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**Preferential Assessment of Agricultural and
Forest Land Under Act 319 of 1974:
Entering the Second Decade**

by

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I. Introduction

A. *Development of Act 319*

Following passage of Joint Resolution No. 8 of 1971¹ and Joint Resolution No. 1 of 1973,² the electorate of the Commonwealth of Pennsylvania was asked whether the Commonwealth should amend its Constitution to provide special provisions for taxation of land actively devoted to agricultural or agricultural reserve use. Voters responded affirmatively, and Article 8, Section 2(b)(i) of the Pennsylvania Constitution was amended. The amendment gives the general assembly power to establish standards and qualifications for agricultural reserves and land actively devoted to agricultural use, and to make special provisions for the taxation of such land. To effectuate this constitutional amendment, the general assembly passed Act 319.³

The legislative history of Act 319 reveals various problems which faced Pennsylvania's law makers. For example, Representative A. C. Foster of York County stated:

The one thing which this bill is designed to do was to protect the interests of the farmer who wanted to remain on his farm and conduct an agricultural operation despite the rampant land price in his area. Obviously, if a man has a 200 acre farm and land in its vicinity is selling for \$10,000 an acre, he cannot long continue to farm if his land is assessed on that basis. Everyone recognizes the need to do something to relieve the farmer of this plight, and this we attempt to do in House Bill No. 1056

.....
We should try to keep out the speculative interests which would use this as a vehicle for windfall profit⁴

In response to this and other comments, Representative Thomas of Snyder County remarked:

. . . I want to remind everyone on the floor of this House that no land-use assessment bill will stop speculation in the Commonwealth of Pennsylvania. This is where we need zoning and planning laws that are effective on the local level. We have zoning and planning ordinances all over this Commonwealth, some of which are effective, some of which are working, many of which are not working. Let us not try to build something in here to solve the ills of those areas which do not have effective work-

1. House Bill No. 582, 1971-72 Session.

2. House Bill No. 3, 1973-74 Session.

3. Farmland and Forest Land Assessment Act, Pub. L. No. 973 (1974) (codified as amended at Pa. Stat. Ann. tit. 72, § 5490.1-5490.13 (Purdon 1985 Supp.)).

4. 1974 LEGISLATIVE JOURNAL 4173.

ble zoning and planning laws now⁵

A third excerpt from the floor debate highlights the view of the farm community in response to these proposals. Representative Fox of Lawrence County stated:

This program is conceived both for farmers and for urban people; for the farmers to enable them financially to continue in production and for the urban people to keep the supply of the food coming

I know the farmers there want this, not so they can get a tax benefit for a few years until they can sell off piece by piece of their real estate, but they want this so they can stay in production. That is the purpose of it, to keep them in production⁶

These three excerpts provide a number of factors that explain the legislature's various positions on the purpose of the bill. First, farmers actively engaged in production of agricultural commodities faced serious financial pressure which threatened their ability to remain in business. Second, farmers were subject to burdensome property taxes. Third, House Bill 1056 only addressed financial problems facing farmers; it did not implement land use regulations or restrictions. Fourth, urban versus rural differences in viewpoint and understanding of the problem and the best method of addressing it had to be addressed in any bill considered.

On December 19, 1974, Governor Milton J. Shapp approved House Bill 1056 which became Act 319 of 1974, Pamphlet Law 973, cited as the Pennsylvania Farmland and Forestland Assessment Act of 1974 and popularly known as the "Clean and Green Act." Pennsylvania is one of several states that have adopted a statute which allows certain land to be assessed for tax purposes at current-use value rather than market value determined at a higher or best use of land. Assessment at current-use value amount is one of several methods of achieving a differential assessment, the officially sanctioned practice of assessing some property classes at value levels different from those normally applied to others.⁷ Use-value assessment programs such as Pennsylvania's have been suggested and endorsed in

5. *Id.* at 4176.

6. *Id.* at 4178.

7. R. Barlowe, T. Alter, *Use Value Assessment of Farm and Open Space Land*, MICHIGAN STATE UNIVERSITY RESEARCH REPORT 308, at 2 (September 1976). Other forms of differential assessment are: total exemption from property taxation; partial exemption; assessment at nominal rates; classification of properties with each class assessed at its own level; and spacial forest taxation arrangements. Prior to its amendment in 1973, Article 8, Section 2(b)(i) of Pennsylvania's Constitution authorized the general assembly to establish standards and qualifications for private forest reserves and to make special provision for the taxation of such reserves.

many states as workable means to stabilize rural land taxes and encourage owners to keep lands in their current uses.

B. Purpose of Article

The purpose of this article is to examine the original Act of 1974, amendments to the Act, and the various interpretations given to the Act in its original and amended forms. The article also considers the usefulness of Act 319 and its adaptability to modern agricultural problems.

In the ten-year period from March 1974 to March 1984, the average value per acre of Pennsylvania farm real estate increased 122 percent.⁸ During the same period, the average net income per farm was also increasing, but at a much slower rate. In 1970 average net income per farm was \$4,255, but thirteen years later it had increased to only \$6,629.⁹ For landowners who lived in counties which re-assessed land, taxes may have risen dramatically as property values increased. Landowners were, therefore, confronted with the problem of rapidly increasing property taxes but slowly increasing net income.

Recently, land values have slightly fallen from their peak. Pennsylvania's experience reflects a decrease of twelve percent in land value from 1981 to 1985 with a decrease of eight percent from 1984 to 1985.¹⁰ Although land values have fallen in recent years, these decreases have not been evidenced through lower property value assessments or lower taxes. Agriculture's income situation has also been such that financial pressures have increased rather than decreased. Before discussing how Act 319 alleviates these problems, it is necessary to review the act in its original form.

II. Act 319 As Originally Passed

A review of Act 319 in its original form is helpful in three ways. First, it provides a basis for understanding how the legislature addressed the problem. Second, it points to other areas where revision is necessary. Third, many of the original provisions still apply today.

Under the Act in its original form, an owner of land devoted to agriculture, agricultural reserve or forest reserve use may apply for a preferential assessment of his land. If approved, the land is valued

8. *Farm Real Estate Market Developments*, U.S. Dept. of Agriculture, Economic Research Service, CD-89-Aug. 84, 3.

9. *1984 Crop and Livestock Annual Summary*, Pa. Dept. of Agriculture, Pa. Crop Reporting Service, 57.

10. *Agricultural Land Values and Markets*, U.S. Department of Agriculture, Economic Research Service, CD-90-Aug. '85, 5.

for general property tax purposes at its value for its particular use.¹¹ For approval, the following conditions must be met:¹²

- A. For land presently devoted to an agriculture use:
 - 1) agricultural use for the three years preceding the application; and 2) land is not less than ten contiguous acres in area or land has an anticipated yearly gross income of two thousand dollars (\$2,000).
- B. For land presently devoted to an agricultural reserve or forest reserve use:
 - 1) land is not less than ten contiguous acres in area.

The condition applicable to land devoted to agricultural use is interesting in that its focus is directed to use of the land. Landowners' involvement with such use is not essential. Use of land is the key. The gross income requirement focuses on the commercial farm enterprise as opposed to the part-time enterprise. The Act clarifies this by describing an agricultural use as one which includes production of an agricultural commodity. This latter term is defined to include any and all plant and animal products produced in Pennsylvania for commercial purposes.¹³

The definition of "agricultural reserve" requires land to be in a non-commercial, open-space use, such as outdoor recreation or scenic enjoyment, open to the public without charge on a non-discriminatory basis.¹⁴

The Act describes a forest reserve as land stocked by forest trees of any size capable of producing timber or other wood products.¹⁵ In this context, the use need not currently be commercial production. The definition refers to capability to produce timber and wood products. It appears the legislature recognized the long-term nature of forest production, which may involve fifty years or more.

A landowner applying for a preferential assessment must include the entire contiguous area used by the owner for agricultural or forest reserve purposes.¹⁶ Farm woodlots which are contiguous to agricultural land and owned by the same owner need not conform to the ten acre minimum area requirement.¹⁷

A landowner desiring to take advantage of the act must file an application with the county board of assessment.¹⁸ In determining

11. Farm Land and Forest Land Assessment Act, Pub. L. No. 973 § 3 (1974) (codified at Pa. Stat. Ann. tit. 72, § 5490.3 (Purdon 1985 Supp.)).
12. *Id.*
13. *Id.* at § 2.
14. *Id.*
15. *Id.* at § 3(c).
16. *Id.* at § 3(a)(4).
17. *Id.* at § 3(c).
18. *Id.* at § 4(a).

the value of such land, regulations of the Department of Agriculture provide that the method used by the county assessor should be logical, uniform and reasonable.¹⁹ The method applies whenever value must be determined and should include consideration of both the soil's capability for a particular use and the parcel's capability, including its productive capacity—the average annual gross return from the land less average annual management costs.²⁰ The Pennsylvania Department of Agriculture prepared suggested methods for calculating tax assessments under the Act, and regulations allow the Department of Agriculture to distribute these methods to counties upon request.²¹ These methods are merely suggested forms and do not preclude use of some other method.

In the floor debate on House Bill 1056, one crucial question dealt with a landowner's ability to sell, separate or split off a portion of land which has a preferential assessment under the Act. In its original form, the Act provided that separation or split off of a part of land for a use other than for agriculture, agricultural reserve or forest reserve subjected both the separated land and the remaining original parcel to liability for roll-back taxes.²² If separation occurred as a result of condemnation, liability for roll-back taxes did not apply. Under the regulations, an owner can transfer all land subject to preferential assessment to another person and the land will still retain the preferential tax assessment as long as there is no change of the eligible use.²³

The original Act allowed an owner of land subject to preferential assessment to transfer up to two acres of land annually for a residential, agricultural or forest reserve use while the remaining land continued to receive preferential treatment. This provision also required construction of a residential dwelling for the person to whom the land was transferred.²⁴ The dwelling requirement, however, was applicable only when the two-acre tract was split-off for residential purposes.

Under this provision, the landowner could not convey more than ten acres or ten percent of the land subject to preferential assessment, whichever was less.²⁵ If a landowner complied with this limited right to transfer land, he could preserve the preferential assess-

19. 7 PA. ADMIN. CODE § 137.62 (Shepard's 1981).

20. *Id.*

21. *Id.* See also *infra* note 65.

22. Farm Land and Forest Land Assessment Act, Pub. L. No. 973 § 6(a) (1974) (codified as amended at Pa. Stat. Ann. tit. 72, § 5490.6(a) (Purdon 1985 Supp.)).

23. 7 PA. ADMIN. CODE § 137.42 (Shepard's 1981).

24. Farm Land and Forest Land Assessment Act, Pub. L. No. 973 § 6(b) (1974) (codified as amended at Pa. Stat. Ann. tit. 72, § 5490.6(b) (Purdon 1985 Supp.)).

25. *Id.*

ment on the land retained if its use continued to meet minimum acreage or gross income requirements.²⁶

The original Act addressed the subject of roll-back taxes in provisions dealing with determination of the tax due when use of land was abandoned. Except in the case of condemnation, if an owner of land which was subject to preferential assessment changed the use of land to something other than agricultural, agricultural reserve or forest reserve, the preferential assessment was removed, and the land became subject to roll-back taxes.²⁷ These taxes are the difference between taxes paid or payable on the basis of valuation and assessment under Act 319 and taxes that would have been paid or payable had the land been valued, assessed and taxed as other land in the same taxing district during the current year, the year of the change, and in six of the previous tax years or the number of years of preferential assessment up to seven plus interest on each year's roll-back tax at the rate of six percent per annum.²⁸ If the land had been subject to preferential assessment for more than seven years, the roll-back period extended only to the seven most recent years.²⁹

The original Act stated that unpaid roll-back taxes were due on the date of the change of use and must be paid by the owner of the land at the time of change in use or other termination of the preferential assessment.³⁰ As part of the application for preferential assessment, the applicant agreed to provide thirty days notice to the county assessor of a proposed change in use of the land, a split-off of a portion of the land or a conveyance of the land.³¹ Under this scheme, an owner of land subject to preferential assessment who intended to sell the land was required to notify the county assessor of the sale. The county assessor would then calculate any roll-back taxes due, give notice of that amount to the interested parties and file liens for unpaid roll-back taxes.³² Collection of this lien would be executed in the same manner as other delinquent taxes.³³

When Act 319 was passed, a number of counties had existing programs under provisions of the Act of January 13, 1966, Act. No. 515 of 1965, P.L. 1292. Under this statute, a county can enter into a covenant with a landowner to preserve the use of land as farm, forest, water supply or open space land.³⁴ Such covenants last for a

26. *Id.*

27. *Id.* at § 8(a).

28. *Id.*

29. *Id.*

30. *Id.* at § 8(b).

31. *Id.* at § 4(c).

32. *Id.* at § 5(b).

33. *Id.* at § 8(b).

34. PA. STAT. ANN. tit. 16, § 11943 (Purdon 1985 Supp.).

period of ten years, and the county agrees to reflect the restriction on land use in calculating the property tax for the land subject to the covenant.³⁵ If the landowner breaches the covenant by altering the use of land to any use other than that described in the covenant, the landowner is responsible for paying the county the difference between real property taxes paid and taxes which would have been paid absent the covenant plus compound interest at the rate of five percent per year from the date of entering the covenant to the date of the breach, or five years, whichever period is shorter.³⁶

To provide flexibility to those counties which participated in Act 515, Act 319 provided that a landowner had an option to renegotiate the covenant to make it conform to provisions of Act 319.³⁷

III. Statutory Amendments

A. *Act of May 21, 1976, P.L. 143, No. 68, effective May 21, 1976*

The first amendment to Act 319 deals with responsibilities of the county assessor and the State Tax Equalization Board. Under the amendment, preferential use assessments granted under the Act are considered by the board in determining market value of taxable real property for school subsidy purposes, but the board does not consider the individual school district market value decrease as it relates to agricultural land when certifying the statewide market value to the Department of Education. The importance of this treatment is found in the market value aid ratio for each school district. This ratio is equal to:

$$1.00 - \left[\frac{\text{School District Market Value per ARWADM}}{\text{Statewide Market Value per ARWADM}} \right] \times 0.50$$

ARWADM = Aid Ratio Weighted Average Daily Membership.

Under this amendment to Act 319, the decrease in value caused by the preferential assessment is used to determine the school district market value, but the decrease is not reflected in the statewide market value. When calculated, the amount within the brackets is a lower number than if the decrease in market value were treated in the same manner on the top and bottom of the fraction. Since this fraction is then deducted from 1.00, a lower fraction will yield a higher final result as the market value aid ratio for the school dis-

35. *Id.*; see Att'y Gen. Op. #68, 1973, which interprets two amendments to this section, Act of October 26, 1972, P.L. 1030, No. 254 and Act of December 28, 1972, P.L. 1656, No. 352 amending Section 3 of the Act of January 13, 1966, P.L. (1965) 1292 No. 515.

36. PA. STAT. ANN. tit. 16, § 11946 (Purdon 1985 Supp.).

37. Farm Land and Forest Land Assessment Act, Pub. L. No. 973 § 10 (1974) (codified at Pa. Stat. Ann. tit. 72, § 5490.10 (Purdon 1985 Supp.)).

tract in question.³⁸ All other factors being constant, this results in a higher school district subsidy payment.

B. Act of March 24, 1980, P.L. 15, No. 15. Effective March 24, 1980

The second amendment to the Act clarifies a landowner's ability to deal with land which is subject to preferential assessment. This amendment adds new definitions for the terms "separation" and "split-off."³⁹ Under this amendment, a separation of land involves a division by the owner of lands preferentially assessed under the Act into two or more tracts, the uses of which continue to be an eligible use and to meet the ten acre or yearly gross income requirements.⁴⁰ A split-off, on the other hand, involves a division into two or more tracts, the use of which on one or more tracts does not meet the requirements of eligible use, minimum acreage or gross income.⁴¹

The second amendment, then, addresses split-off and separation in the context of roll-back taxes. If a tract is split-off from land which is preferentially assessed and the use of land is not an eligible use, this transfer subjects the land split-off and the entire tract to liability for roll-back taxes as set forth in the Act.⁴²

The split-off of up to two acres annually for residential, agricultural or forest reserve use is permitted, without triggering roll-back taxes provided that the land retained continues to receive preferential tax assessment and a residential dwelling is constructed for occupancy by the person to whom the land is transferred.⁴³ The requirement to build a residence applies solely when the two-acre tract is split-off for residential purposes.

The separation of property subject to preferential assessment results in all tracts formed thereby continuing to receive preferential use assessment unless the use of one of the tracts is abandoned. In such a case, the owner of the tract who abandons the eligible use faces roll-back taxes on both the abandoned tract and the remaining portion of the original tract if abandonment takes place within seven years of the separation.⁴⁴

38. A. Daugherty, *Pennsylvania's Alternative Preferential Assessment Authorizations: Public v. Private Benefits and Costs*, EXTENSION STUDIES 85, THE PENNSYLVANIA STATE UNIVERSITY, 21-22 (Feb. 1979) [hereinafter referred to as Daugherty Study].

39. Farm Land and Forest Land Assessment Act, Pub. L. No. 45 § 1 (1980) (codified at Pa. Stat. Ann. tit. 72, § 5490.2 (Purdon 1985 Supp.)).

40. Farm Land and Forest Land Assessment Act, Pub. L. No. 973 § 3 (1974) (codified at Pa. Stat. Ann. tit. 72, § 5490.3 Purdon 1985 Supp.)).

41. Farm Land and Forest Land Assessment Act, Pub. L. No. 45 § 1 (1980) (codified at Pa. Stat. Ann. tit. 72, § 5490.2 (Purdon 1985 Supp.)).

42. *Id.* at § 3.

43. *Id.*

44. *Id.*

The amendment also addresses the separation and distribution of property subject to preferential assessment among beneficiaries of the deceased owner who are designated as class A for inheritance tax purposes. In this situation, the change in use of one of the separated portions of property does not subject all other beneficiaries to roll-back taxes if the remaining beneficiaries continue an eligible use of their land.⁴⁶ The beneficiary who changes use of the property is subject to roll-back taxes.

Under the Inheritance and Estate Tax Act,⁴⁶ a class A beneficiary includes a deceased person's grandfather, grandmother, father, mother, husband, wife and lineal descendants including a wife or widow and husband or widower of a child.⁴⁷ A lineal descendant includes all children of the natural parents and their descendants, adopted children and their descendants, stepchildren and their descendants and children and their descendants of the natural parent who are adopted by the parent's spouse.⁴⁸ The inheritance tax definition of lineal descendant was changed in 1982 to include descendants of stepchildren.⁴⁹ Regulations issued by the Department of Agriculture state that the term lineal descendants does not include descendants of stepchildren.⁵⁰ Since the 1980 amendment to Act 319 referred to "beneficiaries designated as class A for inheritance tax purposes" and did not define the term, the subsequent amendment of the inheritance tax definition is operative in this statute as well.

C. Act of May 13, 1983, P.L. 9, No. 4 Effective, July 12, 1983

This amendment added to the list of permitted split-off situations by allowing a landowner to apply up to a maximum of two acres of preferentially assessed land to the direct commercial sale of agriculturally-related products and activities without subjecting the entire tract to roll-back taxes. The commercial activity must be owned by the landowner or beneficiaries designated as class A for inheritance tax purposes. Furthermore, an assessment of the commercial store's inventory must verify that it is owned by the landowner or his beneficiaries.

If a landowner desires to take advantage of this provision, roll-back taxes are imposed, but only on the portion of land where the activity takes place.⁵¹

45. *Id.*

46. 72 PA. CONS. STAT. ANN. § 1701-1720 (Purdon 1985 Supp.).

47. *Id.* at § 1716(a)(1).

48. *Id.* at § 1701.

49. Inheritance and Estate Tax Act, Pub. L. No. 255 (1982), amending PA. STAT. ANN. tit. 72, §§ 2485-101—2485-1003 (Purdon 1985).

50. 7 PA. ADMIN. CODE § 137.45 (Shepard's 1981).

51. Farm Land and Forest Land Assessment Act, Pub. L. No. 9 § 1 (1983) (codified at

D. *Act of May 9, 1984, P.L. 234, No. 51, Effective, July 8, 1984*

The 1984 amendment affected the application-filing procedure by requiring the landowner to submit an application to the county board of assessment appeals on or before June first of the year immediately preceding the tax year in question. The application is due one month earlier than under the original statute.⁵²

The amendment also provided that a breach of preferential assessment is recorded in the office of the recorder of deeds. The fee to record the breach is added to the total roll-back taxes due and must be paid by the property owner.⁵³

E. *Summary of Amendments*

These amendments clarify what landowners may do with land subject to a preferential assessment. The distinction between separation and split-off found in the 1980 amendment is significant because it permits landowners to transfer land while still retaining preferential assessment. As the following discussion of cases interpreting the Act indicates, courts have encountered difficulties with this distinction.

The 1983 amendment addressed this concern by giving landowners the option to open direct marketing facilities on preferentially-assessed land without losing the assessment on the remaining land. Therefore, when a roadside market can contribute to the financial viability of an agricultural operation, lower taxes on the remaining preferentially assessed land can be retained.

IV. *Litigation Which Interprets Act 319*

Act 319 and its application have not been immune from legal challenge. This section reviews litigation concerning interpretation of the Act.

A. *In re Patterson Lumber Co., Inc.*

*In re Patterson Lumber Co., Inc.*⁵⁴ concerned an appeal to the Potter County Court of Common Pleas of a decision by the Potter County Board of Assessment Appeals. Potter County instituted a county-wide property re-assessment program in 1976. Patterson Lumber Co., Inc. and Hammermill Paper Co. owned tracts of forest

Pa. Stat. Ann. tit. 72, § 5490.8 (Purdon 1985 Supp.).

52. Farm Land and Forest Land Assessment Act, Pub. L. No. 234 § 1 (1984) (codified at Pa. Stat. Ann. tit. 72, § 5490.4 (Purdon 1985 Supp.)).

53. *Id.*

54. *In re Patterson Lumber Co., Inc.*, No. 843-44, slip op. at 1 (Potter County Court of Common Pleas 1977).

land in Potter County and applied for preferential assessment of their land under Act 319. The County Board of Assessment Appeals assessed the forest land as follows:

Class I land \$110 per acre; Class II land \$90 per acre; Class III land \$40 per acre.

The lumber and paper companies appealed these assessments on three grounds:

(1) the method used to arrive at the classification was not pursuant to statutory guidelines; (2) the methodology employed by the county violated the United States and Pennsylvania Constitutions; and (3) the county abused its discretion in arriving at the present acre valuations based on use.⁵⁵

The Potter County Board of Commissioners passed a resolution dated June 20, 1977 which established certain classes for categories of land with the following use values:

Forest and Forest Reserve Land: Class I \$110 per acre; Class II \$90 per acre; Class III \$40 per acre.⁵⁶

In their resolution, the county commissioners described these various classes:

Class I - forest land, small or large tracts with marketable timber and accessible; Class II - tracts with fair location and access with timber in pole or pulpwood growth; Class III - all other timber or forest tracts including barren and brush areas.⁵⁷

On July 25, 1977, the board of commissioners passed another motion stating that soil types were reflected in the clarification of forest land as set forth in the resolution of June 20, 1977.⁵⁸

The court found that the motion of July 25, 1977 was an afterthought which attempted to meet statutory guidelines for use value of timber land and therefore did not establish the defacto basis for the commissioners to arrive at forest land use values.⁵⁹ The court also concluded that forest land use values of June 20, 1977 were actually based in part on a need for revenue in light of the assessment of other land in Potter County.⁶⁰

The court's findings also made reference to the Tioga-Potter County committee, appointed by the county commissioners to submit recommendations for farm and forest land use value figures under

55. *Id.*

56. *Id.* at 2.

57. *Id.* at 3.

58. *Id.*

59. *Id.*

60. *Id.*

the Clean and Green Act. This committee in its final recommendation suggested that there be two land categories: a forest land category valued at \$82.10 per acre and a waste land category valued at \$6.50 per acre.⁶¹ The committee, however, was a sham, and the court noted that two reputed members of the committee claimed that they knew nothing about the committee, its work or the report it allegedly issued.⁶²

The court then turned to guidelines issued by the Pennsylvania Department of Agriculture for evaluating agricultural and timber land based upon soils. Under these guidelines, the Department of Agriculture recommended use values ranging from \$84.70 for Northern Hardwood in assessment group I to \$7.70 for oak and pine in assessment group III.⁶³ The calculation of these values came from a recommended or suggested formula which provides that use value is equal to average net return divided by the current interest rate or expected return of investment capital.⁶⁴

In calculating the average net return, the Department of Agriculture used data from the Department of Environmental Resources, Bureau of Forestry for the sale of timber on state forest land. To determine an average annual return, the Department of Agriculture divided the value at the time of harvest by eighty years to reflect the time period needed for a stand of hardwood trees to reach harvest size.⁶⁵

61. *Id.* at 4-5.

62. *Id.* at 5.

63. *Id.* at 6.

64. *Id.*

65. *A Procedure for Determining the Use-value of Land Under the Pennsylvania Farmland and Forest Land Assessment Act of 1974*. Prepared by: The Pennsylvania Department of Agriculture, Agriculture Offices of Planning and Research and Crop Reporting Board, The Department of Environmental Resources, Bureau of Forestry Revised: September, 1976.

DERIVING FOREST LAND ASSESSMENT VALUES

Based on data from the Department of Environmental Resources, Bureau of Forestry, the value of forest products can be determined by using the values received for timber on state forest land. Due to the difference between oaks and northern hardwoods in price, these two groups are evaluated separately. Timber is a long term crop that requires many years to reach a harvestable size. The index of site quality for each of the soils described by the Soil Conservation Service is based on the average height obtained by the tallest oak trees at the age of fifty years.

The average annual return for a timber crop per acre can be determined by dividing the value of the crop at the time of harvest by eighty years. The average annual net return for a timber crop can be determined by subtracting the estimated annual management costs from the average annual management costs from the average annual gross return. The annual management costs were estimated to be: \$0.75 per acre for group I lands; \$0.50 per acre for group II lands; and \$0.25 per acre for group III lands.

Based on the five year average stumpage price for contract sales of oaks from Bureau of Forestry districts 1, 3, 5 and 7, sawtimber per thousand board feet was \$32.86, and pulp per hundred cubic feet was \$1.64.

Based on the five year average stumpage price for contract sales of northern hardwoods from Bureau of Forestry districts 4, 15 and 20, sawtimber per thousand board feet was \$52.71, and pulp per hundred cubic feet was \$2.06.

The court found that the formula used by the Department of Agriculture to determine use value of timber lands in Pennsylvania was reasonable, practical and bore a real relationship to obtaining actual use value.⁶⁶ Further, the court found that the department's use of data gathered over a longer period of time — five years rather than only one year — is a more equitable and proper method than the single year averaging method.⁶⁷ Moreover, the court concluded that values established by the Board of Assessment and Revision of Potter County tended to discourage proper forest management and

Because of the small differences between the S.C.S. woodland classifications of excellent and very good, they have been combined into a single assessment group I. Similarly, the S.C.S. woodland classifications of fair and poor have been combined into assessment group III. The average volume of assessment group from the Schnur Yield tables (Technical Bulletin No. 560, U.S.D.A.) is given below.

ASSESSMENT GROUP	MERCHANTABLE CUBIC FEET	BOARD FOOT VOLUME SCRIBNER RULE
I	1,615	13,360
II	1,949	8,037
III	1,989	1,478

The calculations which were used to determine the average annual gross return per acre are given in the following table.

Assessment Group	Product	Volume	Unit Value	Total	Unit Value	Total
I	Sawtimber	13.36	\$32.86	\$439.01	\$52.71	\$704.21
	Pulp	16.15	\$ 1.64	\$ 26.49	\$ 2.06	\$ 33.27
	Subtotal			\$465.50		\$737.48
	Average Annual Gross Return (÷ 80)			\$ 5.82		\$ 9.22
II	Sawtimber	8.04	\$32.86	\$264.19	\$52.71	\$423.79
	Pulp	19.48	\$ 1.64	\$ 31.95	\$ 2.06	\$ 40.13
	Subtotal			\$296.14		\$463.92
	Average Annual Gross Return:			\$ 3.70		\$ 5.80
III	Sawtimber	1.48	\$32.86	\$ 48.63	\$52.71	\$ 78.01
	Pulp	19.89	\$ 1.64	\$ 32.62	\$ 2.06	\$ 40.97
	Subtotal			\$ 81.25		\$118.98
	Average Annual Gross Return:			\$ 1.02		\$ 1.49

The average annual gross return minus the average annual management cost gives the average annual net return. Capitalization of the per acre average annual net return at the rate of 10% results in the estimate of the average use value per acre of forest land devoted to the production of either of these two ranges of timber products. The calculations follow:

Assessment Group	Average Annual Gross Return	Management Cost	Average Annual Net Return	Average Use Value Per Acre
OAK	I	\$5.82 - \$0.75 =	\$5.07	\$50.70
	II	\$3.70 - \$0.50 =	\$3.20	\$32.00
	III	\$1.02 - \$0.25 =	\$0.77	\$ 7.70
HARDWOOD	I	\$9.22 - \$0.75 =	\$8.47	\$84.70
	II	\$5.80 - \$0.50 =	\$5.30	\$53.00
	III	\$1.49 - \$0.25 =	\$1.24	\$12.40

66. *Patterson Lumber Co.*, No. 843-44, slip op. at 6.

67. *Id.* at 7.

encourage premature harvesting of timber land.⁶⁸

The court held that the county did not comply with guidelines established by the Act and that it abused its discretion in establishing present values of timber land. Furthermore, the court held that the method for calculating assessments lacked uniformity and was used to assess agricultural land rather than forest land.⁶⁹

The court declared the use value established by the Potter County Board of Assessment and Revision to be null and void. It then remanded the matter to the board and ordered it to establish three classifications of timber lands according to soils and to use the department's formula to establish the use value of timber lands owned by the appellants in Potter County.⁷⁰

This decision is significant for a number of reasons. Some question exists as to whether the court's opinion requires county boards of assessment to use figures generated by the Department of Agriculture. The court's opinion does not appear to require that result. The Act states that the assessor, when determining the value of land, shall consider available evidence of such land's capability for its particular use. The Act then lists a number of examples of such evidence.⁷¹ In preparing forest land assessment values, the Pennsylvania Department of Agriculture used information taken from the sales of timber from state forest land.⁷² The percentage of total market sales attributable to state timber is not stated, but it appears logical that such sales are only a portion of the overall timber market. The guidelines also fail to account for influence the state has on sellers of timber as well as market distinctions between sales of timber from state forests and private forests. Since these elements are missing from the suggested guidelines, it is reasonable to conclude that the guidelines provide some but not all of the evidence concerning value of forest land. Other available evidence may yield a different result, but the scope of this difference is unknown.

The court's support for the use value formula developed by the Department of Agriculture is significant.⁷³ Recognizing that this dispute took place only a few years after the Act was passed, the court could conclude that the formula was a reasonable and practical method to obtain use value. The county provided little help and the board of assessment and revision did not present any evidence regarding the method used to determine the use value of appellants'

68. *Id.*

69. *Id.* at 8.

70. *Id.* at 10.

71. PA. STAT. ANN. tit. 72, § 5490.3(b) (Purdon 1985 Supp.).

72. *Supra* note 65.

73. *Id.*

forest land.⁷⁴ In its findings of fact, the court states that the forest land values established by the commissioners were actually based in part on the need for revenue in light of the assessment of other lands in Potter County.⁷⁵ The court was displeased with the county officials,⁷⁶ and this displeasure may distinguish the case and provide the basis for its holding.

B. *In re Miller*

In this case, the Bucks County Court of Common Pleas sitting en banc was asked to consider exceptions filed by the Bucks County Board of Assessment Appeals to an opinion and order of the court in an appeal from a decision of the board.⁷⁷ The landowner owned two tracts of land which were preferentially assessed under the Act. One tract was 125 acres and the second tract was slightly larger than 290 acres. By deed, the landowner, George R. Miller, Sr., conveyed 5.154 acres of the tracts to George R. Miller, Sr. and George R. Miller, Jr., co-partners trading as Miller and Son. Following the transfer, the land conveyed to the partnership and the remaining land of George R. Miller, Sr. continued to meet the use requirements of the Act. The issue in the case was whether this conveyance of land to the partnership fell under Section 8 of the Act which provided:

When any tract which is in agricultural use, or agricultural reserve use or forest reserve use and which is being valued, assessed and taxed under the provisions of this Act is applied to a use other than agricultural, agricultural reserve, or forest reserve, or for any other reason, except condemnation thereof, is removed from the category of land preferentially assessed and taxed under this Act, the land so removed and the entire tract of which it was a part shall be subject to taxes in an amount equal to the difference, herein after referred to as roll-back taxes

. . . .⁷⁸

The court focused on the question of whether the conveyance caused the property to lose its preferential assessment status "for other reasons."

Under Section 6(a) of the Act,⁷⁹ the split-off of a part of land for a use other than agricultural or agricultural reserve or forest reserve will, except where the split-off occurs through condemnation,

74. *Patterson Lumber Co.*, No. 843-44, slip op. at 9.

75. *Id.* at 3.

76. *Id.* at 5.

77. *In re Miller*, No. 78-4451-04-6 (Bucks County Court of Common Pleas 1978).

78. PA. STAT. ANN. tit. 72, § 5490.8(a) (Purdon 1985 Supp.).

79. *Id.* at § 5490.6(a).

subject the land conveyed and the entire parcel from which it came to liability for roll-back taxes except for certain two acre parcels specified by Section 6(b) of the Act. The conveyance by Miller, Sr. to the partnership could not meet the requirements of Section 6(b) because of its size and thus was not an issue.

In wrestling with the Section 6(a) issue, the court stated that if a property owner were permitted to convey a portion of property without regard to its size and without restriction so long as the use of the conveyed portion continued to be agricultural, agricultural reserve or forest reserve, the two-acre restriction of Section 6(b) would be meaningless.⁸⁰ The court felt that the legislature did not intend that a property owner whose land is preferentially assessed should be permitted to fragment the property into as many pieces as he or she may desire so long as the qualifying use is made. To permit this would create a nightmare for the board in overseeing conveyances and the continuing use of the property by succeeding owners.⁸¹ In the court's view, the philosophy of the Act is to maintain large tracts of land for agricultural uses and not to permit their fragmentation into small pieces.⁸²

In its conclusion, the court stated that the conveyance by Miller, Sr. constituted a separation or split-off and triggered roll-back taxes under Section 8 of the Act.⁸³ The court reversed its order of November 9, 1978 and reinstated the decision of the board of assessment appeals which removed the appellant's property from the category of preferentially assessed land and imposed the roll-back taxes set by the Act.

C. *In re Phillips*

In the case of *In re Phillips*⁸⁴ appellants were the owners of a 104 acre farm which was granted a preferential assessment under the Act. After the land was assessed under the Act, the appellants granted twenty-one acre and forty-seven acre portions of their farm to their three children. Appellants retained a 35.8 acre portion, which included their home and farm buildings. Subsequently, appellants were notified that they had violated the Act and that roll-back taxes were due. Appellants requested a hearing before the board of assessment appeals, but their arguments at the hearing were unsuccessful. An appeal to the court of common pleas ended with the same result.

80. In Re Miller, No. 78-4451 -04-6, slip op. at 4.

81. *Id.*

82. *Id.*

83. PA. STAT. ANN. tit. 72, § 5490.8 (Purdon 1985 Supp.).

84. 48 Pa. Commw. 86, 409 A.2d 481 (1979).

On appeal, the commonwealth court framed the issue as the proper interpretation of Section 6 of the Act, the same section which was considered in *Miller*.⁸⁵ The court concluded that under Section 6, a separation or split-off of a part of preferentially assessed land for agricultural, agricultural reserve or forest reserve use is not a separation that subjects the land to roll-back taxes. The court stated:

. . . [T]he use to which the land is put is the key factor undergirding Act 319 rather than the element of transfer. Accordingly, we view the conveyance in question here not as a conveyance for a use other than agricultural or reserve use and thus not one that falls within the roll-back provisions of Section 8(a). A landowner breaches Section 8 of Act 319 only if the parcel split off or the original parcel is used for a use other than agricultural or agricultural reserve or forest reserve.⁸⁶

The court also discussed the two acre annual split-off for residential, agricultural or forest reserve use and found that it supported the court's conclusion that a transfer of land which does not change the qualifying use does not trigger the imposition of roll-back taxes.⁸⁷ In the court's view, a preferential assessment remains until a land use change takes place or the use is abandoned.

In attempting to reconcile the *Miller* and *Phillips* cases, one should note that an amendment to the Act has substantially prepared courts to deal with this situation in the future.⁸⁸ Since both decisions arose before the amendment, it is enlightening to consider the factors which the courts found significant. In *Miller*, the court was clearly concerned about the administrative burden which would be created by permitting landowners to convey parcels and retain preferential assessments if the qualified use continued. In *Phillips*, however, the court focused on use of the land and found that continuation of the qualifying use was the purpose or object of the statute and, therefore, that the roll-back tax should not be imposed. One significant distinction is the size of the parcels which were conveyed by the owners. In the *Miller* situation, the new owners of the 5.154 acre tract were not able to successfully obtain a preferential assessment in their own right unless the anticipated yearly gross income was \$2,000 or more. In the *Phillips* situation, however, each parcel was sufficiently large to support an application in its own right. By passing the amendment which created the current distinction between split-off and separation, the legislature seemingly chose to side

85. *Id.* § 5490.6.

86. *In re Phillips*, 48 Pa. Commw. at 89, 409 A.2d at 483.

87. *Id.* at 90, 409 A.2d at 483.

88. Act of March 24, 1980, Pub. L. No. 45 § 3 (1980) (codified at Pa. Stat. Ann. tit. 72, § 5490.6 (Purdon 1985 Supp.)).

with the *Miller* court. The amendment imposed a limitation on a landowner's right to sell a portion of preferentially assessed land. A split-off was defined as a conveyance into two or more tracts of land, one of which does not meet the eligibility requirements of size, anticipated gross income or use. This definition prevents fragmentation of a preferentially assessed tract into many small tracts. While the amendment imposed a condition, the condition is not particularly onerous; it simply forces the owner of the land to be mindful of the eligibility requirements of Section 3 of the Act when deciding to convey land.⁸⁹ Since these definitions are mutually exclusive, the terms are no longer interchangeable as the *Miller* court concluded, and the *Miller* opinion must be read in that light.⁹⁰

D. *Hess v. Montgomery County*

In the 1979 case of *Hess v. Montgomery County*⁹¹, Jane and Lawrence Hess appealed from an order of the Court of Common Pleas of Montgomery County arguing that the ten acre minimum size for forest reserves was unconstitutional. The common pleas court did not reach this issue, but dismissed the appeal on a procedural matter.

On appeal to the commonwealth court, Judge Wilkinson noted that Section 9 of the Act provides that an owner of property upon which a preferential assessment is sought and the political subdivision where it is located have a right of appeal under existing law. The court noted that the term "existing law" refers to the Act of June 26, 1931, P.L., as amended.⁹²

The Act deals with appeals from property value assessments fixed at the county level. The local rule of civil procedure in Montgomery County required an appellant to promptly file its petition for allowance of appeal and a proposed preliminary decree and to serve copies of the petition and preliminary decree on the board of assessment appeals, the board of county commissioners, the governing body of the municipality and the board of school directors of the school district where the real estate is located.⁹³ The appeal hearing would then be scheduled upon the filing of a praecipe signed by all counsel of record. In taking their appeal,⁹⁴ appellants failed to give any notice to the local township, the school board, the county com-

89. PA. STAT. ANN. tit. 72, § 5490.3 (Purdon 1985 Supp.).

90. *Miller*, No. 78-4551-04-6, slip. op. at 6.

91. 42 Pa. Commw. 292, 400 A.2d 1337 (1979).

92. PA. STAT. ANN. tit. 72, § 5350 (Purdon 1985 Supp.).

93. 42 Pa. Commw. at 294, 400 A.2d at 1338.

94. *Id.* at 295, 400 A.2d at 1338.

missioners and the court.⁹⁵ The lower court felt that appellant's disregard of the local rule was sufficient cause for striking the appeal.⁹⁶

On appeal to the commonwealth court, appellants argued that the local rule did not apply since the appeal was from the refusal to grant a preferential assessment but not from an assessment.⁹⁷ The commonwealth court concluded that the argument was a distinction without a difference.⁹⁸

Appellant's final argument was to seek the protection of the Judicial Code which provides for improvident appeals from a governmental determination.⁹⁹ The court dealt with this argument by concluding that the Judicial Code sections would be applicable if a matter were handled as an action in equity, mandamus, prohibition, quo warranto or otherwise, instead of as an appeal.¹⁰⁰ Since the court concluded that this matter should have been handled as an appeal, it ruled that the Judicial Code did not apply.¹⁰¹ Accordingly, the commonwealth court affirmed the lower court's order dismissing the appeal.

In 1983, the appellants again found themselves before the commonwealth court.¹⁰² In this action, the appellants appealed an order of the Court of Common Pleas of Montgomery County which rejected their constitutional challenge to the Act. This challenge focused on the Act's requirement that a tract must contain a minimum area of ten acres in order to meet the definition of a forest reserve. Appellants owned a six acre tract of forest land.

Appellants argued that the ten acre minimum area requirement violated the uniformity clause of the Pennsylvania Constitution.¹⁰³ The lower court found that preferential tax assessments for forest reserves were specifically allowed by the amendment to Article 8, Section 2(b)(i) of the Pennsylvania Constitution and that the ten acre qualification was a reasonable prerequisite for tax relief.¹⁰⁴

The commonwealth court found that adoption of the amend-

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. 42 PA. CONST. STAT. ANN., § 708 (Purdon 1981).

100. 42 Pa. Commw. at 296, 400 A.2d at 1338.

101. *Id.*

102. *Hess v. Montgomery County Board of Assessment Appeals*, 75 Pa. Commw. 69, 461 A.2d 333 (1983).

103. PA. CONST. art. 8, § 1 (Purdon 1969) ("All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws").

104. PA. CONST. art. 8, § 2(b)(i) (Purdon 1985 Supp.):

"The General Assembly may, by Law: . . . Establish standards and qualifications for private forest reserves, agricultural reserves, and land actively devoted to agricultural use, and make special provisions for the taxation thereof"

ment to Article 8, Section 2 empowered the general assembly to treat forest reserves as a separate class of real estate entitled to special provision for taxation and not subject to the uniformity clause requirement that all real estate be treated as a single class for taxation purposes. The court concluded that the appellant's position centered on what constitutes a "forest reserve." Appellants, as the owners of forest land, argued that all forest land should be treated equally and that the ten acre limitation violates the constitutional mandate of uniformity. The court rejected these arguments by pointing out that the constitution does not define forest reserves and authorizes the general assembly to establish standards and qualifications for them. Since the general assembly had exercised its authority to define what constitutes a forest reserve for special tax treatment, the court refused to hold that the definition was invalid or that the uniformity clause mandated a different result.¹⁰⁶ The court concluded that appellants had failed to meet their heavy burden of demonstrating that the Act clearly and plainly violated the constitution.¹⁰⁶

The court's conclusion was aided by the Pennsylvania Supreme Court decision in *Clearfield Bituminous Coal Corp. v. Thomas*, which involved an attempted to create a separate class of taxed land under the category of "forest reserve."¹⁰⁷ The court in *Clearfield Coal* held that this attempt violated the constitutional principles of equality and uniformity and was, therefore, invalid. Years later, the constitution was amended to give the general assembly authority to establish standards and qualifications for private forest reserves and to make special provisions for their taxation. Thus, the amendment to the constitution provided the needed authority to enact provisions offering preferential treatment. In the *Hess* case, the constitution was amended prior to enactment of the statute. In this case, uniformity was not an issue since lack of uniformity was already authorized. What the *Clearfield Coal* situation lacked, the *Hess* situation possessed. The decisions are, therefore, consistent in their approach to analyzing this issue.

The uniformity clause of the Pennsylvania Constitution has frequently been the subject of litigation aimed at challenging tax enactments.¹⁰⁸ Some of these cases have clearly stated that the taxing power is one that belongs to the legislature and not to the courts.¹⁰⁹ On this philosophical base, the constitutional grant of authority to

105. 75 Pa. Commw. at 74, 461 A.2d at 335.

106. *Id.* at 74, 461 A.2d at 336.

107. 336 Pa. 572, 9 A.2d 727 (1939).

108. *Id.*

109. PA. CONST. art. 8, § 1 and annotations (Purdon 1985 Supp.).

enact nonuniform provisions enhances the power of the legislature and eases the constitutional limitation it faces. The question becomes not whether the legislature's action was reasonable or proper, but simply whether the action was authorized by the constitution and was within the terms of the authorization.

E. Ruehl v. Bucks County

The case of *Ruehl v. Bucks County*¹¹⁰ concerned an action for a declaratory judgment on behalf of a class consisting of all property owners who covenanted with Bucks County under the provisions of Act 515,¹¹¹ and who then renegotiated these covenants pursuant to the provisions found in section 10 of Act 319.¹¹² Petitioners sought to establish their qualification to have land assessed under both statutes.¹¹³ Petitioners argued that once they had covenanted with the county under Act 515, they were able to apply for and receive a preferential assessment under Act 319.¹¹⁴

The court focused on Act 319's provisions which permit an agreed renegotiation of an Act 515 covenant into an approved Act 319 application for preferential assessment.¹¹⁵ The court concluded that this provision contemplated a conversion to a preferential assessment rather than a new assessment in addition to the assessment calculated under Act 515.¹¹⁶ The court found that if the legislature had intended to allow dual assessment, it could have easily provided for it instead of using the term "renegotiation." The court buttressed its conclusion by referring to the respective provisions which apply when the covenant with the county is breached or when the qualified use of land is changed. In both cases, the statutes contemplate that a penalty will be imposed; that penalty is the difference between the favorable tax rates secured under either plan and the amount of tax which would have been paid had there been no preferential or favorable assessment.¹¹⁷ The court held that property owners who obtain a preferential assessment under either Act have that as their sole assessment on the property.¹¹⁸

From petitioners' point of view, it is difficult to see what purpose could be served by having a parcel subject to both assessment statutes. Under Act 515, the assessment of land is determined after tak-

110. 26 Pa. D. & C. 3d 264 (1983).

111. Pa. Stat. Ann. tit. 16 § 11941-11947 (Purdon Cum. Supp. 1985).

112. PA. STAT. ANN. tit. 72, § 5490.10 (Purdon 1985 Supp.).

113. 26 Pa. D. & C. 3d at 266.

114. *Id.*

115. PA. STAT. ANN. tit. 72, § 5490.10 (Purdon 1985 Supp.).

116. 26 Pa. D. & C. 3d at 269.

117. *Id.* at 270.

118. *Id.* at 271.

ing into consideration the restriction placed on the land by the covenant.¹¹⁹ Since the covenant requires the landowner to agree to keep the land in farm, forest, water supply or open space use, and since Act 319 requires the land be used in agriculture, agricultural reserve or forest reserve, wouldn't the assessment be the same under either statute? While at first glance one might conclude that the assessments would be equal, one must remember that Act 319 directs the county assessor to use certain sources to determine the land's capability for its particular use.¹²⁰ Act 515 does not dictate the use of such sources. Other differences between the assessment systems may favor use of one form over the other. These differences should not be overlooked, for some land may be able to satisfy only one of the statutes.¹²¹

F. Godshall v. Montgomery County

This case addressed the novel question of whether a temporary use of land for a purpose other than the use which qualified the land for an Act 319 preferential assessment triggers loss of the preferential assessment and imposition of roll-back taxes for such change in use.¹²²

The appellant applied for and was granted a preferential assessment on a 75 acre tract which she owned in Montgomery County. In August 1980, the appellant made her land available to a private organization which used it to conduct a folk music and craft festival known as the Philadelphia Folk Festival. The organization which conducted the festival was a non-profit educational corporation, and it paid the appellant for the use of her land. The festival lasted approximately five days; the use of the land at all other times was an agricultural use which qualified for a preferential assessment.

Noting that the festival was conducted on land subject to a preferential assessment, the Montgomery County Board of Assessment Appeals notified the appellant that she was in violation of the Act and reassessed the property to its previous level. The board also sought to impose roll-back taxes for the allowable period under the Act. The board maintained that permitting the land to be used for the folk festival was an application of the land to a use other than agriculture. The appellant then appealed to the court of common

119. PA. STAT. ANN. tit. 16, § 11943 (Purdon 1985 Supp.).

120. PA. STAT. ANN. tit. 72, § 5490.3b (Purdon 1985 Supp.).

121. For example, a 15 acre tract of land used to raise vegetables would not satisfy the definition of "farmland" under PA. STAT. ANN. tit. 16, § 11941, but would meet the "agricultural-use" definition of PA. STAT. ANN. tit. 72, § 5490.3(a)(1).

122. *Godshall v. Montgomery County*, No. 81-865 (Montgomery County Court of Common Pleas 1981).

pleas which affirmed the board's decision without opinion.

Both the appellant and the board filed memoranda of law in support of their respective positions, and these are enlightening in the absence of an opinion. The appellant's memorandum focused on a number of points, including statutory construction of Section 8 of Act 319 and the word "use." The central point of appellant's argument was that a temporary use is not one that would indicate abandonment of the agricultural use which is needed for the preferential assessment. The appellant noted that no prior case addressed this question but that cases decided under Act 515 and zoning ordinances might be enlightening, although not directly applicable. In dealing with an alleged ambiguity in the Act, appellant cited *Phillips*¹²³ to support a statement that courts have identified other ambiguities in the Act and have been willing to interpret its meaning. As mentioned previously, the *Phillips* situation was decided under a law which has since been amended to clarify the situation.

In regard to the zoning cases, appellant cited several cases dealing with temporary or incidental uses which do not change the primary use of the property. Appellant argued that a minor deviation in use should not be permitted to become the basis for withdrawal of the preferential assessment and for imposition of roll-back taxes.

The memorandum filed by the board focused on the fact that the Act simply does not permit temporary use of the land outside of the qualified uses which are needed to obtain the preferential assessment. As such, the Act, being strictly construed against the taxpayer, was violated and roll-back taxes triggered.

V. Use of Act 319

Act 319 participation has been the subject of periodic review by the Pennsylvania Department of Agriculture and researchers at The Pennsylvania State University. These efforts provide statistical evidence and analyses describing how the Act has functioned.

1. *Pennsylvania Department of Agriculture Statistics*

Regulations adopted by the Pennsylvania Department of Agriculture require county assessors to report annually on the extent of Act 319 participation within their counties.¹²⁴ From this information, the office of planning and research of the Pennsylvania Department of Agriculture prepares a summary of participation.¹²⁵ This

123. 48 Pa. Commw. 85, 409 A.2d 481 (1979).

124. 7 PA. ADMIN. CODE § 137.67 (Shepard's 1981).

125. Copies of this summary report are available upon request by writing to Office of Planning and Research, Pennsylvania Department of Agriculture, 2301 North Cameron

summary is not intended to address the effectiveness of Act 319 or its administration by counties; rather, it is designed to provide the best data currently available on the degree of participation in each county. According to the summary of participation for 1984, issued on April 30, 1985, the number of participants throughout Pennsylvania totals more than 21,000 with more than 1,700,000 acres of land under the program. This land is located in thirty-four of Pennsylvania's sixty-seven counties.¹²⁶ Within each county, the number of participants and amount of land varies considerably. Perry, Delaware and Lancaster Counties each have two participants, while Washington County has more than 5,100 participants. Lancaster County has twenty-four acres of land preferentially assessed under the Act, and Bradford County has more than 400,000 acres participating. The report indicates that the percentage reduction in dollar value per acre of Class I farmland was as high as ninety-seven percent in Delaware County, with an unweighed average reduction of fifty-six percent based on information from twenty-six counties.

2. *Penn State Research Studies*

Early in the history of participation under the Act, two studies were conducted by researchers at Penn State University.¹²⁷ The Gamble study made a number of important conclusions based on the experience available. One conclusion stated that tax savings is the principal force motivating landowners to participate in preferential assessment.¹²⁸ If a county embarks on a reassessment and selects realistic land values, it is likely that participation will increase significantly in order to gain tax savings.¹²⁹ On the other hand, counties which provide landowners with real tax savings through other means, such as unrealistically low assessed values for farm and open land — sometimes called a de-facto subsidy — pre-empt participation in Act 319.¹³⁰ If landowners can obtain tax savings without restricting opportunities for dealing with their land, then the unrestricted approach is the more attractive alternative.

Street, Harrisburg, PA 17110-9408.

126. Counties participating include: Allegheny, Beaver, Bradford, Bucks, Butler, Cambria, Centre, Chester, Clinton, Cumberland, Dauphin, Delaware, Erie, Fayette, Fulton, Greene, Huntingdon, Juniata, Lancaster, Lehigh, Luzerne, McKean, Monroe, Montgomery, Northampton, Perry, Pike, Potter, Snyder, Union, Washington, Wayne, Westmoreland and York.

127. H.B. Gamble, O.H. Sauerlender, R.H. Downing, *The Effectiveness of Act 319, the Pennsylvania Farmland and Forestland Assessment Act*, 100 INSTITUTE FOR RESEARCH ON LAND AND WATER RESOURCES THE PENNSYLVANIA STATE UNIVERSITY Dec, 1977; [hereinafter referred to as *Gamble Study*]. See also, Daugherty Study, *supra* note 38.

128. *Gamble Study*, *supra* note 127, at 47.

129. *Id.*

130. *Id.*

As participation in the preferential assessment program increases, revenue will decline. The Gamble study concluded that this decline may lead to increases in millage rates of non-participating landowners, thereby shifting tax liability to them.¹³¹ Increases in millage rates will also result in a reduction of tax savings to program participants if the amount of tax reduction is so significant that millage rates must be dramatically increased. If a participant has land which is not subject to preferential assessment, the increase in millage rates will reduce the overall savings obtained by the landowner. The Gamble study's final conclusion was that preferential assessments will not prevent agricultural land from shifting into other uses but that it may postpone such shifts until some future date.¹³²

The Daugherty study approached the preferential assessment situation from the viewpoint of comparing Act 319 to its predecessor, Act 515, which concerns covenants between landowners and county commissioners. Some of the points of comparison deal with the method of determining preferential assessment amounts, penalty amounts, alternative uses of tax savings gained from the preferential assessments and the landowner's ability to deal with the property under the respective preferential assessment program. In reviewing the public benefits and costs from these programs, the Daugherty study looked at whether each program would contribute to preservation of open space, reduction of urban sprawl and maintenance of the agricultural sector in the economy.¹³³ Under Act 515, only land which is designated as farm, forest, water supply or open space land on an adopted municipal, county, or regional plan, for the purpose of preserving the land in the designated use, is eligible for a covenant with the county.¹³⁴ Using land preservation as a gauge gives Act 515 an edge, since land under that program must be so designated in order to participate. Act 319 does not impose such a requirement for participation.¹³⁵ The Daugherty study pointed out that in some of the counties offering Act 515 covenants, land designated on future land use plans as commercial, industrial or residential has been involved in the preferential assessment program.¹³⁶

Daugherty concluded that a landowner would benefit from either preferential assessment program if a large portion of the assessed value of the land came from a use other than the existing open space use and if the land was not currently receiving a "de

131. *Id.*

132. *Id.* at 48.

133. *Daugherty Study supra* note 38, at 14.

134. PA. STAT. ANN. tit. 16, § 11942, 11943 (Purdon 1985 Supp.).

135. PA. STAT. ANN. tit. 72, § 5490.2 (Purdon 1985 Supp.).

136. *Daugherty Study supra* note 38, at 15.

facto preferential assessment.”¹³⁷ On the question of public benefits in one program as compared to another, Daugherty maintained that Act 319 did not significantly contribute to achieving public benefits, since some land in the Act 319 program may not have been designated as open space land on future land use plans.¹³⁸ Under the Act 515 program, only land which has been designated as farm, forest, water supply, or open space land in an adopted plan is eligible for the program. Under the Act 319 program, the landowner decides to participate regardless of whether the land has or has not been designated in an adopted plan.

Both studies were completed in the late 1970’s — the Gamble study in 1977 and the Daugherty study in 1979. A number of developments subsequently occurred which may impact on the concept of preferential assessments. The first development is passage of the Agricultural Area Security Law.¹³⁹ The stated purpose of this law is to provide a means by which agricultural land may be protected and enhanced as a viable segment of the commonwealth’s economy.¹⁴⁰ The Act declares the policy of the commonwealth to be one of conserving, protecting and encouraging development and improvement of agricultural lands for the production of food and other agricultural products.¹⁴¹ Under this Act, a landowner may initiate a process which could eventually result in having an area of land designated as an “agricultural area.” If this designation is made, government agencies and municipalities have an obligation to encourage continuity, development and viability of agriculture within the area.¹⁴² Condemnation of land being used for productive agricultural purposes can only be accomplished after approval of the Agricultural Land Condemnation Approval Board,¹⁴³ an agency which determines whether there is a reasonable and prudent alternative to using land within the agricultural area for the public purpose contemplated by the condemnation.¹⁴⁴ This act also provides for transfer of development rights to land located within the agricultural area.¹⁴⁵ House Bill 806 and Senate Bill 641 have been introduced in the 1985-86 Session of the Pennsylvania General Assembly to fund the purchase of development rights under this statute.

If a landowner is successful in having an area designated and

137. *Id.* at 17.

138. *Id.*

139. PA. STAT. ANN. tit. 3, §§ 901-915 (Purdon 1985 Supp.).

140. *Id.* at § 902.

141. *Id.*

142. *Id.* at §§ 911-12.

143. *Id.* at § 913(a)(b).

144. *Id.* at § 913(d).

145. *Id.* at § 914.

state and local governments thereby incur an obligation to support and encourage agriculture within the area, how might this support and encouragement be given? The Act does not address the question of tax assessments, but this situation may be ripe for what the studies have called "de facto preferential assessment," or low assessment on lands within the agricultural area.¹⁴⁶ It is important to note that the Agricultural Area Security Law does not prohibit a landowner from taking any action with the land while it is in the area. If the land is taken out of an agricultural use, the Act neither requires nor provides any penalty for the landowner. One may argue that since the Act provides few tangible benefits, it should provide even fewer penalties. A landowner who wants to retain maximum flexibility to deal with new developments may be drawn to this provision because of its flexibility.

In other areas of the state, the thrust of preservation of agricultural land has taken more determined steps. In Lancaster County, the board of county commissioners has appointed an agricultural preserve board to develop and administer a voluntary deed restriction for farming program in order to preserve selected areas of the county's best agricultural land. These preserves include those areas of the county which have prime agricultural soil, are most suitable for agriculture and are in townships which have adopted effective agricultural zoning districts. Under the program, a landowner may donate a deed restriction to the preserve board, sell the development rights to the county, or grant the county the first right to purchase the farm if it is sold. The county may also purchase farms within preserve areas and resell them with deeds which restrict their use to agriculture. The objective of the program is to preserve, through all feasible means, 278,000 acres of land which the county comprehensive plan identifies as prime farmland. In addition, this comprehensive plan allows for an expected increase in county population by identifying more than 100,000 acres of land where development is appropriate.

In this Lancaster County program, the landowner is making a substantial commitment to the preservation program far beyond the contribution made by an Act 319 participant or someone whose land is in an agricultural area. The earlier statistics of Act 319 participation show that only two landowners in Lancaster County have participated. One reason for this limited participation could be the other opportunities available to landowners in the county. The 1984 sum-

146. Note, however, that PA. STAT. ANN. tit. 3, § 902(2) describes a rise in farm taxes as one of the problems which result from the scattered development of urban areas from good farm areas.

mary of Act 319 participation also indicates that Lancaster County's last assessment was made in 1962 and that the values used to calculate the taxes paid may yield low taxes.

The reference to agricultural zoning may also have played a part in reducing the assessed valuation of land by limiting the uses to which land in prime agricultural areas may be put. The commitment made by Lancaster County reflects the importance which its citizens and government place on agricultural land preservation. Other counties share this concern and may look to the Lancaster County experience as a basis for programs of their own.

VI. Conclusion

The situation in which the agricultural community finds itself today is one characterized by financial pressures of various sorts. As taxing authorities look to property value re-assessments to relieve their own pressures, agricultural landowners have the option of participating in programs such as Act 319 to relieve some of the pressure which re-assessment creates. By virtue of the constitutional amendment, this special treatment is proper, even though use of the special treatment can shift a tax burden to landowners who are not participating in a preferential tax assessment program. The decision to participate in the preferential tax assessment program is not without a price to the landowners. This price is the cost incurred in roll-back taxes when the land is sold for a use other than those which qualify for the preferential assessment or when a portion of the land is split-off. Landowners do not lose the option to sell their land for a use other than one which will qualify for participation, but the imposition of roll-back taxes probably influences a buyer's negotiating strategy in dealing with landowners. This may make such transactions more time consuming to negotiate and close, thereby placing those owners at a competitive disadvantage in the real estate market.

From the relatively low participation found in Lancaster County, the heart of Pennsylvania farm country, one can draw the conclusion that landowners have other options available to them. If these options create a tolerable level of real estate taxes and do not restrict owners' options to take advantage of market changes, then these options are preferable to participation in Act 319. What if there are changes in the conditions which created these options, such as a re-assessment intended to remove unrealistically low assessment values? If property owners feel that their assessments are unrealistically high in relation to other landowners who have unrealistically low assessments, owners of property with high assessments will take advantage of opportunities to lessen their burden by seeking a re-

assessment which will create a balanced assessment approach having neither unrealistically high nor low assessment amounts.

If re-assessment occurs, a fundamental decision regarding preferential tax assessment programs must be made. Should the program simply ease a taxpayer's immediate burden or should the program extend further to an agricultural land preservation program? Lancaster County seems to have made agricultural land preservation one of its important goals. Other areas of Pennsylvania may share that concern and may be willing to take action.

If the land preservation approach is adopted, a landowner will face a fundamental conflict. Is the owner willing to forego a chance to sell the land at market value prices in return for a reduction in real estate taxes? Since farm units are facing substantial pressure from falling prices and rising costs, the question of continued participation in farming is being considered more frequently. Since these considerations are becoming more prominent, flexibility is becoming more important.

As agriculture passes through its current period of financial difficulties and changes take place in the organization of agriculture, it may be necessary to evaluate whether what emerges from this period is something that a preferential tax assessment plan should benefit. Should a large corporate farm receive the benefit of lower taxes as well as a family owned farm? Would an increase in the number of large-scale corporate farms and a decrease in the number of family-owned farms signal the end of the need for a preferential tax assessment program?

Structural changes in agriculture are likely to take some time to complete. In the meantime, participation in a preferential assessment program, such as Act 319, will most likely continue. The problem of taxes is an annual one, and a program which offers relief is attractive. Fluctuations in farm income are more easily handled when other burdens are minimized. Programs like Act 319 effectively minimize these burdens.