



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

Clean & Green Separations and Split-offs: Leasing, Subdividing, or Selling Enrolled Land

February 23, 2024





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.





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- Statutory Protections for Ag Operations
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- Crop Insurance
- Federal & State Conservation Programs
- Licensing & Regulation of Direct Agricultural Product Sales
- Agricultural Finance
- PA's "Clean & Green" Tax Assessment Program
- Animal Confinement Laws
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- Landowner Immunity Statutes
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Clean & Green Separations & Split-offs: Leasing, Subdividing, or Selling Enrolled Land





This is a “drill-down” topic in this series.

[Previous webinar on February 24, 2023](#)

Understanding the Basics of Pennsylvania’s “Clean & 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.

[PowerPoint: Understanding the Basics of Pennsylvania’s “Clean & Green” Preferential Tax Assessment Program](#)

See our [Virtual Resource Room: Pennsylvania Clean and Green Act](#)

[Recording: Understanding the Basics of Pennsylvania’s “Clean & Green” Preferential Tax Assessment Program](#)

Let’s do a quick recap (on 2/23/24 of the 2/24/23 program!)



PENNSYLVANIA CLEAN AND GREEN ACT



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CONTACT PERSON:

Brook Duer
Staff Attorney

PHONE:

EMAIL:

dhd5103@psu.edu

Statutes and Regulations

The following materials represent various statutes and regulations that have been enacted or promulgated by the Pennsylvania state government. While the Center makes every effort to update and provide current resources, be aware that statutory and regulatory language is subject to change. As a result, the Center offers no warranty or other guarantee regarding the timeliness or accuracy of the information presented.

The [Pennsylvania Farmland and Forest Land Assessment Act of 1974](#) (72 P.S. § 5490.1-5490.13), commonly referred to as Clean & Green Act, and as amended by Act 89 of Jul. 20, 2016, is a preferential tax assessment program aimed at reducing property taxes on rural landowners by taxing enrolled land at its use value rather than its fair market value.

Clean & Green Act regulations can be found in the [Pennsylvania Code, Chapter 137b. Preferential Assessment of Farmland and Forest Land Under the Clean and Green Act.](#)

Amendments to the Clean & Green Act:

[Act 89 of 2016 \(H.B. 806\)](#): An Act amending the Act of Dec. 9, 1974 (P.L. 973, No. 319), known as the Pennsylvania Farmland and Forest Land Assessment Act of 1974, further providing for land devoted to agricultural use, agricultural reserve, and/or forest reserve, for responsibilities of department and for responsibilities of county assessor in establishing use values.



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*. (Easier to read [copy](#).)
- 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 2022 Bureau of Farmland Preservation Annual Report, **10,917,928 million acres and 215,866 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.”*



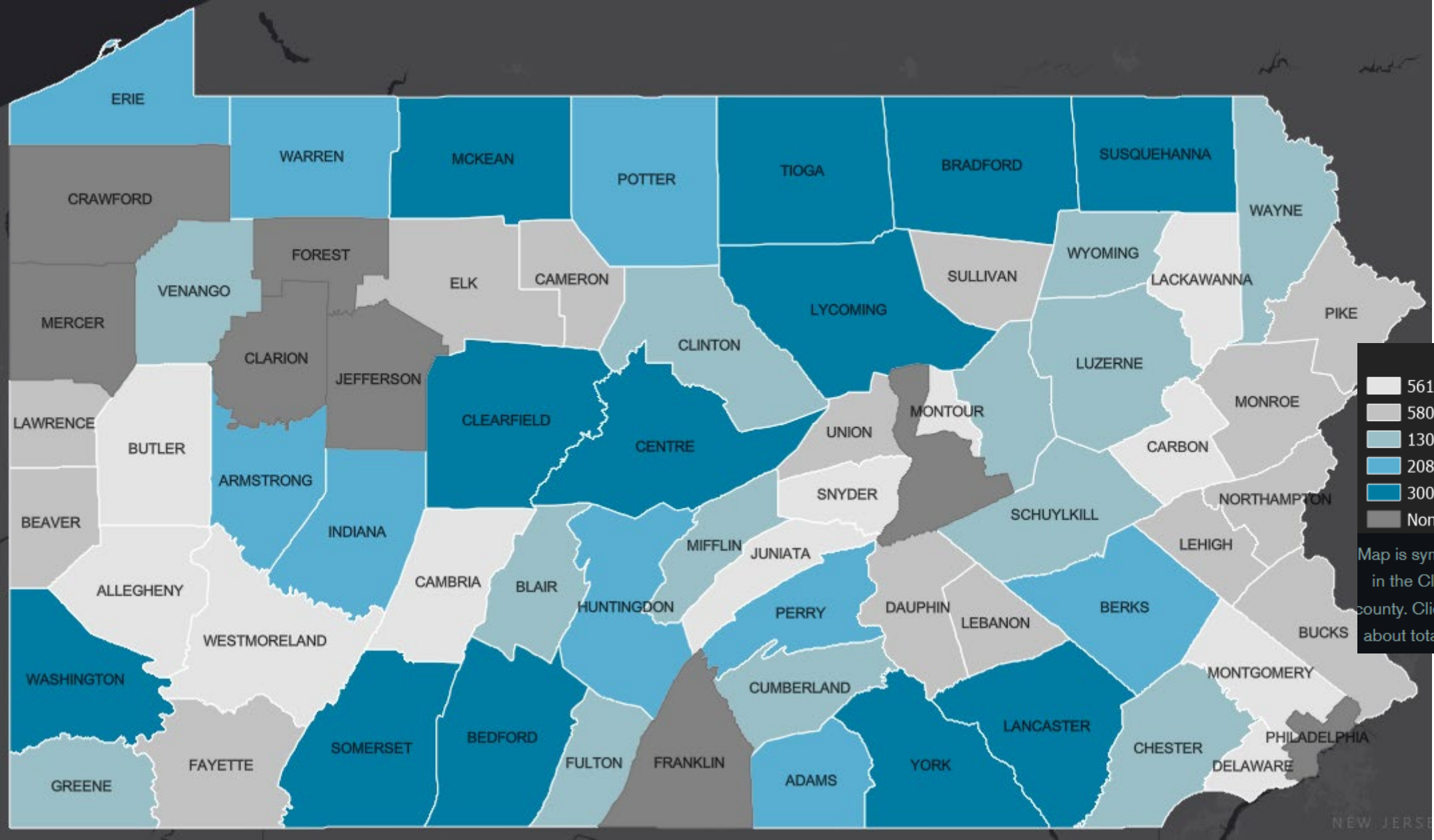
Clean and Green Overview (cont.)

- County participation and 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 ~4.3 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) (a residence is always allowed = The “McMansion problem”)
 - **Forest reserve** – 10 acres or more of forested land capable of yielding timber or other wood products (total of ~5.4 million acres enrolled)



Which counties do not offer C&G?

- Clarion
- Crawford
- Forest
- Franklin
- Jefferson
- Mercer
- Northumberland





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 reduction in gross 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 (and eligible acreage) of the enrolled 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, roll back and removal contained in the law.



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, only in theory since 2010).
 - 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.



Voluntary 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. The removed acreage may NOT be re-enrolled by the same owner.

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

- Without all the 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.
- **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.



Split-Offs & Separations - Definitions

- **"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 this 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 section 3. [*i.e.* 72 P.S. §5490.3]
- **"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 this 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. [*i.e.* 72 P.S. §5490.3]

“Split-Off – BAD! Separation – GOOD!”





72 P.S. §5490.6. Split-off, separation or transfer; Leasing . . .

- This is a labyrinthian section of law. After all, it is tax code.
- The title alone is a string of ~ 40 words and phrases.
- Amended 7 times - twice in 2010 and twice in 2011.
- We'll walk through it step-by-step.



Split-off = Rollback

72 P.S. §5490.6 (a.1)(1):

“The split-off of a part of land which is subject to preferential assessment under this act shall subject the land so split off and the entire tract from which the land was split off to roll-back taxes . . . , except as provided in this subsection.

The landowner who conducts the split-off shall be liable for payment of roll-back taxes.”



Recap of standard rollback rule [72 P.S. § 5490.5a]

- If a landowner removes land from a preferential assessment
- if a landowner changes the use of any tract of land subject to preferential assessment under this act to one which is inconsistent [with the allowable use & acreage provisions]
- if for any other reason the land is removed from a land use category, except for a condemnation of the land

“the land so removed and the entire tract of which it was a part shall be subject to roll-back taxes plus interest on each year's roll-back tax at the rate of six percent (6%) per annum. After the first seven years of preferential assessment, the roll-back tax shall apply to the seven most recent tax years.”



Split-off “Allowance” : 2-acre residential lot

§5490.6(a.1)(1) (cont.):

“If one of the following provisions apply, roll-back taxes . . . shall only be due as provided in this subsection:

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

(ii) The split-off occurs through a condemnation.”” *[which results in no rollback tax penalty of any kind]*



Modified rollback : 2-acre residential lot

“Each tract which has been split off under and meets the provisions of paragraph (1)(i) shall be subject to roll-back taxes . . .

The landowner who conducts the split-off shall be liable for payment of roll-back taxes, which shall only be due with respect to the split-off portion of land.

If the owner of the tract which has been split off under paragraph (1)(i) subsequently changes the use of that land to an ineligible use, the owner of the original tract which continues to be eligible for preferential assessment shall not be liable for any roll-back taxes triggered as a result.”

The split-off exception for a annual 2-acre residential lot in action below. It is exhausted upon reaching the smaller of 10 acres or 10% of total enrolled acreage.





2-acre Split Off for an “Eligible Use”

Note that the same statutory text also allows an annual 2-acre split off provided the split off parcel remains in an eligible use. This is the equivalent of an allowable “2-acre separation.” The same rules apply. A rollback is paid only the 2-acre separation, and it is removed from the C&G program as not meeting the 10-acre requirement. This potential scenario gets very little acknowledgement, and presumably little use.



Separations

72 P.S. 5490.6 (a.2):

“The owner of land subject to preferential assessment may separate land. If a separation occurs, all tracts formed by the separation shall continue to receive preferential assessment unless, within seven years of the separation, there is a subsequent change of use to one inconsistent . . . [with the allowable use and acreage provisions].



Separations (cont.)

“Such subsequent change in use shall subject the entire tract so separated to roll-back taxes . . .

[Note: read as “entire tract enrolled and subsequently separated”]

The landowner changing the use . . . shall be liable for payment of roll-back taxes.

[CAVEAT: a separated tract frequently has a new owner, so that owner can be liable for a large rollback of tax savings realized by the prior owner, not them.]

After seven years from the date of the separation, only that portion of land which has had its use changed . . . shall be subject to roll-back taxes . . . “

Conclusion: 7 years after a separation, no more strings.



Leasing, etc. allowed on enrolled land

- $\leq \frac{1}{2}$ acre lot leased for 1 **wireless/cellular** telecommunication tower; rollback on only the leased acreage.
- **Oil, gas, coal bed methane** lease or the exercise of legal rights to explore/extract by a pre-existing vested owner of those rights.
 - Rollback on only acreage “incapable of being immediately used” for the C&G enrolled use, as determined when “well production report is first due.” (i.e. after construction/drilling, etc. completed).
 - Rollback owed is retroactive on that acreage back to Oil and Gas Act permit approval.
 - Landowner held harmless for rollback if exploration/extraction is done pursuant to pre-existing vested rights in a third party.



Leasing, etc. allowed on enrolled land

- **Wind power generation system** (by lease or by landowner); Rollback on “footprint;” owed 30 days after electricity first generated.
- \leq 2-year lease for 1 “**pipe storage yard;**” rollback on the leased acreage; land “shall be restored to original use.”
- “**Small noncoal surface mining**” (by lease or by landowner); rollback on acreage “leased or devoted to” mining; one mining permit active at any time.



Transfers Upon Death

“Upon the death of a landowner . . . , **if land subject to preferential assessment is divided among the beneficiaries designated as class A*** for inheritance tax purposes and, as a result of such division, one or more tracts no longer meet the . . . *[10 acres size requirement]*, no roll-back tax shall be due . . .

A subsequent change in the use of one such beneficiary's portion of the divided land shall not subject any other beneficiary's portion of the divided land to roll-back taxes. **Roll-back taxes shall be due only . . . on the tract held by the beneficiary who changes the use** of any portion of his or her inheritance.”

**Class A beneficiaries in PA: Grandparents, parents, descendants (including natural descendants, adopted descendants and step-descendants), and an un-remarried spouse of a child.*



Other Transfers & Exceptions

- In addition to 72 P.S. §5490.6, keeping with the labyrinthian nature of the C&G statute, §5490.8 also contains relevant text.
- §5490.8 contains the general rule that roll back taxes “shall become due on the date of change of use” (or as prescribed in §5490.6 in certain defined circumstances).



Cemeteries and Recreational Trails

71 P.S. §5490.8(e):

“(1) No roll-back taxes shall be due and no breach of a preferential assessment shall be deemed to have occurred if:

- (i) the land transferred from a preferential assessment is conveyed to a nonprofit corporation for use as a **cemetery** and at least ten acres of land remain in the preferential use after removal; or
- (ii) the land transferred from a preferential assessment, or an easement or a right-of-way in that land, is conveyed to a **nonprofit corporation** and:
 - (A) the subject land does not exceed twenty feet in width;
 - (B) the subject land is used as a **trail for nonmotorized passive recreational use**;
 - (C) the subject land is available to the public for use without charge; and
 - (D) at least ten acres of land remain in preferential assessment after conveyance.

(2) Any acquisition or subsequent resale or change in use of any of the removed land for use other than as a cemetery under paragraph (1)(i) or as a trail under paragraph (1)(ii) shall subject the nonprofit corporation to payment of roll-back taxes and interest due on the entire tract of land removed.



Caselaw

[Moyer v. Berks County Board of Assessment Appeals](#), 803 A2d. 833 (Pa. Cmmw Ct. 2002).

Pursuant to an approved subdivision plan, the owners of two enrolled parcels (which at all times relevant remained fully devoted to qualifying ag uses) conveyed to themselves two new deeds for those two parcels which reconfigured the lot lines and transferred 2.7 acres from one parcel to the other. The County Assessor interpreted that as a split-off because it involved the conveyance of a parcel smaller than 10 acres. The Commonwealth Court held that because it was a deed transfer between the same owners solely for the purpose of reconfiguring lot lines on two parcels that otherwise always remained eligible to be enrolled in C&G, it was essentially an allowable separation, not a split-off.

There were other issues in the case, but this one provides the biggest take-away on the topic of today's webinar.



Caselaw (cont.)

[Saenger v. Berks County Board of Assessment Appeals](#), 732 A.2d 681 (Pa. Commw. Ct 1990) . A post-estate administration conveyance of 3.56 acres of enrolled land from a landowner (who acquired title via the death of her husband) to the landowner jointly with one of the couple's children, despite remaining in an eligible use, was a split-off resulting in rollback and removal of the total enrolled acreage.



Caselaw (cont.)

[Bowman v. Berks County Board of Assessment Appeals](#), 54 D.&C. 4th 544 (2001).

Clarified that the allowable split-off limit of “ten acres or ten percent (10%) of the entire tract” is to be tallied cumulatively over the period of enrollment. A landowner can theoretically convey five annual 2-acre split-offs for residential use or 10% of entire tract via one or more annual 2-acre split-offs, whichever limit is exhausted first.

There were other issues in the case, but this one provides the biggest take-away on the topic of today’s webinar.



Caselaw (cont.)

Maula v. Northampton County Division of Assessment Commonwealth Court of Pennsylvania, No. 1341 C.D. 2015.

A tax sale of 2.88 acres of enrolled land did not constitute an “action of the owner” under the definition of a “split-off” and did not therefore justify roll-back tax on and removal from the program of all acreage enrolled together.



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Center programs are funded in part by the Commonwealth of Pennsylvania through the Pennsylvania Department of Agriculture. The Center for Agricultural and Shale Law is a partner of the National Agricultural Law Center (NALC) at the University of Arkansas System Division of Agriculture, which serves as the nation's leading source of agricultural and food law research and information.

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