



PennState Law

Center for Agricultural
and Shale Law

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series

Understanding Agricultural Law

Webinar Series

Understanding the Basics of

Pennsylvania's "Clean & Green"

Preferential Tax Assessment Program

February 24, 2023





Ag Law Center Website Resources

aglaw.psu.edu

- Agricultural Law Weekly Review
- Agricultural Law Virtual Resource Rooms
- Agricultural Law Tracker
- Shale Law Tracker
- Agricultural Law Podcast
- Social Media
 - Twitter, Facebook, LinkedIn
- Videos/Presentations
- PA Ag Mediation Program



Agricultural Law Weekly Review

[SEE ALL AGRICULTURAL LAW WEEKLY REVIEWS »](#)

Agricultural Law Weekly Review—Week Ending November 11, 2022

Agricultural Antitrust: Federal Court Denies Tyson's Motion to Dismiss Poultry Renderers' Antitrust Suit 🌱 On November 8, 2022, the U.S. District Court for the Northern District of Georgia issued an order denying a motion to dismiss filed by River Valley Ingredients, LLC; Tyson Poultry, Inc.; and Tyson Farms, Inc.—the defendants in an antitrust case filed by three southeast poultry rendering companies. *American Proteins, Inc. v. River Valley Ingredients, LLC*, No. 2:22-cv-00091. According to the complaint, filed May 11, 2022, River Valley and Tyson acquired ten-year exclusive

Tweets from @AgShaleLaw



PSU Ag & Shale ...
@AgShaleLaw · 2h

Today at noon (ET):
"Understanding the Basics of
Licensing & Regulation of Direct
Agricultural Product Sales" 🍷
1 CLE credit available for PA
attorneys
[Learn more and register:](#)



Pennsylvania Agricultural Mediation Program

Who can request mediation?

USDA-related issues:

- Agricultural Loans
- Wetlands determinations
- Compliance with farm programs, including conservation programs
- National organic program established under the Organic Foods Production Act of 1990
- Agricultural Credit
- Rural water loan programs
- Grazing on National Forest System land
- Pesticides

Non-USDA issues:

- Land and Equipment Lease issues.
- Family farm transition.
- Farmer-neighbor disputes.
- As approved by PA Secretary of Agriculture



Contact us:

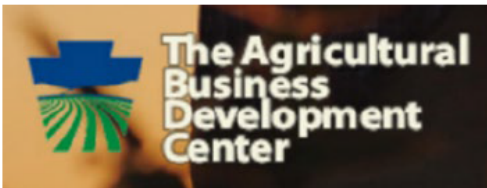
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Website: www.PAAgMediation.com



Understanding Agricultural Law

A Legal Educational Series for General Practice Attorneys and Business Advisors Representing Agricultural and Rural Clients

This webinar series is specifically tailored to create subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.





Understanding Agricultural Law Webinar Series:

Past Topics:

Understanding the Basics of

- | | |
|--|------------------|
| 1. Agricultural Labor Laws | (April 29, 2022) |
| 2. Leasing Farmland for Energy Development | (May 20, 2022) |
| 3. Local Land Use Regulation of Agriculture | (June 24, 2022) |
| 4. Statutory Protections for Ag Operations | (July 22, 2022) |
| 5. Agricultural Cooperatives | (Aug. 26, 2022) |
| 6. Livestock Market Regulation | (Sept. 23, 2022) |
| 7. Crop Insurance | (Oct. 21, 2022) |
| 8. Federal & State Conservation Programs | (Nov. 18, 2022) |
| 9. Licensing & Regulation of Direct Agricultural Product Sales | (Dec. 16, 2022) |
| 10. Agricultural Finance | (Jan. 27, 2023) |



Understanding Agricultural Law Webinar Series

Upcoming Topics:

Friday, March 24, 2023, noon–1:00 ET

*Understanding the Basics of **Farm Animal Handling & Confinement Laws***

- ***Registration available!***

Friday, April 28, 2023, noon–1:00 ET

*Understanding the Basics of **Agricultural Conservation Easements***

- ***Registration available!***

Friday, May 19, 2023, noon–1:00 ET

*Understanding the Basics of **Landowner Immunity Statutes** (registration available soon)*



Housekeeping

- This webinar is being recorded.
- Please Use the Q&A feature for questions.
- CLE credits:
 - Link to CLE form will be posted in the chat
 - Please fill out form ASAP
 - Listen for code word, enter code word in form



Understanding the Basics of **Pennsylvania's "Clean and Green"** **Preferential Tax Assessment Program**

- Under **Pennsylvania's Clean and Green Program**, qualifying Pennsylvania farm and forestland owners can receive a **preferential property tax assessment** based upon the **land's current use** rather than its highest and best use.
- This webinar will:
 - Provide an **overview** of Pennsylvania's Clean and Green Program,
 - Explain **eligibility and enrollment criteria**, and
 - Review the **restrictions** on, and **allowances** for, **changing land use** once enrolled,
 - including the assessment of **roll-back taxes** if a **changed use** disqualifies property from remaining enrolled.



Clean and Green Program Overview

- Statute: *The Pennsylvania Farmland and Forest Land Assessment Act of 1974*, [72 P. S. § § 5490.1—5490.13](#). (Easier to read [copy](#).)
- Regulations: [7 Pa. Code 137b.1 – 137b.133](#). *Preferential Assessment of Farmland and Forest Land Under the Clean and Green Act*.
- 60 of 67 counties have **elected** to have a program. (Clarion, Crawford, Forest, Franklin, Jefferson, Mercer, Northumberland have no C&G program.)
- Some limited administrative duties are performed by the Pennsylvania Department of Agriculture - see PDA's [webpage](#).



Authority in the PA Constitution

PA Const. Art. 8 §2 (b)(i):

“ . . . [e]stablish standards and qualifications for private forest reserves, agricultural reserves, and land activity devoted to agricultural use, and make special provision for the taxation thereof . . . ”

- It authorizes a form of statutory “non-uniform” property tax.



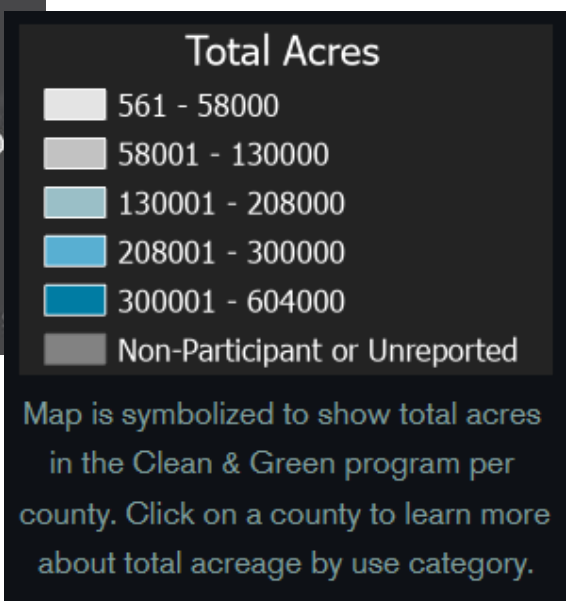
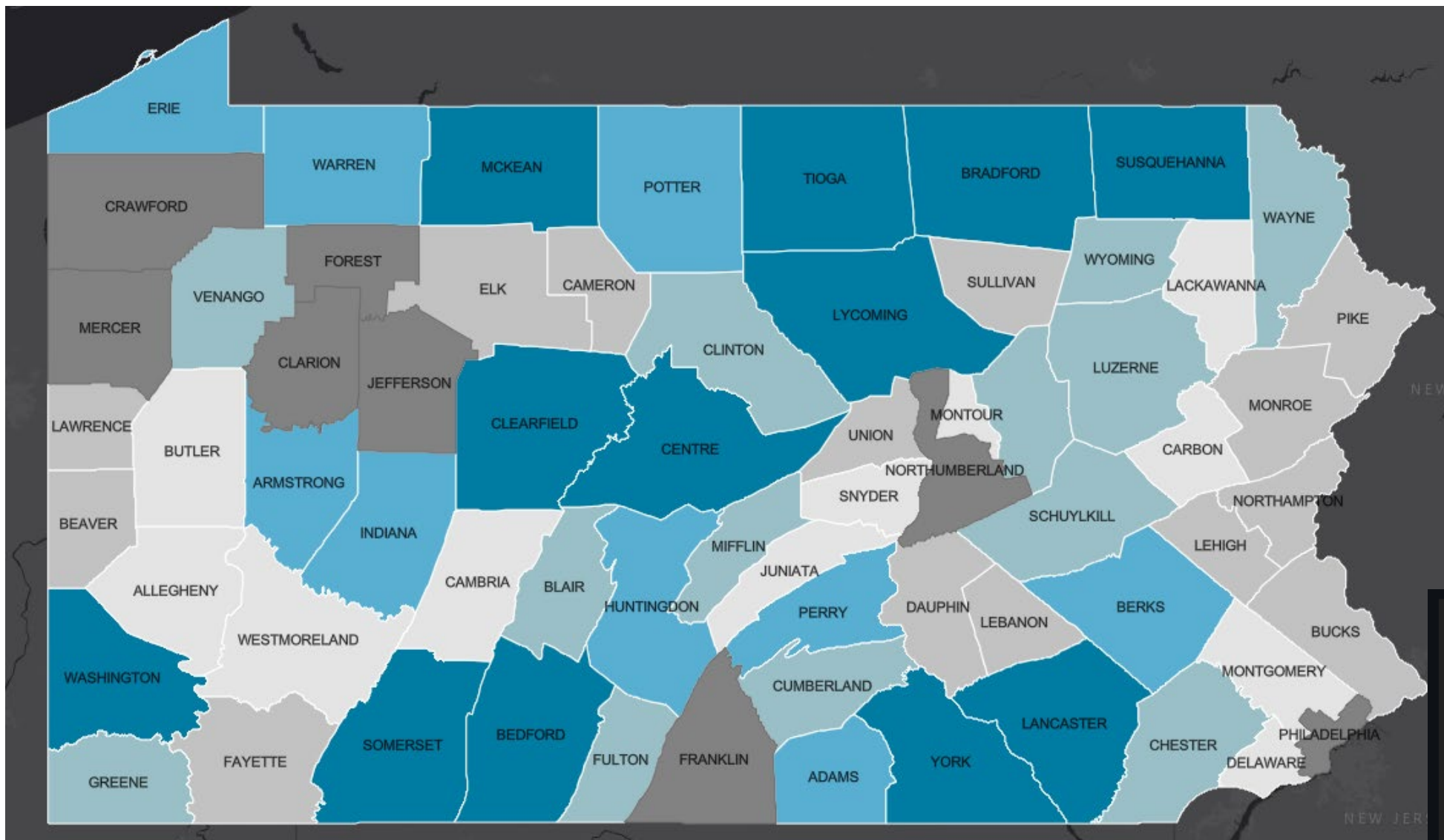
Clean and Green Overview (cont.)

- The Pennsylvania Farmland and Forest Land Assessment Act of 1974, also known as the Clean and Green Act, or Act 319, allows land taxation per its **value as used (“use value”)** rather than its **fair market value**.
- Enrolled land is assessed per the **income approach** to land appraisal – the amount of income the land can produce as **agricultural or forest use**.
- According to PDA’s 2021 Bureau of Farmland Preservation Annual Report, **10.8 million acres and 214,482 separate parcels** were enrolled statewide.
 - *“The **average reduction** in fair market assessed value for enrollees is **roughly 50 percent** – providing an incentive to keep the land undeveloped.”*



Clean and Green Overview (cont.)

- Landowner enrollment is **voluntary** and requires a minimum of 10 acres* to qualify for one of three designated use categories:
 - **Agricultural use** – land used to produce agricultural commodities commercially (total of ~4.5 million acres enrolled)
*Enrolled tract may be <10 acres if capable of \geq \$2000 in annual farming income
 - **Agricultural reserve** – noncommercial open space land used for recreation and scenic enjoyment that is open to the public free-of-charge (total of ~600,000 acres enrolled)
 - **Forest reserve** – 10 acres or more of forested land capable of yielding timber or other wood products (total of ~5.5 million acres enrolled)



PA Dept. Agriculture, Farmland Preservation Annual Report 2020

<https://storymaps.arcgis.com/stories/3a837c549a5a4aff99d5dc059f693a31>



Clean and Green Overview (cont.)

- A county's voluntary election to have a C&G program means that the county has chosen to forego imposing and transfer some portion of the gross real estate tax burden necessary for that county's needs from the C&G enrolled lands to all other lands in the county.
- ***Policy choice:*** The more property that is enrolled results in either a gross reduction in county real estate tax revenue or an increase in property taxes (primarily school taxes).
- The program is not without its detractors for this reason.



Clean and Green Overview (cont.)

- **Change of Use & Rollback Tax Assessment** - Land use changed from an eligible use to an ineligible use subjects the enrolled land to a roll back tax assessed as the last seven years of tax savings, plus six percent simple interest (which goes to the fund for purchasing Agricultural Conservation Easements), and the land is removed from the program.
 - Certain subdivisions and conveyances are exempt from roll-back penalties if the qualifying use of the land does not change - “Split-offs” and “separations.”
 - “Rural Enterprises” are allowed (includes retail sales with conditions). This is just one of the many, many exceptions to ineligibility and roll back and removal contained in the law.
- **County tax assessment offices administer the program at the county level** - The Pennsylvania Department of Agriculture (Bureau of Farmland Preservation) provides for uniform interpretation of the Clean and Green Act among county assessment offices, promulgates the C&G regulations, and distributes annual use values by May 1 of each year.
 - Counties may establish use values that are lower, but not higher.



2022 Clean & Green Use Values

County	Map unit symbol	Map unit name	Soil capability class	Acres in AOI	Percent of AOI	C&G Use Value
Adams	AtA	Athol gravelly silt loam, 0 to 3 percent slopes	1	340.9	0.001	\$ 1,536.10
Adams	Be	Bermudian silt loam	1	256.3	0.001	\$ 1,616.32
Adams	BgA	Birdsboro silt loam, 0 to 3 percent slopes	1	292.4	0.001	\$ 1,599.57
Adams	CnA	Conestoga silt loam, 0 to 3 percent slopes	1	1288.8	0.004	\$ 1,800.84
Adams	ArB	Arendtsville gravelly loam, 3 to 8 percent slopes	2	3503.2	0.01	\$ 1,450.05
Adams	AtB	Athol gravelly silt loam, 3 to 8 percent slopes	2	786.6	0.002	\$ 1,540.39
Adams	BgB	Birdsboro silt loam, 3 to 8 percent slopes	2	1974.6	0.006	\$ 1,593.95
Adams	BrB	Brecknock channery silt loam, 3 to 8 percent slopes	2	3565.4	0.011	\$ 1,457.48
Adams	BuB	Buchanan channery loam, 3 to 8 percent slopes	2	1482.8	0.004	\$ 1,272.73
Adams	CcB	Catoctin channery silt loam, 3 to 8 percent slopes	2	128.7	0	\$ 1,189.57
Adams	CkA	Clarksburg silt loam, 0 to 3 percent slopes	2	3025.5	0.009	\$ 1,478.75
Adams	CkB	Clarksburg silt loam, 3 to 8 percent slopes	2	521.9	0.002	\$ 1,477.61
Adams	Cm	Codorus silt loam	2	2195.5	0.007	\$ 1,487.25
Adams	CnB	Conestoga silt loam, 3 to 8 percent slopes	2	4133.9	0.012	\$ 1,800.84
Adams	EdB	Edgemont channery loam, 3 to 8 percent slopes	2	314.7	0.001	\$ 1,472.64
Adams	GbB	Glenelg channery loam, 3 to 8 percent slopes	2	3670.2	0.011	\$ 1,638.34
Adams	GdA	Glenville silt loam, 0 to 3 percent slopes	2	126.2	0	\$ 1,504.91
Adams	GdB	Glenville silt loam, 3 to 8 percent slopes	2	625.8	0.002	\$ 1,608.90

**Excerpt of
published
2022
Ag and Ag
Reserve Use
Values on
PDA's
website**



2022 Clean & Green Forest Values

County	Softwoods	Select Oak	Oak	Northern Hardwoods	Black Cherry	Misc. Hardwoods	Weighted Average
Adams	\$54.24	\$259.63	\$80.95	\$45.55	\$154.88	\$82.09	\$112.46
Allegheny	\$0.00	\$105.17	\$10.50	\$56.38	\$82.30	\$33.59	\$57.19
Armstrong	\$10.21	\$209.38	\$98.58	\$130.34	\$405.77	\$86.12	\$140.79
Beaver	\$0.00	\$114.26	\$11.40	\$61.26	\$89.42	\$36.50	\$62.14
Bedford	\$0.00	\$126.40	\$12.61	\$67.77	\$98.92	\$40.37	\$45.22
Berks	\$52.19	\$249.83	\$77.89	\$43.83	\$149.03	\$78.99	\$99.25
Blair	\$0.00	\$105.50	\$10.53	\$56.56	\$82.56	\$33.70	\$44.76
Bradford	\$2.06	\$97.19	\$14.49	\$85.07	\$346.13	\$46.91	\$84.79
Bucks	\$56.72	\$271.52	\$84.65	\$47.63	\$161.97	\$85.85	\$81.92
Butler	\$13.61	\$279.06	\$131.39	\$173.71	\$540.82	\$114.79	\$182.94
Cambria	\$0.00	\$115.58	\$11.53	\$61.97	\$90.45	\$36.92	\$54.40
Cameron	\$11.98	\$245.48	\$115.57	\$152.80	\$475.73	\$100.97	\$155.12
Carbon	\$1.98	\$93.26	\$13.90	\$81.63	\$332.14	\$45.01	\$32.23
Centre	\$2.12	\$99.95	\$14.90	\$87.48	\$355.95	\$48.24	\$53.87
Chester	\$54.91	\$262.84	\$81.94	\$46.11	\$156.79	\$83.11	\$79.31
Clarion	\$11.41	\$233.94	\$110.14	\$145.62	\$453.37	\$96.23	\$121.20
Clearfield	\$0.00	\$121.15	\$12.09	\$64.95	\$94.81	\$38.70	\$42.37
Clinton	\$2.09	\$98.56	\$14.69	\$86.26	\$350.99	\$47.57	\$47.49
Columbia	\$2.18	\$102.67	\$15.30	\$89.86	\$365.62	\$49.55	\$54.55
Crawford	\$12.43	\$254.80	\$119.96	\$158.61	\$493.79	\$104.80	\$174.44
Cumberland	\$55.75	\$266.88	\$83.21	\$46.82	\$159.20	\$84.38	\$115.60
Dauphin	\$54.16	\$259.27	\$80.83	\$45.48	\$154.66	\$81.98	\$78.75
Delaware	\$54.06	\$258.78	\$80.68	\$45.40	\$154.37	\$81.82	\$78.08
Elk	\$12.86	\$263.65	\$124.13	\$164.12	\$510.96	\$108.45	\$197.58
Erie	\$12.39	\$253.96	\$119.57	\$158.09	\$492.17	\$104.46	\$177.32
Fayette	\$0.00	\$118.77	\$11.85	\$63.67	\$92.94	\$37.94	\$42.87
Forest	\$12.82	\$262.69	\$123.68	\$163.52	\$509.08	\$108.05	\$161.60
Franklin	\$56.12	\$268.65	\$83.76	\$47.13	\$160.26	\$84.94	\$91.03

**Excerpt of
published
2022
Forest
Reserve Use
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Enrollment Restricts Land Use & “Alienability”

- The landowner’s acceptance of the tax reduction carries the obligation to maintain all acres enrolled together in one application conforming to the qualifying uses’ requirements “perpetually” (well, theoretically).
 - The obligation “runs with the land.”
- The cost of a rollback tax and removal may be considered by this or subsequent owners as the “cost of doing business” to develop all or some of the land. Therefore, use changes (including “dimensionally”) are intentionally made in some instances.
- ***Caveat:*** If the enrolled land was 100 acres, a change to an ineligible use of even 1 acre means rollback tax on and removal of the entire 100 enrolled acres.
- The trick is not how to “get in” the program, it is how to “stay in” the program while exercising the rights accompanying land ownership. It can be a minefield.



Voluntarily removal from C&G is allowed (as of 2010)

- A landowner may voluntarily remove their land from C&G by notifying the county assessor by June 1 of the year immediately preceding the tax year for which removal is requested. Rollback taxes are due upon submission of the request. That removed acreage may NOT be re-enrolled.

C&G is riddled with exceptions to every rule = that's why it works!

- If everything I said to this point were iron-clad with no exceptions, the law would be rather simple, but very burdensome. As a result, it would not likely be utilized to the massive extent it has been since 1974.
- As we dive deeper into the law, it is the exceptions written into the law that essentially make the law work as well as it has as a tool to preserve open space, undeveloped land, and essentially be the fundamental tool in Pennsylvania's efforts to prioritize farmland preservation. Farms need reduced property tax to be viable.

TABLE 10 -- Acres Terminated in Each Category of Clean and Green

COUNTY	AG USE	AG RESERVE	FOREST USE	TOTAL ACREAGE
Adams	189	11	98	298
Allegheny	21	80	234	335
Armstrong	28	0	0	28
Beaver	0	0	79	79
Bedford	9	0	7	16
Blair	154	0	27	181
Bradford	83	156	49	288
Bucks	117	0	29	146
Carbon	30	0	9	39
Chester	288	0	15	303
Clearfield	66	28	399	493
Clinton	20	0	50	70
Columbia	80	19	17	116
Delaware	1	0	0	1
Erie	323	28	136	487
Fayette	142	0	43	185
Greene	0	0	0	360
Huntingdon	4	0	19	23
Indiana	37	0	54	92
Juniata	118	0	0	118
Lackawanna	1	0	0	1
Lancaster	482	0	98	580
Lebanon	496	9	64	569
Lehigh	27	44	64	135
Luzerne	145	81	1369	1595
Lycoming	37	0	0	37
McKean	38	0	74	113
Mifflin	16	0	10	26
Monroe	145	81	140	366
Montgomery	1129	440	0	1570
Montour	6	0	0	6
Northampton	512	0	0	512
Perry	24	0	307	331
Pike	0	9	248	257
Potter	0	0	6	6
Somerset	19	0	0	19
Sullivan	2	0	23	25
Tioga	35	25	5	64
Union	55	0	28	84
Venango	92	0	50	142
Warren	86	0	231	317
Washington	100	50	26	176
Westmoreland	63	0	0	63
Wyoming	0	0	0	135
York	0	0	0	615
Totals	5,221	1,060	4,008	11,399

Counties not listed either do not participate in the program, had no terminations to report, or do not have the capability of breaking down enrollment categories.

TABLE 12 -- Rollback Tax Summary

County	Dollar Amount Received as Rollback Taxes	Dollar Amount Received as Interest on Rollback Taxes
Adams	\$512,999.95	\$73,622.95
Armstrong	\$4,591.64	\$861.72
Beaver	\$11,872.96	\$2,006.82
Bedford	\$7,047.42	\$1,664.17
Berks	\$804,818.46	\$145,114.14
Blair	\$156,234.61	\$12,888.54
Bradford	\$63,756.57	\$10,247.23
Bucks	\$301,444.00	\$41,873.00
Carbon	\$14,161.73	\$3,115.47
Centre	\$237,642.98	\$32,534.67
Chester	\$715,722.56	\$112,317.11
Clearfield	\$19,241.13	\$2,539.50
Clinton	\$5,217.62	\$777.79
Columbia	\$110,490.43	\$19,011.90
Cumberland	\$622,697.49	\$57,032.40
Dauphin	\$291,530.90	\$58,336.10
Erie	\$123,800.83	\$18,955.62
Fulton	\$3,577.92	\$495.03
Fayette	\$32,874.23	\$5,370.97
Greene	\$10,472.25	\$2,419.10
Huntingdon	\$3,186.74	\$119.62
Indiana	\$21,031.29	\$1,398.60
Juniata	\$8,919.26	\$1,568.23
Lackawanna	\$186.32	\$13.72
Lancaster	\$889,789.52	\$115,482.84
Lawrence	\$14,829.06	\$2,180.23
Lebanon	\$1,101,198.03	\$177,141.72
Lehigh	\$226,537.31	\$47,226.03
Luzerne	\$219,693.01	\$45,228.18
Lycoming	\$22,205.66	\$3,292.78
McKean	\$10,948.10	\$67.42
Mifflin	\$31,155.07	\$15,724.10
Monroe	\$531,362.77	\$105,030.10
Montgomery	\$1,799,777.48	\$329,982.99
Montour	\$1,598.58	\$166.53
Northampton	\$561,238.80	\$96,635.50
Perry	\$162,342.35	\$23,891.13
Pike	\$60,534.73	\$10,815.63
Potter	\$3,692.14	\$685.81
Schuylkill	\$54,484.93	\$12,863.44
Somerset	\$13,423.47	\$7,991.96
Sullivan	\$10,927.60	\$1,728.66
Susquehanna	\$97,881.17	\$13,846.44
Tioga	\$66,820.94	\$9,416.43
Union	\$28,801.98	\$2,109.34
Venango	\$21,593.32	\$4,111.12
Warren	\$5,303.88	\$0.00
Washington	\$472,092.00	\$79,059.00
Wayne	\$12,057.81	\$1,435.47
Westmoreland	\$3,414.64	\$518.21
Wyoming	\$31,973.17	\$4,568.71
York	\$713,171.97	\$107,222.00
Totals	\$11,252,368.78	\$1,822,706.17



Use Value Rule Exception as of 2016

- Effective in 2016, the law was amended so that the annual updated use values may not be employed until a County performed a county-wide reassessment. Frozen at 2016.
- In counties without a reasonably recent reassessment, the use values were routinely increasing due to annual updating, while assessment of lands not enrolled in C&G remain static.
- This was viewed as inequitable. Plus, the use value could be approaching or exceeding the assessed “fair market value.”

**TABLE 13 -- Clean and Green Use Value
Implementation by County**

AGRICULTURAL VALUES BY COUNTY

2021 Values PDA	Values locked-in July 20, 2016	Other
Delaware	Adams	Lehigh
Fayette	Allegheny	Luzerne
Franklin	Armstrong	Lycoming
Greene	Bedford	Mifflin
Philadelphia	Berks	Montour
Perry	Blair	Montgomery
	Bradford	Northampton
	Bucks	Pike
	Butler	Potter
	Cambria	Schuylkill
	Cameron	Snyder
	Carbon	Somerset
	Centre	Sullivan
	Chester	Susquehanna
	Clearfield	Tioga
	Clinton	Union
	Columbia	Venango
	Cumberland	Warren
	Dauphin	Washington
	Elk	Wayne
	Erie	Westmoreland
	Fulton	Wyoming
	Huntingdon	York
	Indiana	
	Juniata	
	Lackawanna	
	Lawrence	

*Act 89 of 2016, effective as of July 20, 2016. A county assessor shall apply the use values in effect on the effective date until such a time as a countywide reassessment of real property value is implemented.

** "Other" represents updates that occurred between 2016-2020

**TABLE 13 -- Clean and Green Use Value
Implementation by County**

FOREST VALUES BY COUNTY

2021 Use Values PDA	Use Values locked-in July 20, 2016	Other
Clearfield	Adams	Lebanon
Delaware	Allegheny	Lehigh
Fayette	Armstrong	Luzerne
Franklin	Bedford	Lycoming
Greene	Berks	Mifflin
Somerset	Blair	Montgomery
Washington	Bradford	Montour
Philadelphia	Butler	Northampton
	Bucks	Perry
	Cambria	Pike
	Cameron	Potter
	Carbon	Schuylkill
	Centre	Snyder
	Chester	Sullivan
	Clinton	Susquehanna
	Columbia	Tioga
	Cumberland	Union
	Dauphin	Venango
	Elk	Warren
	Erie	Wayne
	Fulton	Westmoreland
	Huntingdon	Wyoming
	Indiana	York
	Juniata	
	Lackawanna	
	Lawrence	

*Act 89 of 2016, effective as of July 20, 2016. A county assessor shall apply the use values in effect on the effective date until such a time as a countywide reassessment of real property value is implemented.

** "Other" represents updates that occurred between 2016-2020



C&G – A Deeper Dive - to identify key “exceptions”

THE 3 QUALIFYING USES:

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

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



Notes on Ag Use:

- **"Agricultural commodity."** Any of the following:
 - (1) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.
 - (2) Pasture.
 - (3) Livestock and the products thereof.
 - (4) Ranch-raised furbearing animals and the products thereof.
 - (5) Poultry and the products of poultry.
 - (6) Products commonly raised or produced on farms which are:
 - (i) intended for human consumption; or
 - (ii) transported or intended to be transported in commerce.
 - (7) Processed or manufactured products of products commonly raised or produced on farms which are:
 - (i) intended for human consumption; or
 - (ii) transported or intended to be transported in commerce.
 - (8) Compost – [added in 2012]**
- **"Farmstead land"** located within an area enrolled as agricultural use shall be assessed at agricultural value.



THE 3 QUALIFYING USES:

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



Notes on Ag Reserve:

- Farmstead land located within an area enrolled as agricultural reserve use may be assessed at agricultural reserve value, at County's option (if uniformly applied County-wide).
- A landowner may place **reasonable** restrictions on public access.
Examples:
 - Limiting access to pedestrians only
 - Prohibiting hunting or the carrying of firearms
 - Prohibiting entry where damage to the land where damage to the land might result or where hazardous conditions exist



THE 3 QUALIFYING USES:

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



Notes on Forest Reserve:

- Farmstead land located within an area enrolled as agricultural reserve use may be assessed at agricultural reserve value, at County's option (if uniformly applied County-wide).
- Is not required to be open to the public.



Notes on “Enrollment” issues

- “A landowner may not enroll less than the entire contiguous portion of land described in the deed” (ineligible acreage on the deed will not get the tax break)
- Can combine contiguous tracts from multiple deeds in one application as long as the total enrolled land meets eligibility criteria. (But is that wise?)
- Can subsequently add contiguous tracts that are <10 acres to previously enrolled contiguous land if it otherwise qualifies.
- One application can combine more than one use category. (But is that wise?)
- Recreational activity (w/ or w/o a fee) on ag or forest reserve does not disqualify it if the land is not rendered incapable of (a) immediate conversion to ag use; or (b) producing timber or wood products.



“Separation” and “Split-off”

- A landowner may still subdivide lands (w/ or w/o a conveyance of ownership) subject to specific rules.
- **Separation** (*you're safe*):

“A division, by conveyance or other action of the owner” of enrolled land “into two or more tracts of land” = NO rollback and removal provided “all tracts so formed” remain eligible.
- **Split-off** (*you're out*):

“A division, by conveyance or other action of the owner” of enrolled land “into two or more tracts of land” = rollback and removal if the use or size of “one or more such tracts” is ineligible.



Separation and Split-off (cont.)

- Split-offs of < 2 acres (unless municipality as 2-3 acres minimum lot size) remaining in an eligible use or used as owner's residence are permitted annually, provided 10 total acres or 10% of enrolled land has not be so split-off since enrollment.
- Rollback and removal owed on the < 2 acres only.
- Split-off by condemnation = no rollback and removal.
- If separated tracts subsequently experience a change of use, the party responsible for the changed use pays the roll-back.



Separation, Split-off and Other “Use” Exceptions

- $\geq \frac{1}{2}$ Acre single cell tower lease \neq rollback. (a simplification)
- Gas, oil, coal-bed methane exploration and extraction leases.
 - This exception has very complex criteria. Consult the law.
 - Acreage actually utilized, not simply leased = rollback.
- *Note:* some exceptions carry a duty to report to County Assessor
- Wind power generation; only acres utilized = rollback. There is no specific solar exception. Solar is dealt with in the use definitions as an “alternative energy system.”
- < 2 year lease for “pipe storage yards;” only acres utilized = rollback



Exceptions (cont.)

- Small noncoal surface mining; only acres utilized = rollback
- Recreational activity (w/ or w/o a fee) on ag or forest reserve does not disqualify if land not rendered incapable of: (a) immediate conversion to ag use; or (b) producing timber/wood products.
- Estate Administration transfers \neq rollback; an estate beneficiary who changes use = rollback on their acreage only.
- Land donations to school districts, local and county govt., volunteer fire/ambulance; tax-exempt non-profits for recreational uses w/municipal agreement; churches; cemeteries; <20 ft. ROWs to non-profits for trails (non-motorized use). For cemeteries and trails, any subsequent change of use by donee = rollback assessed on donee only.

Rural Enterprise Exception

§ 5490.8. Roll-back taxes; special circumstances

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

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

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

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

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

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

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

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

(iii) Require **no new utilities or buildings**.



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QUESTIONS?



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