

COUNTY OF SULLIVAN – PENNSYLVANIA  
Policy on Clean & Green Enrollment Procedures  
Act 319, 156 & 235

Effective with the 2008 enrollment year (deadline to file, June 1, 2007) the Sullivan County Assessment Office will accept prospective new enrollees to the Clean & Green program via a phone call or in person. At the time of contact we will obtain name, parcel number and phone number. All interested applications will be placed in a file until after the June 1 deadline.

Clean & Green Rules & Regulations will be mailed or handed to prospective applicants at the time of contact. The Assessment Office will call after June 1 to schedule an appointment in July and/or August of that same year for each applicant to come into the office to review, with assessment personnel, the tax maps, soil maps etc. and complete the application and worksheet.

The Assessment Office will assist the property owner with the application and its worksheet at the time of the scheduled appointment. Upon completion of the application, the property owners' signature(s) will be notarized and applicable fees will be collected.

At said meeting, the Clean & Green assessment will be derived and a comparison of Clean & Green value to Assessed value will be discussed. Applying the millage at that time will provide the property owner an estimated savings if the owner enrolls in the Clean & Green program. Until the application is recorded the property owner may opt out of the program.

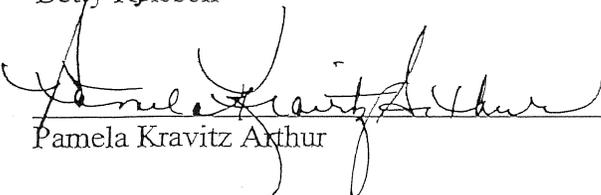
Parcels that are "split" or "separated" throughout any given year will continue to have their value adjusted, along with the remaining parent parcel, during the regular monthly deed processing.

SULLIVAN COUNTY BOARD OF ASSESSMENT

April 12, 2007  
Date

  
\_\_\_\_\_  
Wayne E. Gavitt, Chairman

  
\_\_\_\_\_  
Betty Gibson

  
\_\_\_\_\_  
Pamela Kravitz Arthur

# COUNTY OF SULLIVAN

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Board of Appeals

## Act 319, 156 & 235 Clean & Green Processing Fee Schedule (fees effective June 17, 2002)

### **Application**

Application Fee - \$50.00  
Recording Fee - \$18.50

Two (2) separate checks are required: Processing fee made out to **Sullivan County Treasurer**  
Recording fee made out to **Sullivan County Recorder**

Separate checks must be made out for each parcel of land to be put in Clean and Green.

**ALL PARTIES LISTED ON THE DEED MUST SIGN AND  
HAVE THEIR SIGNATURES NOTARIZED.**

### **Amendment**

Recording Fee \$18.50 – No additional fee.  
Recording fee must be made out to the **Sullivan County Recorder**

### **Revocation**

Recording Fee of \$20.50 to remove the parcel from Clean and Green.  
Recording fee must be made out to the **Sullivan County Recorder**

## Lower Your Property Taxes With Clean and Green

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The purpose of this publication is to help you know and understand more about this important issue. The material is general and educational in nature. It is not intended to be legal advice. If you need legal advice, you are encouraged to seek the aid of a competent professional in your area.

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### **This Pamphlet May Be Useful To You If:**

- You own agricultural or forest land and would like to pay lower property taxes, or
  - You are currently enrolled in Clean and Green and would like to know about recent changes that may save you money.
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### **What is Clean and Green?**

Clean and Green is a land conservation program that lowers the property tax rate for landowners who enroll in the program. Landowners are obligated to devote their land to agricultural use, agricultural reserve use, or forest reserve use in order to qualify for lower property taxes. Landowners who want to exit the program are required to pay roll-back taxes and interest for up to seven years.

### **You Might Qualify for Clean and Green if:**

- You own 10 acres or more of agricultural land, or
- You own less than 10 acres of agricultural land but gross more than \$2,000 income from the land,  
or
- You own 10 acres or more of forest land.

### **Why Wouldn't I Want to Enroll My Land in Clean and Green?**

You might **not** want to enroll your land in Clean and Green if you plan to sell your land or part of your land within the next several years. Enrolling in the Clean and Green program may lower the value of your land because if a new owner wants to change the use of the land he may have to pay roll-back taxes and interest for up to seven years.

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### **What's New For Currently Enrolled Landowners?**

At the end of 1998, the Pennsylvania Legislature made numerous amendments to the Clean and Green program. The Department of Agriculture published interim regulations on June 19, 1999, to supplement the statute until permanent regulations can be enacted. Recent changes include:

- Requiring that farmstead land be included as land that is devoted to agricultural use, agricultural reserve use, or forest reserve use.
- Requiring the Department of Agriculture to establish maximum tax rate values for each county.
- Prohibiting county assessors from imposing any requirements other than those provided by statute and regulation.
- Requiring counties to accept all complete and accurate Clean and Green applications if the applications meet the statutory and regulatory requirements.

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## I. Introduction

An effective way of saving property taxes in Pennsylvania is to enroll farmland or forest land in the Clean and Green program. This publication describes the Clean and Green program's requirements.

The primary goal of the Clean and Green program is to encourage landowners to preserve agricultural land by providing tax savings for preservation. Many farmers in Pennsylvania are facing financial difficulty, and the answer for some has been to sell their farms for development.

Clean and Green creates an incentive for landowners to continue to devote their land to agricultural or forest use by giving reduced property tax rates to those who enroll in the program. The program creates a preferential assessment rate (Clean and Green tax rate) whereby land that is enrolled in the program is taxed at the use value of the land rather than the fair market value. Further, the program creates a disincentive for landowners to sell their land for development or commercial purposes after it is enrolled in the program by requiring that roll-back taxes be paid for up to seven years if the program's requirements are violated.

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## II. Key Provisions

### a. What land can I enroll in Clean and Green?

To be eligible to be enrolled in the Clean and Green program land must be devoted to one of the following three qualifying uses: agricultural use, agricultural reserve use, or forest reserve use.

*Agricultural use* is defined as land which is used for the purpose of producing an agricultural commodity.

*Agricultural reserve use* is defined as noncommercial open space lands used for outdoor recreation or scenic enjoyment. If you classify your land as an agricultural reserve, it must be open to the public without charge on a non-discriminatory basis. Agricultural reserve land is the only category of land under the Clean and Green program that must be open to the public.

*Forest reserve use* is defined as land, ten acres or more, stocked by forest trees of any size that are capable of producing timber or other wood products.

In addition to restricting land to qualifying uses, the Clean and Green program has minimum requirements for each qualifying use that must be met before land can be enrolled. Land eligible under the agricultural use category must have been in agriculture for 3 years preceding the application **and** be either 10 contiguous acres or more in area **or** have an anticipated yearly gross income of \$2,000 or more. For example, if you own 10 acres of land that has been in agricultural use for 3 years, you may enroll your land in Clean and Green no matter how much income the land produces. However, if you own less than 10 acres of land, you must make at least \$2,000 dollars per year from the land in order to qualify for the Clean and Green program. (NOTE: Contiguous tracts of land are tracts of land that are beside each other and are part of the same operational unit. If you have two tracts of land that are separated by a road but you use both tracts of land to support your farm, the tracts are contiguous.)

The only requirement for both agricultural reserve use and forest reserve use is that you must own at least ten acres. If you own less than 10 acres, you cannot enroll land in one of these categories no matter how much income is produced from the land.

### Qualifying Uses:

Agricultural use --

- 10 acre minimum, **or**
- If less than 10 acres, the land produces \$2,000 or more of gross income, **and**
- Land must have been in agriculture for the past three years.

Agricultural reserve use --

- 10 acre minimum, **and**
- Land must be open to the public without charge.

Forest reserve use --

- 10 acre minimum.

**b. What if I own a tract of agricultural land that is not 10 acres and that does not meet the income requirement?**

If you own a tract of land that does not meet the minimum requirements of the program you cannot enroll it under Clean and Green unless it is contiguous to another tract you own. If by taking both tracts of land together you meet the minimum Clean and Green requirements, you may enroll both tracts of land in the program even if they are separately deeded.

**c. What if all of my land is not used for agriculture?**

If you have several uses on a single tract of land but only some of the uses qualify for the Clean and

Green tax rate, you may still enroll in Clean and Green. You need to include all of the tract on the application, but only the portions of the tract that are devoted to a qualifying use will be given the Clean and Green tax rate. In such a case, the portion of land devoted to a qualifying use must meet the acreage and/or gross income requirements of the program.

**d. Do I have to enroll all of my land in the program?**

One requirement of the Clean and Green program is that all contiguous land described in one deed must be enrolled in the program. This means that if your deed describes two tracts of land that are next to each other and are part of one operational unit, both tracts of land must be enrolled in the program. However, if you own two tracts of land that are contiguous to each other but are described in separate deeds, you do not have to enroll both tracts. Also, if you have a single deed which describes two tracts of land that are not contiguous, you do not have to enroll both of the non-contiguous tracts.

**e. May a county impose any additional requirements?**

Counties may not require that you reside in the county before enrolling your land in the Clean and Green program. Also, county assessors are not permitted to add any other requirements or conditions of eligibility in addition to the ones given by statute and regulation. If the provisions of the statute and regulations are met, the county board of assessment appeals must accept your Clean and Green application.

**f. How long must I stay in the program?**

The general rule of the Clean and Green program is that after your land is enrolled, you are obligated to continue using your land in a qualified use indefinitely or face the penalty of roll-back taxes plus interest. The roll-back tax is the difference between the taxes paid based on the Clean and Green rate and the taxes that you would have paid if your land was not enrolled in Clean and Green. Roll-back taxes are due for the year of change and six of the previous tax years for a total of up to seven years. Land that has been in Clean and Green for more than seven years is only subject to roll-back taxes for the seven most recent tax years. In addition to the tax, interest is imposed on each year's roll-back tax at the rate of six percent per year.

**g. What happens if I want to sell part or all of my land?**

You are still able to sell your land that is enrolled under the Clean and Green program without paying roll-back taxes or interest as long as you sell all of your land or follow the program's requirements for a separation or split-off. If you sell all of your land, the buyer will be obligated to continue using the land in a qualified use or pay roll-back taxes and interest.

**h. What are separations and split-offs?**

A separation of land is the division of Clean and Green land into two or more tracts of land, each of which meets the minimum requirements of the program. In essence, each tract is able to be enrolled in Clean and Green because each tract meets the program's requirements. Separation does not trigger roll-back taxes or losing Clean and Green status as long as all of the land continues to be used in a qualified use. If the owner of a separated tract changes the qualified use, the owner faces the obligation to pay roll-back taxes on the separated tract and the original tract from which it came if the change in use is made within seven years after the separation. Abandoning the qualified use more than seven years after the separation subjects only the separated tract to roll-back taxes.

For example, if you own 100 acres that is enrolled in the Clean and Green program and you sell 50 acres to your neighbor, neither you or your neighbor owe any taxes on the transfer. However, if your neighbor changes the use of her 50 acres to a non-qualified use within 7 years of separation, your neighbor owes roll-back taxes on the entire 100 acres. If, however, your neighbor waits to change the use until after 7 years, your neighbor only owes roll-back taxes on her 50 acres.

A "split off" on the other hand is a division of a tract of Clean and Green land into two or more tracts, the use of which on one or more tracts does not meet the program's requirements. For example, if you sell four acres of land that will not produce \$2,000 of yearly income for the buyer, this is a split-off because the four acre tract could not be enrolled in Clean and Green. Split-offs generally subject both the tract split off and the remaining tract to roll-back taxes. However, if the split-off tract occurs through condemnation, there is no liability for roll-back taxes.

**i. Are there any provisions for splitting-off small portions?**

The Clean and Green program allows certain split-offs to be made without roll-back taxes being due on the entire tract. However, roll-back taxes are due on the split-off portion in most cases. Each year, you may split-off a tract of up to two acres for agricultural use, agricultural reserve use, forest reserve use, or for the construction of a residential dwelling to be occupied by the owner of the split-off tract. (In very limited circumstances you may be able to split-off up to three acres for a residential lot.) A maximum of 10% of the original tract under Clean and Green or 10 acres, whichever is less, can be split-off under this provision. For these transfers, roll-back taxes apply only to the split-off tract. The remaining portion of the land can remain enrolled in Clean and Green as long as it continues to meet the requirements of the program.

You may also split-off 2 acres or less of Clean and Green land for selling agricultural products or for a rural enterprise incidental to the operational unit.

If 2 acres or less are used for the direct commercial sales of agriculturally related products or for a rural enterprise incidental to the operational unit, roll-back taxes are imposed only on the portion of the tract devoted to commercial activity.

Another special exception exists for a split-off for a wireless or cellular communication tower. Strict requirements must be met in order to qualify for this exception. First, you may lease a maximum of one-half acre for this purpose; second, the tract of land leased may not have more than one communication tower; third, the tract of land must be accessible; and fourth, the tract of land cannot be sold or subdivided. In this situation, you must pay roll-back taxes on the tract of land that is leased for the communication tower, and your remaining land continues to be eligible for the Clean and Green tax rate as long as it continues to meet the program's requirements.

**Authorized split-offs:**

2 acres or less *each year* for:

- Agricultural use, **or**
- Agricultural reserve use, **or**
- Forest reserve use, **or**
- Construction of a residential dwelling by the owner of the lot.

Maximum of 10% of the original tract or 10 acres, whichever is less can be split off.

Roll-back taxes are due on the split-off portion.

2 acres or less for:

- Direct commercial sales of agricultural products and activities, **or**
- A rural enterprise incidental to the operational unit.

Roll-back taxes are due on the split-off portion.

1/2 acre or less for:

One cellular communication tower.

- Tract must be accessible, **and**
- Tract cannot be sold or subdivided.

Roll-back taxes are due on the split-off portion.

**j. What happens if I die and give my land to my children?**

If you die and devise your land to your immediate beneficiaries, in most cases, no roll-back taxes are due. If the inherited section of land does not meet the minimum requirements for Clean and Green, a beneficiary does not have to pay roll-back taxes. But in this case, the inherited land is no longer taxed at the Clean and Green rate. However, if a beneficiary inherits a tract that does qualify for the Clean and Green rate and the beneficiary changes the use of the tract, the beneficiary faces roll-back taxes on the tract of land that he or she owns. (These provisions are limited to Class A beneficiaries who are a person's parents, grandparents, spouse, children, grandchildren, or spouse of a child.)

**k. What do I need to do if I plan to change the use of my land?**

If you plan to change the use of your land or sell your land, you need to notify the county assessor thirty days prior to the proposed change. The change must be recorded in the Clean and Green docket at your expense. However, in addition to the recording fee, the county may not impose any additional fee for amending your application for a split-off, a separation, a transfer, or a change of ownership.

**l. Are there other transfers that may be exempt from roll-back taxes?**

Certain transfers are exempt from roll-back taxes, and for other transfers counties have the option of not collecting roll-back taxes. Those instances are when land is donated to school districts, municipalities, counties, volunteer fire companies, volunteer ambulance service companies, religious organizations or non-profit corporations.

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**III. May I Continue to Enroll My Land in Clean and Green After a Transfer?**

Even if you split-off a tract of land and roll-back taxes are imposed, your remaining land may still be enrolled in Clean and Green if it meets the initial requirements of the program.

#### IV. Who is Responsible for Setting the Clean and Green Tax Rate?

The Department of Agriculture is responsible for providing maximum tax rate values to county assessors. County assessors are free to use lower tax rate values than those provided by the Department as long as the values are applied uniformly throughout the county. However, county assessors cannot use higher tax rate values than those provided by the Department. County assessors use these values as part of their calculations for determining your final tax rate.

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#### V. What Are the Implications of the New Farmstead Provision?

One of the major changes made by the 1998 amendments to the Clean and Green program is that farmstead land is to be valued at its use value rather than at its fair market value. If the farmstead land has previously been assessed at its fair market value, county assessors are required to reassess it at its use value. Furthermore, if a county assessor has not previously included the contributory value of your farm buildings when assessing your property, the assessor must reassess your property to include this value.

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#### VI. Application Procedure

##### a. Where do I apply?

Applications for the Clean and Green program are filed with the county board of assessment appeals where your land is located. If your application is filed with a county on or before June 1, the county must review and process the application for the next taxable year. For example, if a county receives your application on or before June 1, 1999, and your application is approved, you must receive the Clean and Green tax rate for the taxable year 2000. However, if your application is received on June 2, 1999, or after, you are not entitled to receive the Clean and Green tax rate until taxable year 2001. An exception exists if the county undergoes a countywide reassessment. When a countywide reassessment occurs, the application deadline is Oct. 15 or 30 days after the final order of the county board for assessment appeals, whichever comes first.

##### b. How much does it cost to enroll in Clean and Green?

The county board for assessment appeals is limited to charging an application fee of no more than \$50 for processing your application. This fee can be charged whether or not your application is approved. In addition to the application fee, the recorder of deeds may charge a fee for filing an approved application in a Clean and Green docket. The recording fee may only be charged if your Clean and Green application has been approved by the county board.

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#### VII. Penalties

A civil penalty of \$100 may be imposed for each violation of the Clean & Green law. The County Board of Assessment Appeals must notify you by certified mail of the nature of the violation, the amount of the civil penalty, and the right to contest the civil penalty. If you do not notify the county, in writing, of

intent to contest the penalty within 10 days, the penalty becomes final.

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### VIII. Participation in Clean and Green Program, 1981- 1995

The number of counties with landowners participating in Clean and Green grew from 32 counties in 1981 to 46 counties in 1997. The total amount of land under Clean and Green has also grown dramatically from 543,707 acres in 1981 to more than 5,300,000 acres in 1997.

The Pennsylvania Department of Agriculture uses information from county assessors to issue its annual summary of participation. This summary provides the best data currently available on the degree of participation in each county. Annual summaries are prepared in April for the prior year's participation. Copies of the summary are available upon request by writing to the Office of Planning and Research, Pennsylvania Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408.

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Web Site Created by Gene Carson Brucker, Legal Research Assistant.

RULES AND REGULATIONS  
FOR IMPLEMENTATION OF ACT 319,  
THE CLEAN AND GREEN ACT

TITLE 7. AGRICULTURE  
PART V-C. FARMLAND AND FOREST LAND  
CHAPTER 137. PREFERENTIAL ASSESSMENT OF FARMLAND AND FOREST LAND

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GENERAL PROVISIONS

137.1. Under which act is the program conducted?

(a) This chapter sets forth provisions to implement the Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P.S. sections 5490.1 - 5490.13). It is sometimes unofficially referred to as Act 319 of 1974 or the Clean and Green Act. It will simply be called the act in this chapter.

(b) The act provides for land devoted to agricultural use, agricultural reserve use, or forest reserve use to be assessed at the value it has for that use rather than at development value. The intent of the act is to encourage you to retain your land in one of these uses.

137.2. What role does the Pennsylvania Department of Agriculture play in the administration of the act?

The Pennsylvania Department of Agriculture is responsible for developing application forms and the rules and regulations, in order to assure statewide uniformity. The Department of Agriculture has an advisor role in the administration of the act. It does not administer the rules and regulations.

137.3. Who does have the responsibility to administer the act?

The county assessor has the major responsibility for administration of the act. The county assessor must process application forms, calculate the assessment, determine what penalties are due when the provisions of the act are violated, and keep records for those properties enrolled under the act.

137.4. How do I use this chapter?

This chapter is written in such a way that you can decide after reading the general provisions whether or not you wish to enroll in the act. If, upon reading the general provisions, you decide that the act is inappropriate, you need not read any further.

137.5. What are the benefits to me under the program?

The benefits to you as a landowner are an assurance that your land will not be assessed at the same rate as adjacent land under development pressure and not enrolled in the program. In almost all cases, you will see a reduction in your property tax assessment compared to land that is being developed. The difference between assessments of land enrolled under the act and nonparticipating land will be most noticeable when a county is reassessed. The intent of the act is to protect you from being forced to go out of agriculture or sell part of the land in order to pay unusually high taxes. In addition to the tax benefit, you as well as your neighbors benefit by having the land kept in agricultural use rather than developed.

137.6. Is land under assessment under the act open to the public?

It is a common misconception that all land assessed under the act must be open to the public. The truth is that only land enrolled under the category agriculture reserve must be kept open to the public and then only for outdoor recreation or the enjoyment of scenic or natural beauty. Nothing under the act changes your rights to exclude the public from land enrolled under agricultural uses or forest reserve.

137.7. Am I eligible for a tax assessment under the act?

Land may be eligible for tax assessment under the act when it meets the qualifications for either agricultural use, agricultural reserve, or forest reserve. Qualified land can have any combination or amount of the three eligible uses. You must include all your land as described in the deed when you apply for an assessment under the act.

137.8. Does my land qualify under the requirement of an agricultural use

(a) Your land must have produced an agricultural commodity three years prior to application and must presently be devoted to the production of an agricultural commodity. Your land must also be 10 contiguous acres. However, if your land is less than 10 contiguous acres, you may still qualify under agricultural use, if you can prove to your county assessor that the land has an anticipated gross income of \$2,000 per year from the production of agricultural commodities. This can be shown by using evidence from soil surveys, from proof of income for three years, or from other evidence acceptable to your county assessor. Your county assessor can require you to furnish with your application certified copies of the applicable schedules of your Federal or State income tax returns or both to establish proof of an anticipated annual gross income of \$2,000 or more from the production of agriculture commodities. The annual income requirement for land less than 10 contiguous acres must be met each year, unless there are circumstances beyond your control.

(b) For example, you have eight acres of land. This land contains a fruit orchard which produces at least \$2,000 of annual gross income to you. The land is under the tax assessment under the act. Last year, a disease destroyed all your fruit trees. Therefore, you have no gross income to report from the orchard. As long as you make a good faith effort to replant your orchard, you are still eligible for the tax assessment under the act, and there has been no change in use.

(c) For another example, you have eight acres of land. You are under a tax assessment under the act. You have a \$2,000 annual gross income from swine production. After two years under an Act 319 tax assessment under the act, you decide to sell your entire swine herd. You do not start another agricultural use on your eight acres, which can produce an anticipated annual gross income of at least \$2,000. Your failure to continue the land in an agricultural use capable of producing income constitutes a change to an ineligible use. Therefore you are liable for the roll-back taxes and interest.

137.9. Does my land qualify under the requirement of an agricultural reserve?

(a) Agricultural reserve land must be at least 10 acres in area and may not be used for any commercial purpose; that is, you may not earn any profit from any use of the land. This is the only category where the land must be open to the public for use as outdoor recreation or the enjoyment of scenic or natural beauty. No fee can be charged for the use of the land; nor can you discriminate against a person on the basis of race, creed, color, sex, age or national origin.

(b) Before a person can enter upon your land, he must first, whenever possible, notify you of his intent to enter. You can deny entry to your land in cases when damage to the property might result. You can close off entry to areas upon prior notification to the county assessor of the existence of hazardous situations. However, the public has a right to use your land for recreation and for the enjoyment of scenic and natural beauty. Your reasons to deny entry to your land must be based upon fact and acceptable to your county assessor.

(c) At least 60% of the land must be in a Soil Conservation Service capability classification I through VI, excluding water and wetland areas. The Soil Conservation Service (SCS) is an agency of the United States Department of Agriculture responsible for a national program of soil and water conservation. The Soil Conservation Service has leadership for the National Cooperative Soil Survey Program, which serves as a base for establishing the land capability classes.

(d) General descriptions of the applicable capability classes reflect their agriculture use and are as follows:

(1) Class I. Soils in Class I have few limitations that restrict their use for agriculture.

(2) Class II. Soils in Class II have some limitations that reduce the choice of plants or require moderate conservation practices.

(3) Class III. Soils in Class III have severe limitations that reduce the choice of plants or require special conservation practices, or both.

(4) Class IV. Soils in Class IV have severe limitations that restrict the choice of plants, require very careful management, or both.

(5) Class V. Soils in Class V have little or no erosion hazard but have other limitations impractical to remove that limit their use largely to pasture, range, woodland, or wildlife food and cover.

(6) Class VI. Soils in Class VI have severe limitations that make them generally unsuited for cultivation and limit their use largely to pasture or range, woodland, or wildlife food and cover.

(e) Detailed descriptions of soil classifications may be obtained from the Soil Conservation Service. The address is: Suite 340, One Credit Union Place, Harrisburg, Pennsylvania 17110-2993. The information may also be obtained from your county office of the Soil Conservation Service.

137.10. Does my land qualify under the requirements of a forest reserve?

(a) Your land must be presently stocked with trees and capable of producing 25 cubic feet per acre of annual growth.

(b) Your land must also be at least ten contiguous acres. If you own a farm woodlot that is contiguous to your land in the agricultural use category, the ten acre minimum requirement is not necessary.

(c) In addition to the work sheet for forest reserve valuation, Part 2-C (form AAO-85), the county assessor may require such documentation as he deems necessary to substantiate that the land in the application is capable of producing timber or other wood products. The documentation may include, but is not limited to, any of the following: photographs, a survey plan, income tax records, an inventory of trees by species and size, sales invoices of products sold, sales invoices from trees planted, an Affidavit, etc.

137.11. How long does a tax assessment continue on my land?

Tax assessments under the act continue on your land as long as your land meets the eligibility requirements as explained in sections 137.8, 137.9, and 137.10 of this title. You can sell your land to another person without the loss of benefits under the act. You can transfer your land from one category to another within the eligible uses - for example, ten acres of agricultural use land can be planted in trees and reclassified forest reserve land - without the loss of tax assessment under the act, although the assessment may change. If you change your land to an ineligible use, there is a penalty. You are required to pay roll-back taxes and interest on these taxes. Roll-back taxes are explained in section 137.54 of this title. There are provisions to split off, separate and transfer your land without incurring the penalty of payment of roll-back taxes. These provisions are found in sections 137.42, 137.43 and 137.44 of this title.

137.12. How are the key words in this chapter defined?

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Agricultural commodity - All plant and animal products including Christmas trees produced in this Commonwealth for commercial purposes. Animal products include equine and other livestock, that are produced and bred for commercial purposes.

Agricultural reserve - Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for such use, without charge or fee, on a nondiscriminatory basis.

Agricultural use - Use of the land for the purpose of 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.

Bureau of Forestry, PA Department of Environmental Resources - The Commonwealth office where inquiries about Forest Reserve and Forest Management Plans can be directed. The address is Bureau of Forestry, P.O. Box 1467, Harrisburg, Pennsylvania 17120.

Contiguous land or contiguous areas - All portions of one operational unit as described in the deed whether or not the portions are divided by streams, paved public roads, streets or bridges. It includes supportive lands such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams.

County assessor or county board of assessment - The agency charged with the administration of the act.

Forest reserve - Land 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products.

Ineligible land or ineligible use - Land or land use that fails to meet the requirements as explained in sections 137.7, 137.8, 137.9, or 137.10 of this title.

Pennsylvania Department of Agriculture - The Commonwealth agency charged with the promulgation of rules and regulations for the act. Inquiries about this chapter can be directed to the Bureau of Farmland Protection, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

Preferential assessment - The assessment as determined under the provisions of the act.

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

Separation - A division, by conveyance or other action of the owner, of lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the provisions of the act into two or more tracts of land, the use of which continues to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of sections 137.7, 137.8, 137.9, and 137.10 of this title.

Split-off - A division by conveyance or other action of the owner, of lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the provisions of the act into two or more tracts of land, the use of which on one or more of such tracts does not meet the requirements of sections 137.7, 137.8, 137.9, and 137.10 of this title.

Transfer - A conveyance of an entire tract of land under a tax assessment under the act, the use of which continues to be agricultural use, agricultural reserve or forest reserve and meets the requirements of sections 137.7, 137.8, 137.9, and 137.10 of this title.

Use-value assessment - The assessment as determined under the provisions of the act.

HOW TO APPLY FOR THE ACT 319 TAX ASSESSMENT

137.21. Where do I get an application for a tax assessment under the Act?

You can request an application under the act from the County Board of Assessment office. You can also inspect a copy of these rules and regulations at your County Board of Assessment office.

137.22. When should I apply for a tax assessment under the act?

You shall submit your completed application to the county assessor on or before June 1 to be considered for tax assessment under the act for the next tax year.

137.23. What forms should I complete?

(a) You must complete application Form AAO-82, Part I. Depending upon the eligible use category you desire, then the following worksheets must also be completed:

(1) Agricultural Use - Form AAO-83, Part 2-A.

(2) Agricultural Reserve - Form AAO-84, Part 2-B.

(3) Forest Reserve - Form AAO-85, Part 2-C.

(b) Your county assessor will perform any calculations necessary on the forms in order to arrive at a tax assessment under the act for your land. If your land lies in more than one county, you should file your application with the county assessor in the county to which you pay property taxes.

(c) The forms appear as Appendices to this chapter.

137.24. Can I file a preliminary application to see if I qualify for the tax assessment under the act?

You may file a preliminary application to determine whether your land qualifies for the tax assessment under the act. You must complete Form AAO-82 and the appropriate work sheet(s) for the use category under which you are applying. You must indicate that these completed forms are only a preliminary application.

137.25. Must I mail a letter of acceptance to my county assessor if I qualify for the tax assessment under the act?

After the county assessor has notified you that your land qualifies for tax assessment under the act, you must mail a letter to the county assessor to indicate your intent to enroll in the program.

137.26. How much of my land must be enrolled under the act?

You must include all your land as described in the deed in your application. All contiguous land must be enrolled in the program. See section 137.12 of this title for the definition of contiguous land.

137.27. Once enrolled in the act, must I submit an annual request for continuance of my enrollment?

Your tax assessment under the act shall continue until a land use change takes place.

137.28. Can I change a tax assessment to a tax assessment under the act?

If your land is presently under a tax assessment under the act of January 13, 1966, (P.L. (1965) 1291, No. 515) (16 P.S. sections 11941 - 11947), you have the option to renegotiate ~~the assessment~~ with the county assessor, to come under a tax assessment under the act.

137.29. Can I appeal a decision of my county assessor?

You or the political subdivision in which the property is located have the right to appeal any decision of the county assessor regarding your application and the method used to determine any assessments under the provisions of the act. You must first appeal to the County Board of Assessment. After this board has made a decision, you then have a right to appeal to the Court of Common Pleas.

137.30. Will my tax assessment under the act stay the same every year?

Your tax assessment under the act may change due to a reassessment of your land by the county assessor.

#### HOW TO CONVEY LAND

137.41. What must I do if I separate or split off or transfer a portion of my land under tax assessment under the act?

(a) You must notify your county assessor. You must give the county assessor at least 30 days written notice of a transfer, separation or split-off. The notice shall include the following information:

(1) Name and address of the persons, partnerships or companies to whom you are conveying the land.

(2) Date of the proposed transfer, separation or split-off.

(3) The amount of land to be transferred, separated or split off.

(4) The present use of the land to be transferred, separated or split off.

(5) The date of the original application for tax assessment under the act.

(6) Any previous transfers, separations or split-offs of tax-assessed land under the act from the original tract.

(7) The intended use to which the land when transferred, separated or split off will be applied.

(b) Notification forms for proposed separations, transfers or split-offs can be obtained by your county assessor from the Pennsylvania Department of Agriculture.

137.42. Can I transfer all of my land and does it still remain under the tax assessment under the act?

You can convey all your land to another person and the land will still retain the tax assessment under the act, as long as there is no change to an ineligible use.

137.43. Can I separate my land and does the land still remain under the tax assessment under the act?

You can separate your land into two or more tracts, as long as the eligible use continues on each tract. Each tract so formed must also be ten contiguous acres, or it must produce an anticipated yearly gross income of \$2,000 or more. If one of the owners of the tract that you formed in the separation changes his tract to an ineligible use within seven years taxes and interest on the original tract of land that you separated. After seven years from the date of your separation, an owner of a tract that you formed can change to an ineligible use and be liable only for the roll-back taxes on his tract.

137.44. Can I split off a portion of my land and still retain the tax assessment under the act?

You are restricted to the following requirements:

(1) The tract of land that you split off must not exceed two acres annually.

(2) The use of the split-off land must be in residential, agricultural, or forest reserve. The person to whom you conveyed the split-off tract must occupy the residential dwelling that would be constructed on this land.

(3) The total amount of split-off tracts of land cannot exceed 10 or ten acres, whichever is the lesser, of your entire tract of land under tax assessment under the act.

137.45. What happens to my tax assessment under the act at my death?

(a) If your land is separated among your beneficiaries who are considered as Class A for Pennsylvania inheritance tax purposes, then the tax assessment under the act remains with the separated tracts. If one of the beneficiaries of your estate changes to an ineligible use, then that person is liable for the roll-back taxes on the tract held by him.

(b) Class A beneficiaries are defined as grandfather, grandmother, father, mother, husband, wife, lineal descendants, and a wife or widow, husband or widower of a child. Lineal descendants can be further defined as all children of the natural parents and their descendants, adopted descendants and their descendants, stepchildren, and children and their descendants of the natural parents who are adopted by his or her spouse. Lineal descendants do not include descendants of stepchildren or adopted children and their descendants in the natural family.

137.46. What happens to my tax assessment under the act if a portion of my land is condemned by the Federal, State or local government?

(a) If any or all of your land is condemned by a governmental entity, the condemnation will not affect the land that you retain or subject you to roll-back taxes on any part of your land. You will also not be subject to roll-back taxes on the condemned portion.

(b) If you reach an agreed settlement to sell any or all of your land to any entity that possesses the power of condemnation, then that sale to that entity will not subject you to roll-back taxes on the land you retain or the land you sell.

HOW TO DETERMINE THE ROLL-BACK TAX

137.51. What happens if I change to an ineligible land use?

Generally, if you change to an ineligible land use, you are liable for roll-back taxes and interest on that land on which the use change occurs. Exceptions to this section are given in 137.55 (relating to who has to pay the roll-back taxes?).

137.52. What must I do if I change to an ineligible land use?

You must notify your county assessor at least 30 days prior to the date of use change. The notice must state the number of acres subject to use change and the number of acres retained by you in an eligible use, if any.

137.53. What are roll-back taxes?

(a) Roll-back taxes are defined in section 137.12 of this title (relating to key words). This is the statutory definition found in the act.

(b) In simpler terms, roll-back taxes are the difference between what you have been paying as real estate taxes based upon your tax assessment under the act and what you would have paid if your land had not been assessed under the act.

(c) For example, you own 100 acres. Your tax assessment under the act is \$5,000. If you had not been assessed under the act, your assessment would have been \$25,000. Your total annual real estate millage is 100 mills. Therefore, under a tax assessment under the act your real estate taxes amount to \$500 per year. If your land was not under the act, your real estate taxes would have been \$2,500 per year. The difference is \$2,000. That difference is the roll-back tax.

137.54. How does my county assessor calculate my roll-back taxes?

(a) Once your county assessor is notified of a change to an ineligible use, the county assessor will calculate your roll-back taxes. The county assessor will first determine who is liable to pay the taxes and what amount of land is subject to the roll-back taxes. The county assessor determines the roll-back tax for each year based on section 137.53 of this title. You are liable for the current year's roll-back taxes as well as the six most recent tax years that your land was assessed under the act plus interest at 6.0% per annum on each year's roll-back taxes. The roll-back taxes only apply to the seven most recent tax years.

(b) For example, using the same facts in the example in section 137.53 of this title, the following facts are added: You have had tax assessment under the act for nine years. You notify the county assessor that you are changing your entire 100 acres to an ineligible use. The county assessor must calculate your roll-back taxes on the seven most recent years. Therefore, the first two years that you were under assessment under the act are not considered in the calculation. The calculation would be the following:

	<u>Roll-Back Tax</u>	<u>Interest at 6.0%/Year</u>	=	<u>Amount Due</u>
3rd Year	\$ 2,000.00	\$ 840.00		\$ 2,840.00
4th Year	2,000.00	720.00		2,720.00
5th Year	2,000.00	600.00		2,600.00
6th Year	2,000.00	480.00		2,480.00
7th Year	2,000.00	360.00		2,360.00
8th Year	2,000.00	240.00		2,240.00
9th Year	2,000.00	120.00		2,120.00
	<u>\$14,000.00</u>	<u>\$ 3,360.00</u>		
		Total Amount Due		<u>\$17,360.00</u>

137.55. Who has to pay the roll-back taxes?

The general rule is that the person who owns the land and who changes to an ineligible use, is liable for the roll-back taxes and interest. Here are some examples:

(1) If you change your entire tract of land to an ineligible use then you are liable for the roll-back taxes on the entire tract of land.

(2) If you separate your land under section 137.43 of this title then the owner of a tract who changes the use is liable either for the entire original tract's roll-back taxes or the roll-back taxes only on his tract. It depends upon whether he changes use within seven years of your separation. Check section 137.43 of this title for this rule.

(3) If you split off a part of your land and change to an ineligible use on that part, then the part split off and the remaining portion of your land are liable for roll-back taxes. There are two exceptions to this rule:

(i) One exception is for land split off due to a condemnation. Check section 137.46 of this title for more details.

(ii) The other exception is for a split-off that follows the requirements in section 137.44 of this title. The part split off must be used in one of the three ways:

(A) as agricultural use,  
(B) as forest reserve use, or  
(C) as residential use. The person to whom you conveyed the split-off part must have a dwelling constructed and then reside in it.

(iii) Even if you split off two acres, the person to whom you conveyed it must use that part in only one of the three uses. If the owner of the part split off refuses to use his land, as required, then your remaining land as well as the split-off part are liable for roll-back taxes and interest. However, the act gives you the right to file a court action in equity to compel the owner of a split-off part to keep that land in one of three uses. Your right to sue in equity is to protect you against the imposition of roll-back taxes and interest on the land that you retain.

(iv) In addition, a part split off that is for residential use can be reassessed to a normal tax assessment. See section 137.61 of this title for a definition of normal tax assessment.

137.56. When are my roll-back taxes due?

Your roll-back taxes and interest are due on the day of change of use. That day can be the date of conveyance of your land to another who does not desire to continue with an eligible use. The day of change of use can also be determined by your county assessor to be that day when you have taken substantial steps to begin to change to an ineligible use. Usually, the county assessor will accept the day of change of use as submitted under the notice requirements in section 137.52 of this title.

137.57. What happens if the roll-back taxes are not paid?

The county can cause a lien to be placed on your land for the value of the roll-back taxes and interest and any other administrative and local court costs. The lien can be collected by the county having jurisdiction in the same manner as other lien-debts on real estate.

OTHER THINGS YOU SHOULD KNOW

137.61. What are the responsibilities of my county assessor?

(a) The major responsibility of the county assessor is to determine the amount of tax assessment under the act. In addition, the county assessor has the responsibility to accept and to note on all appropriate records, such as property record cards and assessment rolls, the fair market value, the use value, the normal tax assessment, and the tax assessment under the act. The county assessor must record all annual changes in the values, if there are any. The county assessor must also notify within five days the appropriate taxing bodies of any tax assessments under the act granted or terminated within their jurisdiction. The county assessor must notify within five days the owner of land that is under tax assessment under the act and the appropriate taxing bodies of any changes in the fair market value, the normal tax assessment or the tax assessment under the act. The county assessor shall maintain a permanent record of the tax millage levied by each of the taxing authorities in the county for each tax year. The county assessor must also calculate the roll-back taxes due as described in sections 137.51 - 137.57 of this title (relating to how to determine the roll-back tax). Finally, the county assessor must record in the Office of the Recorder of Deeds for your county all approved applications under the act in a separate tax assessment docket book.

(b) Fair market value means the price a property will bring in the open market for its highest and best use, where there is a willing seller and a willing buyer neither of whom is compelled to enter into the transaction. Normal tax assessment means the fair market value of the land multiplied by the local assessment ratio, and is the value to be taxed at the appropriate millage rate in cases where a tax assessment under the act is not used for taxing purposes. Use-value means the value land has when devoted to its present use, based on ability to produce an agricultural commodity.

137.62. What method does the county assessor use in determining my tax assessment under the act?

The method used by the county assessor to calculate the assessment under the act should be logical, uniform and reasonable. The method must consider not only (1) the available evidence of the capability of the soils for the particular use, but also must consider (2) the evidence of the capability of the parcel of land when it is devoted to the proposed particular use. The capability of the soils should be derived from available soil surveys such as the soil survey at Pennsylvania State

University, the National Cooperative Soil Survey and the United States Census of Agricultural Categories of Land Use Classes. The capability of the land devoted to such use could be determined by an analysis of the evidence of the productive capability of the land, including such factors as average annual net return (average annual gross return less average annual management costs) discounted at an appropriate interest rate. The Pennsylvania Department of Agriculture can distribute upon request suggested methods for calculating tax assessments for land devoted to agricultural use, agricultural reserve use or forest reserve use under the act.

137.63. What happens if my land lies in more than one tax district?

When your land is located in more than one taxing district, the minimum acreage requirements must be determined on the basis of the total contiguous land, regardless of whether the contiguous land lies in more than one taxing district.

137.64. What does my county assessor's office do after it receives a notice of a change to an ineligible land use?

Within five working days after receipt of the notice, the county assessor shall calculate the roll-back taxes due and notify you of the amount. The county assessor shall also notify the other taxing bodies of the district in which your land is located of the change in assessment and any roll-back taxes that may be due. The county assessor shall file a claim for roll-back taxes and interest for years prior to the current year with the Tax Claim Bureau or the County Treasurer, whichever is more appropriate. This action shall constitute a lien on your land having the same effect as if it were filed by the taxing bodies.

137.65. Who is responsible to distribute the roll-back taxes to the taxing authorities?

Your County Treasurer or Tax Claim Bureau shall be responsible for the proper distribution of the taxes and interest to the taxing bodies.

137.66. Does the removal of subsurface resources constitute an ineligible use of the land?

The removal of subsurface resources such as oil, gas or coal shall not constitute an ineligible use of the land, as long as the land is returned to the original use after the extraction. The county assessor may make a normal tax assessment on the working area of the resource extraction without jeopardizing your tax assessment under the act on the remainder of your land. Extraction ceases when the land is returned to a condition whereby it can meet the requirements for one of the three eligible uses.

137.67. Does the Pennsylvania Department of Agriculture require any information from my county assessor?

The Pennsylvania Department of Agriculture is charged under the act with promulgating statewide uniform rules and regulations. The Department needs information from each county assessor for each calendar year in order to insure that these rules are fair and consistent with everyday implementation of the act. The information must be submitted on Form AAO-91 to the Pennsylvania Department of Agriculture by January 31st of each year.

137.68. Are the tax assessments under the act considered by the State Tax Equalization Board for school subsidy purposes?

The State Tax Equalization Board shall consider the tax assessments under the act in determining the market value of taxable real property for school subsidy purposes. The State Tax Equalization Board shall not reflect the individual school district market value decrease as it relates to agricultural land when certifying the statewide market value to the Pennsylvania Department of Education.

137.69. Am I permitted to start a farm market or other business on my land after it is enrolled under the act?

(a) Only businesses involving the direct commercial sale of agriculturally-related products and activities may be conducted on the land without losing preferential assessment after it is enrolled under the act. Not more than 2 acres may be devoted to this business activity.

(b) The business shall be owned and operated by the landowner or his beneficiaries who are designated as Class A for inheritance tax purposes. Class A beneficiaries are defined in section 137.45 (relating to what happens to my tax assessment under the act at my death?).

(c) The county assessor may inventory the goods sold at the business to assure that they are owned by the landowner or his Class A beneficiaries and that the goods meet the requirements of this section.

(d) Rollback taxes as defined in section 137.12 (relating to how are key words in this chapter defined?) will be imposed upon that portion of the tract where the business activity takes place. The assessment on the business portion will be returned to an assessment based upon fair market value once the business is started. The remainder tract will continue to receive tax assessment under the act as long as it meets the requirements of at least one of the three eligible uses.

(e) Landowners desiring to start a business activity under the provisions of this section must notify the county assessor in writing at least 30 days prior to the change of use. Notification must include the name and address of the landowner, the proposed new use and the acreage involved.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 137. (Reserved)

§§ 137.1--137.12. (Reserved).

§§ 137.21--137.30. (Reserved).

§§ 137.41--137.46. (Reserved).

§§ 137.51--137.57. (Reserved).

§§ 137.61--137.70. (Reserved).

CHAPTER 137a. (Reserved)

§§ 137a.1--137a.24. (Reserved).

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- 137b.105. Annual update of records.
- 137b.106. Notification of change in preferential assessment status.
- 137b.107. Notification of change in factors affecting total assessment.
- 137b.108. Adjusting records to reflect split-off, separation or transfer.
- 137b.109. Enforcement and evidence gathering.
- 137b.110. Assessment of roll-back taxes.
- 137b.111. Record of tax millage.
- 137b.112. Submission of information to the Department.

#### RECORDER OF DEEDS

- 137b.121. Duty to record.
- 137b.122. Fees of the recorder of deeds.

#### MISCELLANEOUS

- 137b.131. Civil penalties.
- 137b.132. Distributing taxes and interest.
- 137b.133. Appealing a decision of the county assessor.

## GENERAL PROVISIONS

### § 137b.1. Purpose.

(a) This chapter establishes procedures necessary for the uniform Statewide implementation of the act. The act provides for land devoted to agricultural use, agricultural reserve use or forest reserve use to be assessed at the value it has for that use rather than at fair market value. The intent of the act is to encourage the keeping of land in one of these uses.

(b) The benefit to an owner of enrolled land is an assurance that the enrolled land will not be assessed at the same value for tax assessment purposes as land that is not enrolled land. In almost all cases, an owner of enrolled land will see a reduction in his property assessment compared to land assessed or valued at its fair market value. The difference between assessments of enrolled land and land that is not enrolled land will be most noticeable when a county is reassessed.

### § 137b.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Act*--The Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. §§ 5490.1--5490.13), commonly referred to as the Clean and Green Act.

*Agricultural commodity*--Any of the following:

- (i) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.
- (ii) Pasture.
- (iii) Livestock and the products thereof.
- (iv) Ranch-raised furbearing animals and the products thereof.
- (v) Poultry and the products of poultry.
- (vi) Products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.
- (vii) Processed or manufactured products of products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.

*Agricultural reserve*--

- (i) Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for that use, without charge or fee, on a nondiscriminatory basis.

(ii) The term includes any farmstead land on the tract.

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

(i) The term includes any farmstead land on the tract.

(ii) The term includes a woodlot.

(iii) The term includes land which is rented to another person and used for the purpose of producing an agricultural commodity.

*Assessment ratio or county's established predetermined ratio*--The ratio established by a taxing body that determines on what portion of the assessed value the millage rate is to be levied, as prescribed by assessment law.

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

*Class A beneficiaries for inheritance tax purposes*--The following relations to a decedent: grandfather, grandmother, father, mother, husband, wife, lineal descendants, wife, widow, husband or widower of a child. Lineal descendants include all children of the natural parents and their descendants, whether or not they have been adopted by others, adopted descendants and their descendants and stepdescendants.

*Contiguous tract*--

(i) All portions of one operational unit as described in the deed or deeds, whether or not the portions are divided by streams, public roads or bridges and whether or not the portions are described as multiple tax parcels, tracts, purparts or other property identifiers.

(ii) The term includes supportive lands, such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams.

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

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

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

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

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

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

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

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

*Forest reserve*--Land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products. The term includes farmstead land on the tract.

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

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

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

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

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

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

*Outdoor recreation*--Passive recreational use of land that does not entail the erection of permanent structures or any change to the land which would render it incapable of being immediately converted to agricultural use.

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

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

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

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

*Rural enterprise incidental to the operational unit*--A commercial enterprise or venture that is conducted within 2 acres or less of enrolled land and, when conducted, does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of the enrolled land that is not subject to roll-back taxes under section 8(d) of the act (72 P. S. § 5490.8(d)) as a result of that commercial enterprise or venture.

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

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

*Tract*--

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

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

*USDA*--The United States Department of Agriculture.

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

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

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

### **§ 137b.3. Responsibilities of the Department.**

(a) *General.* The Department's responsibilities are to provide the use values described in section 4.1 of the act (72 P. S. § 5490.4a) by May 1 of each year and to provide the forms and regulations necessary to promote the efficient, uniform Statewide administration of the act.

(b) *Information gathering.* The Department will collect information from county assessors for each calendar year to insure that the act and this chapter are being implemented fairly and uniformly throughout this Commonwealth. This information will be collected through a survey form to be provided to county assessors by the Department no later than December 15 each year, and which county assessors shall complete and submit to the Department by January 31 of the following year.

(c) *Educational outreach.* The Department will conduct an educational outreach effort on matters related to the administration and interpretation of the act and this chapter.

### **§ 137b.4. Contacting the Department.**

For purposes of this chapter, communications to the Department shall be directed to the following address:

Pennsylvania Department of Agriculture  
Bureau of Farmland Protection  
2301 North Cameron  
Street Harrisburg, PA 17110-9408  
Telephone: (717) 783-3167  
Facsimile: (717) 772-8798

## **ELIGIBLE LAND**

### **§ 137b.11. General.**

Three types of land are eligible for preferential assessment under the act.

- (1) Land in agricultural use.
- (2) Land in agricultural reserve.
- (3) Land in forest reserve.

### **§ 137b.12. Agricultural use.**

Land that is in agricultural use is eligible for preferential assessment under the act if it has been producing an agricultural commodity or has been devoted to a soil conservation program under an agreement with the Federal Government for at least 3 years preceding the application for preferential assessment, and is one of the following:

(1) Comprised of 10 or more contiguous acres (including any farmstead land and woodlot).

(2) Has an anticipated yearly gross income of at least \$2,000 from the production of an agricultural commodity.

### **§ 137b.13. Agricultural reserve.**

Land that is in agricultural reserve is eligible for preferential assessment under the act if the land is comprised of 10 or more contiguous acres (including any farmstead land and any woodlot).

### **§ 137b.14. Forest reserve.**

Land that is in forest reserve is eligible for preferential assessment under the act if presently stocked with trees and the land is comprised of 10 or more contiguous acres (including any farmstead land). Forest reserve land includes land that is rented to another person for the purpose of producing timber or other wood products.

### **§ 137b.15. Inclusion of farmstead land.**

(a) Farmstead land is an integral part of land in agricultural use, agricultural reserve or forest reserve. In considering whether land is in agricultural use, agricultural reserve or forest reserve, a county shall include any portion of that land that is farmstead land.

(b) Farmstead land shall be considered to be land that qualifies for preferential assessment under the act and this chapter.

### **§ 137b.16. Residence not required.**

A county may not require that an applicant for preferential assessment under the act be a resident of the county or reside on the land with respect to which preferential assessment is sought.

### **§ 137b.17. Common ownership required.**

A landowner seeking preferential assessment under the act shall be the owner of every tract of land listed on the application.

*Example 1:* Husband and wife are joint owners of two contiguous 100-acre tracts of farmland. They have common ownership of both tracts and may include these tracts in a single application for preferential assessment.

*Example 2:* Husband and wife are joint owners of a 100-acre tract of farmland. Husband and son are joint owners of a contiguous 100-acre tract of farmland. These two tracts may not be combined in a single application for preferential assessment.

### **§ 137b.18. County-imposed eligibility requirements.**

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

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

### **§ 137b.19. Multiple tracts on a single application.**

A landowner seeking preferential assessment under the act may include more than one tract in a single application for preferential assessment, regardless of whether the tracts on the application have separate deeds, are identified by separate tax parcel numbers or are otherwise distinct from each other.

(1) *Contiguous tracts.*

(i) A landowner seeking preferential assessment under the act may include in the application individual contiguous tracts that would not--if considered individually--qualify for preferential assessment.

(ii) If two or more tracts on a single application for preferential assessment are contiguous, the entire contiguous area shall meet the use and minimum size requirements for eligibility.

(2) *Noncontiguous tracts.* If any tract on a single application for preferential assessment is not contiguous to another tract described on that application, that individual tract shall--by itself--meet the use and minimum size requirements for eligibility.

### **§ 137b.20. Inclusion of all contiguous land described in the deed to the tract with respect to which enrollment is sought.**

A landowner may not apply for preferential assessment for less than the entire contiguous portion of land described in the deed applicable to a tract with respect to which preferential assessment is sought.

*Example 1:* A landowner owns a single, 100-acre tract of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The application may not be for less than the entire 100 acres.

*Example 2:* A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes three separate tracts: two contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner's options are as follows:

(1) Enroll the contiguous 50-acre tract.

(2) Enroll the noncontiguous 50-acre tract.

(3) Enroll both the contiguous 50-acre tract and the noncontiguous 50-acre tract.

The landowner does not have the option to enroll only one of the contiguous 50-acre tracts.

**§ 137b.21. Exclusion of noncontiguous tract described in a single deed.**

If two or more tracts of land are described in a single deed, a landowner seeking preferential assessment under the act may exclude from the application for preferential assessment any separately-described tract that is not contiguous to the tracts for which preferential assessment is sought.

*Example:* A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes three separate tracts: two contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner has the option to seek to enroll the noncontiguous 50-acre tract.

**§ 137b.22. Landowner may include or exclude from the application tracts described in separate deeds.**

If the landowner seeking preferential assessment under the act owns contiguous tracts that are described in separate deeds, the landowner may include or exclude any of the contiguous tracts from the application for preferential assessment.

**§ 137b.23. Land adjoining preferentially assessed land with common ownership is eligible.**

(a) *General.* A tract of land in agricultural use, agricultural reserve or forest reserve shall receive a preferential assessment under the act regardless of whether the tract meets the 10-contiguous-acres minimum acreage requirement or the \$2,000-per-year minimum anticipated gross income requirement, or both, established in section 3 of the act (72 P. S. § 5490.3) if the following occur:

(1) The landowner owns both the tract for which preferential assessment is sought and a contiguous tract of enrolled land.

(2) The landowner files an amended application for preferential assessment, describing both the tract for which preferential assessment is sought and the contiguous tract of enrolled land. The amended application shall be in accordance with the act and this chapter.

(b) *Roll-back taxes.* A violation of the provisions of preferential assessment on a tract added under subsection (a) shall trigger liability for roll-back taxes, plus interest, on that tract and all other contiguous tracts identified in the amended application.

### **§ 137b.24. Ineligible land.**

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

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

### **§ 137b.25. Multiple land use categories on a single application.**

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

*Example:* A landowner owns 100 acres of land. The landowner may submit an application that designates 75 acres in agricultural use, 13 acres in agricultural reserve and 12 acres in forest reserve, if the acreage identified by the landowner for the particular land use category meets the minimum criteria in section 3 of the act (72 P. S. § 5490.3) for that land use category.

### **§ 137b.26. Land located in more than one tax district.**

If land for which preferential assessment is sought lies in more than one taxing district, the county's determination as to whether the land meets applicable minimum acreage requirements for eligible land shall be made on the basis of the total contiguous acreage--without regard to the boundaries of the taxing districts in which the land is located.

*Example 1:* A landowner has a 100-acre tract of farmland--94 acres of which lie in Township A and 6 acres of which lie in Township B. The landowner files an application seeking preferential assessment of this land. The fact that the tract lies in two separate townships shall be immaterial to the determination of whether the 100-acre tract meets the requirements for preferential assessment under the act.

*Example 2:* A landowner has a 100-acre tract of farmland--94 acres of which lie in County A and 6 acres of which lie in County B. The landowner files an application seeking preferential assessment. The fact that the tract lies in two separate counties shall be immaterial to the determination of whether the land

described in the application meets the requirements for preferential assessment under the act.

### § 137b.27. Assessment of ineligible land.

Land that is included in an application for preferential assessment under the act but is ineligible for preferential assessment shall be appraised at fair market value and shall be assessed accordingly.

## APPLICATION PROCESS

### § 137b.41. Application forms and procedures.

(a) *Standardized application form required.* A county shall require a landowner seeking to apply for preferential assessment under the act to make that application on a current "Clean and Green Valuation Application" Form--a uniform preferential assessment application form developed by the Department. The Department will provide an initial supply of these forms to a county upon request. The county assessor shall maintain an adequate supply of these forms. The following shall be required of an applicant on the Clean and Green Valuation Application Form:

- (1) The name, address and telephone number of each landowner.
  - (2) A statement as to the form of ownership of the land (whether by an individual partnership, corporation, and the like. . . ).
  - (3) A statement of whether the land is currently subject to a covenant for preservation of "open space" land in accordance with the act of January 13, 1966 (1965 P. L. 1292, No. 515) (16 P. S. §§ 11941--11947).
  - (4) A description of the location of the land, including the school district in which it is located.
  - (5) A designation of the land use category or categories (agricultural use, agricultural reserve and forest reserve) with respect to which preferential assessment is sought, and information that might reasonably be required to confirm that the land falls within the land use category with respect to which preferential assessment is sought.
  - (6) Other information that might be reasonably required on the application form to confirm the location and ownership of the land, the land use category or categories of the land and whether the land is, in fact, eligible for preferential assessment.
  - (7) The signation of all of the owners of the land.
- (b) *Application form and worksheets.* A landowner seeking to apply for preferential assessment under the act shall complete a Clean and Green Valuation Application. The county assessor shall complete the appropriate sections of the current "Clean and Green Valuation Worksheet" form for each category of eligible land described in the application. The Department will provide an initial supply of these forms to a county upon request.

(c) *Obtaining an application and reviewing this chapter.* A landowner seeking preferential assessment under the act may obtain an application form and required worksheets from the county board of assessment office. A county assessor shall retain a copy of this chapter at the county board of assessment office, and shall make this copy available for inspection by any applicant or prospective applicant.

(d) *Required language.* An application for preferential assessment shall contain the following statement:

The applicant for preferential assessment hereby agrees, if the application is approved for preferential assessment, to submit 30 days notice to the county assessor of a proposed change in use of the land, a change in ownership of a portion of the land or of any type of division or conveyance of the land. The applicant for preferential assessment hereby acknowledges that, if the application is approved for preferential assessment, roll-back taxes and interest under the act in 72 P. S. § 5490.5a may be due for a change in use of the land, a change in ownership of a portion of the land, or any type of division or conveyance of the land.

(e) *Additional information.* A county assessor may require an applicant to provide additional information or documentation necessary to substantiate that the land is eligible for preferential assessment. A county assessor requiring additional information shall notify the applicant in writing and shall clearly state in the notice the reasons why the application or other information or documentation submitted by the applicant is insufficient to substantiate eligibility, and shall identify the particular information the county assessor requests to substantiate eligibility.

(f) *Signature of all landowners required.* An application for preferential assessment may not be accepted by a county if it does not bear the notarized signature of all of the owners of the land described in the application.

### **§ 137b.42. Deadline for submission of applications.**

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

*Example 1:* A landowner applies for preferential assessment on or before June 1, 2001. The application is subsequently approved. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2002.

*Example 2:* A landowner applies for preferential assessment on or after June 2, 2001, but not later than June 1, 2002. The application is subsequently approved. The application deadline is June 1, 2002. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2003.

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

#### **§ 137b.43. Applications where subject land is located in more than one county.**

If a landowner seeks to enroll a tract of land for preferential assessment under the act, and the tract is located in more than one county, the landowner shall file the application with the county assessor in the county to which the landowner pays property taxes.

#### **§ 137b.44. County processing of applications.**

A county shall accept and process in a timely manner all complete and accurate applications for preferential assessment so that, if the application is accepted, preferential assessment is effective as of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

*Example 1:* An application for preferential assessment is filed on or before June 1, 2001. The county must review and process the application so that--if the application is approved--preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2002 (the calendar year immediately following the application deadline).

*Example 2:* An application for preferential assessment is filed at some point from June 2, 2001, through June 1, 2002. The county must review and process the application so that--if the application is approved--preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2003 (the calendar year immediately following the application deadline).

#### **§ 137b.45. Notice of qualification for preferential assessment.**

A county assessor shall provide an applicant for preferential assessment under the act with written notification of whether the land described in that application qualifies for that preferential assessment or fails to meet the qualifications for preferential assessment.

#### **§ 137b.46. Fees of the county board for assessment appeals; recording fees; processing fees.**

(a) *Application processing fee.* A county board for assessment appeals may impose a fee of no more than \$50 for processing an application for preferential assessment under the act. This fee may be charged regardless of whether the application is ultimately approved or rejected. This fee is exclusive of any fee which may be charged by the recorder of deeds for recording the application.

(b) *Circumstances under which initial application shall be amended without charge.* A county board for assessment appeals may not charge a fee for amending an initial application for preferential assessment.

(c) *Recording fees.* A recording fee may not be assessed if an application for preferential assessment is not approved.

## PREFERENTIAL ASSESSMENT

### § 137b.51. Assessment procedures.

(a) *Use values and land use subcategories to be provided by the Department.* The Department will determine the land use subcategories and provide county assessors use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

(b) *Determining use values and land use subcategories.*

(1) *Agricultural use and agricultural reserve.* In calculating appropriate county-specific agricultural use values and agricultural reserve use values, and land use subcategories, the Department will consult with the Department of Agricultural Economics and Rural Sociology of the College of Agricultural Sciences at the Pennsylvania State University, the Pennsylvania Agricultural Statistics Service, USDA-ERS, USDA-NRCS and other sources the Department deems appropriate. In determining county-specific agricultural use and agricultural reserve use values, the Department will use the income approach for asset valuation.

(2) *Forest reserve.* In calculating appropriate county-specific forest reserve use values and land use subcategories, the Department will consult with the Bureau of Forestry of the Department of Conservation and Natural Resources.

(c) *County assessor to determine total use value.*

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

(2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve, including farmstead land, by considering available evidence of the capability of the land for its particular use. Contributory value of farm buildings, as calculated in accordance with § 137b.54 shall be used.

(d) *Determining preferential assessment.* The preferential assessment of land is determined by multiplying the number of acres in each land use subcategory by the use

value for that particular land use subcategory, adding these products and multiplying the total by the county's established predetermined ratio. The Department will establish land use subcategories as part of the procedure to establish use values.

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

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

### **§ 137b.52. Duration of preferential assessment.**

(a) *General.* Enrolled land shall remain under preferential assessment for as long as it continues to meet the minimum qualifications for preferential assessment. Land that is in agricultural use, agricultural reserve or forest reserve shall remain under preferential assessment even if its use changes to either of the other two land use categories.

*Example:* A landowner owns a 100-acre tract of enrolled land, consisting of 85 acres in agricultural use and 15 acres in forest reserve. If the landowner later amends his application to one in which 60 acres are in agricultural use, 30 acres are in agricultural reserve and 10 acres are in forest reserve, the entire 100-acre tract continues to receive preferential assessment (although different use values and land use subcategories may apply in recalculating the preferential assessment).

(b) *No termination of preferential assessment without change of use.* An owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land. Preferential assessment terminates as of the change of use of the land to something other than agricultural use, agricultural reserve or forest reserve. It is this event--the change of use of the enrolled land to something other than agricultural use, agricultural reserve or forest reserve--that terminates preferential assessment and triggers liability for roll-back taxes and interest.

(c) *Split-offs, separations, transfers and other events.* Split-offs that meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), separations and transfers under the act or this chapter will not result in termination of preferential assessment on the land which is retained by the landowner and which continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3). In addition, the following events will not result in termination of preferential assessment on that portion of enrolled land which continues to meet the requirements of section 3 of the act:

(1) The lease of a portion of the enrolled land to be used for a wireless or cellular communication tower in accordance with section 6(b.1) of the act (72 P. S. § 5490.6(b.1)) and § 137b.73 (relating to wireless or cellular telecommunications facilities).

(2) The change of use of a portion of the enrolled land to another land use category (agricultural use, agricultural reserve or forest reserve).

(3) Condemnation of a portion of the land.

(4) The sale or donation of a portion of the enrolled land to any of the entities described in section 8(b)(1)--(7) of the act (72 P. S. § 5490.8(b)(1)--(7)), for the purposes described in that section, and § 137b.74 (relating to option to accept or forgive roll-back taxes in certain instances).

(5) The use of up to 2 acres of the enrolled land for direct commercial sales of agriculturally related products or for a rural enterprise incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit).

(6) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a cemetery, in accordance with section 8(e) of the act and § 137b.75 (relating to conveyance of enrolled land for use as a cemetery).

(7) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a trail, in accordance with section 8(e) of the act and § 137b.76 (relating to conveyance of enrolled land or conveyance of an easement or right-of-way across enrolled land for use as a trail).

(8) The distribution, upon the death of the owner of the enrolled land, of the enrolled land among the beneficiaries designated as Class A for inheritance tax purposes, in accordance with section 6(d) of the act and § 137b.71 (relating to death of an owner of enrolled land).

(d) *Payment of roll-back taxes does not affect preferential assessment of remaining land.* The payment of roll-back taxes and interest under the act and this chapter may not result in termination of preferential assessment on the remainder of the land covered by preferential assessment. The landowner may terminate preferential assessment on enrolled land subject to roll-back taxes by submitting written notice under section 3(d) of the act (72 P. S. § 5490.3(d)).

*Example 1:* A landowner owns a 100-acre tract of enrolled land, which is in agricultural use. The landowner splits off a tract of no more than 2 acres and that 2-acre tract is used for a residential dwelling as described in section 6(a.1)(1)(i) of the act and meets the other criteria in that paragraph. Although the 2-acre tract is no longer entitled to receive preferential assessment, the 98-acre tract shall continue to receive preferential assessment. Also, roll-back taxes and interest would be due with respect to the 2-acre tract.

*Example 2:* Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A splits off a 2-acre tract and sells it to Landowner B, with the understanding that Landowner B will use the land for a residential dwelling permitted under section 6(a.1)(1)(i) of the act. Roll-back taxes and interest are due with respect to the 2-acre tract. Landowner B does not erect the permitted residential dwelling, but converts the 2-acre tract to commercial use. Landowner B owes roll-back taxes and interest with respect to the entire 100-acre tract (under section 6(a.1) of the act). Landowner A has no liability for any of the roll-back taxes and interest which were triggered and are owed by Landowner B as a result of the conversion of the 2-acre tract to commercial use. If the 98-acre tract owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment.

*Example 3:* Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A separates the land into a 50-acre tract and two 25-acre tracts, and sells a 25-acre tract to Landowner B. All 100 acres continue in agricultural use and continue to meet the requirements of section 3 of the act. No roll-back taxes are due. The entire 100-acre tract shall continue to receive preferential assessment.

*Example 4:* Same facts as Example 3, except that within 7 years of the separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes and interest with respect to the entire 100-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment under the act.

*Example 5:* Same facts as Example 3, except that more than 7 years after the date of separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes on his 25-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment under the act.

(e) *Termination of preferential assessment by county.* The maximum area with respect to which a county may terminate preferential assessment may not exceed:

- (1) In the case of a split-off that is not a condemnation and that meets the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, the land so split-off.
  - (2) In the case of a split-off that is not a condemnation and that does not meet the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, all land enrolled under the application for preferential assessment.
  - (3) In the case when the owner of enrolled land changes the use of the land so that it no longer meets the requirements in section 3 of the act, all land enrolled under the application for preferential assessment.
  - (4) In the case when the owner of enrolled land leases a portion of that land for wireless or cellular telecommunications in accordance with section 6(b.1) of the act and § 137b.73 (relating to wireless or cellular telecommunications facilities), the land so leased.
  - (5) In the case of condemnation, the land so condemned.
  - (6) In the case when enrolled land is sold or donated to an entity described in section 8(b)(1)--(7) of the act in accordance with the requirements in those paragraphs, the land so sold or conveyed.
  - (7) In the case when not more than 2 acres of enrolled land is used for direct commercial sales of agriculturally related products and activities or for a rural enterprise incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72 the land so used for those purposes.
  - (8) In the case when a portion of enrolled land is conveyed to a nonprofit corporation for use as a cemetery in accordance with section 8(e) of the act and § 137b.75 the land so transferred.
  - (9) In the case when a portion of the enrolled land is conveyed to a nonprofit corporation for use as a trail in accordance with section 8(e) of the act and § 137b.76 (relating to death of an owner of enrolled land or conveyance of an easement or right-of-way across enrolled land for use as a trail), the land so transferred.
  - (10) In the case when enrolled land is distributed upon the death of the landowner among the beneficiaries designated as Class A for inheritance tax purposes in accordance with section 6(d) of the act and § 137b.71 the portion that fails to meet the requirements for preferential assessment in section 3 of the act.
- (f) *Termination of preferential assessment on erroneously-enrolled land.* If a county assessor erroneously allowed the enrollment of land that did not, at the time of enrollment, meet the minimum qualifications for preferential assessment, the county assessor shall, in accordance with section 3(d)(2) of the act provide the landowner written notice that preferential assessment is to be terminated. The notice shall state the reasons for termination and afford the landowner the opportunity for a hearing. If the use of the land was not an eligible use at the time it was enrolled, and preferential assessment is terminated for that reason, no roll-back taxes shall be due from the landowner as a result.

*Example:* In calculating the preferential assessment of enrolled land, a county has assessed farmstead land at its fair market value, rather than as part of the land that is in agricultural use, agricultural reserve or forest reserve. The county shall recalculate these assessments so that the farmstead land receives preferential assessment, rather than assessment based on fair market value.

(e) *Required recalculation of preferential assessment if contributory value of farm buildings has not been used in determining preferential assessment of land in agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land if the earlier calculation did not consider the contributory value of any farm buildings on that land. This recalculation shall be accomplished in accordance with § 137b.51.

(f) *Required recalculation of preferential assessment in countywide reassessment.* If a county undertakes a countywide reassessment, or a countywide reassessment of enrolled land, the county assessor shall recalculate the preferential assessment of all of the enrolled land in the county, using either the current use values and land use subcategories provided by the Department.

#### **§ 137b.54. Calculating the contributory value of farm buildings.**

A county assessor shall be responsible to calculate the contributory value of farm buildings on enrolled land. The method of calculating the contributory value of a farm building shall be a method based upon the fair market comparison and the extraction of the value of the farm building from the total fair market value of the parcel.

### **OBLIGATIONS OF THE OWNER OF ENROLLED LAND**

#### **§ 137b.61. Transfer of enrolled land.**

When enrolled land is transferred to a new owner, the new owner shall file an amendment to the original application for the purposes of providing the county assessor with current information and to sign the acknowledgments required under section 4(c) of the act (72 P. S. § 5490.4(c)).

#### **§ 137b.62. Enrolled "agricultural use" land of less than 10 contiguous acres.**

(a) *Demonstration of anticipated yearly gross income from agricultural production.* If a landowner has a contiguous tract of less than 10 acres of enrolled agricultural use land, the county assessor may require the landowner to demonstrate each year that the anticipated yearly gross income from the production of agricultural commodities on the enrolled land is at least \$2,000. A landowner may not be required to demonstrate more than once per year that the enrolled land has sufficient anticipated yearly gross income from the production of agricultural commodities to continue to receive preferential assessment. A county assessor requiring additional information shall notify the landowner in writing and shall clearly state in the notice the reasons why the information

(g) *Transfer does not trigger roll-back taxes.* The transfer of all of the enrolled land described in a single application for preferential assessment to a new owner does not trigger the imposition of roll-back taxes.

### **§ 137b.53. Calculation and recalculation of preferential assessment.**

(a) *New values each year.* As described in § 137b.51 (relating to assessment procedures), the Department will determine the land use subcategories and provide to a county use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

(b) *Option of county assessor in calculation of preferential assessment.* A county assessor shall calculate the preferential assessment of enrolled land using one of the following methods:

(1) Calculate the preferential assessment of all of the enrolled land in the county each year.

(2) Establish a base year for preferential assessment of enrolled land in the county, and use this base year in calculating the preferential assessment of enrolled land in the county, unless recalculation is required under subsection (c), (d), (e) or (f).

(c) *Required recalculation of preferential assessment if current assessment is based upon use values higher than those provided by the Department.* A county assessor shall calculate the preferential assessment of all enrolled land in the county using either the current use values and land use subcategories provided by the Department or lower use values established by the county assessor.

*Example 1:* All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are lower than the use values provided by the Department. The county has the option of either continuing to assess all enrolled land using its lower use values or recalculating the preferential assessment of all enrolled land using the use values provided by the Department.

*Example 2:* All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are higher than the use values provided by the Department. The county shall recalculate the preferential assessment of all enrolled land using either the use values provided by the Department or lower use values determined by the county assessor.

(d) *Required recalculation of preferential assessment if farmstead land has not been preferentially assessed as agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land which contains farmstead land if the earlier calculation did not value and assess the farmstead land as agricultural use, agricultural reserve or forest reserve. This recalculation shall be accomplished in accordance with § 137b.51.

or documentation submitted by the landowner fails to demonstrate sufficiency of income, and shall identify the particular information the county assessor requests to demonstrate sufficiency of income.

(b) *Annual requirement; circumstances beyond the landowner's control.* The \$2,000 anticipated annual gross income requirement referenced in this section shall be met each year, unless circumstances beyond the landowner's control are the cause of the requirement not being met.

(c) *Examples.*

*Example 1:* A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. Although the landowner reasonably anticipated production well above the \$2,000 minimum production requirement in a particular year, and represented that to the county assessor, a drought, hailstorm or blight causes the orchard's production to drop below \$2,000 that year. Preferential assessment of the orchard shall continue.

*Example 2:* A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. A plant disease destroys the fruit trees. Although the landowner replants the orchard, it will take several years for gross income from agricultural production from that orchard to meet the \$2,000 requirement. Preferential assessment of the orchard shall continue.

*Example 3:* A landowner owns 8 acres of enrolled land. The tract generates over \$2,000 in gross annual income from production of an agricultural commodity. The landowner ceases the production of that particular agricultural commodity and does not begin producing another agricultural commodity on the land. The land is no longer in agricultural use. The landowner's failure to continue the land in an agricultural use capable of producing income constitutes a change to an ineligible use. The landowner is liable for roll-back taxes and interest, and preferential assessment shall terminate.

### **§ 137b.63. Notice of change of application.**

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

- (1) A change in use of the enrolled land to some use other than agricultural use, agricultural reserve or forest reserve.
- (2) A change in ownership with respect to the enrolled land or any portion of the land.
- (3) Any type of division, conveyance, transfer, separation or split-off of the enrolled land.

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

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

(c) *Landowner's responsibility to provide notice of termination of preferential assessment.* An owner of enrolled land shall provide the county assessor of the county in which the land is preferentially assessed with advance written notice of termination of preferential assessment, under § 137b.52(d) (relating to duration of preferential assessment) or § 137b.84 (relating to split-off that does not comply with section 6(a.1)(1)(i) of the act). The notice shall include the following information:

- (1) The name and address of the landowner.
- (2) Information sufficient to identify the property with respect to which preferential assessment is to be terminated. This may include tax parcel numbers, deed descriptions, references to the place of recording of the initial application for preferential assessment or similar information.
- (3) The date upon which preferential assessment is to be terminated.

(d) *Landowner's duty to notify.* As stated in § 137b.41(d) (relating to application forms and procedures), a person applying for preferential assessment of land under the act shall acknowledge on the application form the obligation described in subsection (a).

#### **§ 137b.64. Agricultural reserve land to be open to the public.**

(a) *General.* An owner of enrolled land that is enrolled as agricultural reserve land shall allow the land to be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty without charge or fee, on a nondiscriminatory basis. Enrolled land that is in agricultural use or forest reserve is excluded from this requirement.

(b) *Actual use by public not required.* Enrolled land that is enrolled as agricultural reserve land need not actually be used by the public for the purposes described in subsection (a) to continue to receive a preferential assessment. It shall, however, be available for use for those purposes.

(c) *Reasonable restrictions on use allowed.* A landowner may place reasonable restrictions on public access to enrolled land that is enrolled as agricultural reserve land. These restrictions might include limiting access to the land to pedestrians only, prohibiting hunting or the carrying or discharge of firearms on the land, prohibiting entry

where damage to the land might result or where hazardous conditions exist, or other reasonable restrictions.

(d) *Entry upon the agricultural reserve land.* A person shall, whenever possible, notify the landowner before entering upon enrolled land that is enrolled as agricultural reserve land. The landowner may deny entry when damage to the property might result. The landowner can prohibit entry to areas of the agricultural reserve land upon prior notification to the county assessor of the existence of a hazardous condition on that land. The landowner's reasons to deny entry to the land shall be based upon fact and be acceptable to the county assessor.

(e) *County assessor's discretion.* A county assessor may establish reasonable guidelines by which an owner of enrolled agricultural reserve land may identify the conditions under which the land shall be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty, and by which the county assessor may maintain an up-to-date summary of the locations of agricultural reserve land within the county and the public uses to which these agricultural reserve lands may be put. A county assessor may disseminate this information to the public.

## IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

### § 137b.71. Death of an owner of enrolled land.

(a) *Inheriting a tract that does not meet minimum requirements for preferential assessment.* Upon the death of an owner of enrolled land, if any of the enrolled land that is divided among the beneficiaries designated as Class A for inheritance tax purposes no longer meets the minimum qualifications for preferential assessment, preferential assessment shall terminate with respect to the portion of the enrolled land that no longer meets the minimum requirements for preferential assessment, and no roll-back tax may be charged on any of the land that no longer meets the requirements for preferential assessment.

*Example:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and the land is divided among several Class A beneficiaries, as follows: Landowner B--75 acres. Landowner C--2 acres. Landowner D--23 acres. The tracts owned by Landowners B and D continue in agricultural use. The 2-acre tract owned by Landowner C no longer meets the size or income requirements in section 3 of the act (72 P. S. § 5490.3). Under these facts, preferential assessment of the 2-acre tract ends. Landowner C does not owe roll-back taxes with respect to this tract. Landowners B and D continue to receive preferential assessment. Landowners B and D must file amended applications.

(b) *Inheriting a tract that meets the minimum requirements for preferential assessment.* If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and the tract continues in agricultural use, agricultural reserve or forest reserve, preferential assessment shall continue. If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and subsequently changes the use of that tract so that it does not qualify for preferential assessment, that beneficiary shall owe roll-back taxes and interest with respect to the portion of the enrolled land he inherited, but no roll-back taxes are due with respect to any other portion of the enrolled land inherited by another beneficiary.

*Example 1:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and Landowners B and C each inherit a 50-acre tract, as Class A beneficiaries. The tracts owned by Landowners B and C continue in agricultural use. Preferential assessment continues on each tract, and the landowners must file amended applications.

*Example 2:* Same facts as Example 1, except Landowner B converts the 50-acre tract of agricultural land to industrial use. Landowner B owes roll-back taxes and interest with respect to the 50-acre tract. Landowner A does not owe roll-back taxes. Preferential assessment continues with respect to Landowner A's tract.

### **§ 137b.72. Direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit.**

(a) *General.* An owner of enrolled land may apply up to 2 acres of enrolled land toward direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, without subjecting the entirety of the enrolled land to roll-back taxes and interest, if both of the following apply to the commercial activity or rural enterprise:

(1) The commercial activity or rural enterprise does not permanently impede or otherwise interfere with the production of an agricultural commodity on the remainder of the enrolled land.

(2) The commercial activity is owned and operated by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes.

(b) *Roll-back taxes and status of preferential assessment.* If a tract of 2-acres-or-less of enrolled land is used for direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, the 2-acre-or-less tract shall be subject to roll-back taxes and interest, and preferential assessment of that 2-acre-or-less tract shall end. The remainder of the enrolled land shall continue under preferential assessment as long as that remainder continues to meet the requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(c) *Inventory by county assessor to determine ownership of goods.* A county assessor may inventory the goods sold at the business to assure that they are owned by the landowner or persons who are class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, and that the goods meet the requirements of this section.

### § 137b.73. Wireless or cellular telecommunications facilities.

(a) *Permitted use.* A landowner may lease a tract of enrolled land to be used for wireless or cellular telecommunications, if the following conditions are satisfied:

- (1) The tract so leased does not exceed 1/2 acre.
- (2) The tract does not have more than one communication tower located upon it.
- (3) The tract is accessible.
- (4) The tract is neither conveyed nor subdivided. A lease is not considered a subdivision.

(b) *Roll-back taxes imposed with respect to leased land.* A county assessor shall assess and impose roll-back taxes and interest upon the tract of land leased by an owner of enrolled land for wireless or cellular telecommunications purposes.

(c) *Preferential assessment ends and fair market value assessment commences with respect to leased land.* A county assessor shall assess land leased in accordance with subsection (a) based upon its fair market value.

(d) *Preferential assessment continues on unleased land.* The lease of enrolled land in accordance with subsection (a) does not invalidate the preferential assessment of the remaining enrolled land that is not so leased, and that enrolled land shall continue to receive a preferential assessment, if it continues to meet the minimum requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(e) *Wireless services other than wireless telecommunications.* Wireless services other than wireless telecommunications may be conducted on land leased in accordance with subsection (a) if the wireless services share a tower with a wireless telecommunications provider.

(f) *Responsibility for obtaining required permits.* The wireless or cellular telecommunications provider shall be solely responsible for obtaining required permits in connection with any construction on a tract of land which it leases for telecommunications purposes under subsection (a).

(g) *Responsibility of municipality for issuing required permits.* A municipality may not deny a permit necessary for wireless or cellular telecommunications use for any reason other than the applicant's failure to strictly comply with permit application procedures.

### **§ 137b.74. Option to accept or forgive roll-back taxes in certain instances.**

(a) *Option to accept or forgive principal on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may accept or forgive roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the following:

- (1) A school district.
- (2) A municipality.
- (3) A county.
- (4) A volunteer fire company.
- (5) A volunteer ambulance service.
- (6) A not-for-profit corporation that qualifies as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)), if prior to accepting ownership of the land, the corporation enters into an agreement with the municipality wherein the subject land is located guaranteeing that the land will be used exclusively for recreational purposes, all of which shall be available to the general public free of charge. If the corporation changes the use of all or a portion of the land or charges admission or any other fee for the use or enjoyment of the facilities, the corporation shall immediately become liable for all roll-back taxes and accrued interest previously forgiven.
- (7) A religious organization, if the religious organization uses the land only for construction or regular use as a church, synagogue or other place of worship, including meeting facilities, parking facilities, housing facilities and other facilities which further the religious purposes of the organization.

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

### **§ 137b.75. Conveyance of enrolled land for use as a cemetery.**

(a) *Conveyances.* If an owner of enrolled land sells, donates or otherwise conveys any portion of the enrolled land to a nonprofit corporation for use as a cemetery, and at least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve after the conveyance, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the conveyed portion of the enrolled land or the remainder of the enrolled land.

*Example:* A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner sells 20 acres of the enrolled land to a nonprofit corporation

for use as a cemetery. The remaining 30-acre tract continues in agricultural use. Under these facts, no roll-back taxes are due with respect to either tract. The 30-acre tract continues to receive preferential assessment. The 20-acre tract receives an assessment based on fair market value.

(b) *Exception.* If a nonprofit corporation acquires enrolled land as described in subsection (a), and subsequently changes the use of the land to some use other than as a cemetery or conveys the land for use other than as a cemetery, the nonprofit corporation shall be required to pay roll-back taxes and interest on that land.

*Example:* Same facts as the example under subsection (a), but 2 years after it acquired the 20-acre tract, the nonprofit corporation changes the use to something other than cemetery use. The nonprofit corporation owes roll-back taxes and interest with respect to the 20-acre tract. The owner of the 30-acre tract is not liable for the payment of any roll-back taxes triggered by the nonprofit corporation's change of use.

### **§ 137b.76. Conveyance of enrolled land or conveyance of an easement or right-of-way across enrolled land for use as a trail.**

(a) *Conveyances.* If an owner of enrolled land sells, donates or otherwise conveys any portion of the enrolled land, or conveys an easement or right-of-way with respect to any portion of the enrolled land, no violation of preferential assessment will be deemed to have occurred and roll-back taxes will not be assessed with respect to either the conveyed portion of the enrolled land or the remainder of the enrolled land if all of the following occur:

- (1) The land, or an easement or right-of-way in the land, is conveyed to a nonprofit corporation.
- (2) The conveyed land is used as a trail for nonmotorized passive recreational use.
- (3) The conveyed land does not exceed 20 feet in width.
- (4) The conveyed land is available to the public for use without charge.
- (5) At least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve.

*Example:* A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 20-foot-wide pathway across the land to a nonprofit corporation for use as a trail, and otherwise complies with paragraphs (1)--(5) and section 8(e) of the act (72 P. S. § 5490.8(e)). Under these facts, no roll-back taxes are due with respect to either tract. The trail receives an assessment based upon fair market value. The remainder of the landowner's 50-acre tract continues to receive a preferential assessment.

(b) *Exception.* If a nonprofit corporation acquires enrolled land or an easement or right of way with respect to enrolled land as described in subsection (a), and the use of the land is

subsequently changed to a use other than the use described in subsection (a)(1)--(4) or section 8(e) of the act (72 P. S. § 5490.8(e)), the nonprofit corporation shall be required to pay roll-back taxes and interest on that land.

*Example:* A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 15-foot-wide pathway across the land to a nonprofit corporation for use as a trail. The conveyance is for a use described in subsection (a)(1)--(4) or section 8(e) of the act. The nonprofit corporation subsequently changes the use of the trail to a motorcycle trail, a snowmobile trail or some other use not allowed under subsection (a)(1)--(4) or section 8(e) of the act. Under these facts, roll-back taxes and interest are due with respect to the 15-foot-wide tract. The remainder of the 50-acre tract continues to receive preferential assessment. The owner of the remainder continuing to receive preferential assessment is not liable for any roll-back taxes triggered by the nonprofit corporation's change of use.

## LIABILITY FOR ROLL-BACK TAXES

### § 137b.81. General.

If an owner of enrolled land changes the use of the land to something other than agricultural use, agricultural reserve or forest reserve or changes the use of the enrolled land so that it otherwise fails to meet the requirements of section 3 of the act (72 P. S. § 5490.3), that landowner shall be responsible for the payment of roll-back taxes and interest, and preferential assessment shall end on that portion of the enrolled land which fails to meet the requirements of section 3 of the act. The owner of enrolled land will not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner of a split-off tract.

### § 137b.82. Split-off tract.

When a split-off tract meets the following criteria, which are set forth in section 6(a.1)(1) of the act (72 P. S. § 5490.6(a.1)(1)), roll-back taxes and interest are only due with respect to the split-off tract, and are not due with respect to the remainder:

- (1) The tract split off does not exceed 2 acres annually, except that a maximum of the minimum residential lot size requirement annually may be split off if the property is situated in a local government unit which requires a minimum residential lot size of 2--3 acres.
- (2) The tract is used for agricultural use, agricultural reserve or forest reserve or for the construction of a residential dwelling to be occupied by the person to whom the land is conveyed.
- (3) The total tract split off does not exceed the lesser of 10 acres or 10% of the entire tract of enrolled land.

**§ 137b.83. Split-off that complies with section 6(a.1)(1)(i) of the act.**

If enrolled land undergoes split-off and the tract that is split-off meets the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes and interest with respect to the split-off tract. The preferential assessment of that split-off tract shall be terminated. If the remainder of the enrolled land is in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3), no roll-back taxes are due with respect to that remainder, and preferential assessment shall continue with respect to that tract.

*Example:* Landowner owns 50 acres of enrolled land. Landowner splits off 2 acres for a residential dwelling, in compliance with section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes and interest on the 2-acre tract, and the preferential assessment of that tract shall be terminated. The remaining 48-acre tract would continue to receive preferential assessment, assuming it remains in agricultural use, agricultural reserve or forest reserve and otherwise continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3).

**§ 137b.84. Split-off that does not comply with section 6(a.1)(1)(i) of the act.**

If enrolled land undergoes split off and the tract that is split-off does not meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes and interest with respect to all of the enrolled land.

*Example 1:* Landowner owns 50 acres of enrolled land. Landowner splits off 4 acres in a single year. This split-off would not meet the size requirements in section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes and interest on the entire 50-acre tract. The 4-acre tract no longer receives preferential assessment. If the 46-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that tract, unless the landowner terminates preferential assessment under section 3(d) of the act (72 P. S. § 5490.3(d)).

*Example 2:* Landowner owns 50 acres of enrolled land. Landowner splits off 2-acre tracts in 3 different years. The aggregate amount of land split-off (6 acres) exceeds the 10% cap in section 6(c.1)(1)(i) of the act. Under these facts, the aggregate total of split-off land could not exceed 5 acres. The landowner owes roll-back taxes and interest on the remaining 44-acre tract. The three 2-acre tracts no longer receive preferential assessment. If the remaining 44-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that 44-acre tract, unless the landowner terminates preferential assessment under section 3(d) of the act.

**§ 137b.85. Split-off occurring through condemnation.**

If any portion of a tract of enrolled land is condemned, the condemnation will not trigger liability for roll-back taxes on either the condemned portion of the enrolled land or the remainder. If the condemned portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the act (72 P. S. § 5490.3), preferential assessment shall continue with respect to that condemned portion or remainder.

**§ 137b.86. Split-off occurring through voluntary sale in lieu of condemnation.**

If any portion of a tract of enrolled land is--in lieu of requiring the condemnation process to proceed--voluntarily conveyed by a landowner to an entity that possesses the lawful authority to acquire that portion through condemnation, the conveyance will not trigger liability for roll-back taxes on either the split-off portion of the enrolled land or the remainder. If the split-off portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the act (72 P. S. § 5490.3), preferential assessment shall continue with respect to that split-off portion or remainder.

**§ 137b.87. Change in use of separated land occurring within 7 years of separation.**

If enrolled land undergoes separation, and one of the tracts created through separation is converted to a use other than agricultural use, agricultural reserve or forest reserve within 7 years of the date of the separation, or is converted so that it no longer meets the requirements of section 3 of the act (72 P. S. § 5490.3), the owner of the ineligible tract owes roll-back taxes and interest with respect to all of the enrolled land. The ineligible tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

*Example:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Six years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes and interest with respect to the entire 100-acre tract. Landowner A's 50-acre tract continues to receive preferential assessment, and preferential assessment of Landowner B's 50-acre tract ends.

**§ 137b.88. Change in use of separated land occurring 7 years or more after separation.**

If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest reserve 7 years or more after the date of the separation, the owner of the separated tract owes roll-back taxes

and interest with respect to that separated tract, but does not owe roll-back taxes with respect to the remainder of the enrolled land. The separated tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

*Example:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Eight years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes and interest with respect to the 50-acre tract which he has converted to ineligible use. Landowner A's 50-acre tract continues to receive preferential assessment, and preferential assessment of Landowner B's 50-acre tract ends.

### § 137b.89. Calculation of roll-back taxes.

A county assessor shall calculate roll-back taxes using the following formula:

(1) If preferential assessment has been in effect for 7 tax years or more, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the 6 tax years immediately preceding the current tax year. If preferential assessment has been in effect for less than 7 tax years, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the tax years in which the enrolled land was preferentially assessed.

(2) With respect to each of these sums, multiply that sum by the corresponding factor, which reflects simple interest at the rate of 6% per annum from that particular tax year to the present:

Year	Factor
Current Tax Year	1.00
1 Tax Year Prior	1.06
2 Tax Years Prior	1.12
3 Tax Years Prior	1.18
4 Tax Years Prior	1.24
5 Tax Years Prior	1.30
6 Tax Years Prior	1.36

(3) Add the individual products obtained under Step (2). The sum equals total roll-back taxes, including simple interest at 6% per annum on each year's roll-back taxes.

*Example 1:* Landowner's liability for roll-back taxes is triggered on July 1, 7 or more tax years after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and in each of the 6 tax years preceding the current tax year, in accordance with this section. The county assessor determines the appropriate sum

to be \$2,000 in each full year, and prorates this sum with respect to the current tax year.

Year	Amount Multiplied by Factor
Current Tax Year	\$1,000 x 1.00 = \$1,000
1 Tax Year Prior	\$2,000 x 1.06 = \$2,120
2 Tax Years Prior	\$2,000 x 1.12 = \$2,240
3 Tax Years Prior	\$2,000 x 1.18 = \$2,360
4 Tax Years Prior	\$2,000 x 1.24 = \$2,480
5 Tax Years Prior	\$2,000 x 1.30 = \$2,600
6 Tax Years Prior	\$2,000 x 1.36 = \$2,720
TOTAL ROLL-BACK	\$15,520
TAXES, WITH INTEREST:	

*Example 2:* Landowner's liability for roll-back taxes is triggered on July 1, less than 7 tax years after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and each of the tax years since preferential assessment began, in accordance with this section. The county assessor determines the appropriate sum to be \$2,000 in each of these years. The county assessor would calculate roll-back taxes and interest in accordance with the chart set forth in Example 1, calculating for only those tax years in which preferential assessment occurred.

### § 137b.90. Due date for roll-back taxes.

If roll-back taxes and interest are owed, they are due on the day of the change in use or other event triggering liability for those roll-back taxes.

### § 137b.91. Liens for nonpayment of roll-back taxes.

The county can refer a claim for unpaid roll-back taxes and interest to the county's tax claim bureau, and take other actions necessary to cause a lien to be placed on the land for the value of the roll-back taxes and interest and other administrative and local court costs. The lien can be collected in the same manner as other lien-debts on real estate.

### § 137b.92. Time period within which roll-back taxes are to be calculated and notice mailed.

(a) *General.* A county assessor shall calculate the roll-back taxes and interest, and mail notice of these roll-back taxes to the affected landowner, within 5 days of learning of a change in status triggering liability for roll-back taxes. The county assessor shall also mail a copy of the notice to the other taxing bodies of the district in which the land is located.

(b) *Notice of change of application.* If a county assessor receives a "notice of change of application" described in § 137b.63 (relating to notice of change of application), and that

notice triggers liability for roll-back taxes, the 5-day period described in subsection (a) shall commence as of receipt of that notice.

### **§ 137b.93. Disposition of interest on roll-back taxes.**

(a) *"Eligible county" explained.* A county is an "eligible county" under the Agricultural Area Security Law (3 P. S. §§ 901--915), and for purposes of this chapter, if it has an agricultural conservation easement purchase program that has been approved by the State Agricultural Land Preservation Board in accordance with that statute.

(b) *Disposition in an eligible county.*

(1) *County treasurer.* If a county is an eligible county, the county treasurer shall make proper distribution of the interest portion of the roll-back taxes it collects to the county commissioners or the county comptroller, as the case may be. The county commissioners or comptroller shall designate all of this interest for use by the county agricultural land preservation board. This interest shall be in addition to other local money appropriated by the eligible county for the purchase of agricultural conservation easements under section 14.1(h) of the Agricultural Area Security Law (3 P. S. § 914.1(h)).

(2) *County agricultural land preservation board.* A county agricultural land preservation board that receives interest on roll-back taxes in accordance with paragraph (1) shall segregate that money in a special roll-back account. Notwithstanding any other provisions of the Agricultural Area Security Law, the eligible county board under the Agricultural Area Security Law shall, at its discretion and in accordance with its approved county agricultural conservation easement purchase program, give priority to the purchase of agricultural conservation easements from agricultural security areas located within the municipality in which the land subject to the roll-back tax is located, when using the funding from the special roll-back account.

(c) *Disposition in a county that is not an eligible county.* If a county is not an eligible county, the county treasurer shall forward the interest portion of the roll-back taxes it collects to the Agricultural Conservation Easement Purchase Fund. The county treasurer shall coordinate with the Department's Bureau of Farmland Protection, at the address in § 137b.4 (relating to contacting the Department) to accomplish this transfer.

## **DUTIES OF COUNTY ASSESSORS**

### **§ 137b.101. General.**

A county assessor shall perform all the duties prescribed by the act and this chapter. The county assessor has the major responsibility for administration of the act.

### **§ 137b.102. Recordkeeping.**

A county assessor shall indicate on property record cards, assessment rolls and any other appropriate records the base year fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land.

### **§ 137b.103. Recording approved applications.**

A county assessor shall record any approved application in the office of the recorder of deeds in the county where the land is preferentially assessed.

### **§ 137b.104. Determining total use value.**

A county assessor shall determine the total use value for all enrolled land. The contributory value of farm buildings shall be used in determining the total use value.

### **§ 137b.105. Annual update of records.**

A county assessor shall, at least on an annual basis, update property record cards, assessment rolls and any other appropriate records to reflect all changes in the fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. This subsection does not require that a county assessor recalculate the preferential assessment of all enrolled land each year, but instead requires the county assessor to maintain reasonably current records reflecting any changes in preferential assessment.

### **§ 137b.106. Notification of change in preferential assessment status.**

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

### **§ 137b.107. Notification of change in factors affecting total assessment.**

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

### **§ 137b.108. Adjusting records to reflect split-off, separation or transfer.**

(a) A county assessor shall adjust an approved and recorded application for preferential assessment under the act to reflect a change when an owner of enrolled land changes enrollment status as a result of a split-off, separation, transfer or change of ownership. These changes may include those actions described in § 137b.52 (relating to duration of preferential assessment).

(b) A county assessor may require the preparation, execution and filing of a new application for preferential assessment (without charging the landowner an application fee) to accomplish such an adjustment.

**§ 137b.109. Enforcement and evidence gathering.**

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

**§ 137b.110. Assessment of roll-back taxes.**

A county assessor shall calculate, assess and file claims with the county's tax claim bureau for roll-back taxes and interest owed under the act.

**§ 137b.111. Record of tax millage.**

A county assessor shall maintain a permanent record of the tax millage levied by each of the taxing authorities in the county for each tax year.

**§ 137b.112. Submission of information to the Department.**

A county assessor will compile and submit the information required by the Department under § 137b.3(b) (relating to responsibilities of the Department).

**RECORDER OF DEEDS**

**§ 137b.121. Duty to record.**

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

**§ 137b.122. Fees of the recorder of deeds.**

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

## MISCELLANEOUS

### § 137b.131. Civil penalties.

(a) *General.* A county board for assessment appeals may assess a civil penalty of not more than \$100 against a person for each violation of the act or this chapter. An action that triggers liability for roll-back taxes and interest does not, by itself, constitute a violation of the act or this chapter.

(b) *Written notice of civil penalty.* A county board for assessment appeals shall assess a civil penalty against a person by providing that person written notice of the penalty. This notice shall be served by certified mail or personal service. The notice shall set forth the following:

(1) A description of the nature of the violation and of the amount of the civil penalty.

(2) A statement that the person against whom the civil penalty is being assessed may appeal the penalty by delivering written notice of the appeal to the county board for assessment appeals within 10 calendar days of receipt of the written notice of penalty.

(c) *Appeal hearing.* If notification of the intent to contest the civil penalty is given within the time frame described in subsection (b)(2), the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. Chapter 5, Subchapter B and Chapter 7, Subchapter B (relating to local agency law).

(d) *Final civil penalty.* If, within 10 calendar days from the receipt of the notification described in subsection (b), the person against whom the civil penalty is assessed fails to notify the county board for assessment appeals of intent to contest the assessed penalty, the civil penalty shall become final.

### § 137b.132. Distributing taxes and interest.

The county treasurer or tax claim bureau shall be responsible for the proper distribution of the taxes to the proper taxing authority (that is, political subdivision) and the proper distribution of interest in accordance with § 137b.93 (relating to disposition of interest on roll-back taxes).

### § 137b.133. Appealing a decision of the county assessor.

A landowner whose land is the subject of an application for preferential assessment under the act, or a political subdivision affected by the preferential assessment of that land may appeal a decision of the county assessor regarding the application and the method used to determine preferential assessments under the act. The landowner shall first appeal to the county board of assessment. After this board has made a decision, the landowner then has a right to appeal to the court of common pleas.

END