. Only the greater of the two taxes will be imposed. Id. § 13.

E. Rollback Taxes:

1. When land classified as either agricultural or horticultural land no longer qualifies as land actively devoted to its designated use, it shall be subject to rollback taxes. Agricultural or horticultural land shall be subject to rollback taxes for the year in which it ceases to qualify and for the 4 tax years immediately preceding the period when it was classified as agricultural or horticultural land.
2. Rollback taxes shall be imposed only if the amount exceeds the amount of the conveyance tax.
3. If the land was not classified as agricultural or horticultural land in a tax year when its use changed, the land shall be subject to rollback taxes for the 5 preceding years in which the land was specially classified.
4. No rollback tax shall be imposed if the land is purchased for a public purpose by the city or town.
5. To calculate the rollback tax for each year, the assessor must determine the difference between the amount of taxes paid and the taxes that would have been paid had the land not been specially assessed. The formula for determining the rollback tax is as follows:
 - a. The land's full and fair value for that year under the valuation standard applicable to other land in the city or town;
 - b. The amount of the land assessment for that particular tax year;
 - c. The amount of the additional assessment for that particular tax year by deducting the amount of the actual assessment for that year from the amount of the assessment determined under a., above; and

- d. The amount of the rollback tax for that tax year by multiplying the amount of the additional value determined under c., above, by the general property tax rate of the town for that tax year.

The total rollback tax due is the sum of the rollback taxes for each year within the appropriate rollback period. Id.

III. Miscellaneous:

Land qualifying for valuation, assessment, and taxation under this act shall be subject to special assessment proportionally as the service or facility financed by such assessment is used for improving the agricultural or horticultural use capability of the land. The assessment and interest on account of such suspended special assessment shall be suspended during the time the land is in agricultural or horticultural use, but shall be payable when the land use changes. The suspended interest shall be equal to the total amount of interest that would have been paid if it had been paid annually. Id.

MICHIGAN

I. Applicable State Statutes:

Mich. Stat. Ann. §§ 26.1287(1) - .1287(19) (Callaghan 1982 & Supp. 1986), 7-7(4b) (Callaghan 1984).

II. Preferential Property Tax Assessment with Restrictive Agreement and Deferred Taxation:

A. Definitions:

1. "Agricultural use" means substantially undeveloped land devoted to producing plants and animals useful to man including forage and sod crops, grain and feed crops, dairy and dairy products, livestock, fruits, vegetables, Christmas trees, and other similar uses and activities. Id. § 26.1287(2) [1] (Callaghan Supp. 1986).
2. "Development rights" means the right to construct a building or structure, to improve land, or to extract minerals incidental to a permitted use. Id. § 26.1287(2) [3].
3. "Development rights agreement" means a restrictive covenant where the owner and the State agree for a term of years to jointly hold the right to develop the land. Id. § 26.1287(2) [4].
4. "Development rights easement" means a grant whereby the owner relinquishes to the public, in perpetuity or for a term of years, the right to develop the land. Id. § 26.1287(2) [5].

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5. "Farmland" means:

- a. A farm of 40 or more acres in one ownership devoted primarily to an agricultural use.
- b. A farm of 5 or more acres, but less than 40 acres, in one ownership devoted primarily to agricultural use that has produced a gross annual income from agriculture of \$200 per year.
- c. A farm designated by the State Department of Agriculture as a specialty farm in one ownership that has produced a gross annual income of \$2,000 or more from an agricultural use.
- d. Parcels of noncontiguous land in one ownership that constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland.

Id. § 26.1287(2) [6].

6. "Open space land" means:

- a. Land defined as an historic site, environmental area, or any land subject to designation as river front ownership.
- b. Any area approved by the local governing body, the preservation of which in its present condition would conserve natural or scenic resources. Such areas include the promotion of the conservation of soils, wetlands, and beaches; the enhancement of recreation opportunities; the preservation of historic sites; and idle farmland of not less than 40 acres which is substantially undeveloped but which, because of its soil, terrain, and location, is capable of being devoted to agricultural uses.

Id. § 26.1287(2) [8].

7. "Permitted use" means any use contained within a development rights agreement or easement essential to the farming operation or that does not alter the open space character of the land.

Id. § 26.1287(2) [10].

8. "Person" includes an individual, corporation, business trust, estate, trust, partnership, association, or two or more persons having a joint or common interest in the land. Id. § 26.1287(2) [11].

9. "Unique or critical land area" means agricultural or open space land identified by the land use agency as an area that should be preserved in its natural conditions. Id. § 26.1287(2) [19].

B. Valuation:

1. The State land use agency has the power to execute development rights agreements or easements for farmland and open space land on behalf of the State. The provisions of the agreements, however, may not materially impair the character of the lands involved. Id. § 26.1287(3) (Callaghan 1982).
2. The value of the jointly owned development rights in a farmland development rights agreement shall not be exempt from taxation and shall be assessed as part of the land value. Id. § 26.1287(5) [11].
3. The development rights held by the State or local governing body in an open space development rights easement shall be exempt from ad valorem taxation. Id. §§ 26.1287(6) [3], .1287(8) [10].

C. Eligibility:

1. A development rights agreement or easement shall be for a term of not less than 10 years. Id. § 26.1287(4) [1].
2. A farmland development rights agreement or open space development rights easement may be obtained by the landowner by filing an application with the local governing body. The application shall contain information that will aid in classifying the land as either open space or farmland. This information shall include a land survey or legal description of the land, the soil classification of the land, if known, and a map showing the natural features and all structures and physical improvements located on the land. Id. §§ 26.1287(5) [1], .1287(6) [1], .1287(7) [1].
3. An agency or local governing body receiving notice of an application shall have 30 days to review, comment, and recommend to the local governing body with whom the application was filed. Id. §§ 26.1287(5) [3], .1287(7) [3].
4. After considering recommendations of reviewing agencies, the local governing body holding an application for an open space land development rights easement pursuant to II.A.6.b. supra shall approve or reject the application within 45 days after it is received. Mich. Stat. Ann. § 26..1287(7) (4) (Callaghan 1982).
5. An application for an open space development rights easement pursuant to II.A.6.a. supra shall follow the procedure listed in II.C.4. supra. The application shall then be sent to the State land use agency, which will have 60 days to accept or reject the agreement. Mich. Stat. Ann. § 26.1287(6) [1], [2] (Callaghan 1982).

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6. An application for a farmland development rights agreement will follow the procedures in II.C.4. and 5. supra. The State land use agency shall also forward a copy of the application to the State Tax Commissioner who will review the application and send comments to the State land use agency within 60 days after the application is received. An application approved by the local governing body by November 1 shall take effect for the current tax year. Mich. Stat. Ann. § 26.1287(5) [7] (Callaghan 1982).
7. An applicant receiving a rejection has the right to an appeal. The appeal procedure will depend on the type of land involved and the stage of the approval process in which the rejection occurred. Id. §§ 26.1287(5) [6], [9], [10], .1287(7) [8], [9].
8. If approved, an open space development rights easement pursuant to II.A.6.a. supra shall include the following provisions:
 - a. A structure shall not be built on or an improvement made to the land without the approval of the State land use agency.
 - b. Any interest in the land shall not be sold except for a scenic, access, or utility easement that does not substantially hinder the character of the open space land.
 - c. Access to the open space land may be provided if agreed upon by the owner, and the access does not substantially hinder the character of the open space land.
 - d. Any other condition or restriction on the land as agreed to by the parties and is deemed necessary to preserve the land.Mich. Stat. Ann. § 26.1287(6) [1] (Callaghan 1982).
9. If approved, an open space development rights easement pursuant to II.A.6.b. supra shall include the same provisions as II.C.8. supra, except that the local governing body will approve any changes. Mich. Stat. Ann. § 26.1287(7) [5] (Callaghan 1982).
10. If approved, a farmland development rights agreement shall include the same provisions as II.C.8. supra, except that the local governing body and the State land use agency must approve any changes. Prior approval for structures and land improvements consistent with farm operations and lines for utility transmission or distribution purposes, however, is not needed. Mich. Stat. Ann. § 26.1287(5) [7] (Callaghan 1982).
11. A participant owning land contained under a development rights agreement or easement shall notify the State or local governing body holding the development rights of his intention regarding the future plans of the land 6 months before the termination date of the agreement. Id. § 26.1287(8).

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12. Land subject to a development rights agreement or easement may be sold without a penalty if the person who buys the land complies with the provisions stated in the agreement or easement. The seller must notify the governmental authority of the change in ownership. Id. § 26.1287(11) [1].
 13. When the owner of land subject to a development rights agreement or easement dies or is permanently disabled, the land may be released from the agreement. Id. § 26.1287(11) [2].
 14. When the termination date of the farmland development rights agreement or open space development rights easement pursuant to II.A.6.a. supra expires, the owner shall be entitled to automatic renewal of the agreement if all the requirements of the agreement have been kept. If the owner does not desire to renew the agreement, then the State must relinquish the development right at the expiration of the agreement term. Mich. Stat. Ann. § 26.1287(12) [1], .1287(13) [1] (Callaghan 1982).
 15. A farmland development rights agreement or open space development rights easement pursuant to II.A.6.a. supra may be relinquished by the State prior to a termination date in the following situations:
 - a. At any time the State determines that the development of the land is in the public interest and in agreement with the owner.
 - b. The owner of land may submit an application to the local governing body requesting that the agreement be relinquished. The procedure for review is the same as when an initial application is submitted. See II.C.4., 5., and 6. supra.
- Mich. Stat. Ann. §§ 26.1287(12) [2], .1287(13) [2], .1287(14) [4] (Callaghan 1982).
16. An open space development rights agreement pursuant to II.A.6.b. supra will follow the same provision as II.C.14. and 15. supra, except that the local governing body makes the final decision. Mich. Stat. Ann. § 26.1287(14) [1], [2] (Callaghan 1982).

D. Rollback Tax:

1. When a farmland development rights agreement or open space development rights easement is relinquished pursuant to II.C.15.b. supra, the owner is subject to a penalty or lien. The lien shall be for the total amount of the tax credit received by the owner plus 6 percent interest. Mich. Stat. Ann. §§ 26.1287(12) [4], .1287(13) [4] (Callaghan 1982).

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2. Upon termination of the farmland development rights agreement or open space development rights easement pursuant to II.C.15.a. and 16. supra, the rights shall revert back to the owner without penalty or interest. Mich. Stat. Ann. §§ 26.1287(12) [6], .1287(13) [6], .1287(14) [6] (Callaghan 1982).
3. Upon the natural termination of the farmland development rights agreement pursuant to II.C.14. supra, a lien shall be prepared against the property for the total amount of the State income tax credit the owner received for the past 7 years under III. supra. The lien shall be without interest or penalty. This also applies to open space easements, except the lien shall be for the ad valorem taxes not paid on the development rights. Mich. Stat. Ann. §§ 26.1287(12) [7], .1287(13) [7], .1287(14) [7] (Callaghan 1982).
4. If the owner of or a successor in title to the land on which a development rights agreement or easement has been recorded changes the use of the land to a prohibited use or knowingly sells the land for a use other than those permitted in the agreement, he shall be subject to a civil penalty for actual damages. The penalty, however, may not exceed double the value of the land as established when the agreement was initially approved. Id. § 26.1287(15).

E. Miscellaneous:

1. The value of deciduous and evergreen trees, shrubs, plants, bushes, and vines growing on agricultural land devoted to agricultural purposes shall be exempt from taxation. Id. § 7.7(4b) [1] (Callaghan 1984).
2. Special assessments may not be imposed for sanitary, sewers, water, lights, or nonfarm drainage on land for which a development rights agreement or easement has been recorded, except as to a dwelling or a nonfarm structure located on the land unless the assessments were imposed prior to the recording of the agreement or easement. Land covered under this exemption shall be denied use of an improvement created by the special assessment until the owner has paid an amount not more than the amount that would have been paid had the land not been excluded. The land exempt from the assessment shall be denied use of the improvement as long as the landowner has a recorded agreement or easement. Id. § 26.1287(9) (Callaghan 1982).

III. Tax Credit:

Owners of farmland and related buildings, covered by a development rights agreement, are eligible for a credit against the State income tax liability for the amount by which the property taxes on the land and structures used in the farming operation, including the homestead, exceed

7 percent of the household income. A credit is also available against the Michigan single business tax. These credits are compensation for surrendering development rights. If the credit exceeds the tax liability of the landowner, he receives the excess not to exceed the property tax owed by the claimant. Id. § 26.1287(10) [1], [2], [5].

MINNESOTA

I. Applicable State Statutes:

Minn. Stat. Ann. § 273.111 (West Supp. 1986).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definition:

"Agricultural use" means property that annually:

1. Earns at least one-third of the owner's total family income; or the total production income, including rental, from the property is \$300 plus \$10 per tillable acre; and
2. Is devoted to producing for sale livestock, dairy animals, dairy products, poultry and poultry products, fur-bearing animals, horticultural and nursery stocks, fruits of all kind, vegetables, forage, grains, bees and apiary products, and slough, wasteland, and woodland contiguous to or surrounded by farmland.

Id. § 273.111(6).

B. Valuation:

1. The legislature stated that the present system of property taxation in the State does not provide an equitable basis for the taxation of agricultural property and has resulted in inadequate taxes on some lands and excessive taxes on others. The legislature, therefore, declared it the public policy of the State that the public interest would best be served by equalizing tax burdens on agricultural property through appropriate taxing measures. Id. § 273.111(2).
2. The value of agricultural land shall be determined solely with reference to its appropriate agricultural classification and value. Id. § 273.111(4).
3. The assessor shall not consider any added values resulting from nonagricultural factors. Id.

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C. Eligibility:

1. To be entitled to a special assessment, agricultural land shall consist of 10 acres or more; the property shall be actively and exclusively devoted to agricultural use; and either
 - a. Be the owner's homestead, or that of a surviving spouse, child, or owner's sibling, or is farmed real estate containing the homestead property;
 - b. Has been in the applicant's possession, or his spouse's, parent's, sibling's, or any combination thereof, for a period of at least 7 years prior to the special assessment application; or
 - c. Be the shareholder's homestead in a family farm corporation.

Id. § 273.111(3).

2. Special assessment of property is limited to parcels where the ownership is in noncorporate entities, except for family farm corporations. Special rates apply to corporate entities who previously qualified for tax deferment and who continue to otherwise qualify. Id.
3. An application for the special assessment of agricultural land shall be filed with the tax assessor where the land is located by May 1 of the year prior to the year in which the taxes are payable. Any application that is granted shall continue until the property no longer qualifies. Id. § 273.111(8).

D. Rollback Taxes:

1. When agricultural property no longer qualifies for special assessment, the property will be subject to additional taxes. The tax shall be equal to the difference between the taxes paid and the amount that would have been paid based on the market value of the land. The market value, however, shall not be greater than the actual bona fide sale price of the property had an arms-length transaction been made. Id. § 273.111(9).
2. The additional tax shall be extended against the property for the current year, and, if timely paid, no interest or penalties on the additional tax shall be levied. Id.
3. The rollback period for agricultural land shall be 3 years. Id.
4. The rollback tax shall be paid within 90 days, or there shall be a 10-percent penalty on the tax owed. Id. § 273.111(11).

5. When property is sold or transferred, no additional tax shall be levied against the property provided that the property continues to qualify for special assessment and the new owner files an application within 30 days after the sale. Id. § 273.111(11a).

MISSISSIPPI

I. Applicable State Statutes:

Miss. Code Ann. §§ 27-35-49, -50 (Supp. 1985).

II. Preferential Property Tax Assessment:

A. Definitions:

1. "True value" means, but is not limited to, market value, cash value, actual cash value, proper value, and value for appraising for ad valorem taxation. Id. § 27-35-50(1).
2. "Agricultural purposes" means land devoted to commercial production of crops and other products of the soil, including, but not limited to, production of fruits and timber or raising livestock and poultry. Id. § 27-35-50(4).

B. Valuation:

1. To determine the true value of land used for agricultural purposes, the appraisal shall be made according to the land's current use regardless of its location. Id.
2. The assessor shall use soil types, productivity, and other criteria set forth in the State tax commission's land appraisal manuals to appraise land in agricultural use. The criteria shall also include, but not be limited to, an income capitalization approach with a capitalization rate of at least 10 percent and a moving average of 5 years or less. Id.
3. The prospective value that agricultural property may have if it were put to some other possible use shall not be considered in determining the true value based upon current use. Id.

C. Eligibility:

1. Land used for agricultural purposes shall be determined annually by the tax assessor. Id. § 27-35-50(5).
2. Landowners are annually required to list and describe the use of all land in their possession or under their control, showing total

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acres, cultivatable acres, uncultivable acres, and acres devoted to agricultural purposes. Only acreage identified by the owner as devoted to agricultural purposes shall be considered when determining whether or not the land qualifies for this designation. This list of lands shall be delivered to the tax assessor no later than April 1 of each year. Id. § 27-35-49.

MISSOURI

I. Applicable State Statutes:

Mo. Ann. Stat. §§ 137.016 - .026 (Vernon Supp. 1986).

II. Preferential Property Tax Assessment:

A. Definition:

"Agricultural and horticultural property" means all real property used for agricultural purposes and devoted primarily to raising and harvesting crops; feeding, breeding, and managing livestock; dairying; or any other agricultural or horticultural use, as well as associated structures. Agricultural and horticultural property shall also include land qualifying for payments or other compensation under a soil conservation or agricultural assistance program under an agreement with an agency of the Federal Government. Real property classified as forest cropland shall not be agricultural or horticultural property so long as it is classified as such. Id. § 137.016(1) [2].

B. Valuation:

1. The true value of agricultural and horticultural properties shall be the value that such land has for agricultural or horticultural use. Buildings or other structures customarily associated with farming, agricultural, and horticultural uses, excluding residential dwellings and related land, shall be added to the use value of the land. Id. § 137.017(1).
2. The assessor shall consider only those indicia of value which the land has for agricultural or horticultural use. In addition to using his personal knowledge, judgment, and experience, the assessor shall consult the definition of agricultural and horticultural land in arriving at the value of the land. Id. § 137.021(1).
3. During November or December of each year, the State Tax Commission may promulgate recommended values for the following year. Such values shall reflect available evidence of productive capability derived from such information as soil survey data, economic

factors, parity ratios from college research by the University of Missouri, and a reasonable capitalization rate. Id. § 137.021(1). On or before January 1 of each year, the commission shall make those ranges of fair value available to the assessors in each county. Id. § 137.026.

C. Eligibility:

1. After it has been established that the land is agricultural and horticultural property, the land shall remain in this category as long as the owner complies with the eligibility requirements. Id. § 137.017(2).
2. The continuance of special valuation as agricultural and horticultural property depends on the land being used for agriculture or horticulture and not upon continuance in the same owner of title to the land. Id. § 137.017(3).
3. When land is valued and assessed as agricultural and horticultural property and the use changes, the land shall be reassessed as of the following January 1. Id. § 137.021(2).
4. Separation or split-off of a part of the specially assessed land, either by conveyance or other owner actions, so that such property is no longer agricultural and horticultural property, shall subject the separated land to reassessment as of the following January 1. This shall not impair the right of the remaining land to continuance of special valuation. Id. § 137.021(3).

MONTANA

I. Applicable State Statutes:

Mont. Code. Ann. §§ 15-1-101, 15-6-133, 15-7-103, -201 to -216, 15-8-111 (1985).

II. Preferential Property Tax Assessment:

A. Definitions:

1. "Agricultural" refers to raising livestock, poultry, bees, and other animal species in domestic or captive environments; and producing field crops, fruit, and other animal and vegetable matter for food or fiber. Id. § 15-1-101(1)(a).
2. "Taxable value" means the percentage of market or assessed value. Id. § 15-1-101(1)(o).

Mont.

B. Valuation:

1. The legislative intent is that bona fide agricultural properties shall be classified and assessed at values exclusive of urban influences or speculative purposes because the market value of many agricultural properties is based upon speculative purchases not reflecting the productive capability of agricultural land. Id. § 15-7-201(1).
2. In valuing land as agricultural, only those agricultural qualities of such land shall be considered. Agricultural use shall include, but not be limited to, irrigated use, nonirrigated use, and grazing use. Id. §§ 15-7-203, -201(2).
3. Agricultural land shall be classified and appraised without regard to the best and highest value use of adjacent or neighboring land. Id. § 15-7-103(4).
4. For the revaluation beginning January 1, 1986, the State Department of Revenue shall continue to use the agricultural land valuation schedules in effect from January 12, 1984. For the revaluation cycle to take effect January 1, 1991, the Department of Revenue shall determine the productive capacity of agricultural land by using a new formula as defined in the statute. Id. § 15-7-201(4).
5. A property classification system is used in the State for property tax purposes. All taxable property generally must be assessed at 100 percent of its market value, except for delineated exceptions in the statute. Agricultural property is one such exception. Agricultural land shall be assessed at a value based fairly on its ability to produce. Agricultural property shall be assessed at 100 percent of the productive capacity of the land when valued for agricultural purposes. The taxable value for classified property is the percentage of market value established for each class of property by the Department of Revenue. The taxable percentage of agricultural property until July 1, 1986, was 30 percent of its productive capacity. This will increase to an undetermined rate based on the just completed revaluation. Id. §§ 15-8-111, 15-6-133.

C. Eligibility:

1. Land actively devoted to agricultural use shall be eligible for valuation, assessment, and taxation each year that any of the following qualifications are met:
 - a. The parcels produce and the owner receives at least \$1,500 in annual gross income from raising livestock, poultry, field crops, fruits, and other animal and vegetable matter for food or fiber; or

- b. The parcels would have met the qualifications in subsection (a) were it not for independent intervening causes of production failure beyond the control of the producer.

Id. § 15-7-202(a), (b)(1).

2. Land actively devoted to agricultural use includes all land under barns, sheds, silos, cribs, greenhouses, lakes, dams, ponds, streams, and irrigation ditches. Id. § 15-7-206.
3. Land shall not be classified or valued as agricultural land if it is subdivided with stated restrictions prohibiting its use for agricultural purposes. Id. § 15-7-202(b)(3).
4. The grazing on land by a horse or other animals kept as a hobby shall not be considered a bona fide agricultural operation. Id. § 15-7-202(b)(4).
5. The continuance of valuation as agricultural land shall not depend upon the continuance in the same owner of title to the land. Id. § 15-7-207.
6. Whenever land is or has been valued, assessed, and taxed for agricultural use is applied to a use other than agricultural, the owner shall notify the county assessor. Id. § 15-7-209(1).
7. If land has been valued, assessed, and taxed as agricultural land in any year, it shall continue to be valued, assessed, and taxed until the department reclassifies the property. Id. § 15-7-202(b)(5).
8. Upon notice of a change in land classification from agriculture to another use, the property owner may petition the department to retain the land as agricultural. Id. § 15-7-208.
9. Separation or split-off of part of the land, whether by conveyance or by other actions of the owner for a use other than agriculture, shall subject the land so separated to reclassification. The separation or split-off shall not impair the right of the remaining land to continue to be valued, assessed, and taxed as agricultural land, provided that the minimum eligibility requirements are met. Id. § 15-7-210.

NEBRASKA

I. Applicable State Statutes:

Neb. Rev. Stat. §§ 77-1343 to -1368 (Supp. 1985).

Neb.

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Agricultural land and horticultural land" means:

- a. A parcel of land over 20 acres in size which is used for agricultural production;
- b. Wasteland lying in or adjacent to and in common ownership with land used for agricultural production; or
- c. A parcel of 20 acres or less if managed in conjunction with other agricultural or horticultural land that in total exceeds 20 acres, or the owner proves the land's sales of agricultural products exceeded \$1,000 in 2 of the previous 3 years.

Such land shall have been used for production of agricultural products in at least 2 of the last 3 previous years, unless the land is certified by the Department of Revenue as participating in an agricultural land use retirement program authorized by Federal law or protected under a conservation easement. Id. §§ 77-1359, -1360

2. "Agricultural use" means use of land as defined in II.A.1. supra. Neb. Rev. Stat. § 77-1343(1) (Supp. 1985).

3. "Zoned for agricultural use" means any land designated predominantly for agricultural use by any political subdivision. The primary objective of agricultural use zoning shall be to preserve and protect agricultural activities and the potential for agricultural or open use of land. Uses to be allowed on such lands shall include primarily agriculturally related uses. Nonagricultural industrial, commercial, or residential uses allowed on such lands shall be restricted so that they do not conflict with or detract from this objective. Id. § 77-1343(2).

4. "Agricultural products" include, but are not limited to, grain and feed crops; forage and sod crops; animal production (including breeding, feeding, or grazing cattle, horses, swine, sheep, goats, bees, or poultry); and fruits, vegetables, flowers, seeds, grasses, trees, and other horticultural crops. Id. § 77-1359(2).

5. "Landowner share" means the proportion of the gross receipts less landowner expenses paid to the landowner. Id. § 77-1364(1).

B. Valuation:

1. The State legislature finds that agricultural and horticultural land must be valued differently from other land because:

- a. Speculation in agricultural and horticultural land creates excessive and speculative values for land used for agricultural and horticultural purposes;
- b. Farmers must own large amounts of land to generate adequate incomes, and the ability to pay property taxes is a function of both land value and income;
- c. Farmers in other States, selling on the same markets as Nebraska farmers, pay property taxes that reflect the earning capacity of agricultural and horticultural land;
- d. Agricultural and horticultural land values based on a market approach would impose a heavy tax burden upon agricultural and horticultural property owners, which, in turn, would harm the State; and
- e. Agricultural and horticultural land needs to be preserved.

Id. § 77-1358(2).

- 2. The earning capacity valuation method used to value agricultural and horticultural land shall be based on accurate crop yields, prices, and patterns; expenses; and rate of return data. This method shall use nominal interest rates and average income data. Id. § 77-1358(3).
- 3. Land zoned for agricultural use shall be valued at its actual value for agricultural use and not at the actual value for nonagricultural use. Id. § 77-1344(1).
- 4. Land disqualified for special valuation before July 1 shall be valued at its actual value, while land disqualified after July 1 shall be specially valued for that year. Id. § 77-1344(2).
- 5. An agricultural land valuation manual shall be developed by the tax commissioner using the following formula to determine actual value of agricultural and horticultural land:
 - a. Dividing agricultural and horticultural land into major use categories and subclasses based on soil classifications;
 - b. Computing a typical income stream based on historical gross receipts and landowner shares; and
 - c. Dividing the derived income stream by a capitalization rate.

The manual shall also contain allowances to adjust actual values for irrigation costs and land productivity cost variances. Upon written application to and approval from the tax commissioner, a county assessor can apply adjustments to specific parcels of land. Id. § 77-1362.

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6. Agricultural and horticultural land shall be divided into five major categories: irrigated cropland, dryland cropland, pasture land, rangeland, and wasteland. These categories shall be divided into subclasses based on soil classification standards developed by the U.S. Department of Agriculture's Soil Conservation Service. Id. § 77-1363.
7. Income streams shall be determined as follows:
 - a. For irrigated and dryland croplands, multiply gross receipts by landowner share by county. Gross receipts shall be computed by multiplying the most recent 5-year average price of a crop by the most recent 5-year average yield of a crop and weighting the result by the most recent 5-year average cropping-pattern. The landowner's share shall be computed based on representative leasing arrangements.
 - b. For rangeland and pasture land, multiply the carrying capacity in terms of animal-unit months by representative rental value per animal-unit month. When animal-unit-month data are not available, the income stream shall be computed by using the average of the most recent 5-year prevailing cash rental rates per acre, less representative landowner expenses.
 - c. For wasteland, actual values shall be computed based on 5 percent of the average actual value of all agricultural and horticultural land in the crop reporting district where such wasteland is located.

Id. § 77-1364.

8. Capitalization rates shall be determined as follows:
 - a. The rate shall be computed using two components consisting of a debt portion and an equity portion. The relative proportion of the debt and equity components shall be based on the relationship of real estate debt to owner equity for the farm sector in the State. Starting January 1, 1986, the relative proportion of the debt and equity components was 28 percent and 80 percent, respectively. Beginning January 1, 1987, when the relative proportion changes by 5 percent or more, the relative proportions shall be adjusted so that they are divisible by five.
 - b. The percentage of debt shall be multiplied by a number equal to the most recent 5-year average of the Federal land bank interest rates in the Omaha District. The product of this multiplication shall be the weighted debt capitalization rate.

- c. The percentage of owner equity shall be multiplied by a number equal to the most recent 5-year average of 6-month U.S. Treasury bill interest rates. The product of this multiplication shall be the weighted equity capitalization rate.

The sum of the weighted debt capitalization rate and the weighted equity capitalization rate shall be the capitalization rate used in determining the actual value of agricultural and horticultural land. Id. § 77-1365.

C. Eligibility:

1. Land must have an actual value (reflecting a potential use other than agricultural use), be located outside corporate boundaries of any sanitary and improvement district, be used exclusively for agricultural use, and be zoned for agricultural use. Id. § 77-1344(1).
2. The landowner shall apply to the county assessor on or before May 1 of the first year in which the special valuation is requested. Id. § 77-1345(1).
3. The application may be signed by any of the following:
 - a. The owner, tenants in common, or joint tenants that hold an estate in the farmland in fee simple or for life;
 - b. The guardian of an owner or administrator of the owner's estate; or
 - c. The purchaser of the fee simple or life estate of an owner under a contract of sale.

Id. § 77-1345(2)(b).

4. No area of land associated with an improvement or structure shall apply in determining compliance with the 20-acre requirement. See II.A.1.C. supra. Neb. Rev. Stat. § 77-1361(3) (Supp. 1985).
5. No residential, commercial, industrial, or agricultural building or enclosed structure shall be assessed as agricultural or horticultural land. Id. § 77-1361(2).
6. Special valuation shall not apply to land zoned for agricultural use if the land has been subdivided for residential use. Id. § 77-1344(2).
7. Land will be disqualified for special valuation by:
 - a. Notification by the taxpayer to the assessor to remove the special valuation;

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- b. Sale or transfer to an ownership making it exempt from ad valorem property taxation;
- c. A change in zoning so that the land is no longer zoned for agricultural use;
- d. Subdivision of the land;
- e. Inclusion of the land within the corporate boundaries of any sanitary and improvement district; or
- f. A change from agricultural use.

Id. § 77-1347.

D. Rollback Taxes:

- 1. When land no longer qualifies for special valuation, the assessor shall notify the owner and there shall be an added tax against the land. Id. § 77-1348(1).
- 2. The tax shall be equal to the sum of the following:
 - a. The total amount by which the taxes assessed against the land would have increased if it had been valued without the special valuation during the past 5 or less years in which the special valuation was in effect; and
 - b. Interest upon the amounts of additional tax from each year included in section (a) at the rate of 6 percent.

Id.

- 3. Land receiving special assessment as agricultural use land prior to August 26, 1983, which became disqualified on August 26, 1983, solely because of amendments to the State statutes, shall not be subject to rollback taxes. Id. § 77-1348(2).

NEVADA

I. Applicable State Statutes:

Nev. Rev. Stat. §§ 361A.010 - .290 (1986).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

- 1. "Agricultural real property" means:

- a. Land devoted exclusively for at least 3 consecutive years immediately preceding the assessment date for agricultural use, or activities which prepare the land for agricultural use, and having a greater value for another use than for agriculture.
- b. The improvements on such land that support accepted agricultural practices, except any structures or any portion of a structure used primarily as a human dwelling.

Id. § 361A.020.

2. "Agricultural use" means the current employment of real property as a business venture for profit. The business must have a minimum gross income of \$2,500 from agricultural pursuits during the preceding calendar year by:
 - a. Raising, harvesting, and selling crops, fruits, flowers, timber, and other products of the soil;
 - b. Feeding, breeding, managing, and selling livestock, poultry, fur-bearing animals, honeybees, or the produce thereof; or
 - c. Dairying and the sale of dairy products.

Agricultural use includes every process and step necessary and incidental to the preparation and storage of the products raised on such property for human or animal consumption or for marketing, except actual market locations. Id. § 361A.030(1).

3. "Higher use" means any use other than agricultural use or open space use. Id. § 361A.032.
4. "Open-space real property" means:
 - a. Land located within a classified area and subject to regulations designed to promote the conservation of open space and the protection of other natural and scenic resources from unreasonable impairment;
 - b. Devoted exclusively to open space use; and
 - c. The improvements on such land are made primarily to support the open space use and not primarily to increase the value of surrounding developed property or secure an immediate monetary return.

Id. § 361A.040.

5. "Open space use" means the current employment of land, the preservation of which would conserve and enhance natural or

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scenic resources, protect streams and water supplies, or preserve designated historic sites. Id. § 361A.050.

B. Valuation:

1. The legislature declared that it is their intent to constitute agricultural and open space real property in a separate class for taxation purposes and provide a separate plan for the appraisal and valuation of such property for assessment purposes. In making this declaration, the legislature emphasized that the best interest of the State is to maintain, preserve, conserve, and otherwise continue adequate agricultural and open space lands to assure continued good public health and the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of its citizens. Id. § 361A.090.
2. If the property is found to be agricultural or open space real property, the county assessor shall determine its value accordingly and assess it for taxes to be collected in the ensuing fiscal year at 35 percent of that value. Id. §§ 361A.130(1), .220(1).
3. The county assessors shall classify agricultural real property by using definitions and applying values published in the tax commissioner's bulletin. It is the tax commissioner's responsibility to define the classifications of agricultural real property, determine the valuations for each classification, and prepare a bulletin listing all classifications and values for the following year. This bulletin must be prepared by the first Monday in October of each year. Id. §§ 361A.140.

C. Eligibility:

1. The owner of real property shall apply to the county assessor where the property is located for agricultural use or open space use assessment by the first Monday in October of any year. Id. §§ 361A.100, .110(1)(a), .180, .190(1). If the agricultural property, however, is less than 5 acres, the application shall be filed with the tax department and not with the county assessor. Id. § 361A.110(1)(b).
2. A new application to continue agricultural or open space use assessment is required on or before the first Monday in October following any change in ownership or conversion to a higher use of any portion of the property. If agricultural property is divided, an owner who retains a portion of the property is not required to file a new application to continue agricultural use assessment unless any part of that portion is converted to a higher use. If open space property, however, is divided, the owner who retains a

portion of it must always file an application to continue open space use assessment on the portion retained. Id. §§ 361A.110(2), .190(1).

3. The application may be signed by:

- a. The owner of the agricultural or open space real property, including tenants in common or joint tenants.
- b. Any person of lawful age, authorized by a duly executed power of attorney to sign an application on behalf of any person described in (a).
- c. The guardian or conservator of an owner or the executor or administrator of an owner's estate.

Id. §§ 361A.110(4), .190(3).

- 4. Upon receipt of an application for agricultural use assessment, the county assessor or department shall make an independent determination of the use of the owner's property. The assessor or department may inspect the property and request evidence of use and sources of income to make an accurate determination of use. An application may be denied if the owner refuses to permit an inspection or furnish evidence. Id. § 361A.120(1).
- 5. Upon receipt of an application for open space use classification, the county assessor shall refer the application to the board of county commissioners (and if any part of the property is located within an incorporated city to the governing body of the city) within 10 days after its filing. The governing body of the city will consider the application in a public hearing and recommend its approval or denial to the board of county commissioners within 90 days. The board of county commissioners shall consider the application in a public hearing and weigh the benefits to the general welfare of preserving the current use of the property against the potential loss in revenue. Id. § 361A.200.
- 6. The county assessor or department shall approve or deny an application for agricultural use classification by December 15 of each year. An application on which action by the assessor or department is not completed by December 15 is approved. The board must deny an open space use application by March 31, or it is considered approved. Id. §§ 361A.120(3), .200(6).
- 7. If an applicant seeking agricultural use assessment on property located in more than one county is refused such assessment in one county, he may withdraw his applications for such assessment in all other counties. An applicant seeking open space use assessment may receive approval from the board for only part of the property. The applicant may withdraw the entire application if part of it is denied. Id. §§ 360A.120(4), .200(5).

8. The entitlement of agricultural or open space real properties to agricultural use assessment must be determined by December 15 of each year. If the property becomes disqualified for such assessment before that date, it must be assessed as all other real property is assessed. Id. §§ 361A.130(3), .200(6).
9. Agricultural and open space land shall no longer be eligible for special assessment when any of the following occurs:
 - a. The applicant notifies the assessor to remove the special assessment;
 - b. The owner sells or transfers to an ownership making the land exempt from ad valorem property taxation;
 - c. The assessor removes the special assessment upon discovery that the property is no longer in its agricultural or open space use; or
 - d. The owner fails to file an application.

Except as provided in (b), the sale or transfer to a new owner does not operate to disqualify property from its special assessment so long as the property continues to be used exclusively for its designated special use, and the new owner fulfills the mandatory application procedure. Id. §§ 361A.150(1), (2), .230(1), (2).

10. The determinations of use, agricultural and open space assessments, and the taxable value assessments are final unless appealed. Id. §§ 361A.160, .240, .250.

D. Rollback Taxes:

1. Within 30 days after any property that has received agricultural or open space use assessment ceases to be used exclusively as such, the owner shall notify the county assessor in writing. Id. § 361A.270.
2. When property receiving agricultural or open space use assessment is converted to a higher use, there shall be added to the next property tax statement an amount equal to the sum of the following:
 - a. A deferred tax, which is the difference between the taxes paid on the basis of the special assessment and the taxes that would have been paid for each year in which the special assessment was in effect, up to 7 years immediately preceding the date of conversion from agricultural or open space use; and

- b. A penalty equal to 20 percent of the accumulated deferred tax for each year that the owner failed to give the requisite notice of the change in use.

Id. § 361A.280(1).

3. If agricultural or open space property receiving special use assessment is sold or transferred to an ownership making it exempt from ad valorem taxation, a lien for a proportional share of the deferred taxes that would otherwise have been due in the following year attaches on the day preceding the sale or transfer. The lien must be enforced against the property when it is converted to a higher use even though the owner at the time of conversion enjoys an exemption from taxation. Id. § 361A.280(4). See II.C.8. supra.
4. The sale or transfer of real property receiving agricultural or open space assessment discharges the seller or transferor from personal liability for any deferred taxes for which he would otherwise be liable unless the property ceased to be used exclusively for agricultural or open space use during his ownership. The buyer or transferee who changes the use of the property thereby becomes personally liable for the deferred taxes. Nat. Rev. Stat. § 361A.290 (1986).

NEW HAMPSHIRE

I. Applicable State Statutes:

N.H. Rev. Stat. Ann. §§ 79-A:1 to :26 (Supp. 1985).

New Hampshire's preferential assessment statute has two components. The first component is an open space taxation law with a land use change tax rather than a rollback tax. The land use change tax is not a deferred tax but is a new tax imposed when the land use changes. The land use change tax, however, strongly resembles a deferred tax, and is based on current use assessment. Therefore, it has been classified as a deferred tax here. The second component is discretionary easements or restrictive agreements. These agreements are entered into for the acquisition of discretionary easements by the local government. The discretionary easement component will be treated separately in section II.E. infra.

II. Preferential Property Tax Assessment with Deferred Taxation or Restrictive Agreements and Deferred Taxation:

A. Definitions:

1. "Farmland" means any land devoted to agriculture or horticulture as determined and classified by criteria developed by the Commissioner of Agriculture and adopted by the Current Use Advisory Board. N.H. Rev. Stat. Ann. § 79-A:2(III) (Supp. 1985).

2. "Forest land" means any land receiving silvicultural treatment as determined and classified by criteria developed by the State forester and adopted by the board. Id. § 79-A:2(V).
3. "Open space land" means any or all farmland, forest land, wetland, recreation land, flood plain, or wildland that meets definitional criteria and any other rules adopted by the current use advisory board. Open space land shall not include any property held by a city, town, or district in another city or town for water supply or flood control purposes. Id. § 79-A:2(VII).
4. "Land use change tax" means a tax levied when the land use changes from open space use to a nonqualifying use. Id. § 79-A:2(VI).
5. "Person" means any individual, firm, corporation, partnership, or other form of organization or group of individuals. Id. § 79-A:2(IX).
6. "Use value," as it relates to open space land, means the valuation per acre that the land would command if it were required to remain in an open space qualifying use. This valuation will be determined by the assessor in accordance with the recommendations of the Current Use Advisory Board for the class, type, grade, and location of land under consideration and its income-producing capability. Id. § 79-A:2(XI).

B. Valuation:

The New Hampshire Legislature declared that it is in the public interest to prevent the conversion of open space to more intensive uses by the pressure of property taxation at values incompatible with open space usage. To encourage the preservation of open space, the legislature directed the State to use current use as the basis of the assessment of land value for property taxation. Id. § 79-A:1.

1. The implementation of the law rests with the establishment of a Current Use Advisory Board. Id. § 79-A:3.
2. The board shall meet at least annually, prior to February 1, to establish a schedule of criteria and values to use for the current year. The board shall annually, in January, hold a public hearing and any other hearings that may be necessary. Prior to March 1 of each year, the board shall submit to the tax commissioner its recommended schedule of criteria and values for current use assessment for the current tax year. The commissioner shall then distribute such recommended valuations to all selectmen and assessing officials. Id. § 79-A:4.
3. The selectmen or assessing officials shall appraise open space land at valuations based on the current use values the board established. Any buildings, appurtenances, or other improvements on the property shall be excluded. Id. § 79-A:5(I).

C. Eligibility:

1. Property owners must file an application for special assessment with the assessing officials on or before April 15 of the year that such assessment is desired. Id. § 79-A:5(II).
2. The assessing officials shall notify the applicant no later than July 1, or within 15 days if the application is filed after July 1, of their decision to classify or refusal to classify. Id. § 79-A:5(III).
3. Prior to July 1 each year, the assessing officials shall determine if previously classified lands have been reapplied or have undergone a change in use so that the land use change tax may be levied. Id. § 79-A:5(V).
4. If a landowner's application for classification as open space land is denied or if the assessing official grants a different classification from that applied for, the applicant may appeal to the Board of Tax and Land Appeals or to the superior court. Any appeal to the superior court shall be in lieu of an appeal to the Board of Tax and Land Appeals. Id. §§ 79-A:9, :11.

D. Land Use Change Tax:

1. Land classified as open space land shall be subject to a land use change tax when it is changed to a use not qualifying for open space assessment. The tax shall be at the rate of 10 percent of the full and true value determined without regard to the open space assessed value of the land. This tax shall be in addition to the annual real estate tax. Id. § 79-A:7(I).
2. Land use shall be considered changed and the land use change tax shall become payable when:
 - a. Actual construction begins on the site causing physical changes in the earth, such as building a road; installing sewer, water, or electrical utilities; excavating or grading the site for present or future construction of buildings; or any other act that is consistent with the construction of buildings. Roads for agricultural, recreational, watershed, or forestry purposes, however, shall be exempt.
 - b. Topsoil, gravel, or minerals are excavated or dug from the site.
 - c. Because of size, the site no longer conforms to criteria established by the board.

Id. § 79-A:7(IV).

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3. The land use change tax shall be due and payable by the owner to the town or city where the property is located when the use changes. Id. § 79-A:7(II).
4. Land changed to a use not qualifying for open space assessment shall then be taxed at its full value. Id. § 79-A:7(II)(f).
5. Land use shall not be considered changed and the land use change tax shall not be assessed when:
 - a. Land under current use is taken by eminent domain or any other type of governmental taking that would cause the use change penalty to be invoked because, by reason of an actual physical change or size, the site no longer conforms to criteria established by the board.
 - b. Land abutting a site taken by eminent domain or any other governmental taking upon which construction is in progress is used to stockpile earth taken from the construction site.

Id. § 79-A:7(VI).

E. Discretionary Easements or Restrictive Agreements:

1. If land cannot meet the necessary criteria for open space land and the owner still wishes to keep the land in a use consistent with the purposes of open space land classification, the owner may apply, in April to the planning board of the city or town in which the land is located, for a permit to convey a discretionary easement to the town or city. Id. § 79-A:15(I).
2. If the town planning board determines that the planned use of such land is consistent with the open space objectives as established by the town's master plan or provides other benefits to the town and its residents, the board shall approve the application, grant a permit, and recommend to the selectmen that a discretionary easement be acquired by the town. The officials may balance the public benefit to be obtained versus the tax revenue to be lost in determining if an easement should be granted. Id. § 79-A:15(II).
3. Once a landowner has received a permit to convey a discretionary easement, he must then apply to the selectmen or the mayor and council to grant an easement to the town not to subdivide, develop, or otherwise change the use of such land to a more intensive use. Id. § 79-A:17(I).
4. Once the easement is granted, it shall be a burden on the land and bind all transferees and assignees of such land. An easement shall not be assigned, transferred, or released by a town without the consent of the owner. Id. § 79-A:17(III).

5. The acquisition of a discretionary easement by a town shall include current use assessment as a term of agreement, provided that the selectmen may agree to a fixed assessment for the applicable land for the term of the easement which does not exceed the highest per acre valuation of any category of open space land established by the board. Id. § 79-A:18.
6. Any easement acquired by a town shall be for a minimum of 10 years. Id.
7. Any landowner who has granted a discretionary easement to a town may apply for a release from such easement upon a demonstration of extreme personal hardship. Upon release from such easement, the landowner must pay the following considerations to the town tax collector:
 - a. Twenty percent of the full value assessment of the land for a release within the first half of the duration of the easement; or
 - b. Ten percent of the full value assessment of the land for a release within the second half of the duration of the easement.

Id. § 79-A:19(I).

8. Should any land subject to a discretionary easement be condemned by a governmental agency or be acquired through eminent domain proceedings, release of the easement to the owner shall be executed by the selectmen or the mayor and council. The provisions of II.E.7. supra shall not apply. N.H. Rev. Stat. Ann. § 79-A:20(II) (Supp. 1985).

NEW JERSEY

I. Applicable State Statutes:

N.J. Stat. Ann. §§ 54:4-23.1 to .20, :5-12, :5-13 (Supp. 1986).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Agricultural use" means land devoted to producing plants and animals for sale that are useful to man including, but not limited to, forage and sod crops, grain and feed crops, dairy animals and products, poultry and poultry products, livestock (including the breeding and grazing of such animals), bees and apiary products, fur animals, and trees and forest products, or when devoted to and

meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government. Id. § 54:4-23.3.

2. "Horticultural use" means land devoted to producing for sale fruits including grapes, nuts, and berries; vegetables; and floral, ornamental, and greenhouse products, or land devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government. Id. § 54:4-23.4.

B. Valuation:

1. Land qualifying for special assessment shall be valued at that value which such land has for agricultural or horticultural use. Id. § 54:4-23.2.
2. The assessor, in valuing such land, shall consider only those values which such land has for agricultural or horticultural use. In addition to the assessor's personal knowledge, judgment, and experience as to the value of land in agricultural or horticultural use, he shall, in arriving at the value of such land, consider available evidence of the State university, the National Cooperative Soil Survey, and such land-value recommendations as may be made by any county or statewide committee established to assist the assessor. Id. § 54:4-23.7.
3. A State Farmland Evaluation Advisory Committee shall annually determine and publish a range of values for each of the several classifications of land in agricultural and horticultural uses in various areas of the State. The committee's primary objective shall be to determine the ranges in fair value of such land based on its productive capabilities. Available soil survey information shall aid the committee in reaching its determination along with any other evidence that may be pertinent. On or before October 1 of each year, the committee shall make these ranges of fair value available to the assessing authority in each of the taxing districts in which the land is located. Id. § 54:23.20.

C. Eligibility:

1. Land must be actively devoted to agricultural or horticultural use, which shall also include the area of all land under barns, sheds, silos, cribs, greenhouses, lakes, dams, ponds, streams, and irrigation ditches, but land under and land actually used in connection with a farmhouse shall be excluded. Id. §§ 54:4-23.6, -23.11.

2. Land must be actively devoted to agricultural or horticultural use for at least the 2 successive years immediately preceding the tax year for which special valuation is requested and the area of land cannot be less than 5 acres. Id. § 54:4-23.6(a)(b). See also II.C.3. and 9. infra.
3. The landowner must submit an application for special assessment to the assessor of the taxing district where the land is located on or before August 1 of the year immediately preceding the tax year. If the land use changes between August 1 and December 31, the application shall be denied and the full and fair value of the land shall be determined. N.J. Stat. Ann. § 54:4-23.6(c) (Supp. 1986). All facts stated in the application form shall be considered as if made under oath and subject to the same penalties as provided by law for perjury. Id. § 54:4-23.14.
4. Land of 5 acres in area shall be deemed actively devoted to agricultural or horticultural use when the gross sales of these products, together with any payments received under a soil conservation program, have averaged at least \$500 per year during the 2-year period immediately preceding the tax year in issue, or clear evidence indicates anticipated yearly gross sales and such payments amounting to at least \$500 within a reasonable period of time. Id. § 54:4-23.5.
5. Land more than 5 acres in area shall be deemed actively devoted to agricultural or horticultural use when the gross sales of these products, together with any payments received under a soil conservation program, have averaged at least \$5 per acre per year during the 2-year period immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to an average of at least \$5 per year within a reasonable period of time. For woodland and wetland, the minimum requirement shall be an average of 50 cents per acre on the area above 5 acres. Id.
6. Land previously qualified as actively devoted to agricultural or horticultural use, but failing to meet the additional requirement on acreage above 5 acres, shall not be subject to the rollback tax because of such disqualification, but shall be treated as land for which an annual application has not been submitted. Id.
7. Eligibility of land for valuation, assessment, and taxation shall be determined for each tax year. The assessor will send the taxpayer a form to continue with special assessment by July 1. The failure of any taxpayer to receive this form does not relieve him of the requirement to file an application. Id. §§ 54:4-23.13, -23.15.
8. The assessor shall, on or before November 1 of the pretax year, forward to the landowner who has applied for special valuation a

notice of disallowance when a claim has been disallowed. The assessor shall set forth his reasons together with a statement notifying the landowner of his right to appeal the determination before August 15 of the tax year. Id. § 54:4-23.13b.

9. The continuance of special valuation shall depend on continuance of the land in agricultural or horticultural use and compliance with other qualifications and not upon continuance in the same owner of title to the land. Id. § 54:4-23.15.
10. Where contiguous land in agricultural or horticultural use in one ownership is located in more than one taxing district, compliance with the 5-acre minimum area requirement shall be determined on the basis of the total area of such land and not the area located in a particular taxing district. Id. § 54:4-23.18.

D. Rollback Taxes:

1. When land is being specially assessed based on its agricultural or horticultural use and such land is converted to another use, it shall be subject to additional taxes in an amount equal to the difference, if any, between the taxes paid and the taxes that would have been paid had the land been valued, assessed, and taxed as other land in the taxing district. Id. § 54:4-23.8.
2. The rollback tax will be due for the current tax year (the year of the change in use) and for the preceding 2 years. Id.
3. In determining the amounts of the rollback taxes on land that has changed in use, the assessor shall for each of the rollback tax years involved, ascertain:
 - a. The full and fair value of such land under the valuation standard applicable to other land in the taxing district;
 - b. The amount of the land assessment for the particular tax year by multiplying such full and fair value by the county percentage level, as determined by the county board of taxation;
 - c. The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under (b); and
 - d. The amount of the rollback tax for that tax year by multiplying the amount of the additional assessment determined under (c) by the general property tax rate of the taxing district applicable for that tax year.

Id.

4. If the new owner continues the land in agricultural or horticultural use, there shall be no liability for the rollback tax when ownership changes. Id. § 54:4-23.15.
5. Separation or split-off of a part of the land being specially valued, either by conveyance or other landowner action for a use other than agriculture or horticulture, shall subject the separated land to rollback tax liability. This, however, shall not impair the right of the remaining land to a continuation of special assessment, provided it meets the 5-acre minimum requirement along with the other eligibility requirements. Id. § 54:4-23.16.
6. See II.C.5. supra.

NEW MEXICO

I. Applicable State Statutes:

N.M. Stat. Ann. § 7-36-20 (1983).

II. Preferential Property Tax Assessment:

A. Definition:

"Agricultural use" means the use of land for producing plants, crops, trees, forest products, orchard crops, livestock, poultry, or fish. Included within the definition is land use that meets the requirements for payment to a soil conservation program with the Federal Government. Id. § 7-36-20(B).

B. Valuation:

The New Mexico statute directs that land used primarily for agricultural purposes shall be assessed with a special method of valuation. The value of land used primarily for agricultural purposes shall be determined on the basis of the land's capacity to produce agricultural products. The statute gives the State Department of Revenue and Taxation the power to adopt specific regulations for determining the value of agricultural land. The statute sets out specific objectives that the regulations must meet. Id. § 7-36-20(A), (C), (D).

C. Eligibility:

1. The landowner has the burden of demonstrating primary agricultural use of the land. He must produce objective evidence of bona fide agricultural use for the preceding year in which an application is filed. Id. § 7-36-20(A).

2. The fact that land was devoted to agricultural use in the preceding year is not sufficient to support a finding of bona fide primary agricultural use when there is evidence that the agricultural use was subordinate to another use, such as holding for speculative land division and sale, commercial use of a nonagricultural character, recreational use, or other nonagricultural purpose. Id.
3. The landowner must file an application with the county tax assessor in each tax year that he claims special valuation. The application must be made under oath by the last day of February of the tax year. Id. § 7-36-20(F).
4. Failure to annually apply for a special valuation will lead to reclassification of the land as no longer entitled to special valuation. If the county assessor determines that the land is still eligible for agricultural classification and no application was filed, a penalty of 15 percent of the taxes due shall be imposed. Id. § 7-36-20(F)(1).

NEW YORK

I. Applicable State Statutes:

N.Y. [Agric. & Mkts.] Law §§ 300 - 309 (McKinney 1972 & Supp. 1986).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Viable agricultural land" means land highly suited for agricultural production and economically feasible for such a use. Id. § 301(1) (McKinney Supp. 1986).
2. "Unique and irreplaceable agricultural land" means land uniquely suited for the production of high value crops including fruits, vegetables, and horticultural specialties. Id. § 301(2).
3. "Agricultural value" means the market value of land for agricultural production purposes if no other use were possible. Id. § 301(5).
4. "Land used in agricultural production" means 10 acres of land or more used in the preceding 2 years for the production and sale of crops, livestock, and livestock products with an average gross sales value of \$10,000 or more. Land used in agricultural production shall not include land used for processing or retail merchandising. Land used in agricultural production shall also include:

- a. Rented land that satisfies the requirements for eligibility for an agricultural value assessment;
- b. Land of not less than 10 acres that does not independently satisfy the gross sales requirement, but the land has been used for agricultural production for the preceding 2 years and currently is being so used under a rental arrangement of 5 or more years in conjunction with land qualifying for agricultural assessment; and
- c. Land used in support of a farm operation or land used in agricultural production constituting a portion of a parcel also containing land qualified for agricultural assessment.

Id. § 301(3).

- 5. "Crops, livestock and livestock products" include, but are not limited to, the following:
 - a. Field crops such as corn, wheat, oats, rye, barley, hay, potatoes, and dry beans;
 - b. Fruits such as apples, peaches, grapes, cherries, and berries;
 - c. Vegetables such as tomatoes, snap beans, cabbage, carrots, beets, and onions;
 - d. Horticultural specialties such as nursery stock, flowers, ornamental shrubs, and trees;
 - e. Livestock and livestock products such as cattle, sheep, hogs, goats, horses, poultry, fur-bearing animals, milk, eggs, and furs; and
 - f. Woodland products such as logs, lumber, posts, firewood, and maple syrup, if such products are produced on property otherwise used for agricultural production.

Id. § 301(4).

B. Valuation:

- 1. With the adoption of the preferential assessment statute tied in with the agricultural district laws, the legislative intent is to provide a means by which agricultural land may be protected and enhanced as a viable segment of the State's economy and as an economic and environmental resource of major importance. Id. § 300 (McKinney 1972).
- 2. The State Board of Equalization and Assessment shall annually determine agricultural value by ascertaining the average value per

acre of land used in agricultural production. Value will be determined through a capitalization of income method and the State's land classification system. The capitalization rate shall be equal to the annual 5-year average effective interest rate on new Federal bank loans made in the Springfield Federal Land Bank District for the 5-year period immediately preceding the year for which agricultural values are being determined and economic profiles are being developed by the board. The land classification system shall be developed by the Commissioner of Agriculture and shall be based on soil productivity and capacity, taking into account climatic conditions. Id. § 304-a (McKinney Supp. 1986).

3. That portion of the value of land used for agricultural production within an agricultural district that represents an excess above the agricultural value ceiling shall not be subject to taxation. Id. § 305(1)(b).
4. To determine the agricultural value ceiling for land, the assessor shall use the agricultural value per acre by multiplying it by the number of acres used for agricultural production and adjusting the result by a State equalization rate. Id. § 305(1)(c)(i).

C. Eligibility:

1. To create an agricultural district receiving preferential tax assessment, the landowner must submit a proposal to the county legislative body. The owner must own at least 500 acres or at least 10 percent of the land that is to be included in the district, whichever is greater. The proposal shall include a description of the property, including boundaries, and may recommend an appropriate review period of 8, 12, or 20 years. Id. § 303(1).
2. Once the agricultural district proposal has been submitted to the county legislative body, the formal procedure for the creation of the district is as follows:
 - a. The county legislative body must provide notice of the district proposal by publishing a notice in a newspaper. This notice shall include a statement that any municipality whose territory encompasses the proposed district or any landowner owning at least 10 percent of the land to be in the proposed district shall have 30 days to ask for a modification of the proposed district. Id. § 303(2)(a).
 - b. The proposal with any proposed modifications shall be submitted to the county planning board and county agricultural advisory committee after the 30-day period, and a public hearing shall be held on the proposal. Id. § 303(2)(a)(5).

- c. After the 30-day period, the proposal and any proposed modifications will be simultaneously referred to the county planning board and agricultural districting advisory committee which shall, within 45 days, report back to the county legislative body. Id. § 303(2)(c), (d), (e).
 - d. The county legislative body shall hold hearings on the proposal, and the written proposal shall be given to those municipalities whose territory encompasses the proposed district. Id. § 303(2)(e).
 - e. The county legislative body shall adopt or reject the district proposal no later than 180 days from the date when the proposal was first submitted. If the proposal is adopted, the county legislative body shall submit it to the Commissioner of Agriculture and Markets. Id. § 303(4).
 - f. The Commissioner of Agriculture and Markets shall have 60 days to certify the proposal for districting. The commissioner shall also submit copies of the plan to the Commissioner of Environmental Conservation and to the Secretary of State, who will then have 30 days to comment on the plan. A copy of the plan shall also be provided to the Advisory Council on Agriculture. Id. § 303(5).
 - g. Within 60 days after the certification of the Commissioner of Agriculture and Markets, the county legislative body may hold additional hearings. If, however, the plan is modified by the Commissioner of Agriculture and Markets or the county legislative body after the hearing required in II.C.2.d. supra, the county legislative body shall hold further hearings. N.Y. [Agric. & Mkts.] Law § 303(6) (McKinney Supp. 1986).
 - h. The proposed district, if certified without modification by the Commissioner of Agriculture and Markets, will become effective 30 days after a public hearing or 90 days when there is no public hearing, unless the county legislative body disapproves the proposal within this time. Id.
 - i. Upon the creation and certification of the agricultural district, a description of the district shall be filed with the county legislative body and the Commissioner of Agriculture and Markets. Id. § 303(6).
3. The following factors shall be considered in determining whether or not a district proposal shall be approved:
 - a. The viability of active farming in the area;

- b. The presence of any viable farmlands in the area that are not now in active farming;
- c. The nature and extent of other land uses in the area;
- d. County development patterns and needs; and
- e. Any other matter that may be relevant.

Any relevant agricultural viability maps shall be considered when judging viability, along with soil, climate, topography, markets for farm products, the extent and nature of farm improvements, the present status of farming, and any other relevant factors. Id. § 303(3).

- 4. The county legislative body shall review any district created every 8, 12, or 20 years after the date of its creation, depending on what was agreed to when the plan was adopted. The county legislative body may terminate the district at the end of the 8-, 12-, or 20-year period merely by filing a notice of termination. Id. § 303(8).
- 5. An alternative method is available to establish an agricultural district. The Commissioner of Agriculture and Markets has the authority to create an agricultural district when the land is (a) predominantly unique and irreplaceable agricultural land and (b) consists of 2,000 acres or more. Id. § 304(1).
- 6. Any land used in agricultural production within an agricultural district shall be eligible for agricultural value assessment. Id. § 305(1)(a).
- 7. An applicant must submit an application annually to the county assessor for agricultural use assessment. Id.
- 8. If an applicant owns at least 10 acres and rents other land for agricultural production, the gross sales value of the agricultural products produced on the rented land shall be added to the gross sales value of agricultural products produced on the owner's land for determining eligibility for agricultural assessment. Id.
- 9. If a natural disaster, act of God, or continued adverse weather destroys the agricultural production and, as a result, the gross average sales value of \$10,000 cannot be met, the owner may still qualify for special assessment. The owner may do this by substantiating that the agricultural production initiated on the land would have produced an average gross sales value of \$10,000 or more. Id. § 305(1)(f).
- 10. Agricultural lands outside of districts may also become eligible for agricultural value assessment. Any owner of land used in

agricultural production may make a commitment to continue to use such land exclusively for agricultural production for the next 8 years. A commitment of this kind shall be filed with the county where the land is located and shall entitle the land to be assessed as if the land were in an agricultural district. If the land, however, is converted to another use, the owner shall be subject to rollback penalties. Id. § 306. See II.D.5. infra.

D. Rollback Taxes:

1. If any land within an agricultural district is converted to a use other than agricultural production, rollback taxes will be calculated and become due. The tax rate for each of the preceding 5 years will be applied to the amount of the excess valuation to compute the rollback tax. N.Y. Agric. & Mkts. Law § 305(1)(d) (McKinney Supp. 1986).
2. If only a portion of the parcel of land is converted to another use, the assessor shall apportion the assessment of the parcel. The rollback penalty due shall be the amount that is attributable to the portion of land converted. Id.
3. Land taken by eminent domain, oil or gas exploration, or some other involuntary action, except a tax delinquency sale, will not be subject to the rollback penalties. Id.
4. The State provides assistance to the counties for the loss of revenues due to preferential assessment of lands within an agricultural district. The aid equals half the taxes lost. This assistance payment shall be reduced by half the amount of any rollback taxes collected. Id. § 305(1)(e).
5. If an owner of agricultural land has entered into an 8-year commitment to use the land exclusively for agricultural production and the land is converted to another use during the designated period, this shall constitute a breach of the commitment. The land will no longer be entitled to agricultural value assessment. Also, the land shall be subject to an additional payment equal to two times the taxes determined in the year following the breach of commitment for all of the land previously under commitment. Id. § 306(2). See II.C.11. supra.

NORTH CAROLINA

I. Applicable State Statutes:

N.C. Gen. Stat. §§ 105-277.2 to .7 (1985).

N.C.

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Agricultural land" means land constituting a farm tract actively used for commercial production for growing crops, plants, or animals under a sound management program, including woodland and wasteland that are a part of a farm unit. Id. § 105-277.2(1).
2. "Forest land" means land constituting a forest tract actively used for commercial growing of trees under a sound management program. Id. § 105-277.2(2).
3. "Horticultural land" means land constituting a horticultural tract actively used for commercial production of fruits, vegetables, nursery, or floral products under a sound management program. Id. § 105-277.2(3).
4. "Present use value" means the value of land in its current use as agricultural, horticultural, or forest land, based solely on the land's ability to produce income, using a rate of 9 percent to capitalize the expected net income of the property, and assuming an average level of management. Id. § 105-277.2(5) (effective Jan. 2, 1987).
5. "Sound management program" means a program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement. Id. § 105-277.2(6).
6. "Individually owned" means owned by a natural person or a corporation having agricultural, horticultural, or forest production as its principal business. If a corporation, the owners of all of the shares of such corporation must be natural persons actively engaged in such activities, or the spouse, siblings, or parents of such persons. Id. § 105-277.2(4), (5a).

B. Valuation:

The North Carolina Legislature designated all agricultural, horticultural, and forest land meeting the specified eligibility requirements to be special classes of property. These special classes of property shall be appraised, assessed, and taxed on the basis of the value of the property for its present use. Id. §§ 105-277.3(a), .4(c), .6(b).

C. Eligibility:

1. Agricultural land must meet the following requirements to be eligible for use-value assessment:
 - a. The land must be individually owned;

- b. Consist of 10 acres or more; and
- c. Have a gross income (including governmental payments) from the sale of agricultural products produced on the land averaging \$1,000 for the preceding 3 years.

Id. § 105-277.3(a)(1).

- 2. Horticultural land must meet the following requirements to be eligible for use-value assessment:

- a. The land must be individually owned;
- b. Consist of 5 acres or more; and
- c. Have a gross income (including governmental payments) from the sale of horticultural products produced on the land averaging \$1,000 for the preceding 3 years.

Id. § 105-277.3(a)(2).

- 3. In addition, agricultural or horticultural land may come within a designated special classification if the land was appraised at its present use value at the time title to the property passed to the present owner and he owned other property classified as agricultural or horticultural property. Id. § 105-277.3(c).

- 4. Forest land, to be eligible for use-value assessment, must be individually owned and consist of 20 acres or more, unless the property is included in a farm unit qualifying as agricultural land. Id. § 105-277.3(a)(3).

- 5. Property must be owned by natural persons and be the owner's place of residence, or it must have been owned by the current owner or a relative for 4 years before the special valuation is requested. If owned by a corporation, the property must have been owned by the corporation or one or more of its principal shareholders for 4 years before the special valuation is requested. Id. § 105-277.3(b).

- 6. A landowner shall apply to the county tax assessor for use-value assessment if the property meets the above stated conditions. Id. § 105-277.4(a).

- 7. For appeal provisions, see id. § 105-277.4(b).

D. Rollback Taxes:

- 1. The difference between the taxes due on the present use basis and the taxes that would have been paid in the absence of this special

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classification shall be computed by the tax assessor and kept in the tax records. The difference in taxes shall only become payable immediately with interest if:

- a. The land is conveyed by the owner to anyone other than a relative of the owner;
- b. Ownership of the property passes to anyone other than a relative by will or intestacy;
- c. The ownership of the property passes to a corporation from anyone other than its principal shareholder or from a corporation to anyone other than its principal shareholders; or
- d. The property loses eligibility for some other reason.

Id. § 105-277.4(c).

2. An owner of specially assessed land must immediately notify the tax assessor of any change in land use. Any owner who fails to notify the assessor of such a change in use shall be subject to a penalty of 10 percent of the total amount of the deferred taxes, including interest. Id. § 105-277.5.
3. The rollback period is 3 years. Id. § 105-277.4(c).
4. If only a part of the qualifying tract of land loses its eligibility, a determination shall be made of the amount of deferred taxes applicable to that part and that amount shall become payable with interest. Id.

NORTH DAKOTA

I. Applicable State Statutes:

N.D. Cent. Code §§ 57-02-01, -27, -27.2, 40-51.2-06, -07, -16 (1983 & Supp. 1985).

II. Preferential Property Tax Assessment:

A. Definitions:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals. Lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm

animals. Property platted on or after March 30, 1981, is not agricultural property when any three of the following conditions exist:

- a. The land is platted by the owner;
- b. Public improvements including sewer, water, or streets are in place;
- c. Topsoil is removed or topography is disturbed so the property cannot be used to raise crops or graze farm animals;
- d. Property is zoned other than agricultural;
- e. Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides;
- f. The parcel is less than 10 acres and not contiguous to agricultural property; or
- g. The property sells for more than four times the county's average true and full agricultural value.

Id. § 57-02-01(1) (Supp. 1985).

2. "Assessed valuation" means 50 percent of the true and full value of property. Id. § 57-02-01(3).

B. Valuation:

1. The true and full value of agricultural lands shall be their agricultural value defined as the capitalized average annual gross return. The annual gross return shall be determined from crop share rent, cash rent, or a combination thereof, reduced by estimated property taxes and crop marketing expenses incurred by farmland owners renting their lands on a cash- or crop-share basis. The annual gross return for cropland used for growing crops such as sugar, beets, and potatoes shall be 20 percent of the annual gross income produced, and for other crops it shall be 30 percent. The annual gross return for land used for grazing farm animals shall be 25 percent. Id. § 57-02-27.2.
2. The average annual gross return for each county shall be determined by summing the annual gross returns for the most recent 6 years immediately preceding the current year for which data is available, subtracting the highest and lowest annual gross returns of the 6 years, and dividing that figure by four. Id. This valuation formula for agricultural land is based on productivity. Information received from John Walstadt, North Dakota Legislative Council by Kimberly Grillo.

3. To find the capitalized average annual gross return for years after 1983, the average annual gross return shall be capitalized by a rate which is a 10-year average of the gross Federal land bank mortgage rate of interest for North Dakota. The 10-year average shall be compared with the 12 years ending with the most recent year used in II.B.2. supra, discarding the highest and lowest years. The gross Federal land bank mortgage rate of interest for each year shall be determined under Federal Treasury Department regulations for valuing farm real property for Federal estate tax purposes. N. D. Cent. Code § 57-02-27.2 (Supp. 1985).
4. An estimate of the average agricultural value per acre of agricultural land, including cropland and noncropland, shall be computed annually for each county by the Agricultural Economics Department of North Dakota State University. This information shall be given to the tax commissioner by December 1 of each year. By January 1 of each year, the tax commissioner shall provide to each county tax director the estimates of agricultural value for each county. Id.
5. Prior to February 1 of each year, the county tax director shall provide to all assessors within the county an estimate of the average agricultural value of agricultural lands within each assessment district. This estimate shall be based on the average agricultural value for the county adjusted by the relative values of land within each assessment district compared with the county average. In determining the relative values of land for each assessment district, soil type and soil classification data shall be used whenever possible. Id.
6. The duty of each local assessor shall be to determine the relative value of each assessment parcel within his jurisdiction and to determine the agricultural value of each assessment parcel by adjusting the agricultural value estimate for the assessment district by the relative value of the parcel. Id.
7. Each parcel shall then be valued at a percentage of its assessed value. All agricultural property shall be valued at 10 percent of its assessed value, compared with residential property which shall be valued at 9 percent of its assessed value. The resulting amount shall be known as the taxable valuation. Id. § 57-02-27 (1983).

C. Miscellaneous:

Whenever agricultural land is annexed by a municipality, such land shall be taxed at its present use value until the land is put to another use. This valuation shall be uniform with the valuation of adjoining unannexed agricultural lands. Id. § 57-02-27 (Supp. 1985). See also §§ 40-51.2-06, -07, -16 (1983).

OHIO

I. Applicable State Statutes:

Ohio Rev. Code Ann. §§ 5713.30 - .99 (Page 1980 & Supp. 1985), 929.01, .02 (Page Supp. 1985).

Ohio, in addition to having preferential property tax assessment with deferred taxation, has a program that enables a person to set up an agricultural district. Each program has separate eligibility requirements, but a person may qualify for both programs. The amount of roll-back tax under the agricultural district program depends on whether or not the person also qualifies for preferential assessment. Each program will be examined separately.

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Land devoted exclusively to agricultural use" means:

- a. Tracts, lots, or parcels of land totaling not less than 30 acres and devoted exclusively to commercial animal or poultry husbandry or production for commercial purposes of field crops, tobacco, timber, fruits, vegetables, nursery stock, or flowers during the 3 calendar years prior to the year in which the application is filed;
- b. Land totaling less than 30 acres but with an average yearly gross income of at least \$2,500 during the previous 3 years, where evidence is of an anticipated gross income of such amount during the tax year in which the application is made, or lands that were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the Federal Government;
- c. Land taxed as forest land under the Ohio Code is not land devoted exclusively to agricultural use.

Id. § 5713.30(A) (Page Supp. 1985).

2. "Conversion of land devoted exclusively to agricultural use" means the failure of an owner of land devoted exclusively to agricultural use to file a renewal application during the next preceding calendar year, or the failure of such land or a portion of such land to qualify as land devoted exclusively to agricultural use for the current calendar year. Id. § 5713.30(B).

Ohio

B. Valuation:

Land used solely for agriculture shall be valued for real property tax purposes at the current value such land has for agricultural use, in accordance with rules adopted by the tax commissioner. Id. § 5713.31.

C. Eligibility:

1. Agricultural landowners may file an application with the county auditor where such land is located for an agricultural use valuation. The application may be filed at any time after the first Monday in January and prior to the first Monday in March of any year. Id.
2. The initial application fee is \$25, and no charge for renewal applications. Id.
3. The county auditor must view the land and determine by the first Monday in June whether or not the land is devoted exclusively to agricultural use. Id.
4. When the county auditor determines that land is not devoted exclusively to agricultural use, he must notify the person who filed the application by the first Monday in August. The auditor must give the landowner a reason for the determination. A complaint against such a determination may be made pursuant to section § 5719. Id. § 5713.32 (Page 1980).
5. If an applicant knowingly gives false information on an application, the person will be subject to a first degree misdemeanor offense. Id. §§ 5713.37, .99.

D. Rollback Taxes:

1. Land devoted exclusively to agricultural use and assessed as such shall be subject to a rollback tax if the land is converted to another use. Id. § 5713.35 (Page Supp. 1985).
2. The county auditor shall determine by the second Monday in September if there has been a conversion of land to nonagricultural use. If the auditor determines that there has been a conversion of land, the auditor shall determine the amount of the penalty, and the charge shall be levied for the current tax year. Id.
3. When land is converted, the charge levied shall be in an amount equal to the amount of the tax savings on the converted land during the 4 tax years immediately preceding the year of the conversion. Id. § 5713.34.

4. By the second Tuesday in March, the county auditor shall determine if any landowner failed to file a renewal application for the current tax year and shall notify each owner by mail that unless the application is filed prior to the first Monday in April of the current year, the land will be valued for tax purposes in the current tax year at its true value in money and not at its special assessment, which is based on its agricultural use. Id. § 5713.31.
5. Land acquired through eminent domain will not be subject to rollback taxes. Id. § 5713.34.

III. Agricultural Districts:

A. Definitions:

1. "Agricultural production" means commercial apiculture, animal husbandry, or poultry husbandry; production for commercial purposes of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental shrubs, trees, flowers, or sod; and any combination of such husbandry, including the processing and marketing of agricultural product connected with such husbandry. Id. § 929.01(A).
2. "Withdrawal from an agricultural district" includes the explicit removal of land from an agricultural district, conversion of land in an agricultural district to use for purposes other than agricultural production, and withdrawal of land from a land retirement or conservation program for use other than for agricultural production. Id. § 929.01(B).

B. Eligibility:

1. Any person who owns agricultural land may file an application with the county auditor to place the land in an agricultural district for 5 years. Id. § 929.02(A).
2. For 3 years prior to filing an application, the land must be devoted exclusively to agricultural production or have qualified for payments through State or Federal programs. The land must also be at least 30 acres or produce an actual or anticipated yearly gross income of at least \$2,500 during the 3-year period. Id.
3. The application must be approved or denied within 30 days, and an application that is not denied shall be deemed to be approved. There are provisions for appealing a denial of the application. Id.
4. At any time after the first Monday in January and prior to the first Monday in March of the year in which an agricultural

district terminates, the owner of land in the agricultural district may file a renewal application to continue the inclusion of all or part of the land in an agricultural district for a period of time ending on the first Monday in April of the fifth year following the renewal application. The requirements for continued inclusion in the agricultural district are the same as those required for original application. Id. § 929.02(C).

C. Rollback Taxes:

1. A rollback tax is due when the landowner withdraws the land from an agricultural district. This includes new owners who fail to continue inclusion in the agricultural district. Id. § 929.02(C), (D).
2. The rollback tax shall be as follows:
 - a. If the owner's action also disqualifies his land for any tax savings that it had been receiving under sections 5713.30 to 5713.38 of the revised code, the owner shall pay half of the amount charged under section 5713.34. The withdrawal penalty shall be in addition to the amount charged under that section. Id. § 929.02(D)(1). See II.D.1., 2., and 3. supra.
 - b. If the land had not been receiving any tax savings under those sections or if the owner's action does not disqualify the land for tax savings under them, the owner shall pay an amount equal to half the amount that would have been charged under § 5713.34 if the land had been receiving tax savings and became disqualified for them. Ohio Rev. Code Ann. § 929.02(D)(2) (Page Supp. 1985). See II.D.3. supra.

OKLAHOMA

I. Applicable State Statutes:

Okla. Const. art. X, § 8, Okla. Stat. Ann. tit. 11, § 21-109 (West 1978), tit. 68, § 2427 (West Supp. 1985).

Oklahoma does not have a statute that deals directly with agricultural land preservation. Use-value concepts, however, are applied to determine value. A formula developed by the State Department of Taxation is used to determine the use value of agricultural land. The formula generally consists of a classification system (improved pasture, wasteland, and so forth) and an assigned weighted value for each type of soil.

II. Preferential Property Tax Assessment:

- A. The State constitution provides that no real property shall be assessed for taxation purposes at a value greater than 35 percent of

its fair cash value for the highest and best use for which the property was actually used, or was previously classified for use. Okla. Const. art. X, § 8. See also Okla. Stat. Ann. tit. 68, § 2427 (West Supp. 1985).

- B. Annexed land used for agricultural purposes may not be taken within the limits of a town and taxed at a greater rate than land adjacent to, but outside, the limits of the annexing municipality. Okla. Stat. Ann. tit. 11, § 21-109 (West 1978).

OREGON

I. Applicable State Statutes:

Or. Rev. Stat. §§ 215.203 - .293, 308.345 - .406 (1985).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Farm use" means the current employment of land primarily for obtaining a monetary profit by raising, harvesting, and selling crops; feeding, breeding, managing, and selling livestock, poultry, fur-bearing animals, and honeybees; dairying; or any other agricultural or horticultural use. Farm use also includes the preparation and storage of the products raised on such land for human and animal use and disposal by marketing or otherwise. Id. 215.203(2)(a).
2. "Current employment" of land for farm use includes:
 - a. Land subject to the soil-bank provisions of the Federal Agricultural Act of 1956;
 - b. Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry;
 - c. Land planted in orchards or other perennials prior to maturity;
 - d. Any land constituting a woodlot of less than 20 acres contiguous to and owned by the owner of land classified for farm use, even if the woodlot is not used as farm use;
 - e. Dry or water covered wasteland in or adjacent to a farm-use zone;
 - f. Land under dwellings customarily provided in conjunction with the farm use in a farm-use zone; and

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g. Land under buildings supporting accepted farm practices.

Id. § 215.203(2)(b).

3. "Prudent investor for farm use" is a person who purchases agricultural land with the reasonable expectation of realizing an average annual return on capital not less than the current rate of interest charged by the Federal land bank. Id. § 308.345(4).

B. Valuation:

The Oregon Legislature has enacted extensive preferential assessment and zoning laws. The method for determining taxes depends on whether or not the farmland is zoned exclusively as agricultural land. Farmland not in an exclusive farm-use zone may still be eligible for preferential assessment. Additional criteria stated in the statute, however, must be met. See II.C.4. infra.

1. The legislature, being concerned with the expansion of urban development into rural areas and the loss of open space, devised exclusive farm-use zones. The legislature declared that exclusive farm-use zoning, as provided by Oregon law, substantially limits alternatives to the use of rural lands and, with the importance of rural land to the public, justifies the incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm-use zones. Or. Rev. Stat. § 215.243 (1985). When lands meet the criteria to be zoned as an exclusive farm-use zone, they are automatically eligible for special assessment and will be valued at their true cash value for farm use. Id. § 308.370.
2. Bona fide agricultural property, whether or not zoned in an exclusive farm-use zone, shall be assessed at a value exclusive of values attributable to urban influences or speculative purchases. Farmers wanting the special assessment on land not in a farm-use zone, however, must apply to the county assessor for it. Id. § 308.345(1). See II.C. infra.
3. Two methods are available to value farm-use land. Valuations may be made on the basis of sales figures for land devoted to bona fide farm uses. The "prudent investor for farm use" test is used here. When comparable sales figures are not available, an income approach is used to determine the value of the land. In using the income approach, the capitalization rate shall be the effective rate of interest charged in Oregon by the Federal land bank at the time of closing on loans for farm properties, estimated as an average over the immediate past 5 years, plus a component for the local tax rate. Id. § 308.345(2), (3).

C. Eligibility:

1. Farm-use zones shall be established only when such zoning is consistent with the counties comprehensive plan. Id. § 215.203(1).
2. To be eligible as an exclusive farm-use zone, the land must be used for one of the permitted uses expressly detailed in the statute. Id. § 215.213.
3. To adopt a zoning ordinance such as a farm-use zone, the planning commission must conduct one or more public hearings on the ordinance. Public notice of the hearing must be published in a newspaper 10 days prior to the hearing. If this procedure is not followed, the zoning ordinance enacted will have no legal effect. Id. § 215.223(1).
4. Farmland not in an exclusive farm-use zone must meet additional criteria before it can become eligible for preferential assessment:
 - a. The land must have earned certain annual gross incomes from farming in at least 3 of the preceding 5 years:
 - (1) The gross income amount required for farm units of less than 5 acres is \$500;
 - (2) The gross income amount required for farm units of at least 5 acres, but not more than 20 acres, is at least \$100 times the number of acres, including any fraction of an acre; or
 - (3) The gross income amount required for farm units of more than 20 acres is at least \$2,000.

Id. § 308.372(1), (2).
 - b. The landowner must file an application with the county assessor by April 1 of the first year in which such assessment is desired. Id. § 308.375(1).

D. Rollback Taxes:

The amount of rollback taxes that the landowner will be subject to if he changes the use of the land depends on whether or not the land is in an exclusive farm-use zone.

1. For land use changes in an exclusive farm-use zone, an additional tax shall will be imposed for up to 10 times the total amount by which the taxes would have been increased had the land not received the special assessment. This penalty shall also apply when a dwelling is built on the land. The penalty shall not be imposed if the land becomes disqualified for such special

assessment because it is acquired by a governmental agency as a result of eminent domain or the land ceases to be located within the boundaries of an exclusive farm-use zone as the result of a change in the boundaries or the removal of the zone by the county. Id. §§ 308.399(1), (3), 215.236(5).

2. For land-use changes of unzoned agricultural land, the penalty is an additional tax up to five times the total amount by which the taxes assessed against the land would have been increased had it not been specially assessed during the last year in which the farm use assessment was in effect for the land. When the land use changes, the owner is required to notify the assessor. If notice is not given, the assessor shall determine the date that the notice should have been given and shall impose a penalty equal to the sum of the following:

- a. The penalty mentioned above; and
- b. The total amount by which the taxes assessed against the land would have been increased if it had been valued without special assessment during the assessment year in which the notice should have been given and each assessment year thereafter, including interest; and
- c. A penalty equal to 20 percent of the amount specified in paragraph 2(b) above.

Id. § 308.395.

3. The rollback tax is not applied when land is acquired through eminent domain. Id. § 308.396.(1).

E. Miscellaneous:

Land qualifying for farm use assessment within exclusive farm-use zones is not subject to taxation by sanitary and water supply districts or authorities, except that such assessments may be imposed on a homesite that is part of the farmland parcel. Id. § 308.401.

PENNSYLVANIA

I. Applicable State Statutes:

Pa. Stat. Ann. tit. 16, §§ 11941 - 11947, tit. 72, §§ 5490.1 - .13 (Purdon Supp. 1986).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Agricultural reserve" means noncommercial open space lands used for outdoor recreation or scenic or natural beauty and open to the public for such use. Id. tit. 72, § 5490.2.
2. "Agricultural use" means using the land for producing an agricultural commodity or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government. Id.
3. "Agricultural commodity" means any and all plant and animal products including Christmas trees produced in the State for commercial purposes. Id.
4. "Forest reserve" means land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products. Id.
5. "Separation" means a division, by conveyance or other action by the owner of lands devoted to agricultural use, agricultural reserve, or forest reserve, into two or more tracts of land, the use of which continues to be agricultural, agricultural reserve, or forest reserve. Id.
6. "Split off" means a division, by conveyance or other action by the owner of lands devoted to agricultural use, agricultural reserve, or forest reserve, into two or more tracts of land, the use of which on one or more of the tracts does not meet the eligibility requirements of preferential assessment. Id.
7. "Farmland" means any tract or tracts of land in common ownership of at least 20 acres and used for raising livestock or growing crops. Id. tit. 16, § 11941(1).
8. "Forest land" means any tract or tracts of land in common ownership of at least 25 acres and used for growing timber crops. Id. § 11941(2).
9. "Open space land" means any land in common ownership of at least 10 acres, in which site coverage by structures, roads, and paved areas does not exceed 2 percent. Open space land includes land, the restrictions on the use of which could:
 - a. Conserve natural or scenic resources;
 - b. Enhance the public value of abutting or neighboring parks, forests, wildlife preserves, nature reservations, or other public open spaces;
 - c. Augment public recreation opportunities;

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- d. Preserve sites of historic, geologic, or botanic interest;
- e. Promote orderly urban or suburban development; or
- f. Otherwise preserve open space without structures, roads, and paved areas exceeding 3 percent of site coverage.

Id. § 11941(4).

B. Valuation:

- 1. The value of land devoted to agricultural use, agricultural reserve, or forest reserve shall be the value that the land has for its particular use. Id. tit. 72, § 5490.3(a).
- 2. The assessor, when determining the value of such land, shall consider available evidence of the land's capability for its particular use as derived from the soil survey of the Pennsylvania State University, the National Cooperative Soil Survey, and the U.S. Census of Agricultural Categories of Land Use Classes, and evidence of the capability of land devoted to such use. Id. § 5490.3(b).

C. Eligibility:

- 1. Land devoted to agricultural use must have been so devoted for the previous 3 years and must be either a minimum of 10 contiguous acres or have an anticipated gross annual income of \$2,000. Id. § 5490.3(a)(1).
- 2. Land devoted to an agricultural reserve must be at least 10 contiguous acres. Id. § 5490.3(a)(2).
- 3. Land devoted to a forest reserve must be at least 10 contiguous acres. Farm woodlots contiguous to and held in the same ownership as other agricultural land, however, are not required to conform to the 10-acre-minimum requirement. Id. § 5490.3(a)(3), (c).
- 4. The contiguous tract of land cannot be less than the entire contiguous area used by the owner for agricultural or forest reserve purposes. Id. § 5490.3(a)(4).
- 5. An application for preferential assessment must be filed with the county board of assessment appeals where the land is located. The application must be submitted on or before June 1 of the year immediately preceding the tax year. Preferential assessment shall continue under the initial application until a land-use change occurs. Id. § 5490.4(b).

6. An owner of specially assessed land must give the county assessor 30 days notice of a proposed change in use of the land, a split off of a portion of the land, or a conveyance of the land. Id. § 5490.4(c).
 7. An owner may separate land preferentially assessed. When a separation occurs, all tracts formed shall continue to receive special assessment, unless a subsequent abandonment of preferential use occurs within 7 years of the separation. Such abandonment shall subject the entire tract of land so separated to rollback tax liability. After 7 years from the date of the separation, only that portion whose use has been abandoned shall be subject to the rollback taxes. Different rules, however, apply if the land is separated for inheritance tax purposes. Id. § 5490.6(c), (d).
 8. Generally, the split off of part of the land that is being specially assessed for a use other than agriculture, agricultural reserve, or forest reserve shall subject the land so divided and the entire parcel from which the land was divided to rollback tax liability. Land may be split off and will not be subject to the rollback taxes, and the land retained shall continue to be eligible for special assessment if the following conditions are met:
 - a. No more than 2 acres may be split off annually, and they may only be used for residential, agricultural, or forest reserve use during such time as the land retained continues to receive special assessment; and
 - b. The total parcel or parcels split off shall not exceed 10 percent or 10 acres, whichever is less, of the entire tract.Id. § 5490.6(a), (b).
 9. Where contiguous land in agricultural, agricultural reserve, or forest reserve use in one ownership is located in more than one taxing district, compliance with the minimum area requirement shall be determined on the basis of the total area of such land and not the area located in a particular taxing district. Id. § 490.7.
 10. If a landowner's application for preferential assessment is rejected, he has the right to appeal the decision. Id. § 5490.9(a), (b).
- D. Rollback Taxes:
1. When part of a specially assessed tract of land is applied to a use other than agriculture, agricultural reserve, or forest reserve, the land so removed and the entire tract of which it was a part shall be subject to rollback taxes. Id. § 5490.8(a).

2. The rollback tax shall be the amount equal to the difference between the taxes paid on the basis of the special assessment and the taxes that would have been paid had that land been assessed and taxed as other land in the taxing district. The tax shall be applied to the current tax year, the year of change, and in 6 of the previous tax years or the number of years of special assessment up to 7 years, plus 6-percent interest. Id.
3. Rollback taxes shall become due on the date of change of use. Id. § 5490.8(b).
4. A landowner may apply a maximum of 2 acres of specially assessed land toward direct commercial sales of agriculturally related products and activities without subjecting the entire tract to rollback taxes provided that:
 - a. The commercial activity is owned and operated by the landowner or his beneficiaries; and
 - b. An assessment of the inventory of the goods involved verifies that it is owned by the landowner or his beneficiaries. Rollback taxes shall be imposed upon that portion of the tract with the commercial activity, and the fair market value of the tract shall be adjusted accordingly.

Id. § 5490.8(d).

III. Preferential Property Tax Assessment with Restrictive Agreement and Deferred Taxation:

This statute authorizes counties to enter into covenants or restrictive agreements with landowners whose land is designated as farm, forest, water supply, or open space in an adopted plan of a municipality in which the property is located. The purpose of the covenant is to preserve the land in its designated use. Landowners agree to restrict the use of their land according to its designated use, and the county agrees to assess the property according to the use as restricted by the covenant. The covenant may be for 5 or 10 years, and it automatically renews itself for 1 year on its anniversary date unless the owner gives a notice of termination. The owner must give at least 30 days notice prior to the anniversary date. A 5-year rollback tax, plus 5-percent interest, is due if land is converted to a use other than that in the covenant. Id. tit. 16, §§ 11941 - 11947.

RHODE ISLAND

I. Applicable State Statutes:

R.I. Gen. Laws §§ 44-5-12, -39 (1980 & Supp. 1985), 44-27-1 to -13 (Supp. 1985).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Farmland" means:

- a. Any tract of land, including woodland and wasteland, constituting a farm unit;
- b. Land actively devoted to agricultural or horticultural use, including, but not limited to, forage and sod crops; grain and feed crops; fruits and vegetables; poultry, dairy, and other livestock products; nursery, floral, and greenhouse products; and other food or fiber products useful to man;
- c. Land meeting the requirements and qualifications of a soil conservation program under an agreement with the Federal Government.

Id. § 44-27-2(a) (Supp. 1985).

2. "Open space land" means any tract of undeveloped land, including farmland and forest land, that is 10 acres or larger and:

- a. Is prime or unique agricultural land;
- b. Has more than 1 percent of the surface area of exposed bedrock or soils too thin over bedrock for use;
- c. Has soils that inhibit the natural vertical movement of water or has a seasonal high water table less than 4 feet below the surface in areas without sewer service;
- d. Is important habitat for wildlife; or
- e. Enhances the public value of abutting or nearby parks, recreational areas, forest wildlife preservation, nature reserves, sanctuaries, or historic places.

Further qualifications are in the statute where tracts of land of any size may be designated as open space land. Id. § 44-27-2(c).

3. "Forest land" means any tract of land, 10 acres or larger, bearing a dense growth of trees, and having either the quality of self perpetuation, or being dependent on its development by the planting and replanting of trees in stands of closely growing timber, actively managed under a forest management plan approved by the director of environmental management. Id. § 44-27-2(b).

B. Valuation:

1. The Rhode Island Legislature declared that it is in the public interest to encourage the preservation of farm, forest, and open space land to maintain a readily available source of food and farm products close to the metropolitan areas of the State. It is also in the public interest to prevent the forced conversion of farm, forest, and open space land to more intensive uses as the result of economic pressures caused by the assessment of property at values incompatible with their preservation as such. Id. § 44-27-1.
2. All property in Rhode Island shall be assessed at its full and fair cash value. The only factors that the assessor may consider when assessing farm, forest, or open space land is whether the full and fair cash values are those that relate to such use without regard to neighboring land use of a more intensive nature. Id. § 44-5-12 (1980).

C. Eligibility:

1. A landowner shall file an application with the director of environmental management for its designation as farm or forest land. The director shall then examine the land to determine if it qualifies for such designation. Id. §§ 44-27-3(a), -4(a) (Supp. 1985).
2. An owner of land designated as farm or forest land may apply for such classification on any assessment list of a town by filing a written application with the assessor of that town, no later than 30 days before or 30 days after the date of assessment. Id. §§ 44-27-3(c), -4(c).
3. A landowner applying for classification of open space land shall follow the requirements of II.C.2.. The land, however, does not first have to be designated as open space land. Id. § 44-27-5(a).
4. Rules and regulations defining particular categories and minimum acreages of land eligible for designation as farmland will be determined by the director of environmental management. Id. § 49-27-2(a)(3).
5. When requested or whenever the assessor deems it necessary, the director of environmental management may re-examine the land designated as farm or forest land. If the land is no longer being used in its designated use, the assessor shall send a notice to the landowner indicating that he has 30 days either to bring the land into compliance or to request a formal hearing. A loss of designation by the assessor's action shall make the land subject to a land-use change tax. Id. §§ 44-27-3(b), -4(b). See II.D. infra.

6. To maintain a farm, forest, or open space land classification, the property owner each year must submit to the assessor a certificate, on a form prescribed by the assessor, confirming that the land is still being used in its designated use. R.I. Gen. Laws §§ 44-27-3(c), -4(c), -5(a) (Supp. 1985).
7. Failure of an owner to file a certificate within 30 days of the assessment shall be considered voluntarily withdrawn from the special classification. The assessor may waive this requirement for good cause. Id. §§ 44-27-3(c), -4(c), -5(a).
8. Any landowner shall have the right to file an appeal with the board of assessment review concerning the use-value assessment placed on the land, cancellation of a designation, or the denial of an application. Id. §§ 44-27-3(f), -4(f), -5(d). See also §§ 44-27-11, -12. A procedure for appealing to the superior court is also provided in the statute for each person aggrieved by a decision of the board of assessment review. Id. § 44-27-6.
9. Land previously classified as farm, forest, or open space and subsequently withdrawn from that classification may be reclassified if the requirements can still be met. Any unpaid lien obligated by the previous withdrawal shall be voided. Id. § 44-27-10.

C. Rollback Taxes:

1. When land is classified and taxed as farm, forest, or open space and its use changes or the landowner voluntarily withdraws it from a particular classification, the land shall be subject to additional taxes referred to as a land-use change tax. This tax is based on a percentage of the fair market value of the land. Id. § 44-5-39(a).
2. The tax is set at the rate of 10 percent of the fair market value of the land if the use is changed during the first 6 years of classification. This percentage declines by 1 percent a year to 0 percent after the 15th year. An exception is made for farmland owned and farmed 5 years prior to classification. In this case, the land-use change tax is 10 percent for 1 year and declines 1 percent a year to 0 percent after the 10th year. Id. § 44-5-39(a), (b).
3. When ownership of the specially classified land changes, the land use change tax will not be imposed if the new owner continues to keep the land in its specially classified use. If the new owner, however, does not apply for a continuance of classification, he shall be considered to have voluntarily withdrawn the classification and will become liable for the land-use change tax in effect at the time of ownership change. A transfer of ownership of land from an individual to a corporation wholly owned by the

individual or his immediate family shall not be considered a change in ownership of the land. Where the owner of the land is a corporation, any change in ownership of 10 percent or more of the outstanding common stock of the corporation shall be considered a change in ownership of the land and must be reported to the town assessor. Id. § 44-27-9.

SOUTH CAROLINA

I. Applicable State Statutes:

S.C. Code Ann. §§ 12-43-220, -230 (Law. Co-op. Supp. 1985).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Agricultural real property" means land used to raise, harvest, or store crops; to feed, breed, or manage livestock; or to produce plants, trees, fowl, or animals useful to man, including the preparation of the products raised on this property for man's use and disposed of by marketing or other means. This property includes, but is not limited to, such real property used for agriculture, grazing, horticulture, forestry, dairying, and mariculture. If at least 50 percent of a tract of land qualifies as agricultural real property, the entire tract will be so classified, provided that no other business for profit is being operated on the land. Id. § 12-43-230(a).
2. "Fair market value for agricultural purposes" means the productive earning power based on soil capability, as determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region. Id. § 12-43-220(d)(2).
3. "Soil capability" means the capability of the soil to produce typical agricultural products of the region, considering any natural deterrents to the potential capability of the soil as of the current assessment date. Id.
4. "Region" means that geographical part of the State as determined by the tax commission to be reasonably similar for the production of such agricultural products. Id.

B. Valuation:

1. Agricultural real property is used for agricultural purposes shall be taxed at 4 percent of its fair market value. Id. § 12-43-220(d)(1)(A).

2. Agricultural real property owned or leased by corporations that use the property for agricultural purposes shall also be taxed at 4 percent of its fair market value if:
 - a. The corporation does not have more than 10 shareholders;
 - b. Does not have as a shareholder a person (other than an estate) who is not an individual;
 - c. Does not have a nonresident alien as a shareholder; and
 - d. Does not have more than one class of stock.

Id.

3. Corporations that cannot meet these requirements, but own or lease agricultural real property and use the property for agricultural purposes, shall be taxed at 6 percent of the property's fair market value. Id. § 12-43-220(d)(1)(B).
4. Once average net annual earnings have been established for agricultural real property, they shall be capitalized to determine use value of the property based on a capitalization rate that includes an interest component, a local property tax differential component, a risk component, and an illiquidity component. Each of these components of the capitalization rate shall be based on identifiable factors related to agricultural use of the property. Id. § 12-43-220(d)(2).

C. Eligibility:

1. The owners of agricultural real property must apply for use value of the property on or before May 1 of the tax year in which the special assessment is claimed. Failure to do so shall constitute a waiver of the special assessment for that year. The filing date can be extended, however. Id. § 12-43-220(d)(3).
2. The application for special assessment shall be made to the assessor in the county where the property is located. Id.
3. Property owners shall reapply for the agricultural assessment of property annually or at intervals of 2, 3, 4, or 5 years, depending on the particular county ordinance. Once an application for special assessments has been reapproved, agricultural tax assessments for land still used for agricultural purposes are renewed for the same period of time for which they were initially made. Id. § 12-43-220(d)(4).

D. Rollback Taxes:

1. When real property is being assessed, valued, and taxed as agricultural real property and the property is converted to

another use, the property shall be subject to additional taxes. The rollback taxes shall be the difference between the taxes paid and the amount of taxes that would have been paid had the property been valued, assessed, and taxed as other real property in the taxing district. The rollback tax shall be applied to the year the use changes and each of the 5 preceding years. Id.

2. The statute provides several factors an assessor shall use to ascertain the amount of rollback taxes to impose on the property owner:
 - a. The fair market value of the real property under the valuation standard applicable to other real property in the same classification;
 - b. The amount of the real property assessment for the particular tax year by multiplying the fair market value by the appropriate assessment ratio;
 - c. The amount of the additional assessment on the real property for the particular tax year by deducting the amount of the actual assessment on the real property for that year from the amount of the real property assessment determined under II.D.2.b. supra; and
 - d. The amount of the rollback for that tax year by multiplying the amount of the additional assessment determined under II.D.2.c. supra by the property tax rate of the taxing district applicable for that tax year.

Id.

SOUTH DOKATA

I. Applicable State Statutes:

S.D. Comp. Laws. Ann. §§ 10-6-31, -31.1, -31.3, -33, -33.1, -33.2 (1982).

II. Preferential Property Tax Assessment:

A. Definitions:

1. "Agricultural property" includes all property used exclusively for agricultural purposes not handled for resale by wholesale or retail dealers. This land includes all land used exclusively for agricultural purposes, both tilled and untilled; the improvements on such land, other than buildings and structures; and the livestock and machinery located and used on such agricultural land. Id. § 10-6-31.

2. "Nonagricultural property" includes normally occupied dwellings on agricultural land and all other property not classified as agricultural property. Id.

B. Valuation:

1. All property shall be assessed at its true and full value in money but not more than 60 percent of this assessed value shall be considered as the taxable value of such property. To determine the true value of property, the assessor shall not adopt a lower or different standard of value nor shall he use as criterion the price for which the property would sell. The assessor shall value the property by itself and at such a sum or price that he believes the property to be worth in money. Id. § 10-6-33.
2. Factors the property assessor shall consider in determining the value of agricultural land are:
 - a. The capacity of the land to produce agricultural products, which shall be based on average yields under natural conditions, in the case of land producing crops or plants, and on the average acres per animal unit;
 - b. Soil, terrain, and topographical condition of property;
 - c. The present market value of the property as agricultural land;
 - d. The character of the area or place in which the property is located; and
 - e. Such other agricultural factors as may from time to time become applicable.

Id. §§ 10-6-33.1, -33.2.

3. Land devoted to agricultural use shall be classified and taxed as agricultural land without regard to zoning classification. Id. § 10-6-31.1.
4. Land or improvement on land, within an operating unit not used incidentally to an agricultural pursuit, shall be separately listed and assessed, and the income therefrom shall not be used in determining the values for the purposes of II.B.2. supra. Id. § 10-6-33.3.

C. Eligibility:

1. To be eligible for agricultural valuation, the land must have been used primarily for agricultural use for at least 5

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successive years immediately preceding the tax year for which the land is assessed. Id.

2. Land is classified as agricultural if it meets two of the following three criteria:
 - a. At least one-third of the owner's total family gross income is derived from production from the land, or the total value of agricultural production from the land produced or sold exceeds \$2,500 in 3 of the last 5 years.
 - b. The land is devoted to the production of livestock, dairy animals and products, poultry and poultry products, fur-bearing animals, fish, horticulture and nursery stock, fruit of all kinds, vegetables, forage, grains, or bees and apiary products. Any slough wasteland or woodland contiguous to or surrounded by other agricultural land shall be considered agricultural land if it is under the same ownership or management.
 - c. The land consists of not less than 5 acres of unplatted land or is a part of a management unit of more than 40 acres of unplatted land. The board of county commissioners, however, may change these acreage requirements at their discretion.

Id. § 10-6-31.3.

TENNESSEE

I. Applicable State Statutes:

Tenn. Code Ann. §§ 11-14-201 (1980), 67-5-601, -602, -1001 to -1009 (1983 & Supp. 1985).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Agricultural land" means a contiguous tract of land of at least 15 acres, including woodlands and wastelands, constituting a farm unit engaged in the production of growing crops, plants, animals, or nursery or floral products. Agricultural land also means two or more tracts of land that may not be contiguous but one of which is greater than 15 acres and none of which is not less than 10 acres, constituting a farm unit used for producing or growing agricultural products. Id. § 67-5-1004(1) (1985).
2. "Forest land" means land constituting a forest unit engaged in the growing of trees under a sound program of sustained yield

management or any tract of 15 acres or more having tree growth in such quantity and quality as to constitute a forest. Id. § 67-5-1004(4).

3. "Open space land" means any area of land, other than agricultural and forest land, of not less than 3 acres characterized principally by an open or natural condition and whose preservation provides the public with a benefit. Open space land includes greenbelt lands or lands primarily devoted to recreational use. Id. § 67-5-1004(7).
4. "Present use value" means the value of land based on its current use as either agricultural, forest, or open space land, assuming the land is not being used for another purpose. Id. § 67-5-1004(11).
5. "Rollback taxes" means the amount of back tax differential a landowner would be required to pay as a result of converting the use from agricultural, forest, or open space land, as classified, to some other more intensive use. Id. § 67-5-1004(12).
6. "Open space easement" means a perpetual right in land of less than fee simple which:
 - a. Obligates the grantor and his heirs and assigns to certain restrictions constituted to maintain and enhance the existing open or natural character of the land;
 - b. Is restricted to the area defined in the easement deed; and
 - c. Grants no right of physical access to the public, except as provided for in the easement.

Id. § 67-5-1004(6).
7. "Owner" means the person holding title to the land, provided that in determining the maximum limit of 1,500 acres available for any one owner to place under current use valuation, all affiliated ownership shall be taken into consideration regardless of whether or not the owner has legal or equitable title to more than 50 percent of the land. Id. § 67-5-1004(8).
8. "Person" means any individual, partnership, corporation, organization, association, or other legal entity. Id. § 67-5-1004(9).

B. Valuation:

The Tennessee Legislature declared that with its adoption of the Agricultural, Forest, and Open Space Land Act, it is the State's policy to preserve open space because the preservation of land is a

public purpose necessary for sound, healthful, and well-planned urban development. In furtherance of this policy, the taxing or zoning powers of governmental entities within the State should not be used to force unwise, unplanned, or premature development of land. Public funds may be expended by the State or any county or municipality to carry out the objectives of this act. Id. §§ 11-14-201 (1980), 67-5-1001, -1003 (1983 & Supp. 1985). See also id. § 67-5-1002 (Supp. 1985).

1. The general policy is that the value of all property shall be ascertained from the evidences of its sound, intrinsic, and immediate value for sale between a willing seller and a willing buyer without consideration of speculative values, unless the provisions of the Agricultural, Forest, and Open Space Land Act are applicable. Id. § 67-5-601(a) (1983). If the tax assessor determines that the provisions of the Agricultural, Forest, and Open Space Land Act are applicable, then assessment shall be based on the land's value in the current use rather than on value for some other use. Id. § 67-5-1008(a)(1).
2. The assessor shall use the following factors as a guide for determining the value of all property of every kind:
 - a. Location;
 - b. Current use;
 - c. Whether income bearing or nonincome bearing;
 - d. Zoning restrictions on use;
 - e. Legal restrictions on use;
 - f. Availability of water, electricity, gas, sewers, street lighting, and other municipal services;
 - g. Natural productivity of the soil, except the value of the growing crops shall not be added to the value of the land; and
 - h. All other factors and evidences of values generally recognized by appraisers as bearing on the sound, intrinsic, and immediate economic value at the time of assessment.

Id. § 67-5-602(a), (b).

3. In determining the current use value for land classified and used for agricultural or forestry purposes, the tax assessor shall specifically consider farm income, soil productivity or fertility, topography, susceptibility to flooding, rental value, replaceability as agricultural land for producing food and fiber, and

other factors serving to determine value for agricultural or timber production purposes. Id. § 67-5-1008(a)(2).

4. The tax assessor shall appraise the land and compute the taxes each year based on;
 - a. Farm classification of 25 percent of appraised value and present use value; and
 - b. Farm classification and value determined as if the act does not apply, but taxes shall be assessed and paid only on the basis of farm classification and present use value under the provisions of the act.

Id. § 67-5-1008(b)(2).

5. Where an open space easement has been executed and recorded, the property assessor shall assess the value of such land and taxes shall be computed and recorded each year:
 - (1) On the basis of farm classification and value in its existing use, taking into account the limitation on future use as provided for in the easement; and
 - (2) On the basis of such classification.

C. Eligibility:

1. Any landowner may apply for a land classification as agricultural, forest, or open space land by filing a written application for such classification with the tax assessor of such county. Id. §§ 67-5-1005(a)(1), -1006(a)(1), -1007(c)(1).
2. The applicant is required to provide such information as the assessor may need to aid the assessor in determining whether the land qualifies for such classification, including a description of the land and a general description of its use. Id. §§ 67-5-1005(b), -1006(c), -1007(c)(3).
3. In determining whether or not any land is agricultural land, the tax assessor shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion in actual use for farming or that is being held for farming or agricultural operation. Id. § 67-5-1005(a)(3).
4. In determining whether or not any land is forestland, the tax assessor shall take into account, among other things, the acreage of such land, the amount and type of timber on the land, the actual and potential growth rate of the timber, and the management practices being applied to the land and for the timber on it. The tax assessor may request the advice of the State forester. Id. § 67-15-1006(2)(b).

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5. Land included in a municipality's comprehensive plan may be classified as open space land if there has been no change in the use of the area, which has adversely affected its essential character as an area of open space land, between the date of adoption of the plan and the date of the classification. Id. § 67-5-1007(a)(2).
6. An appeals procedure is available for persons dissatisfied with the tax assessor's actions. Id. §§ 67-5-1005(c), -1006(d),(e), -1007(d).
7. No single owner within any one taxing jurisdiction shall be permitted to place more than 1,500 acres of land under the provision of the Agricultural, Forest, and Open Space Land Act. Id. § 67-5-1003(3) (Supp. 1985).

D. Rollback Taxes:

1. If land classified under the act is converted to another use, the land will be subject to a rollback tax. The tax imposed will be the amount of taxes saved by the owner in allowing him to use present use value assessment as opposed to the value assessment used on most property. Id. § 67-5-1008(c)(1) (1983). See II.B.1. supra.
2. The rollback period shall be 3 years for agricultural and forest land, and the preceding 5 years for open space land. Tenn. Code Ann. § 67-5-1008(c)(1) (1983).
3. If only a portion of a parcel of specially classified land is converted to another use, the assessor shall apportion the assessment and the rollback taxes will be applied. Id. § 67-5-1008(c)(3).
4. If the land is involuntarily converted to another use (for example by eminent domain), the land shall not be subject to rollback taxes. The agency or body doing the taking shall be liable for the rollback taxes. Id. § 67-5-1008(d)(1).
5. If the sale of agricultural, forest, or open space land will result in the property being converted to another use, the seller shall be liable for rollback taxes. Id. § 67-5-1008(e).

TEXAS

I. Applicable State Statutes:

Tex. [Tax] Code Ann. §§ 23.41 - .57 (Vernon 1982 & Supp. 1986).

Texas has two separate chapters that deal with agricultural land: Subchapter C, Land Designated for Agricultural Use, §§ 23.41 - .46, and Subchapter D, Appraisal of Agricultural Land, §§ 23.51 - .57. Apparently, subchapter C is intended for the individual, family farmer, and subchapter D is much broader in scope. Subchapter D has less qualifications and includes corporate farms. Generally, the valuation is the same in both chapters even though they have slight differences in language. When a farmer meets the qualifications under both subchapters, he may elect the subchapter to file under. Information received from Jeff Archer, Legal Division, Legislative Council, State of Texas, by Kimberly Grillo. Although the two chapters have very similar provisions, they will be treated separately in this report to distinguish between the two.

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Agriculture" means the use of land to produce plant or animal products, including fish or poultry products, under natural conditions. Agriculture does not include processing plant or animal products after harvesting or producing of forest products. Id. § 23.42(d) (Vernon 1982).
2. "Agricultural occupation" means that agriculture is an individual's primary occupation and major source of income. A formula is precisely stated in the statute to determine agricultural occupation. Id. § 23.42(c).
3. "Qualified open-space land" means land that is currently and has been principally devoted to agricultural use for 5 of the preceding 7 years, or land used principally as an ecological laboratory by a university. Open space land includes all appurtenances to the land. Id. § 23.51(1).
4. "Appurtenances to the land" means private roads, dams, reservoirs, water wells, canals, ditches, terraces, and other reshaping of the soil, fences, and riparian water rights. Id.
5. "Agricultural use" includes, but is not limited to, cultivating soil, producing crops for human food, animal feed, planting seed or for producing of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; and planting cover crops or leaving land idle to participate in any government program or normal livestock rotation procedure. Id. § 23.51(2).
6. "Net to land" means the average annual net income derived from the use of open space land that would have been earned from the land during the 5-year period preceding the year before the appraisal by an owner using ordinary prudence in the management of the land. The chief appraiser shall calculate net to land

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using an owner-operated budget, subtracting all ordinary and prudent expenses incurred in pursuit of agricultural use. Net to land shall be determined by the same method for all land in the same category located in the same appraisal district. In calculating net to land, a reasonable deduction shall be made for any depletion of underground water used in the agricultural operation. Id. § 23.51(4) (Vernon Supp. 1986).

7. "Income capitalization" means the process of dividing net to land by the capitalization rate to determine the appraised value. Id. § 23.51(5) (1982).

B. Valuation:

1. Subchapter C: The value of land designated for agricultural use is based on the land's capacity to produce agricultural products. This is determined by capitalizing the average net income the land would have yielded under prudent management from production of agricultural products during the preceding 5 years. If this value, however, exceeds the market value of the land, then other appraisal methods will be used. Id. § 23.41(a).
2. Subchapter D: The value of qualified open space land is determined on the basis of the category of the land, using accepted income capitalization methods applied to average net to land. If the landowner requests the appraiser to value the open space land according to Subchapter C, the appraiser shall do so. Id. § 23.52(a), (b). See II.D. infra. The capitalization rate to be used is 10 percent or the interest rate specified by the Federal Land Bank of Houston on December 31 of the preceding year, plus 2.5 percentage points, whichever is greater. Tex. [Tax] Code Ann. § 23.53 (Vernon 1982).

C. Eligibility:

1. Subchapter C:
 - a. An owner is entitled to have his land designated for agricultural use if on January 1:
 - (1) The land has been devoted exclusively to agriculture for the 3 years preceding the current year;
 - (2) He is using and tends to use the land for agriculture as an occupation or a business venture for profit during the current year; and
 - (3) Agriculture is his primary occupation and primary source of income.

Id. § 23.42.

- b. Use of land for nonagricultural purposes does not deprive an owner of the right to an agricultural designation if the nonagricultural use is secondary to and compatible with the agricultural use of the land. Id. § 23.42(b).
- c. An application for the agricultural use designation must be filed before May 1 each year that such designation is claimed with the chief appraiser in the appraisal district in which the land is located. Id. § 23.43(a), (b).
- d. The chief appraiser shall either approve the application, request more information, or deny the application. Id. § 23.44(a).
- e. The statute allows a late application to be filed, but if approved, the farmer is subject to a penalty. Id. § 23.431.
- f. If an application is denied, a written notice must be sent to the claimant within 5 days after the date of denial. The notice must include an explanation of procedures to protest the denial. Id. § 23.44(d).

2. Subchapter D:

- a. A valid application must be filed with the chief appraiser before May 1 on a form provided by the appraisal office. Once an application is filed and appraisal under this subchapter is allowed, the land is eligible for appraisal in subsequent years without a new application. A new application must be filed if the ownership of the land changes, the land's eligibility under subchapter D ends, or the chief appraiser specifically requests an application to be filed. Id. § 23.54(a), (d), (e).
- b. See II.C.1.e. supra. Tex. [Tax] Code Ann. § 23.541 (Vernon 1982).
- c. A penalty is imposed if a landowner fails to notify the appraisal office in writing before May 1 of the land's eligibility ending or a change in the category of agricultural use. The penalty shall be 10 percent of the difference between the taxes erroneously imposed on the property under this subchapter and the taxes that would have been imposed. The amount of the penalty constitutes a lien on the property and shall accumulate interest in the same manner as a delinquent tax. Id. § 23.54(h), (i).
- d. Land is not eligible for appraisal in accordance with this subchapter when:

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- (1) The land is located inside the corporate limits of an incorporated city or town, unless the land has been devoted principally to agricultural use continuously for the preceding 5 years;
- (2) The land is owned by a nonresident alien or by a foreign government, and that individual or government is required by Federal law to register his ownership of the property; or
- (3) The land is owned by a corporation, partnership or other legal entity; a nonresident alien, foreign government, or any combination thereof owns a majority interest in the entity; and the entity is required by Federal law to register its ownership.

Id. § 23.56.

D. Classification of Land:

Lands are classified by categories. A category means the value classification of land considering the agricultural use to which the land is principally devoted. Categories of land include, but are not limited to, irrigated cropland, dry cropland, improved pasture, native pasture, orchard, and waste. These categories may be further divided according to soil type, soil capability, irrigation, general topography, geographical factors, and other factors influencing the productive capacity of the category. Id. § 23.51(3).

E. Rollback Taxes:

1. Subchapter C:

- a. An additional tax is imposed on the property owner if the land designated for agricultural use in any year is sold or diverted to a nonagricultural use. The additional tax is the amount that would have been due if the land had not been designated for agricultural use, plus interest. The rollback tax is imposed for the 3 years preceding the year in which the land is sold or diverted. Id. § 23.46(b), (c).
- b. A tax lien attaches to the land, to secure payment of the additional tax, on the date of sale or change in use. The lien exists in favor of all taxing units for which the additional tax is imposed. Id. § 23.46(d). (Supp. 1986).

2. Subchapter D:

- a. Rollback taxes will be imposed when land use changes. The additional tax is equal to the difference between the taxes imposed and those that would have been imposed had the land

been taxed at its market value. The rollback tax is imposed for the 5 years preceding the year in which the use changes, plus interest at an annual rate of 7 percent. Id. §23.55 (a).

- b. See II.E.1.b supra. Tex. [Tax] Code Ann. § 23.55(a)-(d) (Vernon 1982).
- c. The rollback tax is not imposed if use changes as a result of a sale for a right-of-way or condemnation. Id. § 23.55(f).

UTAH

I. Applicable State Statutes:

Utah Code Ann. §§ 59-5-86 to -105 (1974 & Supp. 1985).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definition:

"Agricultural use" means land devoted to raising plants and animals useful to man, including, but not limited to, forage and sod crops; grain and feed crops; dairy animals, poultry, livestock, horses, bees, fur-bearing animals, trees, fruits of all kinds, and vegetables; or devoted to and meeting the requirements pursuant to the cropland retirement program under an agreement with an agency of the State or Federal Government. The area of land devoted to agricultural use shall include all land under barns, sheds, silos, cribs, greenhouses, lakes, dams, ponds, streams, and irrigation ditches, but excludes land actively used in connection with the farmhouse. Id. §§ 59-5-88, -93(1974).

B. Valuation:

The assessor, in valuing land qualifies as land actively devoted to agricultural use, shall consider only those indicia of value which land has for agricultural use. Id. § 59-5-90 (Supp. 1985).

C. Eligibility:

1. Land actively devoted to agricultural use is eligible for special valuation, assessment, and taxation when the following qualifications are met:
 - a. The land has been devoted to agricultural use for at least 2 successive years immediately preceding the tax year for which valuation is requested;

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- b. The area of land is not less than 5 contiguous acres;
- c. The gross sales of agricultural products produced average, together with any payments received through a cropland retirement program, at least \$1,000 annually.
- d. The landowner submitted an application by January 1 of the tax year for which valuation is requested.
- e. All necessary filing fees are paid when the application is submitted.

Id. § 59-5-89.

- 2. The tax commission may grant waiver of the acreage limitation if the owner obtains 80 percent or more of his income from an area less than 5 acres. The tax commission also may grant a waiver of the income limitation if the land has been valued at its agricultural use for at least the 2 years preceding that tax year, and upon proof that the failure to meet the income requirements was through no fault of the owner. Id. § 59-5-87.
- 3. Where contiguous land in agricultural use in one ownership is located in more than one county, compliance with the minimum requirements shall be determined on the basis of the total area and income of such land and not the area or income of land located in one particular county. Id. § 59-5-98 (1974).
- 4. Once land becomes eligible for special valuation, the owner does not have to reapply until a change in land use occurs. Id. § 59-5-89(3)(e) (Supp. 1985).

D. Rollback Taxes:

- 1. Rollback taxes will be imposed when the land use changes. The amount of the rollback tax is ascertained by computing the difference between the taxes paid and those that would have been paid if the land had not been assessed under the act. A landowner will be liable for this rollback tax for the previous 5 years before the change in land use. Id. § 59-5-91 (1974).
- 2. Liability for the rollback tax shall attach when the use of the land changes but not when ownership changes if the new owner continues the land in its agricultural use. Id. § 59-5-96.
- 3. When land use changes, the landowner has an obligation to notify the county assessor within 90 days and to pay the rollback tax imposed. If the owner fails to notify the county assessor and pays the rollback tax within 90 days after any change in land use, the owner will be subject to a penalty of 100 percent of the computed rollback tax due. Id. § 59-5-89(3)(a) (Supp. 1985).

4. Any change in land use or other withdrawal of land shall be subject to rollback taxes whether the change is voluntary or involuntary, including land taken by eminent domain. Id. § 59-5-89(3)(d), -98.
5. Rollback taxes will be assessed on any parcel separated or split off from the land qualifying for use assessment if the separated land is converted to a use other than agriculture. The status of the remainder of the land kept in its agricultural use will not be affected, provided this parcel continues to meet the eligibility requirements. Id. § 59-5-97.

VERMONT

I. Applicable State Statutes:

Vt. Stat. Ann. tit. 32, §§ 3751 -3760, 3846 (1981 & Supp. 1985), tit. 24, § 2741 (Supp. 1985).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Farmer" means a person who earns at least half of his annual gross income from the business of farming. Id. tit. 32, § 3752(7) (Supp. 1985).
2. "Agricultural land" means land actively used to grow hay, cultivate crops, pasture livestock, or cultivate trees bearing edible fruit or producing an annual maple product. The land must be 25 acres or more unless:
 - a. The land is owned by a farmer and is part of the overall farm unit;
 - b. The farmer has leased the land as part of his farming operation for at least 3 years; or
 - c. The land has produced an annual gross income of at least \$2,000 from the sale of farm crops in 1, 2, or 3 of the 5 preceding calendar years. Exceptions to these requirements may be made in cases of orchard trees, which are not of bearing age.

Id. § 3752(1) (1981).

3. "Managed forest land" means any land, exclusive of any homesite, that is at least 25 acres in size and is active under long-term forest management for growing and harvesting repeated forest crops in accordance with minimum acceptable standards for forest management. Id. § 3752(9) (Supp. 1985).

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4. "Minimum acceptable standards for forest management" refers to certain standards established by the Commissioner of the Department of Forests, Parks, and Recreation. Id. § 3752(13).
5. "Development," for determining whether or not a land-use change tax is to be assessed, means:
 - a. Construction of any structure or road, mining, excavation, or landfill activity; or
 - b. Subdivision of a parcel of land into two or more parcels when one or more of the resulting parcels contain less than 25 acres each.

Id. § 3752(5).

B. Valuation:

The Vermont Legislature stated that one of its purposes in enacting preferential assessment is to prevent the accelerated conversion of agricultural and forest land to more intensive uses because of the pressure of property taxation at values incompatible with the productive capacity of the land. Id. § 3751 (1981). To achieve this purpose, any qualifying agricultural and forest lands shall be appraised by assessing officials at their current use values. These appraisals shall be determined by the assessing officials in accordance with the criteria and values determined by the Current Use Advisory Board. Id. § 3756(C) (Supp. 1985).

C. Eligibility:

1. The following procedure is used to determine whether or not agricultural and forest lands are eligible for use value appraisal:
 - a. An application must be filed by September 1 of the previous tax year with the assessing officials of the municipality.
 - b. A management plan or annual conformance report must be filed by March 1; late filing is allowed.
 - c. The assessing officials shall notify the applicant no later than the date the grand list is lodged in the town clerk's office of their decision to specially classify the land.
 - d. Each year, prior to the date the grand list is lodged in the town clerk's office, the assessing officials shall determine if previously classified lands are still eligible for special assessment.

Id. § 3756(a), (b), (e).

2. Managed forest land, in addition to meeting the requirements listed in II.C.1 supra, must meet several additional requirements.
 - a. The Department of Forests, Parks, and Recreation must approve the forest management plan. Id. § 3755(b)(1).
 - b. The plan shall be on file for at least 10 years with the clerk of the town in which the land is located. Id.
 - c. At intervals not to exceed 5 years, the department shall audit the conformance reports and management plans and inspect the forest land to ensure the terms of the plans have been carried out. Id. § 3755(c).
 - d. If the department finds that the management of the land is contrary to the management plan or to minimum standards, it shall file an adverse inspection report with the town clerk within 30 days of the inspection. After a parcel of forest land is removed from special classification due to an adverse management report, a new application for special classification will not be considered for 5 years. This new application will only be approved if a compliance report is filed with the new application certifying that the requirements have been met. Id. § 3755(c), (d).
3. An appeals process is available for people who are dissatisfied with any of the various decisions of the assessing officials. Id. § 3758(a).
4. A waiver from the statutory definition of a "farmer" is available from the legislative body of a municipality for a year at a time when a farmer is otherwise eligible for current-use valuation but cannot meet the legislative definition of a "farmer" because of personal hardship created by personal or family disability or death, by economic disaster due to fire or disease, or by natural disaster such as a flood or drought. The agricultural land shall continue to be taxed on the basis of a current-use appraisal for that year. Id. § 3756(a).

D. Use Tax Reimbursement Fund:

Vermont has a unique feature in its preferential assessment program, the use-tax reimbursement fund. This fund was created to compensate municipalities for revenue losses attributed to agricultural assessment. The statute contains specific procedures and guidelines concerning the fund and how payment shall be made to municipalities. Id. §§ 3759, 3760 (1981 & Supp. 1985).

E. Rollback Taxes:

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Land classified as agricultural land shall be subject to a "land use change tax" upon its development. The tax is not a rollback tax as such, but is a penalty if the land use changes.

1. The tax shall be 10 percent of the full fair market value of the changed land. Id. § 3757(a) (1981).
2. The tax shall be determined from the day that the land is no longer eligible for use-value appraisal. Id.
3. The land-use change tax is in addition to the annual property tax that is imposed. Id.
4. The tax is due on April 1 preceding the development. Id.
5. If an owner of eligible land wishes to withdraw his land from use-value appraisal, he may do so. The land will be appraised at its full fair market value, and the land-use change tax will be imposed. Id. § 3757(b).
6. A land-use change tax obligation constitutes a lien against the property. Id. § 3757(f).
7. The proceeds from the land-use change tax shall be paid into the use-tax reimbursement fund. Id. § 3757(j). See II.D. supra.
8. The law states specifically when development of the land is not subject to an additional tax:
 - a. Land condemned as a result of eminent domain or sold voluntarily to a condemning authority in anticipation of eminent domain proceedings. Vt. Stat. Ann. tit. 32, § 3757(h) (Supp. 1985); and
 - b. Land transferred to the U.S. Forest Service is usually exempt, although there are some statutory exceptions. Id. § 3757(1).

III. Miscellaneous:

In addition to municipalities' ability to acquire various rights and interests in land, the State has other statutes to aid in the control of land use. One such statute provides municipal corporations with the ability to enter into contracts with farmers and new industrial and commercial establishments to fix the rates of taxation on real property for a period not to exceed 10 years. See generally id. tit. 24, § 2741 (Supp. 1985). Another statute, "Farmland Appraisal Contracts," gives the legislative body of a municipality the power to negotiate tax stabilization contracts with the owners of farm forest land. If a contract is established and the landowner subsequently converts the land to another use in breach of the contract, then a rollback tax shall be imposed.

The rollback tax shall be the sum of the difference between the two taxes for the previous 3 years and shall be paid by the landowner within 30 days of the conversion. See generally id. tit. 32, § 3846 (1981).

VIRGINIA

I. Applicable State Statutes:

Va. Code §§ 15.1-1513.1 to 1513.8 (Supp. 1985), 15.1-1506 to -1513 (1981 & Supp. 1985), 58.1-3229 to -3252 (1984 & Supp. 1985).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Real estate devoted to agricultural use" means land devoted to bona fide production for sale of plants and animals useful to man or devoted to a soil conservation program under an agreement with an agency of the Federal Government. Id. § 58.1-3230 (1984).
2. "Real estate devoted to horticultural use" means land devoted to bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; and nursery and floral products; or devoted to a soil conservation program under an agreement with an agency of the Federal Government. Id.
3. "Real estate devoted to forest use" means land devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under specified standards. Id.
4. "Real estate devoted to open-space use" means land preserved for park or recreational purposes, conservation of land or other natural resources, floodways, historic or scenic purposes, or assisting in shaping the character, direction, and timing of community development pursuant to uniform standards. Id.
5. The total area of real estate actively devoted to agricultural, horticultural, forest, or open-space use shall include barns, silos, cribs, greenhouses, public recreation facilities, lakes, dams, ponds, streams, irrigation ditches, and the areas thereunder, but does not include structures or the areas thereunder not related to the special use. Id. § 58.1-3236(B).

B. Valuation:

To determine the assessment of land, the assessor shall consider only those indicia of a value which such land has for agricultural, horticultural, forest, or open space use. In arriving at the value of such land, the assessor shall also consider:

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1. His personal knowledge, judgment, and experience as to the value of the land in its classified use;
2. Available evidence of the land's capability in its classified use; and
3. Recommendations of value as made by the State Land Evaluation Advisory Committee.

Id. § 58.1-3236(A).

The provisions allowing for assessment and taxation of land in this manner are intended to promote the preservation of land for the public benefit. Id. § 58.1-3229.

C. Eligibility:

1. Any county, city, or town that has adopted a land use plan is eligible to adopt an ordinance to provide for the use-value assessment of land. It must be agricultural, horticultural, forest, or open space land. Id. § 58.1-3231 (1984).
2. The local assessing officer shall determine that the real estate devoted to (a) agricultural or horticultural use consists of at least 5 acres; (b) forest use consists of at least 20 acres; and (c) open space use consists of a minimum of 5 acres, except that in any city having a population density greater than 5,000 per square mile, the governing body may prescribe that land devoted to open space use consist of a minimum of 2 acres. Id. § 58.1-3233(2).
3. The general requirements for property owners are:
 - a. Property owners must submit an application for taxation on the basis of a use assessment to the local assessing officer at least 60 days preceding the tax year for which such taxation is sought. The governing body, by ordinance, may permit late applications to be filed. Id. § 58.1-3234(1).
 - b. An application shall be submitted whenever the use or acreage of land previously approved changes, except when a use changes solely as a result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for special assessment. The governing body, however, may require any property owner to revalidate annually. Id. § 58.1-3234(3).
 - c. Except as provided by local ordinance, no application for assessment based on use shall be accepted or approved if at the time the application is filed the tax on the affected land is delinquent. Land is specially assessed will become

ineligible for such assessment, if the property taxes are delinquent on the property and after notice is sent to the property owner the delinquent taxes remain unpaid. Id. §§ 58.1-3234(3),-3235.

- d. Continuation of valuation, assessment, and taxation under an ordinance adopted pursuant to this law shall depend on compliance with the requirements of this law and not upon continuance in the same owner of title to the land. Id. § 58.1-3234(3).

D. Rollback Taxes:

1. Rollback taxes will be assessed if land valued under this statute is converted to a nonqualifying use. The rollback taxes will be the amount of taxes on the land as if it were assessed at its fair market value minus the amount actually paid under its use-value assessment for the preceding 5 years. Interest on the rollback taxes will also be charged. Id. § 58.1-3237(A) (Supp. 1985).
2. Liability for rollback taxes shall not attach when ownership changes, if the new owner continues the land in the same use classification. Id. § 58.1-3237(C).
3. Rollback taxes, applicable penalties, and interest will be assessed if any person fails to properly report any change in use of the property for which an application for use-value taxation has been filed. Additionally, any person making a material misstatement of fact in any such application shall be liable for all such taxes. Id. § 58.1-3238 (1984).
4. Rollback taxes will be assessed on any parcel separated from the land qualifying for use-value assessment. But, the status of the remainder of the land will not be affected as long as it continues to meet the basic eligibility requirements. The penalty will not bar future qualification of the splitoff portion for use value assessment. Id. § 58.1-3241.
5. Land taken through eminent domain will not be subject to rollback taxes. Id. § 58.1-3242.

III. Miscellaneous:

The Virginia Legislature's enactment of the Agricultural and Forestal Districts Act provides both State and local governments with another means to protect and enhance agricultural and forestal lands as an economic and environmental resource of major importance. Land within an agricultural and forestal district shall be eligible for use-value assessment and taxation whether or not a local land use plan has been adopted. Id. § 58.1-3231. The discontinuance of a district subjects

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the owner to rollback taxes and also a penalty in the amount equal to two times the taxes determined in the year following the withdrawal from the district on all land previously within the district. The criteria and procedures for establishing an agricultural or forestal district are specifically set out in the statute. See generally id. §§ 15.1-1506 to -1513 (1981 & Supp. 1985), 15.1-1513.1 to -1513.8 (Supp. 1985).

WASHINGTON

I. Applicable State Statutes:

Wash. Rev. Code Ann. §§ 84.34.010 - .922 (Supp. 1986).

II. Preferential Property Tax Assessment with Deferred Taxation:

A. Definitions:

1. "Farm and agricultural land" means:

- a. Land in any contiguous ownership of 20 or more acres devoted primarily to the production of livestock or agricultural commodities for commercial purposes;
- b. Any parcel of land 5 acres or more, but less than 20 acres, devoted primarily to agricultural uses, producing a gross income from agricultural uses equivalent to \$100 or more per acre per year for 3 of the 5 years preceding application; or
- c. Any parcel of land less than 5 acres devoted primarily to agricultural uses, producing a gross income of \$1,000 or more per year for 3 of the 5 years preceding the application.

Agricultural lands shall also include farm woodlots less than 20 acres and more than 5 acres, land on with additions necessary to produce for sale agricultural products, and land of 1 to 5 acres not contiguous but which constitutes an integral part of farming operations as conducted on land qualifying as farm and agricultural land. Id. § 84.34.020(2).

2. "Open space land" means:

- a. Land zoned for open space, or
- b. Any land area, the preservation of which in its present use would:
 - (1) Conserve and enhance natural or scenic resources;
 - (2) Protect streams or water supply;

- (3) Promote conservation of soils, wetlands, beaches, or tidal marshes;
- (4) Enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open space;
- (5) Enhance recreational opportunities;
- (6) Preserve historic sites; or
- (7) Retain in its natural state tracts of land not less than 5 acres in an urban area open to public use on such conditions as may be reasonably required by the granting authority.

Id. § 84.34.020(1).

- 3. "Timber land" means land in any contiguous ownership of 5 or more acres devoted primarily to growing and harvesting forest crops and not classified as reforestation land. Timber land means only the land. Id. § 84.34.020(3).

B. Valuation:

- 1. The intent of The Open Space Taxation Act is to value open space, timber, and agricultural land on the basis of its current use and not its "highest and best use." The legislature declares that current use assessment is needed to preserve and conserve open space lands for producing food, fiber, and forest crops. Use-value assessment will also assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of the State and its citizens. Id. § 89.34.010.
- 2. To determine the current use value of open space and timber land, the assessor shall consider only the use to which such property and improvements is currently applied and shall not consider potential uses of such property. To arrive at a current use value of open space land that has no current use, the assessor shall not assign a value less than the value were it to be assessed for agricultural use. Id. § 84.34.060.
- 3. To determine the current use value of farm and agricultural land, the assessor shall consider the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than 5 years. This earning or productive capacity shall be the "net cash rental" and shall be capitalized by a rate that shall be the sum of:
 - a. An interest component similar to interest rates charged on long-term loans secured by mortgages on farms or agricultural lands averaged over the past 5 years, plus

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- b. A component for property taxes which shall be a percentage equal to the tax rate times the legal assessment ratio.

Id. § 84.34.065.

C. Eligibility:

1. Applications for farm and agricultural classifications shall be filed with the county assessor in the county where the property is located. Applications for open space or timber land classification shall be filed with the county legislative authority. Applications must be made during the calendar year preceding the year in which such classification is to begin. Application forms are available in the county assessor's office, and a specified application fee shall accompany each application. Id. § 84.34.030.
2. There is an appeals process for rejected applicants. Id. § 84.34.035.
3. In determining whether or not an application made for classification under II.A.2.b or 3. supra should be approved, the granting authority may balance the benefit of preserving the land against the resulting revenue loss. Id. § 84.34.037.
4. Land classified as either farm and agricultural, open space, or timber land shall not be applied to any other use for at least 10 years. The land shall continue in this classification after the 10-year period until the owner requests a withdrawal, until the use of the land has changed, or until the land has been sold and the new owner has not signed a notice of continuance. Id. §§ 84.34.070, .108(1).

D. Rollback Taxes:

1. After 8 years of the initial 10-year period has passed, the landowner may make an irrevocable request to the assessor that all or part of his land be withdrawn from the classification. If a portion of a parcel is removed from classification, the remaining portion must meet the requirements for original classification. Id. § 84.34.070. The land removed shall be subject to a tax equal to the difference between the amount of tax paid under the farm and agricultural, open space, or timber land classification and the tax at true and fair values for 7 years past, plus the statutory interest rate charged on delinquent property taxes. Id. § 84.34.108(3).
2. If an owner changes the use of his classified land, he must notify the county assessor of this change within 60 days. The assessor shall then impose an additional tax paid on current use value and the tax that would have been paid on the land had it

not been so classified. The tax is payable for the 7 years past, with interest on this additional tax at the same rate as charged on delinquent property taxes along with a penalty of 20 percent of the total amount. Id. § 84.34.080.

3. The assessor may determine, after giving the owner written notice and an opportunity to be heard, that the classified land is no longer primarily devoted to and used for the purposes for which it was granted the classification. The owner may appeal such removal to the county board of equalization. At the time the land is removed from classification, it must be revalued at its full market value, and it becomes subject to an additional tax, interest, and penalty. Id. § 84.34.108(1)-(3).
4. The law provides specific situations when removal of the land is not subject to an additional tax:
 - a. Land is transferred to a government entity in exchange for other land located in the State;
 - b. Land is taken under the power of eminent domain or transferred in anticipation of such action;
 - c. Land is sold or transferred within 2 years of the death of the owner of at least a 50-percent interest in the land;
 - d. A natural disaster changes the use of such property;
 - e. Official action by the State, county, or city disallows the present use of such land;
 - f. The land is transferred to a church whose land would qualify for a property tax exemption; or
 - g. Property interests are acquired by State agencies or organizations qualified under §§ 84.34.210 and 64.04.130.

Id. § 84.34.108(5).

III. Miscellaneous:

Agricultural lands in the State enrolled in the deferred tax assessment program may receive exemptions from special benefit assessments for water, sewer, and other local utility district assessments. Withdrawal from classification for agricultural use or a change in land use makes the landowner liable for the amount of the special benefit assessment plus interest. See generally id. §§ 84.34.300 - .920.

WEST VIRGINIA

I. Applicable State Statutes:

W. Va. Code §§ 11-1A-10 (1983), 11-3-1 (1983), 11-4-3 (Supp. 1985), 11-5-3 (1983), 11-8-5 (1983).

II. Preferential Property Tax Assessment:

A. Definitions:

1. "Farm" shall mean and include land currently being used primarily for farming purposes and has been used as such land in the year preceding the current tax year, but shall not include land used primarily in commercial forestry or the growing of timber for commercial purposes. Id. § 11-1A-3(f)
2. "Farming purposes" shall mean the use of land to produce for sale, consumption, or use any agricultural products, including, but not limited to, livestock, poultry, fruits, vegetables, grains, or hays, or any products derived from tobacco, and horticultural and nursery stock. Id. § 11-1A-3(g).

B. Valuation:

Farm property is assessed according to its fair and reasonable value for farming purposes regardless of what the value of the property would be if used for some other purpose. Determination of value shall be made by considering the fair and reasonable income the property is expected to earn in the locality if rented. One is not engaged in farming if one is primarily in forestry or growing timber. Id. § 11-1A-10. See also id. § 11-3-1.

C. Classification of Property:

West Virginia classifies real and personal property for levy purposes. Class I includes all personal property employed exclusively in agriculture, including horticulture and grazing. Class II property consists of all farms, including land used for horticulture and grazing, occupied and cultivated by their owners or bona fide tenants. Id. § 11-8-5.

WISCONSIN

I. Applicable State Statutes:

Wis. Stat. Ann. §§ 71.09, 91.01 - .79 (West Supp. 1985).

Under Wisconsin's farmland preservation program, farmers may qualify for special assessment (1) if they sign a contract agreeing not to develop their land during the contract period or (2) if their land is zoned for exclusive agricultural use. The program has two stages. In the first stage, any eligible farmer may sign an initial farmland preservation agreement. This part of the program began in 1977, and all initial agreements expired in 1982. The second stage of the program begins when a county adopts exclusive agricultural zoning or planning. When this occurs, farmers become eligible for longer term farmland preservation agreements and increased tax credits. Farmers with initial agreements already in effect may convert them to longer term agreements. After 1982, local planning or zoning must be in effect for farmers to remain eligible for tax credits. R. Barrows, Wisconsin's Farmland Preservation Program, 1-3 (Univ. of Wis. 1982).

II. Preferential Property Tax Assessment with Restrictive Agreement:

A. Definitions:

1. "Agricultural use" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; raising livestock; orchards; plant greenhouses and nurseries; poultry raising; raising grain, grass, mint, and seed crops; raising fruits, nuts, and berries; sod farming; placing land in Federal programs in return for payments in kind; and vegetable raising. Id. § 91.01(1).
2. "Develop" means change to any use other than agricultural use. Id. § 91.01(4).
3. "Devoted primarily to agricultural use" means under agricultural use for at least 12 consecutive months during the preceding 36-month period. Id. § 91.01(5).
4. "Farmland preservation agreement" or "transition area agreement" means a restrictive covenant where the owner and the State agree to hold jointly the right to develop the land, and the covenant not to develop, except as expressly reserved in the instrument, runs with the land for a term of years. Id. § 91.01(7).
5. "Owner" means a resident of Wisconsin who owns land, including an individual, legal guardian, corporation incorporated in the State, business trust, estate, trust, partnership, or association of two or more persons having a joint or common interest in the land. Where land, however, is subject to a land contract, it means the vendor is in agreement with the vendee. Id. § 91.01(9).
6. "Economic inviability" means continued uneconomic operation because of the restrictions in the agreement and not merely the existence of land uses, which would allow higher returns. Id. § 91.19(2)(b)(1).

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B. Eligibility:

1. To qualify for a farmland preservation agreement, the farmland must be a parcel of at least 35 contiguous acres that have produced gross farm profits of \$6,000 in the past year or \$18,000 in the past 3 years. Id. § 91.01(6).
2. An owner may apply for a farmland preservation agreement if the county in which the land is located has a certified agricultural preservation plan in effect or if the land is in an area zoned for exclusive agricultural use. Id. § 91.11(1).
3. An owner, located in a county with a population density of less than 100 persons per square mile that has adopted an exclusive agricultural use zoning ordinance, may apply for a farmland preservation agreement even if the town has not yet approved the ordinance. If the land, however, is located in a county with a population density of 100 or more persons per square mile, an owner may apply for a farmland preservation agreement only if the town has an exclusive agricultural use zoning ordinance and such ordinance has already been approved. Id. § 91.11(2), (3).
4. In any town that has adopted an exclusive agricultural use zoning ordinance or in any town that has approved an ordinance adopted by the county, an owner may apply for a farmland preservation agreement only if the land is in an area zoned for exclusive agricultural use. Id. § 91.11(4).
5. An owner of eligible farmland may apply to the county clerk for a farmland preservation agreement. The application shall include the following:
 - a. A land survey or legal description of all eligible farmland to be covered under the agreement;
 - b. A map showing significant natural features and all structures and physical improvements on the lands, or an aerial photograph of all land that is an integral part of the owner's farming operation, marked to indicate the farmland and structures to be covered by the agreement;
 - c. The soil classification of the land; and
 - d. Any other data necessary to determine the land's eligibility for an agreement.

Id. § 91.13(1).

6. The application shall be approved or rejected within 120 days after it is received. If the application is rejected, the applicant has 30 days to appeal the rejection. Id. § 91.13(4), (7).

7. The local governing body must base its approval or rejection of the application on the following factors:
 - a. The productivity and viability of the land for agricultural use;
 - b. The predominance of agricultural use on the land;
 - c. The inclusion of all contiguous lands in single ownership;
 - d. Whether or not the property is eligible farmland;
 - e. Consistency with the county agricultural preservation plan; and
 - f. Whether or not the farmland is designated an agricultural preservation area or is zoned for exclusive agricultural use under an ordinance.

Id. § 91.13(4).

8. Once an application is approved, a farmland preservation agreement will be prepared. The agreement's major provisions must be that:
 - a. No structures may be built on the land except for uses that are consistent with agricultural use or are approved by the local governing body and the Department of Agriculture, Trade, and Consumer Protection;
 - b. Land improvements shall not be made except for uses consistent with agricultural use or are approved by the local governing body and the department;
 - c. Farming operations shall be in accordance with a soil and water conservation plan;
 - d. The State agrees to pay income tax credits (see III. infra); and
 - e. Any other condition and restriction on the land as agreed to by the parties are deemed necessary to preserve the land for agricultural use.

Wis. Stat. Ann. § 91.13(8) (West Supp. 1985).

9. Farmland preservation agreements shall be for not less than 10 nor more than 25 years. Id. § 91.13(10).
10. An owner may apply for a transition area agreement if the farmland is in an area identified as a transition area under a

county agricultural preservation plan. These agreements shall be for not less than 5 nor more than 20 years. Id. § 91.14.

11. Land that is restricted under a farmland preservation agreement may be sold if the department is notified and if the preservation agreement is kept intact. The purchaser shall be liable only for the amount of tax credits paid on that portion of the land purchased. Id. § 91.17(1).
12. When the owner of land subject to a farmland preservation agreement dies or is certified by a physician to be totally and permanently disabled, the land may be released. The land, however, will be subject to a penalty or lien. Id. § 91.17(2).
13. An owner may apply for relinquishment of an agreement. An agreement shall not be relinquished unless:
 - a. The agreement imposes continuing economic inviability causing hardships;
 - b. There are significant natural physical changes in the land;
or
 - c. Surrounding conditions prohibit agricultural use.

The State Agricultural Lands Preservation Board must approve a relinquishment. Rejected applications may be appealed. Id. § 91.19(b)(1)-(3).

C. Exclusive Agricultural Zoning:

The exclusive agricultural zoning statute is to specify the minimum requirements for zoning ordinances designating certain lands for exclusive agricultural use, thus allowing the owners of such lands to claim farmland preservation tax credits. If local zoning meets the standards in the law for protecting farmland, then farmers may qualify for tax credits without signing a contract. This exclusive agricultural zoning law is part of Wisconsin's broader farmland preservation statute. Id. §§ 91.71 - .79.

D. Farmland Preservation Credit:

Wisconsin's farmland preservation program offers tax credits against State income tax to owners of farmland under restrictive agreements or in exclusive agricultural zones. Different proportions of the tax credit are available to farmers with differing levels of participation in the preservation program. The level of tax credits also depends on whether the county has an agricultural preservation plan, exclusive agricultural zoning, or both. The tax credit is based on household income and property taxes. A complex formula is used to determine the credits. Id. § 71.09.

E. Rollback Taxes:

1. A rollback provision applies to any relinquishment of a farmland preservation agreement. An owner will be liable for all the income tax credits received for the last 10 years, plus 6-percent interest. Id. § 91.19(7).
2. If an owner of land upon which a farmland preservation agreement has been recorded changes the land use to a prohibited use without first receiving a relinquishment, he will be subject to a civil penalty for actual damages. The damages, however, may not exceed double the value of the land. Id. § 91.21(1).

WYOMING

I. Applicable State Statutes:

Wyo. Stat. Ann. § 39-2-103 (1985)

II. Preferential Property Tax Assessment:

A. Definition:

"Agricultural land," for tax assessment, unless legally zoned otherwise by a zoning authority, means land that has been used or employed during the previous 2 years and is presently being used and employed primarily for obtaining a monetary profit as agricultural or horticultural use or any combination thereof. Id. § 39-2-103(a)

B. Valuation:

The fair value of agricultural land for assessment purposes is based on (1) the current use of the land and (2) the capacity of the land to produce agricultural products. This includes grazing and forage based on average yields of lands of the same classification under normal conditions. Id. § 39-2-103(b).

