Overcoming Constitutional Restriction to Permit Property Tax Incentives for Soil Conservation Programs

by

Dean T. Massey

Originally published in SOUTH DAKOTA LAW REVIEW
29 S.D. L. REV. 24 (1983)

OVERCOMING CONSTITUTIONAL RESTRICTIONS TO PERMIT PROPERTY TAX INCENTIVES FOR SOIL CONSERVATION PROGRAMS

DEAN T. MASSEY*

INTRODUCTION

Approximately one-half of the sediment entering streams, rivers, and lakes stems from soil erosion on agricultural cropland.[1] The Soil Conserva-

* General Attorney, Natural Resource Economics Division, Economic Research Service, U.S. Department of Agriculture; and Lecturer, University of Wisconsin Law School, Madison, Wisconsin. B.S., 1954, LL.B, 1958, and M.S., 1961, University of Wisconsin-Madison. Member of the State Bar of Wisconsin.

1. U.S. COUNCIL ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL QUALITY—THE ELEVENTH ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 133 (1980) [hereinafter cited as ELEVENTH ANNUAL REPORT]. *See* Hines, *Agriculture: The Unseen Foe in the War on Pollution*, 55 CORNELL L. REV. 740, 754 (1970) [hereinafter cited as *Agriculture: The Unseen Foe*].

tion Service (SCS) estimates a national average loss of about 3.8 billion tons of soil from water-induced sheet and rill erosion.[2] Precipitation runoff, when exposed to various types of agricultural land use activity, carries bacteria, nutrients, chemical residues, pesticides, animal wastes, and other pollutants along with the sediment into lakes, rivers, streams, and groundwaters.[3] Land use patterns are usually more important in determining soil losses through erosion than are all the natural factors influencing erosion.[4]

Property tax incentives may be a new approach for promoting farmer participation in conservation programs to control soil erosion if methods can be found to overcome the rigid restrictions placed on property taxation by the uniformity clauses in state constitutions.[5] Almost all state constitutions require that taxes levied on real property be "uniform and equal."[6] Several methods are available to overcome the uniformity restrictions to permit property tax incentives for soil conservation programs depending upon the state. Some methods would require constitutional amendments, while others would only require amending statutes to permit an adjustment in assessed values or tax rates applied to those values as an incentive for initiating conservation programs. Still another method would be to amend existing farm, forest, and open space lands preservation statutes to require establishing and maintaining soil conservation programs as a prerequisite for permitting landowners to take advantage of differential or use-value assessment.

This article describes how constitutional uniformity clauses can be overcome to permit property tax incentives for implementing soil conservation programs on agricultural, forest, and open space lands. First, the article describes the need for and problems concerned with property tax incentives to initiate conservation programs, restrictions imposed on property taxing powers by the various constitutional uniformity clauses, methods of overcoming those constitutional restrictions, and the various types of property tax incentives available that may be combined with the methods of over-

2. ELEVENTH ANNUAL REPORT, *supra* note 1, at 133. See U.S. DEP'T OF AGRICULTURE, A NATIONAL PROGRAM FOR SOIL AND WATER CONSERVATION: 1982 FINAL PROGRAM REPORT AND ENVIRONMENTAL IMPACT STATEMENT 7-11 (1982) [hereinafter cited as NATIONAL PROGRAM] for further discussion of soil losses through erosion.

3. Note, *A Procedural Framework for Implementing Nonpoint Source Water Pollution Control in Iowa*, 63 IOWA L. REV. 184 (1977) [hereinafter cited as Note, *Water Pollution Control in Iowa*]. *See* U.S. COUNCIL ON ENVIRONMENTAL QUALITY, ENVIRONMENTAL QUALITY—THE NINTH ANNUAL REPORT OF THE COUNCIL ON ENVIRONMENTAL QUALITY 122 (1978).

4. *See generally, Agriculture: The Unseen Foe, supra* note 1. See also Hines & Schantz, *Improving Water Quality Regulation in Iowa*, 57 IOWA L. REV. 231, 368-72 (1971) [hereinafter cited as *Improving Water Quality Regulation*]; Note, *Water Pollution in Iowa, supra* note 3 for discussion of problems concerned with agricultural pollutants, particularly those dealing with soil erosion and sediment.

5. Myers, *Open Space Taxation and State Constitutions*, 33 VAND. L. REV. 837, 841 (1980) [hereinafter cited as *Open Space Taxation*]. For a comprehensive discussion of the state constitutional uniformity clause restricting taxing powers, see W. NEWHOUSE, JR., CONSTITUTIONAL UNIFORMITY AND EQUALITY IN STATE TAXATION (1959).

6. *See* NEWHOUSE, *supra* note 5, at 9-11.

coming the constitutional restrictions to provide favorable tax treatment to those initiating conservation programs. The article next details each method of overcoming the various constitutional uniformity clause restrictions, the type of property tax incentives that may be implemented under each method, and how those incentives may be implemented. Each state has statutes giving favorable tax treatment to certain types of property and these statutes may be used in many instances as examples of finding a constitutional method for providing favorable tax treatment to promote participation in soil conservation programs.

I. NEEDS AND PROBLEMS OF PROPERTY TAX INCENTIVES FOR SOIL CONSERVATION PROGRAMS

Soil losses from erosion seriously affect the productive capacity of agricultural land;[7] therefore, "[a]griculture's principal concern in controlling soil erosion has been to ensure that soil losses do not impair productivity of land under cultivation."[8] Demand for less turbid water for recreation use, plus the realization that soil erosion plays the major role in transporting nutrients and pesticides to waterways, have caused a reexamination of soil management policy.[9] Conservation programs are designed to conserve soil resources and to prevent and control runoff and soil erosion. These programs may involve the construction of structures such as terraces, sediment traps, ponds, and diversions; observance of cultivation practices such as contour plowing, no-tillage and minimum tillage row-cropping systems, and strip-cropping; planting grass and trees; and retirement of highly erosive areas from cultivation.[10] Various structures and practices may be used singly or in combination with each other.

"The obstacle to developing an effective sediment control program has been the absence of an institutional structure capable of requiring individual landowners to employ the necessary soil conservation measures."[11] Although a substantial nationwide program for the prevention of soil erosion has existed for over forty years,[12] very little has been done to adopt land use

7. ELEVENTH ANNUAL REPORT, *supra* note 1, at 133. See Walker & Young, *A Perspective that Technology may not Ease the Vulnerability of U.S. Agriculture to Erosion*, in PERSPECTIVE ON THE VULNERABILITY OF U.S. AGRICULTURE TO SOIL EROSION: AN ORGANIZED SYMPOSIUM 19-31 (U.S. Dep't of Agric., Econ. Research Service, NRE Staff Rep. No. AGES830315, 1983) for further discussion on loss of productivity.

8. *Agriculture: The Unseen Foe*, *supra* note 1, at 754. See Ferguson, *Nation-wide Erosion Control: Soil Conservation Districts and the Power of Land-Use Regulation*, 34 IOWA L. REV. 166 (1949) [hereinafter cited as *Nation-wide Erosion Control*] for a discussion of the creation of the Soil Conservation Service and enactment of state legislation enabling the establishment of soil conservation districts and their role in conserving soil resources and preventing and controlling erosion.

9. *See* Browning & Heinemann, *Workshop Session—Sediment as a Water Pollutant*, in AGRICULTURAL PRACTICES AND WATER QUALITY 46, 47-48, 52 (T. Willrich & G. Smith ed. 1970).

10. *See generally*, U.S. ENVIRONMENTAL PROTECTION AGENCY, EPA-430/9-73-015, METHODS AND PRACTICES FOR CONTROLLING WATER POLLUTION FROM AGRICULTURAL NONPOINT SOURCES (1973); M. POWELL, W. WINTER, & W. BODWITCH, COMMUNITY ACTION GUIDEBOOK FOR SOIL EROSION AND SEDIMENT CONTROL (Nat'l Ass'n of Counties Research Foundation 1970).

11. *Improving Water Quality Regulation*, *supra* note 4, at 369.

12. *See Nation-wide Erosion Control*, *supra* note 8, at 166-73.

regulations to control erosion.[13] Soil conservation programs have been accomplished primarily through farmers' voluntary initiative prompted by the educational activities of the soil and water conservation districts and county extension system.[14]

Even though the districts play a significant role in implementing soil conservation programs, they are virtually helpless without the services provided by SCS and the Agricultural Stabilization and Conservation Service (ASCS). SCS provides technical assistance for planning and applying land treatment practice within the districts and for individual landowners. Districts enter into a series of memorandums of understanding with SCS in which SCS promises the technical assistance of at least one staff member per district and the district promises to formulate plans and to require cooperating farmers to sign written agreements specifying their obligations.[15]

The Rural Environmental Assistance Program (REAP), formerly the Agricultural Conservation Program (ACP), is administered by ASCS to provide financial assistance to carry out soil conservation programs for individual farmers.[16] If funds are available REAP will usually pay up to 50% of the cost for implementing most land treatment practices which are suggested in the SCS farm conservation plans with a maximum amount of $3,500 annually per farmer.

> Thus, any success the soil and water conservation districts and SCS may have in implementing soil conservation programs is highly dependent on the availability of REAP cost-sharing funds to the landowners involved. Without such funding the individual landowner would have to pay the full cost for the construction of terraces and other structures and the implementation of other land treatment practices.[17]

New incentives are needed to encourage soil conservation programs. While the voluntary approach to erosion control has achieved significant results, the pool of landowners who can be induced to act by offers of technical and traditional financial cost-share assistance may now have been exhausted after forty years of operation.[18] A survey conducted by USDA's Natural Resource Economics Division among landowners and operators in

13. For states adopting mandatory regulations to control soil loss through erosion, see, e.g., ILL. ANN. STAT. ch. 5, §§ 111(8), 138.3, 138.5-.10 (Smith-Hurd Supp. 1983-1984); IOWA CODE ANN. §§ 467A.42-.53 (West 1971 & Supp. 1983-1984); OHIO REV. CODE ANN. § 1515.30 (amended and renumbered as § 1511.02) (Page Supp. 1982); S.D.C.L. §§ 38-8A-1 to -21 (1977 & Supp. 1983). For a detailed discussion of regulatory methods, see Note, *Water Pollution Control in Iowa, supra* note 3, at 184.

14. *See Contemporary Studies Project: Impact of Local Government Units on Water Quality Control*, 56 Iowa L. Rev. 804, 890 n.542 (1971) [hereinafter cited as *Contemporary Studies Project*].

15. *Id.* at 891. *See also* W. DAVEY, CONSERVATION DISTRICTS AND 208 WATER QUALITY MANAGEMENT 204-06, 210-11 (U.S. Environmental Protection Agency & Nat'l Ass'n of Conservation Districts, 1977) (copies of the memorandums of understanding between SCS and the soil and water conservation districts).

16. The Agricultural Conservation Program was authorized by a 1936 amendment to the Soil Conservation and Domestic Allotment Act of 1936. 49 Stat. 1148 (1936), 16 U.S.C. § 590h (1976 & Supp. V 1981).

17. *Contemporary Studies Project, supra* note 14, at 891-92.

18. *Improving Water Quality Regulation, supra* note 4, at 369-70.

the Maple Creek Watershed in northeast Nebraska regarding their participation in soil erosion control programs found that one-third of the operators indicating that soil erosion problems existed on their farms stated that they were unwilling to adopt additional conservation practices.[19] Lack of cost-sharing was found to be the greatest reason for unwillingness to implement conservation programs.[20] About one-half of the owners and operators in the survey preferred increased REAP cost-sharing as a method of encouraging more conservation practices on their land and about one-fifth wanted tax credits as a means of sharing the cost of conservation practices.[21] REAP cost-share financial assistance has about reached its limit, hence, the reason for examining other means of financial assistance, such as property tax incentives.

The use of property tax incentives for promoting participation in soil conservation programs poses two problems. First, to be economically viable, such incentives must be sufficient to reimburse the landowners for their additional net expenses in establishing soil conservation programs. Second, if the incentives are sufficient to encourage landowners to establish programs, the amount of the reduction in tax receipts may be deemed too costly and burdensome for local governments. Reduction of the tax base of the taxing jurisdiction, thereby reducing local government revenue in the area and shifting the tax burden to other landowners, is the side effect of property tax incentives for conservation programs.[22] The seriousness of these side effects will depend to some extent upon the local government's reliance on property taxes as a source of revenue.[23] Studies conducted in some states adopting statutes allowing differential assessment of farm, forest, and open space lands have not indicated substantial reductions in the tax base[24] or major shifts in the tax burden to other landowners.[25] Some states provide state aid to local governments or school districts to partially reimburse the local jurisdictions for the revenue they lose when farm or open space land is

19. H. HOOVER & M. WIITALA, OPERATOR AND LANDLORD PARTICIPATION IN SOIL EROSION CONTROL IN THE MAPLE CREEK WATERSHED IN NORTHEAST NEBRASKA 45-46 (U.S. Dep't of Agriculture, ESCS Staff Report NRED 80-4, 1980).

20. *Id.* at 55.

21. *Id.* at 33.

22. *See* Lapping, Bevins, & Herbers, *Differential Assessment and Other Techniques to Preserve Missouri's Farmlands*, 42 MO. L. REV. 369, 386-87 (1977) [hereinafter cited as *Differential Assessment*].

23. *See* Currier, *Exploring the Role of Taxation in The Land Use Planning Process*, 51 IND. L.J. 27, 44 (1975) (states that there is a great disparity among states as to how much property tax is relied upon as a revenue source, ranging in 1973 from 14.8% of total receipts in Alabama to 59.1% of total receipts in New Hampshire).

24. *See* T. HADY & A. SIBOLD STATE PROGRAMS FOR THE DIFFERENTIAL ASSESSMENT OF FARM AND OPEN SPACE LANDS, 13 (U.S. Dep't of Agriculture AER No. 256, 1974) [hereinafter cited as HADY & SIBOLD].

25. *See*, *Differential Assessment, supra* note 22, at 387; Fellows, *The Impact of Public Act* 490 *on Agriculture and Open Space in Connecticut*, in PROCEEDINGS OF THE SEMINAR ON TAXATION OF AGRICULTURAL AND OTHER OPEN LAND 48, 52-53 (Mich. St. U. Coop. Ext. Serv., 1971); Garrison, *Problems and Impact of the New Jersey Farmland Assessment Act of 1964*, in PROCEEDINGS OF THE SEMINAR ON TAXATION OF AGRICULTURAL AND OTHER OPEN LAND 35, 46 (Mich. St. U. Coop. Ext. Serv., 1971).

differentially assessed and to finance the administrative cost of such programs.[26]

Any property tax incentives enacted by state legislatures should at least be sufficient to offset any increase in assessed value of land due to the implementation of a soil conservation program if the land remains in agricultural, forestry, or open space use. Landowners should be expected to pay an increase in property taxes if the installation of a conservation structure resulted in, for example, a recreational lake that serves as the basis for a residential development. Some soil conservation programs could be an improvement to land. Land upon which such conservation practices or structures are established may be more valuable than land without such practices and structures and therefore have a higher assessed value. Landowners implementing conservation practices or establishing structures may find themselves paying higher property taxes than those landowners doing nothing. Without property tax incentives, a disincentive may exist for implementing soil conservation programs.

District conservationists employed by SCS at the county level through a memorandum of understanding with the soil and water conservation districts can assist in determining compliance with conservation programs and clarify eligibility for tax incentives to the local taxing jurisdiction. REAP cost-share funds to assist farmers in implementing a soil conservation program can be used in conjunction with property tax incentives.

II. UNIFORMITY RESTRICTIONS ON PROPERTY TAXATION

Constitutions in forty-three states have some type of uniformity clause that could pose possible restrictions on legislatures giving favorable tax treatment to certain properties for implementing soil conservation programs.[27] Several state constitutions, however, have traditionally allowed classification of subject[28] or property,[29] but required uniformity within the same class. A 1959 study conducted by Newhouse revealed nine types of basic constitutional "uniformity clauses" relating to property taxation.[30]

26. *See, e.g.*, CAL. GOV'T CODE §§ 16140-16153 (West 1980 & Supp. 1983); CAL. GOV'T CODE § 51283.1(e) (West 1983); ME. REV. STAT. ANN. tit. 36 § 578 (Supp. 1982-1983); N.Y. AGRIC. & MKTS. LAW § 305(1)(e) (McKinney Supp. 1982-1983).

27. *See* NEWHOUSE, *supra* note 5, at 3, 10-11, 47-48, 591-594, 771-815. See *id.* at 9-11 for a classification of the various types of uniformity clauses. Alaska, Connecticut, Hawaii, Iowa, and New York do not have uniformity clauses in their constitutions. *Id.* at 3, 11, 48, 595-600. The Alaska Constitution only provides, for example, that assessment standards are prescribed by law. ALASKA CONST. art. IX, § 3. Rhode Island and Vermont constitutions have "uniformity clauses" that only provide for a fair distribution of governmental expenses. R.I. CONST. art. I, § 2; VT. CONST. ch. I, art. 9.

28. COLO. CONST. art. X, § 3; DEL. CONST. art. VIII, § 1 (1897); GA. CONST. art. VII, § 1, ¶ 3; IDAHO CONST. art. VII, § 5; LA. CONST. art. X, § 1; MINN. CONST. art. IX, § 1; MO. CONST. art. X, § 3; MONT. CONST. art. XII, § 11; N.M. CONST. art. VIII, § 1; OKLA. CONST. art. X, § 5; OR. CONST. art. I, § 32; PA. CONST. art. IX, § 1; VA. CONST. art. XIII, § 168.

29. ARIZ. CONST. art. IX, § 1; KY. CONST. § 171; MD. CONST. DECL. OF RIGHTS art. 15; N.C. CONST. art. V, § 3; N.D. CONST. art. XI, § 176; S.D. CONST. art. VI, § 17, art. XI, § 2; WASH. CONST. art. VII, § 1.

30. NEWHOUSE, *supra* note 5, at 9-11. Even though many state constitutions have been

The distinguishing characteristics of the clauses relate to the manner in which the words "uniform" and "equal" are used. The nine types of clauses provide for uniformity in the following ways: (1) property shall be taxed according to its value;[31] (2) property shall be taxed in proportion to its value;[32] (3) the legislature may impose proportional and reasonable assessments, rates, and taxes upon all persons and estates within the state;[33] (4) there shall be a uniform rule of taxation;[34] (5) taxation of property shall be equal and uniform;[35] (6) the legislature shall provide by law for a uniform and equal rate of assessment and taxation;[36] (7) taxes shall be uniform upon the same class of subjects;[37] (8) taxes shall be uniform upon the same class of property;[38] and (9) there shall be a fair distribution of governmental expenses.[39] Five states; Alaska, Connecticut, Hawaii, Iowa, and New York; do not have uniformity clauses pertaining to property taxation.[40]

These rigid uniformity provisions mandating equal tax treatment within a particular taxing jurisdiction were originally designed to prevent legislative abuses of the taxing power, by demanding that all property be taxed equally and at its true or full value,[41] and to insure against inequitable apportionment of the government tax burden.[42] In addition to the uniformity clauses seldom being identical, state court interpretation of them are many and varied.[43] Therefore, an analysis is necessary in each state to determine the difficulties that may be confronted when using property tax incentives to promote soil conservation programs.

Uniformity clauses involve three potential restrictions on the exercise of legislative power to tax real property. These three limitations must be analyzed separately because they impose significantly different restrictions and

---

amended to permit differential assessment of farm, forest, and open space lands, the basic uniformity provisions remain the same; the differential assessment amendments merely provided exceptions to the uniformity clauses.

31. *See, e.g.*, ARK. CONST. art. XVI, §§ 5, 6; ME. CONST. art. IX, § 8; TENN. CONST. art. II, § 28.

32. *See, e.g.*, ALA. CONST. art. XI, § 211; CAL. CONST. art. XIII, § 1; ILL. CONST. art. IX, § 1; NEB. CONST. art. VIII, § 1.

33. *See, e.g.*, MASS. CONST. pt. II, ch. 1, § 1, art. 4; N.H. CONST. pt. II, art. 5.

34. *See, e.g.*, MICH. CONST. art. X, § 3; N.J. CONST. art. VIII, § I, ¶ 1; OHIO CONST. art. XII, § 2; WIS. CONST. art. VIII, § 1.

35. *See, e.g.*, MISS. CONST. art. 4, § 112; TEX. CONST. art. VIII, § 1; W. VA. CONST. art. X, § 1; WYO. CONST. art. I, § 28, art. XV, § 11.

36. See, e.g., FLA. CONST. art. VII, § 2; IND. CONST. art. X, § 1; KAN. CONST. art. XI, § 1; NEV. CONST. art. X, § 1; S.C. CONST. art. X, § 1; UTAH CONST. art. XIII, § 3.

37. *See supra* note 29.

38. *See supra* note 30.

39. R.I. CONST. art. I, § 2; VT. CONST. ch. I, art. 9.

40. *See supra* note 28.

41. *See Open Space Taxation, supra* note 5, at 838; NEWHOUSE, *supra* note 5, at 609-42; Matthews, *The Function of Constitutional Provisions Requiring Uniformity in Taxation*, 38 KY. L.J. 31, 39-46 (1949) [hereinafter cited as *The Function of Constitutional Provisions*].

42. *See, e.g.*, Idaho Tel. Co. v. Baird, 91 Idaho 425, 429, 423 P.2d 337, 341 (1967); American Nat'l Ins. Co. v. Board of Supervisors, 303 So. 2d 457, 459 (Miss. 1974); Switz v. Kingsley, 37 N.J. 566, 574-79, 182 A.2d 841, 843-44 (1962). *See also* Myers, *The Legal Aspects of Agricultural Districting*, 55 IND. L.J. 1, 10 (1979) [hereinafter cited as *The Legal Aspects of Agricultural Districting*]. *See generally*, *The Function of Constitutional Provisions*, *supra* note 41, at 51-54.

43. *See The Legal Aspects of Agricultural Districting, supra* note 42, at 10.

each has a bearing on the type of tax incentive that may be implemented for soil conservation programs.[44] The first restriction involves the uniformity required in taxing the property itself, which concerns the degree to which state legislatures are free to pick and choose among classes of property for taxation. This restriction is essentially a question of "universality" and involves whether all classes of property within a taxing authority's territory must be selected for taxation imposed by that authority or whether the constitution permits the legislature to exempt certain classes of property completely from taxation. A requirement of "universality of taxation" exists if all property must be selected for taxation and no property is exempt unless it is expressly designated as exemptible in the constitution.[45]

Universality requirements may be derived from the basic clause in the constitution applicable to uniformity of taxation or a clause other than the basic uniformity clause. The exemption of any real property other than that specifically designated as exempt in the basic uniformity clause is prohibited, for example, in the Tennessee and West Virginia constitutions.[46] Universality of taxation is derived from specific exemptions in both the basic uniformity clause and other clauses specifying exemptions in the Arkansas and Nevada constitutions.[47] Only specific real property designated as exempt in a clause other than the basic uniformity clause may be exempted from taxation, for example, in Florida,[48] Illinois,[49] South Carolina,[50] South

44. NEWHOUSE, *supra* note 5, at 6-8, 650-74; Note, *The Uniformity Clause, Assessment Freeze Laws, and Urban Renewal: A Critical View*, 1965 WIS. L. REV. 885, 889-90 [hereinafter cited as Note, *Uniformity Clause*].

45. NEWHOUSE, *supra* note 5, at 607; Note, *Uniformity Clause, supra* note 44, at 890.

46. TENN. CONST. art. II, § 28 (*See* Cumberland Univ. v. Golladay, 152 Tenn. 82, 86, 274 S.W. 536, 537 (1924) (the legislature is without power to grant tax exemptions contrary to the express mandate of the constitution and that the requirement of the constitution is imperative that all property except that mentioned shall be taxed)); W. VA. CONST. art. X, § 1. (*See* State *ex rel.* County Court v. Demus, 148 W. Va. 398, 404, 135 S.E.2d 352, 357 (1964) (the constitution gives authority to the legislature to exempt all property falling within those categories specified in the constitution)).

47. ARK. CONST. art. XVI, §§ 5(a), 6; NEV. CONST. art. VIII, § 2, art. X, § 1.

ARK. CONST. art. XVI, § 5 is the basic uniformity clause. ARK. CONST. art. XVI, § 6 provides that all laws exempting property from taxation other than as provided in the constitution are void. *See* ARK. CONST. amends 12 (exempting capital investment in textile mills for seven years); 22 (exempting homesteads); and 27 (exempting new manufacturing establishments). See Tedford v. Vaulx, 183 Ark. 240, 242, 35 S.W.2d 346, 347 (1931), holding that the legislature does not have the power to exempt property from taxation unless the property came within the exemption mentioned in the constitution.

NEV. CONST. art. VIII, § 2, art. X, § 1. NEV. CONST. art. X, § 1 is the basic uniformity clause. Both clauses exempt specific property. See State v. Wells Fargo & Co., 38 Nev. 505, 529, 150 P. 836, 842 (1915) holding that the constitution authorizes the taxation of all property not specifically exempted.

48. FLA. CONST. art. VII, § 3 (lists exemptions). FLA. CONST. art. VII, § 2 is the basic uniformity clause. *See* Am Fi Inv. Corp. v. Kinney, 360 So. 2d 415, 416 (Fla. 1978) (holding that the constitution requires that all property used for private purposes bear its first share of the tax burden with certain exemptions specifically enumerated in the constitution); Volusia County v. Daytona Beach Racing & Recreational Facilities Dist., 341 So. 2d 498, 502 (Fla. 1976) (holding all property is subject to taxation unless expressly exempt).

49. ILL. CONST. art. IX, § 6 (provides legislature may exempt from taxation only property listed). ILL. CONST. art. IX, § 4(a) is the basic uniformity clause.

50. S.C. CONST. art. X, § 1 is the basic uniformity clause. S.C. CONST. art. X, § 3 does specifically exempt air, noise, and water pollution control equipment and facilities from property taxa-

Dakota,[51] and Utah.[52] Legislatures have the discretion to exempt certain classes of property completely from taxation under some state constitutions, while in other instances courts have interpreted the uniformity clauses not to contain a rule of universality. "Universality of taxation" is not required in, for example, Alabama,[53] Maine,[54] New Hampshire,[55] Wisconsin,[56] and Wyoming.[57] Consideration must be given to universality requirements in determining the types of property tax incentives available to farmers for implementing soil conservation programs. It may be possible to consider conservation structures improvements to land in those states without a universality requirement and exempting the improvements from taxation without a constitutional amendment.

The second restriction concerns the uniformity required for the effective rate of property taxation, which is a combination of the assessed value and tax rate on that assessed value. Once the taxable property valuation is ascertained, two questions arise as to the legislative power to deal with that property: (1) may the ratio of assessed valuation, that is, the percentage of actual value at which the property is entered on the tax rolls, be varied from class to class even though the rate of taxation imposed on all classes is uniform; and (2) may different rates of taxation be imposed on the various classes of property even when the assessed valuation of the property is determined by

---

tion. See Textile Hall Corp. v. Hill, 215 S.C. 262, 277, 54 S.E.2d 809, 815 (1947), holding that the constitutional provision is largely a limitation on legislative powers in the matter of granting tax exemptions.

51. S.D. CONST. art. XI, §§ 5, 6 provides for the property that is exempted from taxation and S.D. CONST. art. XI, § 7 states that all laws exempting property from taxation other than that enumerated in sections 5 and 6 are void. S.D. CONST. art. XI, § 7, art. XI, § 2 are the basic uniformity clauses.

52. UTAH CONST. art. XIII, § 2 (all tangible property not exempt under this constitution is taxed). UTAH CONST. art. XIII, § 3 is the basic uniformity clause.

53. ALA. CONST. art. IV, § 91, art. XI, §§ 211, 217, *amended by* amend. 373 does not contain any provision limiting exempt property to those listed, but rather provides for taxing all property not exempt by law. See State v. Alabama Fuel & Iron Co., 188 Ala. 487, 511-12, 66 So. 169, 176 (1914) which held that the legislature was empowered to exempt classes of property from the general property tax if the exemptions constituted reasonable classes. ALA. CONST. art. XI, § 217, *amended by* amend. 373 is the basic uniformity clause.

54. ME. CONST. art. IX, § 8 does not provide for either mandatory or permissive exemption of certain classes of property. The state supreme court has held that the constitution does not require the legislature to impose taxes upon all real property within the state of whatever kind or to whatever use applied. In re Opinion of the Justices, 102 Me. 527, 528, 66 A. 726, 727 (1907). ME. CONST. art. IX, § 8 is the basic uniformity clause.

55. N.H. CONST. pt. II, art. 6 does not provide for a requirement of universality either as to selection or exemption. N.H. CONST. pt. art. 5 is the basic uniformity clause. *See* In re Opinion of the Justices, 95 N.H. 548, 550-51, 65 A.2d 700, 701 (1949) (property may be classified for the purpose of exemption on the basis of use, purpose, or inherent characteristics, however, the exemption must be supported by a "just reason" test which is met when the public welfare is benefited. In re Opinion of the Justices, 77 N.H. 611, 612, 93 A. 311, 312 (1915) (holding the legislative has the power to either select less than all property for taxation or by general law to provide for the exemption of classes).

56. WIS. CONST. art. VIII, § 1 (West Supp. 1983-84) provides for exemptions of reasonable classes of property. *See also* WIS. STAT. § 70.11 (West Supp. 1983-84) (property exempted from taxation by legislature).

57. WYO. CONST. art. XV, § 12 lists exempt property, but provides further that the legislature may by general law exempt additional property. WYO. CONST. art. I, § 28, art. XV, § 11 are the basic uniformity clauses.

a uniform ratio between assessed and actual value? If the answer to both questions is negative, then there is a requirement for "absolute uniformity as to effective rate;" and the uniformity requirement not only operates within each class of taxable property, but requires that all classes be treated uniformly.[58] Indiana and Mississippi are examples of "absolute uniformity" states existing today.[59] Several states had strict uniformity requirements until the past few years, but have since then amended their constitutions to allow special tax treatment to certain property by permitting differential assessment of farmland and open space.[60] Absolute uniformity requirements must be taken into consideration to determine if adjustments can be made in assessed value or tax rates applied to those assessed values as a method of providing property tax incentives for soil conservation programs.

A third restriction involves the method of taxation, that is, whether the uniformity clauses require that property be taxed only in accordance with its value (ad valorem method) or permit a specific tax be levied upon the property.[61] Constitutional uniformity clauses requiring that property be taxed only by the ad valorem method exclude the possibility of imposing specific taxes measured by other means, such as gross income from the property, as a substitute for "value."[62] Massachusetts,[63] New Hampshire,[64] Tennessee,[65] Utah,[66] and Wisconsin[67] are examples of states requiring the ad valorem method of taxing property. Property taxes need not be based on value, for example, in Delaware,[68] Michigan,[69] and Minnesota.[70]

Newhouse concluded in his 1959 study that twenty-two states, including Idaho, whose constitution provided that taxes shall be uniform upon the

58. Note, *Uniformity Clause, supra* note 44, at 890. See NEWHOUSE, *supra* note 5, at 7, 655-68.

59. IND. CONST. art. X, § 1; MISS. CONST. art. IV, § 112. *See* Johnson v. Board of Park Comm'rs, 202 Ind. 282, 290, 174 N.E. 91, 94 (1930) (the same ratio of valuation and same percentage rate must be applied to all property taxed by any one taxing authority of the state); Lavecchia v. Vicksburg, 197 Miss. 860, 869, 20 So. 2d 831, 833 (1945) (the constitution requires assessed valuation of a taxpayer's property be equal and uniform with that of other property in the same taxing jurisdiction).

60. *See* NEWHOUSE, *supra* note 5, at 665. *See also Open State Taxation*, *supra* note 5, at 837 n.3 (lists constitutional amendments in the past twenty-five years permitting open space differential assessment).

61. *See* NEWHOUSE, *supra* note 5, at 668-74.

62. *See* In re Oklahoma Nat'l Life Ins. Co., 68 Okla. 219, 225, 173 P. 376, 381 (1918).

63. MASS. CONST. pt. 2, ch. 1, § 1, art. IV; Coomey v. Board of Assessors of Sandwich, 367 Mass. 836, 837, 329 N.E.2d 117, 119 (1975). *See* NEWHOUSE, *supra* note 5, at 174-75.

64. N.H. CONST. pt. 2, art. 5-6; In re Opinion of the Justices, 117 N.H. 749, 755, 379 A.2d 782, 786 (1977).

65. TENN. CONST. art. 2, § 28; Southern Express Co. v. Patterson, 122 Tenn. 279, 292-93, 123 S.W. 353, 356-57 (1909); Reelfoot Lake Levee Dist. v. Dawson, 97 Tenn. 151, 170-72, 36 S.W. 1041, 1043 (1896).

66. UTAH CONST. art. XIII, §§ 2-3; State *ex rel.* Cunningham v. Thomas, 16 Utah 86, 89-90, 50 P. 615, 615-16 (1897).

67. WIS. CONST. art. VIII, § 1; State *ex rel.* Baker Mfg. Co. v. City of Evansville, 261 Wis. 599, 608-10, 53 N.W.2d 795, 800-01 (1952).

68. *See* DEL. CONST. art. VIII, § 1; Fitzsimmons v. McCorkle, 59 Del. 94, —, 214 A.2d 334, 339-40 (1965).

69. *See* MICH. CONST. art. IX, § 3 (provides for ad valorem taxation or an alternative means of taxation on real property as determined by the legislature). *See* NEWHOUSE, *supra* note 5, at 198-212.

70. See MINN. CONST. art. X, § 1.

same class of subjects,[71] had constitutional uniformity clauses interpreted to require absolute uniformity.[72] Seventeen of those states have since amended their constitutions to provide for differential assessment of agricultural, forest, or open space lands.[73] Uniformity clauses in Michigan and New Jersey, which provided that there shall be a uniform rule of taxation, have been interpreted to allow certain classification of property.[74] Absolute uniformity requirements, unaltered by differential assessment amendments, still exist only in Idaho,[75] Indiana,[76] Mississippi,[77] South Carolina,[78] and Wyoming.[79]

Constitutional amendments to the uniformity clauses vary. A large number of the amendments simply authorize use-value assessment for agricultural, forest, or open space lands.[80] Some jurisdictions, such as Alabama

71. IDAHO CONST. art. VII, §§ 2, 5. *See* NEWHOUSE, *supra* note 5, at 660, 665.

72. NEWHOUSE, *supra* note 5, at 665. The states are Alabama, Arkansas, California, Florida, Illinois, Idaho, Indiana, Kansas, Maine, Massachusetts, Mississippi, Nebraska, Nevada, New Hampshire, Ohio, South Carolina, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming. *Id.*

73. ALA. CONST. art. XI, § 217, *amended by* art. XI § 373; ARK. CONST. art. XVI, §§ 5, 15; CAL. CONST. art. XIII, § 8; FLA. CONST. art. VII, § 4(a); ILL. CONST. art. IX, § 4(b); KAN. CONST. art. XI, § 12; ME. CONST. art. IX, § 8; MASS. CONST. Articles of Amendment, art. 41 [§ 143], art. 99 [§ 245]; NEB. CONST. art. VIII, § 2; NEV. CONST. art. X, § 1; N.H. CONST. pt. II, art. 5-B; OHIO CONST. art. II, § 36; TENN. CONST. art. II, § 28; TEX. CONST. art. VIII, § 1-d-1(a); UTAH CONST. art. XIII, § 3; W. VA. CONST. art. VI, § 53; WIS. CONST. art. VIII, § 1.

74. MICH. CONST. art. X, § 3; N.J. CONST. art. VIII, § I, ¶ 1. *See* NEWHOUSE, *supra* note 5, at 212-16, 218-21, 657.

In Michigan, absolute uniformity applies only to property taxed by the ad valorem method. Specific taxes may be levied on some property and such taxes are required to be uniform only within a class. MICH. CONST. art. X, § 4. *See* Lucking v. People, 320 Mich. 495, 504, 31 N.W.2d 707, 711 (1948). When Michigan adopted its new constitution in 1964, the uniformity clause was changed to permit the legislature to provide for alternative means of taxation of designated real property, in lieu of general ad valorem taxation and taxes other than the ad valorem need only be uniform within each class. MICH. CONST. art. IX, § 3.

New Jersey's uniformity clause has been interpreted not to require absolute uniformity in effective rates applicable to property taxed by any one taxing authority. *See* State Board of Assessors v. State, 48 N.J.L. 146, 279-83, 4 A. 578, 584-87 (1886). An amendment to the constitution permits differential assessment for agricultural lands. N.J. CONST. art. VIII, § I, p 1(b).

75. One provision of the Idaho Constitution requires only that taxes be uniform upon the same class of subjects within the territorial limits of a taxing jurisdiction and another requires that the legislature provide such revenue as may be needed so that every person shall pay a tax in proportion to the value of his or her property. IDAHO CONST. art. VII, §§ 2, 5. These provisions have been interpreted to prohibit classification of property for real estate tax purposes. Merris v. Ada County, 100 Idaho 59, 66, 593 P.2d 394, 401 (1979); Idaho Tel. Co. v. Baird, 91 Idaho 425, 429, 423 P.2d 337, 341 (1967).

76. IND. CONST. art. X, § 1 provides for a uniform and equal rate of taxation. *See The Legal Aspects of Agricultural Districting, supra* note 42, at 11-12 (discusses the Indiana uniformity clause).

77. MISS. CONST. art. IV, § 112 provides that taxation shall be uniform and proportionate to value. *See generally*, Robertson, *Problems of Valuation and Equalization in Mississippi's Ad Valorem Tax System*, 48 MISS. L.J. 201, 230-35 (1977).

78. S.C. CONST. art. X, § 1 provides for uniform taxation with certain exceptions; however, these exceptions do not include agricultural, forest, or open space lands.

79. WYO. CONST. art. I, § 28 provides for uniform and equal taxation.

80. *See, e.g.*, DEL. CONST. art. VIII, § 1 (agricultural lands); FLA. CONST. art. VII, § 4(a) (agricultural and noncommercial recreational lands); KY. CONST. § 172A (agricultural and horticultural lands); MD. CONST. DECL. OF RIGHTS, art. 43 (agricultural lands); MASS. CONST. Articles of Amendment, art. 41 [§ 143] (wild or forest lands and lands retained in a natural state for the preservation of wildlife and other natural resources and lands for recreational uses), art. 99 [§ 245] (agricultural and horticultural lands); NEB. CONST. art. VIII, § 1 (agricultural and horticultural lands); N.J. CONST. art. VIII, § 1 (agricultural and horticultural lands); N.J. CONST. art. VIII, § 1, ¶ 1(b) (agricultural and horticultural lands); OHIO CONST. art. II, § 36 (agricultural and forestry lands); UTAH CONST. art. XIII, § 3 (agricultural lands); WASH. CONST. art. VII, § 11 (agricultural

and Tennessee, set up elaborate classification schemes that assign different rates of taxation for certain classes of real property.[81] Other states simply grant certain landowners partial relief from property taxation.[82] Assessment of agricultural land in Kansas and Texas is based on its productivity.[83] Open space land in California is valued for property tax purposes on a basis that is consistent with its enforceably restricted use,[84] and in Oklahoma the legislature has been directed to assess all real estate on the basis of its "highest and best" use-value for the previous year.[85] Unrelated to the uniformity clause, several states have also amended their constitutions to insert provisions giving their citizens the right to have a clean environment.[86]

III. Methods of Overcoming Constitutional Restrictions for Soil Conservation Programs

Several methods may be available for overcoming the constitutional restrictions described above to permit property tax incentives for participating in soil conservation programs. In some instances the constitutional uniformity clauses must be amended, while in other instances the constitutional authority is available and only the statutes need be amended to permit tax incentives. The most direct method of removing any question of constitutional validity is simply to adopt a constitutional amendment permitting the legislature to classify land upon which a soil conservation program has been

---

and forest lands and open space lands used for recreation or for enjoyment of their scenic or natural beauty).

81. ALA. CONST. art. XI, § 217, *amended by* amend. no. 373 (agricultural and forest lands, single family owner-occupied residential property, and historic buildings and sites in one class); TENN. CONST. art. II, § 28 (agricultural lands).

82. MO. CONST. art. X, § 7 (forest lands and rehabilitated blighted areas); VA. CONST. art. X, § 2 (agricultural, horticultural, forestry, and open space lands); W. VA. CONST. art. VI, § 53 (forest lands); WIS. CONST. art. VIII, § 1 (agricultural, forest, and undeveloped lands).

83. KAN. CONST. art. XI, § 12 (agricultural lands); TEX. CONST. art. VIII, § 1-d-1(a) (open space land devoted to farm or ranch purposes).

84. CAL. CONST. art. XIII, § 8.

85. OKLA. CONST. art. X, § 8.

86. *See, e.g.*, FLA. CONST. art. II, § 7 (policy to conserve and protect natural resources and scenic beauty; adequate provision shall be made for abatement of air and water pollution and excessive and unnecessary noise); ILL. CONST. art. XI, §§ 1, 2 (policy of state and duty of each person to provide and maintain a healthful environment; each person has a right to a healthful environment); MICH. CONST. art. IV, § 52 (conservation and development of natural resources declared to be of paramount public concern; legislature to provide for protection of air, water, and other natural resources from pollution, impairment, and destruction); N.Y. CONST. art. XIV, § 4 (policy of state to conserve and protect natural resources and scenic beauty and encourage development and improvement of agricultural lands for production of agricultural products; legislature to provide adequate provisions for abatement of air and water pollution and of excessive and unnecessary noise, the protection of agricultural lands, wetlands, and shorelines, and development and regulation of water resources); R.I. CONST. art. I, § 17 (people shall be secure in their rights to the use and enjoyment of natural resources of state with due regard for the preservation of their values; duty of the legislature to provide for the conservation of air, water, land, mineral, and other natural resources; adopt all means necessary and proper by law to protect the natural environment by providing adequate resource planning for control and regulation of natural resources use and for the preservation, regeneration, and restoration of natural resources); VA. CONST. art. XI, §§ 1, 2 (state policy to conserve, develop, and utilize natural resources so people have clean air, pure water, and the use and enjoyment of natural resources for recreation; legislature may undertake the conservation, development, or utilization of natural resources.

implemented for separate tax treatment.[87] Legislatures could then provide for a different method of appraising land for tax assessment or a different tax rate applied to the assessed value of land separately classified due to implementation of soil conservation practices.

Another method that also removes any question of constitutional validity is to pass a constitutional amendment exempting agricultural, forest, and open space lands from uniformity restrictions and making participation in soil conservation programs a prerequisite for differential or use-value assessment eligibility.[88] Such an approach, giving explicit exceptions to the strict uniformity rule for agricultural, forest, and open space lands and permitting assessment on a use-value basis, has been taken by several states.[89] Once such lands are exempt from the uniformity clause, property tax incentives for promoting participation in soil conservation programs can be tied to differential or use-value assessments and deferred taxes could be levied for failure to maintain a conservation management program.

A third method of overcoming constitutional restrictions is to amend the uniformity clauses to allow legislatures to classify property for the purpose of imposing different ratios of assessed valuation or tax rates applied to assessed value among the class of property, but requiring uniform treatment within each classification.[90] This type of amendment gives legislatures flexibility to use various differential assessment devices without the necessity of amending the constitution specifically for farm, forest, and open space lands. A number of states permit a general classification of this type under their uniformity clauses,[91] while others only permit agricultural land to be separately classified.[92]

The fourth method of achieving property tax incentives for implementing soil conservation programs is to consider conservation structures as improvements and, in those states where the constitutions do not require "universality of taxation" and where improvements may be assessed separately from real property, treat such improvements as property that may be fully exempted from property taxation.[93] Constitutions with a universality requirement would have to be amended to specifically exempt conservation improvements on land from taxation or to give legislatures discretionary power to exempt property from taxation. This method would be helpful to counteract any increases in the land's assessed value caused by the imple-

87. *See* Note, *Uniformity Clause, supra* note 44, at 904.

88. *Id.*

89. Almost one-half of the states have amended their constitutional uniformity clauses in the last twenty-five years to allow for differential taxation of farm, forest, and open space lands. *See Open Space Taxation, supra* note 5, at 837 n.3 (citations to amendments).

90. Note, *Uniformity Clause, supra* note 44, at 904.

91. *See, e.g.*, ARIZ. CONST. art. IX, § 1; COLO. CONST. art. X, § 3; DEL. CONST. art. VIII, § 1; KY. CONST. § 171; MINN. CONST. art. X, § 1; MO. CONST. art. X, § 3; N.C. CONST. art. V, § 2(3); PA. CONST. art. VIII, § 1; S.D. CONST. art. XI, § 2; WASH. CONST. art. VII, § 2.

92. *See, e.g.*, TENN. CONST. art. II, § 28(d); UTAH CONST. art. XIII, § 3.

93. For examples of states that list property exempted from general property taxation, see ME. REV. STAT. ANN. tit. 36, §§ 651, 652, 656 (1978 & Supp. 1982-1983); WIS. STAT. § 70.11 (1981-1982). Conservation structures could be added to the list.

mentation of conservation practices. Another method would be to provide credits in a specified amount against property taxes levied by a local government while the owner is maintaining a soil conservation program. A sixth method would be to provide that the additional property taxes paid on land attributable to the implementation of soil conservation practices be credited against state income taxes. Precedent has been established for these last two methods in some states by providing credits against property or income taxes for the purchase or construction of pollution abatement equipment and facilities or the installation of energy systems.[94]

IV. Classification of Property for Soil Conservation Programs

The most direct method of removing any question of constitutional invalidity would be to simply amend the state constitutions to allow legislatures to classify property upon which conservation programs have been implemented for special tax treatment.[95] Several state constitutions now allow special handling of particular properties for taxation such as certain homesteads,[96] property of certain veterans and military personnel,[97] livestock,[98] railroads,[99] public utilities,[100] mines and mineral lands,[101] forests,[102] large land holdings,[103] urban landmarks,[104] urban redevelopment and renewal projects and areas,[105] merchants' stock-in-trade,[106] manufacturers' material and finished products,[107] and certain energy production systems,[108] and pollution abatement equipment and facilities.[109] A constitutional amendment allowing the classification of property based on the implementation of soil conservation programs would only need to add another explicit exception to the strict uniformity rule.

The constitutional amendment approach would not only apply to states that still retain an "absolute uniformity" rule as to the effective rate of taxation in their constitutions,[110] but to states where constitutional uniformity clauses permit differential assessment of farm, forest, and open space

94. *See, e.g.*, Colo. Rev. Stat. § 39-5-131 (Supp. 1981); S.D.C.L. § 10-6-35.12 (1982).
95. *See* Note, *Uniformity Clause, supra* note 44, at 904.
96. *See, e.g.*, Fla. Const. art. VII, § 6; Tex. Const. art. VIII, § 1-b.
97. *See, e.g.*, Ariz. Const. art. IX, § 2; N.M. Const. art. VIII, § 5.
98. *See, e.g.*, Neb. Const. art. VIII, § 1; Wis. Const. art. VIII, § 1.
99. *See, e.g.*, Miss. Const. art. IV, § 112.
100. *See, e.g.*, Mich. Const. art. IX, § 5.
101. *See, e.g.*, Minn. Const. art. X, § 6; Nev. Const. art. X, § 1; Wis. Const. art. VIII, § 1; Wyo. Const. art. XV, § 3.
102. *See, e.g.*, Minn. Const. art. X, § 2; Mo. Const. art. X, § 7; Ohio Const. art. II, § 36; Wis. Const. art. VIII, § 1.
103. *See, e.g.*, N.M. Const. art. VIII, § 6.
104. *See, e.g.*, Cal. Const. art. XIII, § 8; La. Const. art. VII, § 18(C).
105. *See, e.g.*, Mo. Const. art. X, § 7; N.J. Const. art. VIII, § 1, ¶ 6, § III, § 1; Va. Const. art. X, § 6(h).
106. *See, e.g.*, Wis. Const. art. VIII, § 1.
107. *See, e.g.*, Tenn. Const. art. II, § 30; Wis. Const. art. VIII, § 1.
108. *See, e.g.*, Nev. Const. art. X, § 1; Va. Const. art. X, § 6(d).
109. *See, e.g.*, Va. Const. art. X, § 6(d).
110. *See supra* notes 75 to 79.

lands.[111] This assumes those states do not want to make implementing soil conservation programs a use-value assessment.[112] Constitutions in those states permitting classification of subjects[113] or property[114] may not have to be amended,[115] provided courts interpret legislation dividing property into different classes on the basis of implementing conservation programs as a reasonable classification scheme.[116] Classification of property based on implementation of soil conservation programs would permit legislatures to adopt different assessment methods or tax rates applied to the assessed value for the soil conservation class.

V. Soil Conservation Programs as a Prerequisite for Differential Assessment

Integrating Property Tax Incentives with Differential Assessment

Since Maryland enacted the first statute in 1957 providing for farmland property tax reduction,[117] all other states except Georgia[118] and Mississippi[119] have adopted legislation granting some kind of differential assess-

111. *See supra* note 73.

112. Wisconsin is one of the few states that makes a soil conservation program a prerequisite to differential assessment of farmland. *See* Wis. Stat. §§ 91.13(8)(d), .35(1) (1981-82).

113. *See supra* note 28.

114. *See supra* note 29.

115. *See* Ill. Const. art. IX, § 4(a); Ind. Const. art. X, § 1. The Illinois Supreme Court held in a recent case, however, that the legislature did have the power to classify real property because the constitution did not contain an express and specific constitutional limitation upon the legislature's power to classify. Hoffmann v. Clark, 69 Ill. 2d 402, 423, 372 N.E.2d 74, 84 (1977). Indiana has circumvented its strict absolute uniformity clause by holding that the clause also leaves it to the legislature to prescribe the mode by which the valuation of all property shall be ascertained. Cleveland, C., C. & St. L. Ry. Co. v. Backus, 133 Ind. 513, 535-36, 33 N.E. 421, 428 (1938).

116. Arizona, Colorado, New Mexico, North Dakota, and South Dakota, for example, could probably classify lands upon which soil conservation programs have been implemented separately from other agricultural lands, as their supreme courts have permitted classification based on reasonableness. *See* Apache County v. Atchison, T. & S.F. Ry. Co., 106 Ariz. 356, 359, 476 P.2d 657, 660 (1970); American Mobilehome Ass'n v. Dolan, 191 Colo. 433, 553 P.2d 758, 762 (1976); Property Appraisal Dep't v. Ransom, 84 N.M. 637, 640, 506 P.2d 794, 797 (1973); Caldis v. Board of County Comm'rs, 279 N.W.2d 665, 672 (N.D. 1979); Great Northern Ry. Co. v. Whitefield, 65 S.D. 173, 181, 272 N.W. 787, 791 (1937). *See* Nelson, *Differential Assessment of Agricultural Land in Kansas: A Discussion and Proposal*, 25 Kan. L. Rev. 215, 232 (1977) [hereinafter referred to as *Differential Assessment of Agricultural Land in Kansas*].

117. 1957 Md. Laws ch. 680, Md. Ann. Code art. 81, § 19(b) (1980). *See* Md. Const. Decl. of Rights art. 15; Md. Agric. Code Ann. §§ 2-501 to -515 (Supp. 1983); Md. Nat. Res. Code Ann. §§ 5-301 to -308 (1983). For a history of the Maryland farmland preservation statute, see Ishee, *The Maryland Farmland Use-Value Assessment Law*, in Proceedings of the Seminar on Taxation of Agricultural and Other Open Land 23-29 (Mich. St. U. Coop. Ext. Serv., 1971) [hereinafter referred to as *The Maryland Farmland Use-Value Assessment Law*]; Nielsen, *Preservation of Maryland Farmland: A Current Assessment*, 8 U. Balt. L. Rev. 429, 431-38 (1979).

118. The Georgia Constitution requires that all taxation be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. Ga. Const. art. VII, § 1, ¶ 3. See Ga. Code Ann. § 91A-1002 (1980) which requires all real property be taxed. The uniformity rule of taxation requires that all property of the same class not absolutely exempt be taxed alike. Hutchins v. Howard, 211 Ga. 830, 830-31, 89 S.E.2d 183, 186 (1955). Actual present "use" of the subject property may be considered one of the factors in determining fair market value. Martin v. Liberty County Bd. of Tax Assessors, 152 Ga. App. 346, —, 262 S.E.2d 609, 612 (1979). Lands in Georgia may be assessed based upon their value for agricultural purposes. Burkhart v. City of Fitzgerald, 137 Ga. 366, 367, 73 S.E. 583, 584 (1912).

119. Taxation shall be uniform and equal throughout Mississippi and property shall be taxed in

ment treatment for agricultural or other types of undeveloped land.[120] Therefore, integrating property tax incentives to implement soil conservation programs with differential or use-value assessment of farm, forest, and open space lands appears to be the most promising possibility of providing exceptions to the various constitutional uniformity restrictions.

"All differential taxation programs include land used for agricultural purposes among those land uses eligible for special tax treatment."[121] Several states also provide some coverage of forest lands[122] and of undeveloped land of scenic, environmental, or historical significance.[123] Still other states allow tax relief for open space lands[124] and recreational use lands,[125] such as for country clubs.[126] Qualifying agricultural uses are usually broadly defined in the legislation creating the differential taxation program.[127] Some state statutes leave the meaning of "agricultural use" largely to the local assessor's judgement,[128] while other states attempt to define it.[129] In those

---

proportion to its value. MISS. CONST. art. IV, § 112. The legislature has exempted numerous real properties from ad valorem taxes. MISS. CODE ANN. §§ 27-31-1 to -117 (1972 & Supp. 1982).

120. For discussions of differential assessments of agricultural lands, see Hady, *Do State Property Tax Programs Preserve Farmland*?, in RURAL DEVELOPMENT PERSPECTIVES 40, 41 (U.S. Dep't of Agriculture, ERS, RDP-4, SEPT. 1981); B. DAVIES & J. BELDEN, SURVEY OF STATE PROGRAMS TO PRESERVE FARMLAND (U.S. Council on Environmental Quality, 1979); HADY & SIBOLD, *supra* note 24; J. KEENE, D. BERRY, R. COUGHLIN, J. FARNAM, E. KELLY, T. PLAUT & A. STRONG, UNTAXING OPEN SPACE: AN EVALUATION OF THE EFFECTIVENESS OF DIFFERENTIAL ASSESSMENT OF FARMS AND OPEN SPACE—EXECUTIVE SUMMARY (U.S. Council on Environmental Quality, 1976) [hereinafter cited as UNTAXING OPEN SPACE]; Barlowe, Ahl, & Bachman, *Use-Value Assessment Legislation in the United States*, 49 LAND ECON. 206 (1973) [hereinafter referred to as *Use-Value Assessment Legislation*]; Currier, *An Analysis of Differential Taxation as a Method of Maintaining Agricultural and Open Space Land Uses*, 30 U. FLA. L. REV. 821 (1978) [hereinafter referred to as *An Analysis of Differential Taxation*]; Ellingson, *Differential Assessment and Local Government Control to Preserve Agricultural Lands*, 20 S.D.L. REV. 548 (1975) [hereinafter referred to as *Differential Assessment and Local Government*]; Keene, *Differential Assessment and the Preservation of Open Space*, 14 URB. L. ANN. 11 (1977); *Differential Assessment, supra* note 22; Malone & Ayesh, *Comprehensive Land Use Control Through Differential Assessment and Supplemental Regulation*, 18 WASHBURN L.J. 432 (1979) [hereinafter referred to as *Comprehensive Land Use Control*]; *Differential Assessment of Agricultural Land in Kansas*, *supra* note 116; *Legal Aspects of Agricultural Districting*, *supra* note 42; *Open Space Taxation, supra* note 5; Comment, *Preferential Assessment of Agricultural Property in South Dakota*, 22 S.D.L. REV. 632 (1977) [hereinafter cited as Comment, *Preferential Assessment*].

121. Currier, *supra* note 120, at 824.

122. *See, e.g.*, ARIZ. REV. STAT. ANN. § 42-136(A)(4)(a) (1980); FLA. STAT. ANN. § 193.461(5) (West Supp. 1983); N.J. STAT. ANN. § 54:4-23.3 (West Supp. 1983); N.M. STAT. ANN. § 7-36-20(B) (1978); UTAH CODE ANN. § 59-5-88 (1953). Some states also have separate statutory provisions for taxing forest lands that provide greater benefits to landowners than the differential assessment statutes. *See, e.g.*, WIS. STAT. §§ 77.01-.14, .16 (West 1957 and Supp. 1983-84). *See* UNTAXING OPEN SPACE, *supra* note 120, at 4.

123. *See, e.g.*, ARIZ. REV. STAT. ANN. § 42-136(A)(8) (1980); ME. REV. STAT. ANN. tit. 36, §§ 1102(6), 1103-1105, 1111 (1978); NEV. REV. STAT. §§ 361A.040, .050, .170-.250 (1979); N.H. REV. STAT. ANN. §§ 79-A:2(VII), :5 (Supp. 1981); R.I. GEN. LAWS §§ 44-5-12, 44-27-2(c), -5 (1980); VA. CODE §§ 58-769.4, .5(d), .9 (1974); WASH. REV. CODE ANN. §§ 84.34.010, .020(1), .030 (Supp. 1983-1984). *See* UNTAXING OPEN SPACE, *supra* note 120, at 4.

124. *See, e.g.*, CONN. GEN. STAT. §§ 12-107b(c), -107e, -107f (1981); PA. STAT. ANN. tit. 16, §§ 11941(4), 11943 (Purdon Supp. 1983-1984). *See* UNTAXING OPEN SPACE, *supra* note 120, at 4.

125. *See, e.g.*, FLA. STAT. ANN. § 193.501 (West Supp. 1983).

126. *See, e.g.*, MD. ANN. CODE art. 81, § 19(e) (1980).

127. For example, differential taxation is available in Florida only on land used primarily for *bona fide* agricultural purposes. The phrase "*bona fide*" means "good faith commercial agricultural use of the land." FLA. STAT. ANN. § 193.461(3)(b) (West Supp. 1983).

128. *See, e.g.*, MD. ANN. CODE art. 81, § 19(b)(1) (1980). In October 1960, the Maryland De-

states defining it, allowable uses range from relatively obscure activities such as beekeeping and raising flowers to more common pursuits such as growing crops, fruits, and vegetables and raising livestock.[130]

Often additional eligibility requirements are imposed on the landowner or the land to promote the particular public policies to which the law is directed, especially those that insure tax advantage benefit to farmers and not to speculators.[131] Several approaches have been devised to achieve this result. One approach is to establish a minimum acreage requirement and in those states that do specify such a minimum, most require tracts of five or ten acres.[132] Another approach is to require that some proportion of the landowner's income be derived from farming, such as, for example, at least one-fourth.[133] An alternative to the proportion of income requirement is to require a minimum value of agricultural products be produced from the land over a time period or annually per acre.[134]

Differential assessment statutes generally require that eligible lands have prior histories of agricultural or open space use.[135] Delaware, New Jersey, and Utah, for example, require that the lands have been used for agricultural purposes during the preceding two years; and South Dakota for the five preceding years.[136] A variation of the agricultural use history provision limits eligibility by requiring that the land be in the owner's family. Minnesota, for example, requires that the farm either be the owner's homestead or be owned by family members related to each other within the third degree of kindred.[137]

In several states, use-value assessment applies automatically to all qual-

partment of Assessments and Taxation listed twenty-nine criteria which local assessors could use to judge whether land was actively devoted to agricultural use. *See The Maryland Farmland Use-Value Assessment Law*, *supra* note 117, at 26-27.

129. *See, e.g.*, OR. REV. STAT. § 215.203(2)(a) (1981) which defines "farm use" as "the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof."

130. *See, e.g.*, *Id.*; VA. CODE §§ 58-769.5(a), (b) (1974).

131. The availability of the tax benefit to speculators or owners of land not under development pressure has always been a problem with differential tax programs. *See* Alden & Shockro, *Preferential Assessment of Agricultural Lands: Preservation or Discrimination*? 42 S. CAL. L. REV. 59, 68 (1969); Hagman, *Open Space Planning and Property Taxation—Some Suggestions*, 1964 WIS. L. REV. 628, 646-52.

132. *See, e.g.*, DEL. CODE ANN. tit. 9, § 8329 (Supp. 1982); S.D.C.L. §§ 10-6-31.3(3) (1982). *See Differential Assessment, supra* note 22, at 374.

133. *See, e.g.*, ALASKA STAT. § 29.53.035(c) (1972); S.D.C.L. §§ 10-6-31.3(1) (1982).

134. *See, e.g.*, MINN. STAT. ANN. § 273.111(6) (West Supp. 1983) (gross of $300 plus a $10 minimum value of production per tillable acre); MO. ANN. STAT. § 137.017(4) (Vernon Supp. 1983) ($2,500 annually over a five-year period); N.J. STAT. ANN. § 54:4-23.5 (West Supp. 1983-1984) (gross production averaging at least $500 per year during the two-year period immediately preceding the application); S.D.C.L. §§ 10-6-31.3(1) (Supp. 1982) (products sold exceeds $2,500 in three of the last five years); WASH. REV. CODE ANN. § 84.34.020(2) (Supp. 1983-1984) (minimum of $100 per acre for three of the five preceding calendar years).

135. *See* UNTAXING OPEN SPACE, *supra* note 120, at 4; *An Analysis of Differential Taxation*, *supra* note 120, at 825; *Differential Assessment, supra* note 22, at 375.

136. DEL. CODE ANN. tit. 9, § 8329 (Supp. 1982); N.J. STAT. ANN. § 54:4-23.5 (West Supp. 1982-1983); UTAH CODE ANN. § 59-5-87(1) (Supp. 1981); S.D.C.L. 10-6-31.3(3) (1982).

137. MINN. STAT. ANN. § 273.111(3) (West Supp. 1983).

ifying lands whether or not the owner applies.[138] In other states, such as California, Minnesota, and Rhode Island, owners must apply to have their lands classified for use-value assessment.[139] Applications must be submitted annually for use-value assessments in some states.[140]

Statutes authorizing differential assessment for agricultural lands, forest lands, and open space could be easily amended to require the implementation of recommended soil conservation programs as a prerequisite for eligibility for use-value assessment. Instead of use-value assessments being automatic, the soil conservation districts, with the assistance of Soil Conservation Service district conservationists, could certify on an annual basis the eligibility of agricultural, forest, or open space lands for differential assessments based on the establishment of soil conservation programs.[141] Owners failing to maintain recommended soil conservation programs would lose eligibility to have their lands valued for agricultural, forestry, or open space purposes. Such amendments to the differential assessment statutes would not conflict with the constitutionality of uniformity clauses because the suggested statutory amendments would not create new classes of land, but rather add further requirements for classifying agricultural, forest, and open space lands for differential assessment eligibility. Even if a new class of property is created, legislatures in some states are completely unrestricted as to dividing property into classes for purposes of taxation, so long as the classification is based upon the nature and use of the property justifying it.[142]

Wisconsin is one state that requires participation in a soil conservation program as a prerequisite for differential assessment under farmland preservation agreements.[143] A farm conservation plan must be either prepared or in the process of preparation before approval of an initial program agreement[144] and one must be in effect before approval of a permanent program agreement.[145] Imposing soil conservation requirements would be no different than the other eligibility requirements imposed by statutes on landowners or land as prerequisites for differential assessment. Such other requirements include minimum farm size,[146] minimum farm income,[147] history of eligible use,[148] minimum length of tenure within the family,[149] land

138. *See, e.g.*, ARIZ. REV. STAT. ANN. § 42-227(B) (1980); COLO. REV. STAT. § 39-1-103(5)(a) (Supp. 1981); N.D. CENT. CODE §§ 40-51.2-06, 57-02-27 (Supp. 1981); OKLA. STAT. ANN. tit. 11, § 21-109 (West 1978); Wyo. Stat. § 39-2-103(b) (1977).

139. CAL. GOV'T CODE § 51241 (West 1983); MINN. STAT. ANN. § 273.111(8) (West Supp. 1983); R.I. GEN. LAWS §§ 44-27-3 to -5 (Supp. 1983).

140. *See, e.g.*, CONN. GEN. STAT. §§ 12-107c(a), 107d(c), 107e(b) (1981); DEL. CODE ANN. tit. 9, § 8336 (Supp. 1982); N.J. STAT. ANN. § 54:4-23.6(c) (West Supp. 1983-1984).

141. The powers and duties of soil conservation districts may have to be expanded.

142. See notes 28 and 29 *supra* for constitutional uniformity permitting classification of property.

143. WIS. STAT. ANN. §§ 77.02(1), (3), .16(2), (4), (7), 91.13(8)(d), .35(1) (West Supp. 1983-1984).

144. WIS. STAT. ANN. § 91.35(1) (West Supp. 1983-1984).

145. WIS. STAT. ANN. § 91.13(8)(d) (West Supp. 1983-1984).

146. *See, e.g.*, DEL. CODE ANN. tit. 9, § 8329 (Supp. 1982).

147. *See, e.g.*, ALASKA STAT. § 29.53.035(c) (1972).

148. *See, e.g.*, DEL. CODE ANN. tit. 9, § 8329 (Supp. 1982); N.J. STAT. ANN. § 54:4-23.5 (West

planned for eligible use,[150] and land zoned for eligible use.[151]

The implementation of conservation programs as a prerequisite for differential assessment has the effect of forcing such programs on those otherwise legitimately involved in agricultural, forestry, or open space activities. Force can be justified because one of the purposes of differential assessment statutes is to maintain land in productive agricultural use[152] and conservation programs are essential for the maintenance of land in good agricultural use. Statutes relating to possible force of conservation programs on landowners are not new in the country. Soil conservation districts in many states may adopt and enforce land use regulations[153] and subdividers are required to consider conservation programs as a prerequisite for subdivision approval in others.[154] Provisions in some state statutes provide for the establishment of soil conservation programs and enforcement of them at the state level or through some mechanism other than soil conservation districts.[155]

Three distinct approaches to differential assessment have evolved: preferential assessment, deferred taxation, and the restrictive agreement.[156] They reflect different judgments regarding the proper mixture of incentives to enroll land and disincentives to withdraw land from a differential tax program.[157] For example, the three types of differential assessment vary "in the degree to which the state or local government obtains something in return for the tax relief afforded the property owner and in the degree of participation by the local government."[158] Preferential assessment laws do not demand anything in return from the farmer nor is there any participation by local governments. The state merely dictates that as long as the land is used for agricultural purposes, it will be taxed at its value for agricultural land. Deferred taxation laws also provide that the land be taxed at its agricultural value, but in addition they provide that when land is converted from agricultural to nonagricultural use a penalty is paid. Restrictive agreements also involve lower taxation, but the farmer makes an agreement with the state not to change the use of his land for a specified period, typically ten years.

Supp. 1982-1983); S.D.C.L. § 10-6-31.3(1) (1982); TEX. REV. CIV. STAT. ANN. art. 7174(A)(1) (Vernon Supp. 1982-1983); UTAH CODE ANN. § 59-5-87(1) (Supp. 1981).

149. *See, e.g.*, MINN. STAT. ANN. § 273.111(3) (West Supp. 1983).

150. *See, e.g.*, HAWAII REV. STAT. § 246-12 (1976 & Supp. 1982).

151. *See, e.g.*, CAL. GOV'T CODE §§ 51201(d), 51230 (West 1983).

152. *Analysis of Differential Taxation, supra* note 120, at 830; *Differential Assessment and Local Government, supra* note 120, at 553-54.

153. *See, e.g.*, COLO. REV. STAT. § 35-70-109 (1973); ILL. ANN. STAT. ch. 5, § 128 (Smith-Hurd 1975); KY. REV. STAT. § 262.350(1) (1981); NEB. REV. STAT. § 2-3244 (Reissue 1977); N.D. CENT. CODE § 4-22-27 (1975).

154. *See, e.g.*, COLO. REV. STAT. § 30-28-133 (1974 & Supp. 1981).

155. *See, e.g.*, IOWA CODE ANN. §§ 467A.44(3), .47, .48, .49, .50 (West 1971 & Supp. 1983-1984); S.D.C.L. §§ 38-8A-17 to -21 (1977).

156. For discussion of each type of differential assessment, see HADY & SIBOLD, *supra* note 24, at 2-4; *Analysis of Differential Taxation*, *supra* note 120, at 826-31; *Differential Assessment and Local Government, supra* note 120, at 555-70; *Differential Assessment, supra* note 22, at 371; *Comprehensive Land Use Control, supra* note 120, at 446-51; *Differential Assessment of Agricultural Land in Kansas, supra* note 116, at 221-27.

157. *Analysis of Differential Taxation*, *supra* note 120, at 327.

158. *Differential Assessment and Local Government, supra* note 120, at 554.

The farmer is paid an appropriate amount for this agreement by the state.[159]

Generally speaking, use-value assessment is automatic in preferential assessment states, but must be applied for by landowners in deferred taxation and restrictive agreement states.[160] Local governments, however, ordinarily do not have a choice in granting a differential assessment to landowners if they apply and the property meets the statutory definitions of agricultural, forestry, or open space use.[161]

Tax Incentives Under Preferential Assessment

Under the preferential assessment or use-value approach, agricultural lands and other eligible open space lands specified in the enabling legislation are assessed for property taxation purposes on the basis of their value for agriculture or open space use as long as the land is used for those qualifying purposes.[162] Other potential "highest and best" uses for the land, such as urban purposes, are not to be considered in establishing the property tax appraisal. The criterion in preferential assessment valuation is that land is valued at its current agricultural or open space use rather than at its market value or for potential alternative uses that may incorporate potential gains from converting the land to developed uses.[163] Landowners are not penalized under the preferential concept if at any time in the future they convert their eligible land to a nonqualifying land use.[164] "[An] obvious effect of preferential assessment is to equalize the tax burden for farmers on the rural-urban fringe with that of farmers in strictly rural areas."[165] This tax reduction was intended to make farming more profitable on the land in question and thus encouraged the continued use of the land for that purpose.[166]

Preferential assessment may be granted to all qualifying land in a tax unit or given only to land that is zoned or planned for eligible uses.[167] Other variations exist among pure preferential assessment programs. For example, in some programs landowners must apply for preferential assessment and their reduced tax bill and in other states the tax benefit is granted to all

159. *Id.* at 555.

160. *See* UNTAXING OPEN SPACE, *supra* note 120, at 4.

161. HADY & SIBOLD, *supra* note 24, at 3. *See Differential Assessment, supra* note 22, at 375-76.

162. HADY & SIBOLD, *supra* note 24, at 2; *Use-Value Assessment Legislation, supra* note 120, at 206-07; *An Analysis of Differential Taxation, supra* note 120, at 827; *Comprehensive Land Use Control, supra* note 120, at 446. Put another way, under the preferential assessment approach, land devoted to agricultural use is assessed according to its income-producing capability without regard to inflated property values brought about by the possibility of subdevelopment. *Differential Assessment of Agricultural Land in Kansas, supra* note 116, at 221.

163. *Use-Value Assessment Legislation, supra* note 120, at 207; *Comprehensive Land Use Control* note 120, at 446.

164. HADY & SIBOLD, *supra* note 24, at 2; *An Analysis of Differential Taxation*, *supra* note 120, at 827; *Differential Assessment and Local Government, supra* note 120, at 555; *Comprehensive Land Use Control, supra* note 120, at 446; *Differential Assessment of Agricultural Land in Kansas, supra* note 116, at 222.

165. *Differential Assessment of Agricultural Land in Kansas, supra* note 116, at 221.

166. *Id.*

167. WYO. STAT. ANN. § 39-2-103(a)(i) (1977).

qualifying land whether or not an application for such preferential assessment has been made.[168]

Sixteen states now have legislation allowing for preferential assessment of agricultural lands, including classification of certain specified property.[169] In addition to Florida and Indiana using the preferential approach for agricultural lands, restrictive agreements are used in Florida for recreational or park lands and in Indiana for wildlife habitats.[170]

Of the sixteen states having legislation allowing for preferential assessment, ten of them had constitutional uniformity clauses providing that property taxes shall be uniform upon the same class of subjects[171] or property[172] within the territorial limits of the taxing authority. Three of the states allowing for classification, Arizona, Idaho, and North Dakota, have retained those provisions without amendment;[173] therefore, they do not have any constitutional restrictions on adopting legislation permitting preferential assessment,[174] except for Idaho whose supreme court has interpreted another constitutional provision as prohibiting classification of property for real estate tax purposes.[175] Missouri and Oklahoma retained their uniformity

168. Compare MO. ANN. STAT. § 137.019(1) (Vernon Supp. 1983) (annual application for preferential assessment required) with COLO. REV. STAT. § 39-1-103(5)(a) (1982) (all land in agricultural use shall be preferentially assessed).

169. ARIZ. REV. STAT. ANN. §§ 42-136, -227 (Supp. 1983) (agricultural, forest, and mining lands and historic property); ARK. STAT. ANN. § 84-493.5(b) (Supp. 1983) (agricultural, pasture, and forest lands); COLO. REV. STAT. § 39-1-103 (1982) (agricultural lands); FLA. STAT. ANN. § 193.461 (West Supp. 1983) (agricultural lands); IDAHO CODE §§ 63-105CC, -202 (Supp. 1983) (agricultural lands); IND. CODE ANN. § 6-1.1-4-13 (Burns Supp. 1983) (agricultural lands); IOWA CODE ANN. § 441.21 (West Supp. 1983-1984) (agricultural lands); LA. REV. STAT. ANN. §§ 47:2301-:2309 (West Supp. 1983) (agricultural, horticultural, forest, and marsh lands); MO. ANN. STAT. §§ 137.017-.026 (Vernon Supp. 1983) (agricultural and horticultural lands); MONT. CODE ANN. §§ 15-6-133, 15-7-201 to -213 (1983) (agricultural lands); N.M. STAT. ANN. § 7-36-20 (1978) (agricultural and forest lands); N.D. CENT. CODE §§ 40-51.2-06, -16, 57-02-27 to -27.2 (1983) (agricultural lands); OKLA. STAT. ANN. tit. 11, § 21-109 (West 1978), tit. 68, § 2427 (West Supp. 1982-1983) (agricultural lands); S.D.C.L. §§ 10-6-31 to -33.4 (1982) (agricultural lands); W. VA. CODE §§ 11-3-1, -16 (1974 & Supp. 1983), § 11-4-3 (1974), § 11-8-5 (1974) (agricultural, horticultural, and grazing lands); WYO. STAT. ANN. § 39-2-103 (1977) (agricultural lands). Statutes in Connecticut and Delaware have been considered by some to be preferential, but the additional or conveyance taxes assessed for changes in land use more closely resemble deferred taxation. *See* CONN. GEN. STAT. ANN. §§ 12-504a to -504h (1983); DEL. CODE ANN. tit. 9, § 8335(d) (1974).

170. FLA. STAT. ANN. § 193.501 (West Supp. 1983); IND. CODE ANN. §§ 6-1.1-6.5-1 to -25 (Burns Supp. 1982).

171. COLO. CONST. art. X, § 3 (1876), amended 1956; IDAHO CONST. art. VII, § 5; LA. CONST. art. X, § 1 (1921); N.M. CONST. art. VIII, § 1 (1912, amended 1914); MO. CONST. art. X, § 3; MONT. CONST. art. XII, § 11 (1889, amended 1972); OKLA. CONST. art. X, § 5.

172. ARIZ. CONST. art. IX, § 1; N.D. CONST. art. XI, § 176 (1889, amended 1919); S.D. CONST. art. XI, § 2 (1889, amended 1918).

173. ARIZ. CONST. art. IX, § 1; IDAHO CONST. art. VII, § 5; N.D. CONST. art. X, § 5 (renumbered in 1979); All of these uniformity clauses permit classification of property for tax purposes without regard to the type of property.

174. *See* ARIZ. REV. STAT. ANN. §§ 42-136, -227 (1980 and Supp. 1983-1984) (agricultural, forest, and mining lands and historic property); N.D. CENT. CODE §§ 40-51.2-06, -16, 57-02-27, -27.2 (1983) (agricultural lands); S.D.C.L. §§ 10-6-3 to -33.4 (1982) (agricultural lands).

175. IDAHO CONST. art. VII, § 2 provides that every person shall pay a tax in proportion to the value of his or her property, while IDAHO CONST. art. VII, § 5 provides that all taxes shall be uniform upon the same class of subjects within the taxing authority's territorial limits. These provisions have been interpreted to prohibit classification of property for real estate tax purposes. Merris v. Ada County, 100 Idaho 59, 66, 593 P.2d 394, 401 (1979); Idaho Tel. Co. v. Baird, 91 Idaho 425, 423 P.2d 337, 341 (1967). The Idaho preferential statute does not provide for classifica-

clauses permitting classification without amendment,[176] but Missouri added a new clause giving relief to forest lands[177] and Oklahoma added a new clause specifying that property shall be assessed in accordance with its actual use.[178] Louisiana amended its original uniformity clause to provide that agricultural, horticultural, marsh, and timber lands are to be assessed for tax purposes at 10% of their use-value rather than fair market value.[179] Montana's previous uniformity clause providing for classification was amended to provide that taxes shall be levied by general laws.[180]

Arkansas, Florida, Indiana, West Virginia, and Wyoming had constitutional clauses requiring absolute uniformity in property taxation.[181] Arkansas, while retaining its basic uniformity clause, added a new provision allowing for the adoption of legislation permitting differential assessment of agricultural land.[182] Florida and West Virginia also retained their former absolute uniformity clauses.[183] Florida amended its constitution to provide that agricultural land or land used exclusively for non-commercial recreational purposes may be classified by general law and assessed solely on the basis of character or use and West Virginia added a clause providing for the relief of taxation of forest lands.[184] Even though the absolute uniformity

---

tion, but provides that the speculative portion of the value of land devoted to agriculture be exempt from taxation.

176. MO. CONST. art. X, § 3; OKLA. CONST. art. X, § 5. Classification permitted without regard to type of property.

177. MO. CONST. art. X, § 7. The legislature may provide partial relief from taxation of land devoted exclusively to forestry purposes for a period not exceeding 25 years and prescribe terms, conditions, and restrictions. *See* MO. ANN. STAT. §§ 137.017-.026 (Vernon Supp. 1983) (pertaining to agricultural and horticultural lands).

178. OKLA. CONST. art. X, § 8. No real property shall be assessed for ad valorem taxation at a value greater than 35% of its fair cash value for the highest and best use for which the property was actually used or was previously classified for use during the previous calendar year. *See* OKLA. STAT. ANN. tit. 68, § 2427(b) (West Supp. 1982-1983) (permits classification valuation based on actual use).

179. LA. CONST. art. X, § 1 (1921, amended 1974). *See* LA. REV. STAT. ANN. §§ 47:2301-:2309 (West Supp. 1983) (permitting use-value in assessing agricultural, horticultural, forest, and marsh lands).

180. MONT. CONST. art. VIII, § 1 (1889, amended 1972). See *id.* art. VIII, § 4 (providing that "[a]ll taxing jurisdictions shall use the assessed valuation of property established by the state"). *See* MONT. CODE ANN. §§ 15-6-101, -133, 15-7-201 to -213 (1983) (permitting classification of all property and separate provisions for agricultural land).

181. ARK. CONST. art. XVI, § 5 (1874, amended 1980); FLA. CONST. art. VII, § 2; IND. CONST. art. X, § 1 (1851, amended 1966); W. VA. CONST. art. X, § 1 (1872, amended 1932); WYO. CONST. art. I, § 28.

182. ARK. CONST. art. XVI, 15(b). Agriculture, pasture, and forest lands shall be assessed on the basis of productivity or use and the legislature is empowered to determine methods and procedures for the valuation of property for taxation. *See* ARK. STAT. ANN. § 84-493.5(b) (Supp. 1981) providing that the valuation of agricultural, pasture, and forest lands shall be based on the productivity of the soil.

183. FLA. CONST. art. VII, § 2 (provides that all ad valorem taxation shall be at a uniform rate within each taxing unit); W. VA. CONST. art. X, § 1 (taxation be equal and uniform throughout the state and all property be taxed in proportion to its value to be ascertained as directed by law).

184. FLA. CONST. art. VII, § 4(a); W. VA. CONST. art. VI, § 53. *See* FLA. STAT. ANN. § 193.461 (West Supp. 1983) (preferential assessment of farmland); *id.* § 193.501 (West Supp. 1983) (restrictive covenants and taxation of outdoor recreational and park land). *See* W. VA. CODE § 11-8-5 (1974) (permitting the classification of property, including that used for agriculture, horticulture, and grazing purposes).

clauses in the Indiana and Wyoming constitutions are unaltered,[185] both states have adopted preferential assessment statutes pertaining to agricultural land.[186] This is because their constitutions give the legislatures power to prescribe regulations for securing just valuation.[187] The Iowa Constitution does not have a uniformity clause.[188]

Statutes authorizing preferential assessment could easily be amended in all sixteen of these states to require implementation of soil conservation programs as a prerequisite for use-value assessment eligibility. The simplest method of doing this would be to add the conservation prerequisite to the definition of agriculture, forest, or horticulture lands. For example, South Dakota now requires that agricultural land meet two of the three following criteria before being eligible for use-value assessment: (1) at least two-thirds of the total family gross income of the owner is derived from production from the land or the total value of agricultural production from the land exceeds $2,500 in three of the last five years; (2) is devoted to the production of livestock, dairy animals, poultry, furbearing animals, fish, horticulture, fruit, vegetables, forage, grains, or bees; and (3) it consists of not less than five acres of unplatted land or is a part of a management unit of more than forty acres of unplatted land.[189] Qualifying lands are presently automatically classified for use-value assessment in several states without the owners' application.[190] An initial application must be made in Missouri and New Mexico.[191] Louisiana requires that an application be made every four years.[192] Amendments of this type would not conflict with the constitutional uniformity clauses because they do not create a new class of property, but rather add a further restriction for eligibility into the agricultural class. Owners failing to maintain recommended soil conservation programs would lose eligibility to have their lands assessed at use-value.

185. IND. CONST. art. X, § 1 (the legislature shall provide for a uniform and equal rate of property assessment and taxation and shall prescribe regulations to secure a just valuation for taxation of all property, both real and personal); WYO. CONST. art. I, § 28 (all taxation shall be equal and uniform); *id.* art. XV, § 11 (all property shall be uniformly assessed for taxation and the legislature shall prescribe such regulations as will secure a just valuation for taxation of all property).

186. IND. CODE ANN. § 6-1.1-4-13 (Burns 1978). *See id.* §§ 6-1.1-6.5-1 -25 (Burns Supp. 1982) (restrictive agreements for wildlife habitant). WYO. STAT. ANN. § 39-2-103(b) (1977) (value for agricultural land shall be based on the current use of the land and its capacity to produce agricultural products).

187. *See supra* note 185.

188. *See* IOWA CONST. art. I, § 6. *See also* IOWA CODE ANN. § 441.21 (West Supp. 1982-83) (agricultural lands be assessed at a percentage of actual value).

189. S.D.C.L. § 10-6-31.3 (1982). *See also id.* § 10-6-33.1 (1982).

190. ARIZ. REV. STAT. ANN. § 42-227(B) (1980); ARK. STAT. ANN. § 84-493.5(b) (Supp. 1983); COLO. REV. STAT. §§ 39-1-103(5)(a), (6) (1973 & Supp. 1983); MONT. CODE ANN. §§ 15-6-101, 15-7-202(1) (1981); N.D. CENT. CODE §§ 57-02-27 to -27.2 (1983); W. VA. CODE § 11-8-5 (1974); WYO. STAT. ANN. § 39-2-103 (1977).

191. MO. ANN. STAT. §§ 137.017(1), .019(2), .023 (Vernon Supp. 1983); N.M. STAT. ANN. § 7-36-20(F) (1978).

192. LA. REV. STAT. ANN. §§ 47:2304(A), (B) (West Supp. 1983). An application is filed with the assessor certifying that the property is eligible for use-value assessment as *bona fide* agricultural, horticultural, marsh, or timber lands. In addition, the owner must sign an agreement indicating that the land will be devoted to one or more of the designated qualifying uses. *Id.* §§ 47:2303(B), (C).

Another possible method of providing tax incentives for soil conservation programs is to redefine the factors used in determining assessed value. Assessed value in several states, such as Arkansas,[193] Colorado,[194] Montana,[195] New Mexico,[196] South Dakota,[197] and Wyoming,[198] is based on the capacity of the land to produce agricultural products. Use-value in Louisiana is based on net income divided by the capitalization rate.[199] Use-value in Missouri is determined by considering soil survey data, economic factors, parity ratios, and recommendations regarding relative productive value of land made by the State Tax Commission.[200] Factors considered in determining value of agricultural land, such as capacity of land to produce, may run counter to promoting conservation programs in that the more care given land the higher its assessed value will be. This is particularly true if soil conservation programs increase land capacity to produce agricultural products. Legislation could be adopted providing that improvements to land capacity to produce resulting from soil conservation practices implemented on those lands would be omitted as a factor of soil productivity in determining assessed value. Such legislation could be patterned after a South Dakota statute providing that agricultural land be classified and taxed without regard to zoning classification.[201]

Tax Incentives Under Deferred Taxation

Deferred taxation added another feature to preferential assessments by imposing a sanction requiring owners of qualifying lands who converted the lands to nonqualifying uses. They were required to repay upon conversion

193. ARK. STAT. ANN. § 84-493.5(b) (Supp. 1983) (productivity of soil).

194. COLO. REV. STAT. § 39-1-103(5)(a) (1983) (earning on productive capacity of land during a reasonable period of time, capitalized at a rate of 11½%.

195. MONT. CODE ANN. § 15-6-133(2) (1983) (agricultural use-value is based on its productive capacity and the assessed value is 30% of use-value).

196. N.M. STAT. ANN. §§ 7-36-20(A), (D) (1978) (land's capacity to produce agricultural products with a state agency adopting regulations setting forth factors considered in the valuation process. The regulations are to specify procedures to use in determining capacity of land to produce agricultural products, establishing a carrying capacity through use of an animal unit concept as measurement of production capacity, establish procedures to assure lands with similar production capacity are valued uniformily, and provide period review of production capacities and capalization rates).

197. S.D.C.L. § 10-6-33.1(1)-(5) (1982). The following factors are taken into consideration in fixing the true and full value of agricultural land that has been used primarily for agriculture for at least five successive years immediately preceding the tax year for which assessment is to be made: (1) capacity of land to produce agricultural products; (2) soil, terrain, and topographical condition of property; (3) present market value of property as agricultural land; (4) character of area in which property is located; and (5) such other agricultural factors as may become applicable.

198. WYO. STAT. ANN. § 39-2-103(b) (1977) (current use of land and capacity to produce agricultural products, which is based on average yields of lands of the same classification under normal conditions).

199. LA. REV. STAT. ANN. § 47-2307 (West Supp. 1983). Net income is based on soil classifications, average soil productivity, cost of production, and gross returns for agricultural and horticultural lands. LA. CONST. art. VII, § 18(C) provides that valuation for assessment is 10% of use-value.

200. MO. ANN. STAT. § 137.021(1) (Vernon Supp. 1983). *See id.* § 137.026. For further discussion of preferential assessment in Missouri. *See Differential Assessment, supra* note 22.

201. S.D.C.L. § 10-6-31.1 (1982).

all or part of the taxes for a specified number of years they were excused from paying prior to conversion.[202] Basically, a "rollback" provision was provided to recapture a portion of the tax savings in the event landowners disposed of their holdings prematurely.[203] Sometimes two assessed values are determined annually for each qualifying parcel of land.[204] The value at which the land is assessed on the tax rolls corresponds to its use-value in its current qualifying use as in preferential assessment.[205] A second value representing the assessed value that would have been assigned to the land in the absence of a deferred taxation statute, which means an assessment according to its current market value, is also recorded.[206] Taxes are paid on the basis of the land's use-value assessment as long as it is being used for qualifying purposes under the statute.[207] The state or local government recaptures all or part of the difference between the use-value taxes paid and the taxes that would have been paid under a market value assessment in the form of a rollback tax when the land is sold or converted to a nonqualifying use.[208]

Deferred or "rollback" tax payments when land is transferred from a qualifying to a nonqualifying use vary from state to state.[209] Such payments are ordinarily limited to a given percentage of the deferred taxes or to a rollback for a limited number of years of deferred taxes.[210] The number of years benefit that will be recaptured ranges from two to ten with an average of about five years.[211] A recent trend, particularly in states such as Connecticut that have modified an existing preferential assessment statute, has been to base the "rollback" tax on the market value of the land in the year of conversion rather than on deferred taxes.[212] Some states impose a penalty in

202. HADY & SIBOLD, *supra* note 24, at 2; UNTAXING OPEN SPACE, *supra* note 120, at 3; *An Analysis of Differential Taxation, supra* note 120, at 828; *Differential Assessment and Local Government, supra* note 120, at 558; *Differential Assessment, supra* note 22, at 377; *Comprehensive Land Use Control, supra* note 120, at 447-48; *Differential Assessment of Agricultural Land in Kansas, supra* note 116, at 223.

203. *Differential Assessment and Local Government, supra* note 120, at 558; *Comprehensive Land Use Control, supra* note 120, at 447-48; *Differential Assessment of Agricultural Land in Kansas, supra* note 116, at 223.

204. *An Analysis of Differential Taxation, supra* note 120, at 828; *See, e.g.*, KY. REV. STAT. § 132.450(2)(g) (Supp. 1982).

205. *Use-Value Assessment Legislation, supra* note 120, at 207; *Differential Assessment and Local Government, supra* note 120, at 558; *Comprehensive Land Use Control, supra* note 120, at 447.

206. HADY & SIBOLD, *supra* note 24, at 2; *Use-Value Assessment Legislation, supra* note 120, at 207. The assessor in other programs need not make a yearly calculation of the fair market value of all enrolled land. Rather, the assessor determines the fair market value at the time of conversion to a nonqualifying use and a charge is levied based upon the current difference between the fair market value and the use-value. *See, e.g.*, OR. REV. STAT. § 308.397 (1981). *See An Analysis of Differential Taxation, supra* note 120, at 829.

207. *Use-Value Assessment Legislation, supra* note 120, at 207.

208. HADY & SIBOLD, *supra* note 24, at 2; *Use-Value Assessment Legislation, supra* note 120, at 207; *Differential Assessment and Local Government, supra* note 120, at 558; *Comprehensive Land Use Control, supra* note 120, at 447-48.

209. *An Analysis of Differential Taxation, supra* note 120, at 828-29. *See* UNTAXING OPEN SPACE; *Use Value Assessment Legislation supra* note 120, at 4.

210. *Supra* note 120, at 207.

211. *An Analysis of Differential Taxation, supra* note 120, at 828-29. *See* UNTAXING OPEN SPACE, *supra* note 120, at 4.

212. HADY & SIBOLD, *supra* note 24, at 2. *See* CONN. GEN. STAT. § 12-504a (1981).

addition to the rollback tax if the landowner changes land use without giving proper notification to the governmental authorities.[213] Others require interest paid on the amount of rollback taxes,[214] while some do not.[215]

Twenty-one states now permit deferred taxation of agricultural and other qualifying lands.[216] Seven other states, Maine,[217] Maryland,[218] New Hampshire,[219] New York,[220] Pennsylvania,[221] Vermont,[222] and Washington,[223] have a combination of the deferred taxation and restrictive agreement approaches or use one approach for some qualifying lands and the other approach for other qualifying lands.

Six of the twenty-one states having legislation allowing for deferred taxation of qualifying lands had constitutional uniformity clauses providing that property taxes be uniform upon the same class of subjects[224] or property[225] within the territorial limits of the taxing authority. Three of those six

213. *See* R. GLOUDEMANS, USE-VALUE FARMLAND ASSESSMENT: THEORY, PRACTICE AND IMPACT 15-19 (Int'l Ass'n of Assessing Officers Research & Tech. Serv. Dep't, 1974).

214. Alaska, Illinois, Nebraska, Nevada, North Carolina, and Oregon, for example, require that interest be paid on the rollback taxes. *See* UNTAXING OPEN SPACE, *supra* note 120, at 4.

215. Kentucky, Massachusetts, Minnesota, Montana, New Jersey, Ohio, Rhode Island, South Carolina, Texas, and Utah do not require interest be paid on the amount of the rollback. *See* UNTAXING OPEN SPACE, *supra* note 120, at 4-5; *Use-Value Assessment Legislation, supra* note 120, at 209.

216. ALA. CONST. art. XI, § 217, *amended by* art. XI § 373; ALA. CODE § 40-8-1 (Supp. 1981); ALASKA STAT. § 29.53.035 (Supp. 1983); CONN. GEN. STAT. ANN. §§ 12-63, -107a to 107e (1981); DEL. CODE ANN. tit. 9, §§ 8328 to 8344 (1974 & Supp. 1982); ILL. ANN. STAT. ch. 120 §§ 501, 501a to 501a-3, 501e to 501g-3, 621.02 (Smith-Hurd Supp. 1982-1983); KAN. CONST. art. XI, § 12; KY. REV. STAT. §§ 132.010, .020, .450, .454 (1982 & Supp. 1982); MASS. ANN. LAWS ch. 61A, §§ 1-24 (Michie/Law Co-op. 1978 & Supp. 1982); MINN. STAT. ANN. §§ 273.11, .111, .112, .115, .116, .12, .13(6), (8a) (West 1969 & Supp. 1983); NEB. REV. STAT. §§ 77-1343 to -1348 (1981); NEV. REV. STAT. §§ 161.225, .227, .260, .325, 361A.010-.280 (1981); N.J. STAT. ANN. §§ 54:4-23.1 to -23.23 (West Supp. 1982-1983); N.C. GEN. STAT. §§ 105-277.2 to -277.7 (1979 & Supp. 1981); OHIO REV. CODE ANN. §§ 5713.30-.99 (Page 1980 & Supp. 1981); OR. REV. STAT. §§ 215.203, 308.345-.406 (1981); R.I. GEN. LAWS §§ 44-5-12, -39, 44-27-1 to -6 (1980 & Supp. 1982); S.C. CODE §§ 12-43-220 to -230 (1976 & Cum. Supp. 1982); TENN. CODE ANN. §§ 67-611, -650 to -658 (1976 & Cum. Supp. 1982); TEX. TAX CODE ANN. §§ 23.41-.56 (Vernon 1982); UTAH CODE ANN. §§ 59-5-86 to -105 (1974 & Supp. 1981); VA. CODE §§ 58-769.4 to -769.15:1 (1974 & Supp. 1982). See MASS. ANN. LAWS ch. 61, §§ 1-6 (forest lands), ch. 61B §§ 1-18 (recreational lands) (Michie/Law Co-op. 1978 & Supp. 1982); N.C. GEN. STAT. §§ 105-278 (Supp. 1981) (historic property); OR. REV. STAT. §§ 308.740-.790 (1981) (open space); TEX. TAX CODE ANN. §§ 23.71-.78 (Vernon 1982) (forest land).

217. ME. REV. STAT. ANN. tit. 36, §§ 1101-1118 (West 1978 & Supp. 1982-1983) (deferred taxation and development rights restrictive agreement).

218. MD. ANN. CODE art. 81, §§ 19(b)-(f) (1980 & Supp. 1982) (deferred taxation for farmland & restrictive agreements for open space lands).

219. N.H. REV. STAT. ANN. §§ 79-A:1-26 (Supp. 1981) (combination of deferred taxation and discretionary easements).

220. N.Y. AGRIC. & MKTS. art. 25AA, §§ 301-306 (McKinney Supp. 1982-1983) (combination of deferred taxation and agricultural districts).

221. PA. STAT. ANN. tit. 72, §§ 5490.1-.13 (Purdon Supp. 1983-1984) (deferred taxation of farm, forest, & open space lands); PA. STAT. ANN. tit. 16, §§ 11941-47 (Purdon Supp. 1983-1984) (covenants for farm, forest, & open space lands).

222. VT. STAT. ANN. tit. 32, §§ 3751-3760 (1981 & Supp. 1983) (deferred taxation for agricultural & forest lands); VT. STAT. ANN. tit. 10, §§ 6301-6308 (1973 & Supp. 1983) (development rights with restrictive agreements).

223. WASH. REV. CODE ANN. §§ 84.34.030-.160 (Supp. 1983-1984) (deferred taxation of qualifying lands); *id.* §§ 84.34.200-.380 (acquisition of development rights).

224. DEL. CONST. art. VIII, § 1 (1897); MINN. CONST. art. IX, § 1 (1857); OR. CONST. art. I, § 32 (1859, amended 1917); VA. CONST. art. XIII, § 168 (1902).

225. KY. CONST. § 171 (1891, amended 1915); N.C. CONST. art. V, § 3 (1868, amended 1962).

states, Minnesota, North Carolina, and Oregon, have retained those provisions without amendment; therefore, they do not have any constitutional restrictions on adopting legislation allowing for classification of qualifying lands and permitting a preferential assessment with a deferred tax for changing uses. Delaware, Kentucky, and Virginia retained their uniformity clauses permitting classification,[226] but Delaware and Kentucky added new clauses permitting use-value assessment of agricultural lands and Virginia added a new clause allowing partial relief of agricultural land from taxation.[227]

Twelve states had clauses requiring absolute uniformity in property taxation.[228] Three of them, Alabama, Illinois (only for certain counties), and Tennessee have amended their constitutions to allow classification of property,[229] and two, Kansas and Texas, adopted amendments permitting agricultural land be valued on the basis of productivity.[230] Absolute uniformity clauses have been amended in Massachusetts,[231] Nebraska,[232] New Jersey,[233] Ohio,[234] and Utah[235] to allow use-value assessment for agricultural and other qualifying lands. Nevada's constitution was amended to give partial exemption for agricultural land.[236] South Carolina is the only state among the twelve that has not amended its uniformity clause.[237] Neither the Alaska nor Connecticut constitutions contain uniformity clauses and the Rhode Island Constitution only provides for a fair distribution of government expenses.[238]

Courts have interpreted constitutional uniformity clauses in Illinois and South Carolina to permit differential assessment of agricultural lands. The former absolute uniformity clause in the Illinois Constitution was amended in 1970 to permit classification of property for tax purposes in counties with a population of more than 200,000.[239] Shortly after the constitution was

226. DEL. CONST. art. VIII, § 1; KY. CONST. § 171; VA. CONST. art. X, § 1 (renumbered).
227. DEL. CONST. art. VIII, § 1; KY. CONST. § 172A; VA. CONST. art. X, § 2.
228. VA. CONST. art. XI, § 211 (1901); ILL. CONST. art. IX, § 1 (1870); KAN. CONST. art. XI, § 1 (1859); MASS. CONST. pt. II, ch. 1, art. 4 (1780); NEB. CONST. art. VIII, § 1 (1875); NEV. CONST. art. X, § 1 (1864); N.J. CONST. art. VIII, § I, ¶ 1 (1947); OHIO CONST. art. XII, § 2 (1851, amended 1929); S.C. CONST. art. X, § 1 (1895); TENN. CONST. art. II, § 28 (1870); TEX. CONST. art. VIII, § 1 (1876); UTAH CONST. art. XIII, § 3 (1896, amended 1930).
229. ALA. CONST. art. XI, § 217, *amended by* amend. 373; ILL. CONST. art. IX, § 4(b) (property may be classified for taxation in counties with a population of more than 200,000); TENN. CONST. art. II, § 28.
230. KAN. CONST. art. XI, § 12; TEX. CONST. art. VIII, § 1-d-1(a).
231. MASS. CONST. pt. II, ch. 1, art. 4 [§ 36], *amended by* Articles of Amendment, art. 112 [§ 258]. *See* MASS. CONST. Articles of Amendment, art. 41 [§ 143] (pertaining to wild or forest lands and lands retained in a natural state); art. 99 [§ 245] (pertaining to agricultural and horticultural lands).
232. NEB. CONST. art. VIII, § 1.
233. N.J. CONST. art. VIII, § I, ¶ 1(b). The uniformity clause in New Jersey has been interpreted by the courts not to require absolute uniformity. *See supra* note 84.
234. OHIO CONST. art. II, § 36.
235. UTAH CONST. art. XIII, § 3.
236. NEV. CONST. art. X, § 1.
237. *See* S.C. CONST. art. X, § 1. *See also supra* note 78.
238. *See* ALASKA CONST. art. IX, § 3; CONN. CONST. art. I, § 1; R.I. CONST. art. I, § 2.
239. ILL. CONST. art. IX, § 4(b) (1870, amended in 1970).

amended, the legislature established a preferential system of valuation for farmland in counties with a population of more than 200,000,[240] but the statutes were amended in 1973 to apply to all counties.[241] In a challenge to the constitutionality of the amended statute because of the population requirement in the constitution, the court held that the legislation did not impose non-uniform real property taxes.[242] South Carolina statutes provide that all property subject to ad valorem taxes be classified before assessment.[243] The constitution states that the legislature will provide by law for a uniform and equal rate of assessment and taxation[244] and the statutes further provide that all property be uniformily and equitably assessed throughout the state.[245] Courts have held that there is nothing in the constitution prohibiting the legislature from classifying property according to its use so long as the classification is reasonable and not arbitrary and the tax imposed is uniform on the same class of property.[246]

An annual application must be made for use-value assessment in several states,[247] while the statutes in some others only provide that the landowner make an application.[248] Only a one-time application need be made in Nebraska, Nevada and in Texas for recreational, park, and scenic land.[249] Qualifying lands in North Carolina are initially classified into separate classes for tax purposes[250] and then the owners make application to have the lands appraised on the basis of present use-value.[251]

Generally, agricultural land meeting the size,[252] minimum length of

240. Revenue Act of 1939, §§ 20a, 20a-1 to 20a-3.

241. ILL. ANN. STAT. ch. 120, §§ 501a-1 to 501a-3 (Smith-Hurd 1982-1983).

242. Hoffmann v. Clark, 69 Ill. 2d 402, 423, 372 N.E.2d 74, 85 (1977). For further discussion, see Siegel, *The Future of Classified Real Property Taxation in Illinois: The Wake of Hoffmann v. Clark*, 11 LOY. U. CHI. L.J. 21 (1979). *See also supra* note 115. ILL. CONST. art. IX, § 4(a) provides that taxes upon real property shall be levied uniformly by valuation ascertained as the legislature shall provide by law.

243. S.C. CODE § 12-43-220 (preamble) (Law. Co-op. 1982).

244. S.C. CONST. art. X, § 1.

245. S.C. CODE § 12-43-210 (Law. Co-op. 1982). *See* S.C. CODE § 12-43-220 (preamble) (Cum. Supp. 1982) (ratio of assessment to value in each class of property shall be equal and uniform throughout the state).

246. Holzwasser v. Brady, 262 S.C. 481, 488, 205 S.E.2d 701, 704 (1974); Newberry Mills, Inc. v. Dawkins, 259 S.C. 7, 13, 190 S.E.2d 503, 506 (1972).

247. *See, e.g.*, ALASKA STAT. § 29.53.035(b) (1983); DEL. CODE ANN. tit. 9, §§ 8329, 8334(3) (1975 & Cum. Supp. 1982); ILL. ANN. STAT. ch. 120, § 501a-2 (Smith-Hurd 1983-1984); KY. REV. STAT. § 132.450(2)(a) (Bobbs-Merrill 1982); MASS. ANN. LAWS ch. 61A, § 6 (Michie/Law Co-op 1983); N.J. STAT. ANN. §§ 54:4-23.2, -23.6 (West 1982-1983); OHIO REV. CODE ANN. § 5713.31 (Page 1982); S.C. CODE § 12-43-220(d)(3) (Law. Co-op 1982); TEX. TAX CODE ANN. §§ 23.43(a), .54(g), .75(g) (Vernon 1982) (agricultural land, open space land used for agricultural purposes, and timber land); UTAH CODE ANN. § 59-5-89(3)(a) (Supp. 1983); VA. CODE § 58-769.8 (1974). *See* MASS. ANN. LAWS ch. 61, § 2 (Michie/Law Co-op 1983) (certification of forest land every ten years); OHIO REV. CODE ANN. §§ 5713.22-.30 (Page 1980).

248. *See, e.g.*, ALA. CONST. art. XI, § 217, *amended by* amend. 373(j); ALA. CODE §§ 40-7-25.1, -.25.2(a) (Supp. 1981); OR. REV. STAT. § 308.375(1) (1981); R.I. GEN. LAWS §§ 44-27-3(a), (c), -4(a), (c) (Michie/Law. Co-op. 1982).

249. NEB. REV. STAT. § 77-1345(1) (1981); NEV. REV. STAT. § 361A.100 (1981) (application is not made unless the land has a greater value for another use than for agricultural use); TEX. TAX CODE ANN. § 23.84(a) (Vernon 1982).

250. N.C. GEN. STAT. § 105-277.3 (1979).

251. N.C. GEN. STAT. §§ 105-277.4(a)-(c) (Supp. 1981).

252. *See, e.g.*, DEL. CODE ANN. tit. 9, §§ 8329, 8334(2) (1974 & Supp. 1982) (five acres or more);

time in the agricultural use,[253] and income producing[254] requirements is eligible for classification and differential assessment. Alabama, Minnesota, and Texas have more than one classification scheme. The constitution and statutes in Alabama provide that all property be divided into four classes and one of the classes is to be composed of agricultural, forest, and residential property.[255] Property classified as agricultural or forest is assessed at 10% of its fair and reasonable market value.[256] However, under another classification scheme, owners of property classified as agricultural or forest may upon application and approval have their property assessed at 10% of its current use-value rather than at its fair and reasonable market value.[257]

All real and personal property in Minnesota is classified,[258] and there are three classes relating to agricultural land,[259] one relating to forest land, and one relating to private recreational, open space and park land.[260] Under one class, the first 240 acres of agricultural land used for homestead purposes is assessed at a percentage of its market value, the specific percentage depending upon the total market value.[261] Certain qualifying agricultural lands, upon application of the owners, are assessed under a second classifica-

KY. REV. STAT. §§ 132.010(9), (10) (Bobbs-Merrill 1982) (agricultural land—ten contiguous acres and horticultural land—five contiguous acres); MASS. ANN. LAWS ch. 61A, § 3 (1978) (five acres); N.J. STAT. ANN. § 54:4-23.2, -23.5 (West 1982-1983) (not less five acres); OHIO REV. CODE ANN. §§ 5713.30(A)(1), (2) (Page 1983) (thirty acres; if less than thirty acres, minimum income required); UTAH CODE ANN. §§ 59-5-87(1), -89(2) (Supp. 1983) (not less than five acres). *See* MASS. ANN. LAWS ch. 61, § 2 (Michie/Law. Co-op. 1983) (forest land, ten contiguous acres); *id.*, ch. 61B, § 1 (recreational land, five acres). There are no parcel size restrictions for forest lands in Ohio.

253. *See, e.g.*, DEL. CODE ANN. tit. 9, §§ 8329, 8334(1) (1975 & 1982) (actively devoted to qualifying use for at least the two preceding years); MASS. ANN. LAWS ch. 61A, § 4 (Michie/Law. Co-op. 1978) (two preceding years); N.J. STAT. ANN. §§ 54:4-23.2, -23.5 (West 1983-1984) (two preceding years); OHIO REV. CODE ANN. §§ 5713.30(A)(1), (2) (Page 1983) (three preceding years); UTAH CODE ANN. §§ 59-5-87(1), -89(1) (Supp. 1983) (two preceding years).

254. *See, e.g.*, DEL. CODE ANN. tit. 9, § 8333 (1975) (gross sales of products produced on the land have averaged at least $500 per year during the two preceding years); KY. REV. STAT. §§ 132.010(9), (10) (Michie/Law. Co-op. 1982) (certain annual gross income and income per acre for three out of the five preceding years from products produced, amount of which dependent upon the size of the parcel); MASS. ANN. LAWS ch. 61A, § 3 (Michie/Law. Co-op. 1983) ($500 per year on five acres and $5.00 per acre for each acre over five acres, except for woodlands and wetlands where the minimum is to be 50 cents per acre for all land exceeding five acres); N.J. STAT. ANN. §§ 54:4-23.5 (West 1983-1984) (same as Massachusetts); OHIO REV. CODE ANN. §§ 5713.30(A)(2) (Page 1981) (income requirement if parcel under thirty acres); UTAH CODE ANN. §§ 59-5-87(2), -89(2) (Supp. 1983) ($1,000 per year).

255. ALA. CONST. art. XI, § 217, *amended by* amend. 373(a); ALA. CODE § 40-8-1(a) (Supp. 1982).

256. ALA. CONST. art. XI, § 217, *amended by* amend. 373(b); ALA. CODE § 40-8-1(a) (Michie/Law. Co-op. 1981). All property is taxed at the same rate. ALA. CONST. art. XI, § 217, *amended by* amend. 373(b), (c).

257. ALA. CONST. art. XI, § 217, *amended by* amend. 373(j); ALA. CODE §§ 40-7-25.1, -25.2(a) (Michie/Law. Co-op. 1982). *See* ALA. CODE § 40-8-1(a) (Michie/Law. Co-op. 1982). Neither the constitution or statutes require that notice be given to farm owners that they may seek to have their farm land assessed according to its current use-value rather than upon its fair and reasonable market value. Cooper v. Board of Equalization of Madison County, 392 So. 2d 244, 246 (Ala. Civ. App. 1980).

258. MINN. STAT. ANN. § 273.13 (1969 & West Supp. 1983).

259. MINN. STAT. ANN. §§ 273.111, .13 (subd. 4), (subd. 6) (1969 & West Supp. 1983). *See also id.* § 273.13 (subd. 6a) (West Supp. 1983) (relating to homesteads owned by family farm corporations or partnerships).

260. MINN. STAT. ANN. §§ 273.13 (subd. 8a); 273.112 (West 1983).

261. MINN. STAT. ANN. § 273.13 (subd. 6, 6a) (West 1983).

tion scheme in accordance with its agricultural use and the assessor may not consider any added values resulting from nonagricultural factors.[262] All other agricultural land is assessed under the third class at 19% of its market value.[263] Actually, only the second category of agricultural land involves deferred taxation. Forest land is assessed at 19% of its market value.[264] Owners of certain qualifying recreational, open space and park lands may upon application have their lands assessed in accordance with its use-value and assessors may not consider the value the lands would have if converted to commercial, industrial, residential, or seasonal residential use.[265]

The Texas Property Tax Code has provisions relating to special assessments for land designated for agricultural use,[266] open space land devoted to agricultural purposes,[267] timber land,[268] and recreational, park, and scenic land.[269] Land qualifying for appraisal as that designated for agricultural use[270] must have been devoted exclusively to agriculture[271] for the preceding three years.[272] The owner must be presently using and intending to use the

262. MINN. STAT. ANN. § 273.111 (subds. 4, 6, 8) (West Supp. 1983). Real property is considered to be in agricultural use provided that at least one-third of the total annual family income is derived from the land or the total production income including rental income is $300 plus $10 per tillable acre and it is devoted to the production for sale of livestock, dairy animals, dairy products, poultry and poultry products, fur bearing animals, horticultural and nursery stock, fruits, vegetables, forage, grains, and bees. Adjoining wasteland and woodland considered to be agricultural use. *Id.* at (subd. 6). Also, the land must consist of ten acres or more and be actively and exclusively devoted to agricultural use as defined for that use and either is the homestead of the owner or surviving relatives or has been in possession of the applicant, or his relatives for a period of at least seven years prior to application for deferred taxation, or is the homestead of a shareholder in a family farm corporation. *Id.* § 273.111 (subd. 3).

Despite the statute requiring annual application, the court has held otherwise. Schmidt v. County of Hennepin, 301 Minn. 84, 87-88, 221 N.W.2d 553, 555 (1974). The "Minnesota Property Tax Law," also known as the "green acres statute," was upheld in *Elwell v. Hennepin County*, 301 Minn. 63, 76, 221 N.W.2d 538, 546-47 (1974) as establishing a reasonable classification for property tax purposes based on use.

263. MINN. STAT. ANN. § 273.13 (subd. 4)(b) (West Supp. 1983).

264. MINN. STAT. ANN. § 273.13 (subd. 8a) (West Supp. 1983).

265. MINN. STAT. ANN. § 273.112 (subd. 3) (West Supp. 1983) (qualifying land must be actively and exclusively devoted to recreational purposes, five acres or more in size, and be operated by a private organization and open to the public, operated by a firm for the benefit of its employees, or operated by a private club with fifty or more members); *Id.* The Minnesota Open Space Property Tax Law was upheld in *Orchard Gardens Country Club, Inc. v. Commissioner of Revenue*, 294 N.W.2d 701 (Minn. 1980).

266. TEX. TAX CODE ANN. §§ 23.41 to 23.46 (Vernon 1982). *See* TEX. CONST. art. VIII, § 1-d(a).

267. TEX. TAX CODE ANN. §§ 23.51 to 23.57 (Vernon 1982). *See* TEX. CONST. art. VIII, § 1-d-1(a).

268. TEX. TAX CODE ANN. §§ 23.71 to 23.79 (Vernon 1982). *See* TEX. CONST. art. VIII, § 1-d-1(a).

269. TEX. TAX CODE ANN. §§ 23.81 to 23.87 (Vernon 1982). *See* TEX. CONST. art. VIII, § 1-d-1(a).

270. TEX. CONST. art. VIII, § 1-d(a); TEX. TAX CODE ANN. § 23.41(a) (Vernon 1982). Agricultural use means the raising of livestock or growing of crops, fruit, flowers, and other products of the soil under natural conditions as a business venture for profit which business is the primary occupation and source of income of the owner.

271. Agriculture means the use of land to produce plant or animal products, including fish or poultry products, under natural conditions, but does not include processing after production or harvest or production of timber of forest products. TEX. TAX CODE ANN. § 23.42(d)(1) (Vernon 1982).

272. TEX. CONST. art. VIII, § 1-d(e); TEX. TAX CODE ANN. § 23.42(a)(1) (Vernon 1982).

land for agriculture as an occupation or a business venture project during the current year.[273] Additionally, agriculture is the owner's primary occupation and primary source of income.[274] This land designated for agricultural use is appraised at its value based on the land's capacity to produce agricultural products, which is determined by capitalizing the average net income the land would have yielded under prudent management from production of agricultural products during the five preceding years.[275] Open space land devoted to agricultural purposes[276] to be eligible for deferred taxation must be owned by natural persons who are residents of the state, located outside the boundaries of a municipality, and have been devoted principally to agricultural use for five of the preceding seven years.[277] The primary purpose of this category of agricultural land is to preserve open space land.[278] Open space land devoted to agricultural purposes is appraised on the basis of the category of the land, using accepted income capitalization methods[279] applied to the average "net to land."[280] Such land is divided into categories based on value classification considering the agricultural use to which the land is principally devoted.[281]

Location of lands relative to zoning districts is important in Nebraska and Oregon. Nebraska requires that the farmland be located within an agricultural use zone and land that is removed from such a zone is disqualified

273. TEX. CONST. art. VIII, § 1-d(a); TEX. TAX CODE ANN. § 23.42(a)(2) (Vernon 1982). *See* Maxwell v. White, 564 S.W.2d 396, 400 (Tex. Civ. App. 1978) (the two requisites for agricultural use qualification for taxation purposes are that agricultural operation was primary business as judged both by committment of effort and receipt of income).

274. TEX. CONST. art. VIII, § 1-d(a); TEX. TAX CODE ANN. § 23.42(a)(3) (Vernon 1982). *See* Grandview Independent School Dist. v. Storey, 590 S.W.2d 215, 216 (Tex. Civ. App. 1979) (to qualify for tax assessment based on its agricultural value, the land must be owned by natural persons who use the land in raising livestock or growing crops as a business venture for profit and such business must be the primary occupation and source of income of the owner).

275. TEX. TAX CODE ANN. § 23.41(a) (Vernon 1982). If the value of the land as determined by the income capitalization method exceeds the market value of the land as determined by other acceptable appraisal methods, the land will be appraised by the other methods.

276. Qualified open-space land means land that is currently devoted principally to agricultural use to the degree of intensity generally accepted to the area. TEX. TAX CODE ANN. § 23.51(1) (Vernon 1982).

277. TEX. TAX CODE ANN. §§ 23.51, .56(2), (3) (Vernon 1982).

278. *See* TEX. CONST. art. VIII, § 1-d-1(a).

279. Income capitalization is the process of dividing net to land by the capitalization rate to determine appraised value. TEX. TAX CODE ANN. § 23.51(5) (Vernon 1982). The capitalization rate is ten percent or the interest rate specified by the Federal Land Bank of Houston for the preceding year plus two and one-half percentage points. *Id.* § 23.53.

280. TEX. TAX CODE ANN. § 23.52(1) (Vernon 1982). *See* TEX. CONST. art. VIII, § 1-d-1(a). Net to land means the average annual net income derived from the use of open space land that would have been earned from the land during the five-year period preceding the appraisal by an owner using ordinary prudence in the management of the land and the farm crops or livestock produced or supported on the land and, in addition, any income received from hunting or recreational leases. TEX. TAX CODE ANN. § 23.51(4) (Vernon 1982).

281. TEX. TAX CODE ANN. § 23.51(3) (Vernon 1982). Categories of land include, but are not limited to, irrigated cropland, dry cropland, improved pasture, native pasture, orchard, and waste and may be further divided according to soil capability, irrigation, general topography, geographical factors, and other factors which influence the productive capacity of the category. *See* Briscoe Ranches, Inc. v. Eagle Pass Independent School Dist., 439 S.W.2d 118, 119-22 (Tex. Civ. App. 1969) (property assessment plan dividing land into three general classes and setting a base value to each classification was not arbitrary, capricious, or illegal as a matter of law).

for use-value assessment and subject to rollback taxes.[282] Land outside a farm use zone in Oregon must be presently used and have been used exclusively as farmland during the preceding two years to be eligible for deferred taxation, while that within a farm use zone need only be presently used exclusively as farmland.[283] Owners of farmland within a farm use zone need not make an application, but those outside such zones must make an application.[284]

Eligibility for deferred taxation in some states is dependent upon the land's inclusion in local development plans. Owners of agricultural,[285] forest,[286] and open space[287] lands in Connecticut make an application to have their lands so designated.[288] Prior to classification of land as open space, the municipal planning commission must designate in its development plans such areas as open space lands for preservation.[289] Any owner of agricultural or forest land in Tennessee[290] may file a written application with the county tax assessor to have such land classified as agricultural or forest land.[291] If the assessor determines that it is agricultural or forest land it is classified as such.[292] Productivity is one of the determining factors for agricultural land and management practices is one factor for forest land.[293] The municipal or county planning commission may designate lands for preservation in the land use or comprehensive plan as areas of open space land.[294]

---

282. NEB. REV. STAT. § 77-1344(1); 1347(6) (1981).

283. OR. REV. STAT. § 308.370 (1981). Further eligibility requirements for land outside farm use zones are that the land must be used exclusively for agriculture use in three out of the five preceding calendar years and produce a specific gross income from farm use based on acreage. *Id.* § 308.372(1). *See id.* § 308.372(2) (gross income and acreage requirements). *See also id.* §§ 215.010-.190, .402-.422, 227.210-.300 (farm use zones).

284. OR. REV. STAT. §§ 308.370(1), (2), .375(1) (1981).

285. Farmland means any tract of land, including woodland and wasteland, constituting a farm unit. CONN. GEN. CODE ANN. § 12-107b(a) (1983).

286. Any tract or tracts of land aggregating twenty-five acres or more bearing tree growth in such quantity and so spaced as to constitute a forest area. CONN. GEN. STAT. ANN. § 12-107b(b) (1983).

287. Any area of land, including forest land and wetland and not excluding farmland, the preservation or restriction of the use of which would maintain and enhance the conservation of natural or scenic resources, protect natural streams or water supply, promote conservation, enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, or other open spaces, enhance public recreation opportunities, preserve historic sites, or promote orderly urban or suburban development. CONN. GEN. STAT. ANN. § 12-107b(c) (1983).

288. CONN. GEN. STAT. ANN. §§ 12-107c(a), -107d(a), (c), -107e(b) (1983). The assessor in determining eligibility for classification as agricultural land considers acreage, portion actually used for agricultural, productivity, gross income derived from land, nature and value of equipment used, and extent tracts are contiguous.

289. CONN. GEN. STAT. ANN. § 12-107e(a) (1981).

290. TENN. CODE ANN. 67-653(a), (b) (Supp. 1983). Agricultural land is defined as a tract of land at least fifteen acres, including woodlands and wastelands which form a contiguous part of the fifteen acres, constituting a farm unit engaged in or held for the production of growing of crops, plants, animals, nursery, or floral products. *Id.* at (a).

Forest land is land constituting a forest unit engaged in growing trees under a sound program of sustained yield management or any other tract fifteen or more acres having a tree growth in such quantity and quality and so managed as to constitute a forest. *Id.* at (b).

291. TENN. CODE ANN. §§ 67-654(a), -655(a) (1980).

292. *Id.*

293. TENN. CODE ANN. § 57-654(a) (agricultural land); -655(b) (forest land) (1980).

294. TENN. CODE ANN. § 67-656(a) (1980). If no local planning commission, the state planning

An owner of land in any area designated as open space land upon any adopted plan may apply for classification of it as open space land on the assessment rolls.[295]

Virginia requires the adoption of land use plans or that land be within a district as a prerequisite to use-value assessment. The constitution allows special classification of real estate devoted to agricultural, horticultural, forest, and open space uses.[296] Any local unit of government that has adopted a land use plan may adopt an ordinance providing for use-value assessment and taxation of any of the special classes of real estate.[297] Owners may submit an application for such assessment only after adoption of the local ordinance.[298] Land used for agricultural or forest production within one of the two types of agricultural or forestal districts that can be created under Virginia statutes[299] automatically qualifies for agricultural or forest value assessment whether or not the local unit of government has adopted a local land use plan or ordinance providing for use-value assessment.[300] Any owners of land with at least 500 acres may under the Agricultural and Forestal Districts Act[301] submit an application to the local governing body for the creation of an agricultural, forestal, or an agricultural and forestal district within the locality.[302] This proposal is referred to the county planning board and to an agricultural district advisory committee,[303] which in turn studies the proposal and reports their findings to the local governing body. The local governing body then holds a public hearing and may adopt the proposal or any modified version it deems appropriate.[304] Lands within these districts automatically qualify for an agricultural or forest value assessment.[305]

---

office may designate lands which are highly desirable to be preserved as open space. *Id.* § 67-656(b).

295. TENN. CODE ANN. § 67-656(c) (1976). Open space lands are other than agricultural or forest lands of not less than three acres characterized by open or natural conditions. *Id.* § 67-653(c).

296. VA. CONST. art. X, § 2. Agricultural use means the production for sale of animals and plants or under a soil conservation program agreement with the federal government. VA. CODE § 58-769.5(a) (1974) (minimum of five acres). *Id.* § 58-769.7(b)(1) (Supp. 1982). Horticultural use means the production for sale of fruits, vegetables, or nursery and floral products or under a soil conservation program. VA. CODE § 58-769.5(b) (1974) (minimum acreage of five acres). *Id.* § 58-769.7(b)(1) (Supp. 1982). Forest use means devoted to tree growth to constitute a forest area prescribed by Department of Conservation and Economic Development. VA. CODE § 58-769.5(c) (1974). Minimum acreage of twenty acres. *Id.* § 58-769.7(b)(2) (Supp. 1982). Open space means preserved for park or recreational purposes, conservation of land or other natural resources, floodways, historic, or scenic purposes. VA. CODE § 58-769.5(d) (1974). Minimum of five acres, except cities having a population density greater than 5,000 per square mile, two acres. *Id.* § 58-769.7(b)(3) (Supp. 1982).

297. VA. CODE § 58-769.6 (Supp. 1982).

298. VA. CODE § 58-769.8 (Supp. 1982).

299. VA. CODE §§ 15.1-1506 to -1513, 15.1-1513.1 to -1513.8 (1981 & Supp. 1982).

300. VA. CODE §§ 15.1-1512(A), -1513.7(3) (1981 & Supp. 1982). *See id.* § 58-769.6 (Supp. 1982).

301. VA. CODE §§ 15.1-1506 to -1513 (1981).

302. VA. CODE § 15.1-1511(A) (1981). No one owner may own more than 3,500 acres in the proposed district.

303. VA. CODE § 15.1-1510 (1981).

304. VA. CODE § 15.1-1511(D) (1981).

305. VA. CODE § 15.1-1512(A) (1981).

All provisions under the Local Agricultural and Forestal Districts Act[306] are the same, except that no application may consist of less than twenty-five acres.[307]

As with states permitting preferential assessments, the statutes authorizing deferred taxation for agricultural, horticultural, forest, and open space lands could easily be amended to require implementation of soil conservation programs as a prerequisite for eligibility for use-value assessment. The conservation prerequisite could be added to the definition of agricultural, horticultural, forest, and open space lands.[308] In addition, the local ordinances in Virginia providing for use-value assessment and taxation could require conservation measures.[309] Virginia land to be included in agricultural and forestal districts could also be required to meet certain soil conservation standards.[310] North Carolina already requires that agricultural, forest, and horticultural lands be under a sound management program before they can be designated special classes of property;[311] however, the definition of a sound management program could be amended to make it clear that it includes conservation measures.[312] Alternatively, the definitions of agricultural, forest, and horticultural lands could include conservation programs as a prerequisite to classification.[313]

Factors used to determine use-value assessment could be redefined in some instances as a method of providing tax incentives for soil conservation programs. Statutes in several states provide that the soil productivity or income producing capacity of the land is considered when determining assessed value.[314] Added value due to increases in soil productivity or the income producing capacity of the land caused by soil conservation practices could be eliminated as a factor of consideration in determining assessed

306. VA. CODE §§ 15.1-1513.1 to -1513.8 (Supp. 1982).

307. VA. CODE § 15.1-1513.6(B) (Supp. 1982).

308. *See, e.g.*, ALA. CODE § 40-8-1(b)(3) (Supp. 1982); ALASKA STAT. § 29.53.035(c) (1983); CONN. GEN. STAT. ANN. §§ 12-107b(a)-(c) (1983); DEL. CODE ANN. tit. 9, §§ 8330-8334 (1974); KY. REV. STAT. §§ 132.010(9), (10) (Supp. 1982); MASS. ANN. LAWS ch. 61A, §§ 1-3 (Michie/Law. Co-op. 1978); MINN. STAT. ANN. §§ 273.111 (subds. 3, 6), .112 (subd. 3), .13 (subd. 6) (West Supp. 1983); NEB. REV. STAT. §§ 77-1343(1) (1981); NEV. REV. STAT. §§ 361A.020(1)(a), .030(1), .040(1), .050 (1981); N.J. STAT. ANN. §§ 54:4-23.2 to -23.6 (West Supp. 1983-1984); OHIO REV. CODE ANN. §§ 5713.30(A)(1), (2) (Page Supp. 1982); OR. REV. STAT. §§ 308.372(1), (2) (1981); R.I. GEN. LAWS §§ 44-27-2(a)-(c) (Supp. 1982); S.C. CODE § 12-43-230(a) (Supp. 1982); TENN. CODE ANN. §§ 67-653(a)-(c) (1976 & Supp. 1983); TEX. TAX CODE ANN. §§ 23.41(1), .42(a), 51(1),(4), .56(2),(3), .77(2), (3), .82(a) (Vernon 1982); UTAH CODE ANN. §§ 59-5-87(1), -88, -89(1), (2) (1974 & Supp. 1983); VA. CODE §§ 58-769.5(a)-(d) (1981).

309. VA. CODE § 58-769.6 (1981).

310. *See* VA. CODE §§ 15.1-1511(C), -1513.6(F) (1981 & Supp. 1982) (factors now to be taken into consideration).

311. N.C. GEN. STAT. §§ 105-277.2(1) to (3) (1979). Sound management program means a program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement. *Id.* at (6).

312. *See* N.C. GEN. STAT. § 105-277.2(6) (1979) (where it could be amended).

313. *See* N.C. GEN. STAT. §§ 105-277.2(1)-(3), -277.3(a)(1)-(3) (1979) (where it could be added).

314. *See* ALA. CODE § 40-7-25.1 (Supp. 1981) (farm income, soil productivity or fertility, and topography); CONN. GEN. STAT. ANN. §§ 12-107c(a), -107d(a), -107e(b) (1981); DEL. CODE ANN. tit. 9, §§ 8335(b), (c) (1974); KY. REV. STAT. § 132.010(11) (Supp. 1982); TENN. CODE ANN. §§ 67-654(a), -655(b) (1976); TEX. TAX CODE ANN. §§ 23.41(1), .51(4), .71(2), .73(a) (Vernon 1982); VA. CODE § 58-769.9(a) (Supp. 1982).

value by an amendment to the statutes. For example, in Texas, "net income" is defined as that derived using ordinary prudence in management,[315] but it could be redefined to exclude the extra income derived from the implementation of conservation measures. Precedence exists in some states for eliminating certain improvements to real property when determining assessed value that could be used as examples for conservation programs. North Carolina and Rhode Island assess buildings with solar or wind energy heating or cooling systems as if the buildings had conventional systems and no additional value is assigned for the difference in cost between the solar or wind energy systems and conventional systems.[316]

Statutes requiring the payment of deferred or "rollback" taxes when lands cease to be used for the purposes that made them eligible for differential assessments could be amended to require the payment of certain amounts of rollback taxes for failure to maintain a recommended soil conservation program on the land, just as if the land was sold or its use changed to a nonqualifying use. Rollback taxes are generally the difference between the taxes paid on the basis of use-value assessment and the taxes that would have been paid had the land been valued and assessed on the basis of market value. The number of years land is subject to deferred taxes upon sole or change of use varies, but most provide for the current year plus the preceding two, three, four, or five years.[317] Minnesota is only the current year, Delaware, the current year plus the preceding year, and Nevada, the current year plus the preceding seven years.[318]

In Rhode Island, deferred taxes are based on market value at the time of sale or conversion, the percentage of which being dependent upon the number of years it was classified for use-value assessment before it was withdrawn.[319] The length of time for deferred taxes in Oregon is dependent upon whether the land was located in a farm use zone.[320] If classified land in Connecticut is sold within ten years after acquisition or classification, whichever is earlier, it is subject to a conveyance tax applicable to the total sales

315. TEX. TAX CODE ANN. § 23.51(4) (Vernon 1982).

316. *See* N.C. GEN. STAT. § 105-277(g) (1979); R.I. GEN. LAWS § 44-3-18(B) (Supp. 1982).

317. *See, e.g.*, ALASKA STAT. § 29.53.035(a) (1972); KY. REV. STAT. §§ 132.450(2)(f), .454(1) (1974 & Supp. 1982); N.J. STAT. ANN. § 54:4-23.8 (West Supp. 1982-1983) (all providing for current year plus the preceding two); ALA. CONST. art. XI, § 217, *as amended* amend. 373(j); ALA. CODE § 40-7-25.3 (Supp. 1981); ILL. ANN. STAT. ch. 120, § 501a-3 (Smith-Hurd Supp. 1982-1983); N.C. GEN. STAT. §§ 105-277.4(c), -277.6 (1979 & Supp. 1981); TENN. CODE ANN. § 67-657(c) (Supp. 1982); TEX. CONST. art. VIII, § 1-d(f); TEX. TAX CODE ANN. § 23.46(c) (Vernon 1982) (current year plus the preceeding three); OHIO REV. CODE ANN. § 5713.4 (Page 1980) (current year plus preceding four); NEB. REV. STAT. § 77-1348(1)(a) (1981); S.C. CODE § 12-43-220(d)(4) (Supp. 1982); UTAH CODE ANN. § 49-5-91 (1974); VA. CODE § 58-769.10(A) (Supp. 1982) (all providing for current year plus preceding five).

318. MINN. STAT. ANN. § 273.111 (subd. 9) (West Supp. 1983) (seven years for open space land). *Id.* § 273.112 (subd. 7)); DEL. CODE ANN. tit. 9, § 8335(d) (1974); NEV. REV. STAT. § 361A.280(1) (1981) (plus a 20 percent penalty).

319. R.I. GEN. LAWS § 44-5-39 (Supp. 1982).

320. OR. REV. STAT. §§ 308.395(1), (2) (1981) (outside farm use zone—five years); *id.* § 308.399(1) (within farm use zone—ten years).

price of the land with the rate based on the number of years of ownership.[321] Agricultural and horticultural land in Massachusetts that becomes disqualified by sale or change in use is subject to a conveyance tax and a rollback tax if the amount of the rollback tax exceeds the amount of the conveyance tax.[322] If the land is sold for another use within a period of ten years after acquisition or the owner changes the land's use to a nonqualifying one within ten years after acquisition, the owner must pay a conveyance tax, the amount of which is based on the number of years of ownership.[323] Conveyance taxes are applicable to the total sales price if the land is sold and to fair market value, as if the land had actually been sold, if the use had been changed to a nonqualifying one.[324] Rollback taxes are applied to the land during the current tax year and the four preceding years when the land's use is changed to a non-qualifying use, provided the rollback taxes exceed the conveyance taxes, in which case the conveyance taxes are not imposed.[325]

Tax Incentives Under Restrictive Agreements

The third type of differential assessment is restrictive agreements. This approach requires landowners, if they desire to receive tax concessions, to voluntarily contract with the appropriate governmental unit for a term, usually ten years,[326] to keep their lands in a qualifying use.[327] Generally, either party must give several years notice if they intend to change land use. After giving notice, the land either reverts to standard taxation or some type of charges are imposed.[328] Changing the use of the land prior to termination of the agreement or without giving proper notice of termination is a breach of the agreement and will lead to the imposition of rollback taxes or a penalty.[329]

Usually landowners are required to petition the state or local government to receive the tax relief. In evaluating petitions, the state or local government balances the general welfare interests in preserving the land in its present condition against the loss of revenue that will result from reduced taxes. The state or local government in granting restrictive agreements has as an option choosing the area they want to preserve and contract with a

321. CONN. GEN. STAT. ANN. § 12-504a (1981). The rate is 10% if sold during the first year of owners and goes down to one percent if sold during the tenth year of ownership.

322. MASS. ANN. LAWS ch. 61A, §§ 12, 13 (Michie/Law. Co-op. 1978).

323. MASS. ANN. LAWS ch. 61A, § 12 (Michie/Law. Co-op. 1978). The conveyance tax is 10% if sold within the first year of ownership progressively down to one percent if sold in within the tenth year of ownership.

324. *Id.* Fair market value determined by the board of assessors is used in lieu of total sales price for change in use to a nonqualifying one.

325. MASS. ANN. LAWS ch. 61A, § 13 (Michie/Law. Co-op. 1978).

326. *See* UNTAXING OPEN SPACE, *supra* note 120, at 4.

327. *An Analysis of Differential Taxation, supra* note 120, at 829. *See* HADY & SIBOLD, *supra* note 24, at 3; UNTAXING OPEN SPACE, *supra* note 120, at 5; *Comprehensive Land Use Control, supra* note 120, at 449. Basically, these agreements prohibit the development of agriculture, forest, or open space lands for a specified period of time.

328. HADY & SIBOLD, *supra* note 24, at 3.

329. *Id.*; *Comprehensive Land Use Control, supra* note 120, at 449; *An Analysis of Differential Taxation, supra* note 120, at 829.

limited number of landowners. Moreover, this contract participation allows state and local governments to monitor the program to minimize abuses.[330]

Traditional market value assessment need not be abandoned under restrictive agreements. Tax assessors in appraising land at its "highest and best" use would consider the restrictions placed in the agreement on use of the land. Such restrictions would in effect preclude the assessor from considering the land's development potential because development is prohibited. As a result, assessment for tax purposes is based on the land's allowable use, such as farming, forestry, or open space. If the agreement is breached, annual rollback taxes would equal the difference between the highest and best use assessment with the restriction (farming, forestry, or open space) and the highest and best use assessment without it (urban development).[331]

Four states; California, Hawaii, Michigan, and Wisconsin; now permit differential taxation of agricultural and other qualifying lands that are under restrictive agreements.[332] The California Constitution required that property be taxed in proportion to its value and constitutions in Michigan and Wisconsin provided that there shall be a uniform rule of taxation.[333] Constitutions in California and Wisconsin required absolute uniformity.[334] The uniformity clause in Michigan, which provided that there shall be a uniform rule of taxation, has been interpreted to allow certain classification of property.[335] California and Wisconsin have since amended their constitutions to provide for differential assessment of agricultural, forest, or open space lands.[336] When Michigan adopted its new constitution, the uniformity clause was changed to permit the legislature to provide for alternative means of taxation of designated real property in lieu of general ad valorem taxation and taxes other than ad valorem need only be uniform within each class.[337] Hawaii does not have a uniformity clause in its constitution.

Any county or city in California having a general plan may by resolution establish an agricultural preserve containing at least 100 acres. Such preserves are established for the purpose of defining those areas within which landowners would be willing to enter into contracts.[338] After establishment, a city or county may enter into contracts to preserve eligible lands

330. *Comprehensive Land Use Control, supra* note 120, at 449; *Differential Assessment of Agricultural Land in Kansas, supra* note 116, at 225-26.

331. *Comprehensive Land Use Control, supra* note 120, at 450.

332. CAL. GOV'T CODE §§ 51200-51295 (1983); CAL. REV. & TAX CODE §§ 421 to 430.5, 431 to 439.4 (West Supp. 1983); HAWAII REV. STAT. §§ 246-10, -12 to -12.2 (1976 & Supp. 1982); MICH. COMP. LAWS ANN. §§ 554.701-.719 (West Supp. 1983-1984); WIS. STAT. §§ 71.09(11), 91.01-79 (1981-1982).

333. CAL. CONST. art. XIII, § 1 (1879); MICH. CONST. art. X, § 3 (1908); WIS. CONST. art. VIII, § 1 (1948, amended 1961).

334. *See supra* note 72.

335. *See supra* note 74.

336. CAL. CONST. art. XIII, § 8; WIS. CONST. art. VIII, § 1.

337. MICH. CONST. art. IX, § 3.

338. CAL. GOV'T CODE § 51230 (1983).

in such preserves as agricultural.[339] Land must be devoted to agricultural use and be located within an area designated by a city or county as an agricultural preserve before it is eligible for contract.[340] Every contract provides for the exclusion of uses other than agricultural and other than those compatible with agricultural uses for the duration and are binding on future owners.[341] Contacts must be for at least ten years and are automatically renewed for that term unless notice of nonrenewal is given.[342] Either the landowner or city or county may provide written notice ninety days before the expiration of the contract of its intention not to renew.[343]

Agricultural land subject to enforceable land use contracts is assessed on the basis of those restrictions by using the capitalization of income method.[344] Landowners have to pay a cancellation fee when contracts are cancelled equal to 12½% of the full cash value of the land after it is free of the contractual restrictions.[345] Deferred taxes are also levied after cancellation and these are based on the assessed value of the land as though it was free of the contractual restrictions.[346] This is determined by subtracting the assessed value of the restricted land during the first year of restriction from the assessed value of unrestricted land during the same year and multiplied by a factor specified in the statutes depending upon the amount of time the contract was in effect.[347] From this amount the cancellation fees are subtracted to determine the amount owed.[348]

Hawaii has two taxing schemes for agricultural land. One relates to land dedicated to a particular purpose and the other to land classified for tax purposes as agricultural. A state land use commission divides all land in the state and establishes four land use districts; urban, rural, agricultural,[349] and conservation; into which all the land must be placed.[350] Owners of land used for agricultural or ranching purposes must petition the state director of taxation to have it dedicated for that purpose.[351] Dedicated lands may be located in any of the four use districts. If the petition for dedication is approved, a landowner forfeits the right to change use for the next ten or twenty years.[352] Land in agricultural districts may be dedicated for a

339. CAL. GOV'T CODE § 51240 (1983).
340. CAL. GOV'T CODE § 51242 (1983).
341. CAL. GOV'T CODE § 51243(a), (b) (1983).
342. CAL. GOV'T CODE § 51244 (1983).
343. CAL. GOV'T CODE § 51245 (1983).
344. CAL. CONST. art. XIII, § 8; CAL. REV. & TAX CODE §§ 423, 426 (West Supp. 1983).
345. CAL. GOV'T CODE § 51283 (1983).
346. CAL. GOV'T CODE § 51283.1(a)(1) (1983).
347. CAL. GOV'T CODE §§ 51283.1(a)(2)-(3), (b), (d) (1983).
348. CAL. GOV'T CODE § 51283.1(e) (1983).
349. Agricultural districts include uses such as the cultivation of crops, orchards, forage and forestry; farming activities or uses related to animal husbandry, game, and fish progation; services and uses accessory to the above activities including, but not limited to, living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises, and open area recreational facilities. HAWAII REV. STAT. § 205-2 (Supp. 1982). *See* HAWAII REV. STAT. § 205-4.5 (1976 & Supp. 1982) (permissible uses in agricultural districts).
350. HAWAII REV. STAT. § 205-2 (Supp. 1982).
351. HAWAII REV. STAT. § 246-12(b) (1976).
352. HAWAII REV. STAT. § 246-12(c) (1976).

twenty-year period.[353]

Agricultural land that is dedicated is assessed at its use-value for agricultural purposes. Land dedicated for ten years is taxed on its full assessed value in agricultural use and that dedicated for twenty years is taxed at 50% of its assessed value.[354] Failure of the owner to observe the restrictions on the use of the land cancels the dedication and special tax assessment privilege retroactive to the date of dedication, but in no event further back than the term of the original dedication. All differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use are payable with a 10% a year penalty from the respective dates that these payments would have been due.[355]

Under the classification scheme, all real property in Hawaii is classified into six classes for tax purposes, one of which is agricultural.[356] In determining classification the state director of taxation considers the land use districts.[357] Land classified as agricultural is valued for tax purposes in accordance with its use whether or not it is dedicated to agriculture.[358] In determining the value of land classified as agricultural, whether or not the land is dedicated to agriculture, consideration is given to rent, productivity, nature of agricultural use, location, accessibility, size, shape, topography, quality of soil, water, and other factors deemed appropriate.[359] A deferred or rollback tax up to ten years is due if the land changes use.[360]

An owner of land in Michigan desiring a farmland development rights agreement may file an application with the county board of supervisors.[361] The application, if approved by the county board, is forwarded to the State Department of Natural Resources for approval or rejection.[362] If approved, the department prepares a farmland development rights agreement for execution by the landowner that contains, among other things, that land improvements cannot be made except for uses consistent with farm operations

353. HAWAII REV. STAT. § 246-12(a) (1976).
354. HAWAII REV. STAT. §§ 246-12(a), (b) (1976).
355. HAWAII REV. STAT. § 246-12(d) (1976).
356. HAWAII REV. STAT. § 246-10(d)(1) (Supp. 1982).
357. HAWAII REV. STAT. § 246-10(d)(2) (Supp. 1982).
358. HAWAII REV. STAT. § 246-10(a) (1976).
359. HAWAII REV. STAT. § 246-10(f)(2) (Supp. 1982).
360. HAWAII REV. STAT. § 246-10(f)(3) (Supp. 1982).
361. MICH. COMP. LAWS ANN. § 554.705(1) (West Supp. 1983-1984). Qualified farmland is a farm of forty or more acres, in one ownership which has been devoted primarily to an agricultural use; or a farm between five and forty acres devoted primarily to agriculture use, which has produced a gross annual income from agriculture of $200 per year or more per acre of cleared and tillable land; or a farm designated by State Department of Agriculture as a specialty farm in one ownership which has produced a gross annual income from agricultural use of $2,000 or more. MICH. COMP. LAWS ANN. § 554.702(6) (West Supp. 1983-1984).

Development rights means the right to construct a building or structure, to improve land, or the extraction of minerals incidental to a permitted use or as shall be set forth in the instrument. *Id.* at (3).

A restrictive covenant, evidenced by instrument whereby the owner and state, for term of years, agree to jointly hold the right to develop the land as may be expressly reserved in the instrument, and which contains a covenant running with the land, for a term of years, not to develop, except as this right is expressly reserved in the instrument. *Id.* at (4).

362. MICH. COMP. LAWS ANN. §§ 554.705(4), (5), (7) (West Supp. 1983-1984).

or with the approval of the local governing body and the department.[363] Owners of farmland and related buildings covered by a development rights agreement and who file a state income tax return are eligible for a credit against the state income tax liability for the amount by which the property taxes on the land and structures used in the farming operations restricted by the agreements exceeds 7% of the income.[364] The owner may make application for release from the agreement and if granted, a rollback tax is levied for the total amount of the credit for state income tax.[365]

Wisconsin landowners are eligible for permanent farmland preservation agreements if the local government has adopted either a certified agricultural preservation plan or an exclusive agricultural zoning ordinance.[366] Land in urban counties to be eligible must be located within an area zoned for exclusive agricultural use under an ordinance certified by the State Agricultural Lands Preservation Board and the town in which the land is located must have approved the ordinance.[367] Land in rural counties is eligible for permanent program agreements if the county has adopted an agricultural preservation plan certified by the state board, or an exclusive agricultural zoning ordinance certified by the state board and the land is located within one of those areas.[368] If any city, town, or village has adopted its own certified exclusive agricultural zoning ordinance or a town has approved a similar county zoning ordinance, eligible land must be within the area zoned for agricultural use.[369] Applications for farmland preservation agreements must be approved by the local governing body and submitted to the Wisconsin Department of Agriculture, Trade and Consumer Protection for signature.[370] An approved farm conservation plan must be in effect prior to approval of an agreement.[371]

Lands under farmland preservation agreements located within an area of the county subject to either exclusive agricultural zoning or an agricultural preservation plan are eligible for tax credits of 70% of the potential credits calculated under a "circuit-breaker" formula.[372] A 70% tax credit is

363. MICH. COMP. LAWS ANN. §§ 554.705(7), (8) (West Supp. 1983-1984). *See id.* §§ 554.705(7)(a), (c)-(e) (other conditions in agreements). Agreements constitute a dedication to the public of development rights in the land for term specified in agreement, but not less than ten years. *Id.* § 554.704(1).

364. MICH. COMP. LAWS ANN. §§ 554.710(1), (2) (West Supp. 1983-1984).

365. MICH. COMP. LAWS ANN. § 554.712(2)(b), (4) (West Supp. 1983-1984).

366. WIS. STAT. §§ 91.11(1)(a), (b) (1981-1982). Landowners were eligible for initial farmland preservation agreements until September 30, 1982, after which date they expired. WIS. STAT. §§ 91.31, .35(2) (1981-1982).

367. WIS. STAT. § 91.11(3) (1981-1982).

368. WIS. STAT. s 91.11(2) (1981-1982).

369. WIS. STAT. § 91.11(4) (1981-1982).

370. WIS. STAT. § 91.13 (1981-1982).

371. WIS. STAT. § 91.13(8)(d) (1981-1982). Deviation from the conservation plan is permitted if Soil Conservation Service or soil and water conservation district personnel are unavailable to lay out the suggested practices on the land or if the practices are not economical for the owner to adopt.

372. WIS. STAT. § 71.09(11)(b)(3)(e) (1981-1982). The circuit-breaker formula relieves farmland owners from paying excessive property taxes under a "threshold" concept; "excessive" property taxes is that amount of the property tax bill exceeding a certain threshold percentage of

available on farmland located in an urbanizing area if the farmland is identified as such in the preservation plan and the owner signs a special transition area agreement.[373] If a county has both exclusive agricultural zoning and a preservation plan, land located within an area covered by both is eligible for 100% of the potential tax credit calculated under the "circuit-breaker" formula.[374] Landowners are ineligible for tax credits if they have been notified of a violation of the farm conservation plan.[375]

A lien is recorded against the property for all tax credits received during the past ten years the landowner was eligible for such credits if either the farmland preservation agreement expired or the land was rezoned out of the exclusive agricultural district. Interest is assessed beginning when the agreement expired or the land was removed from the exclusive agricultural zone.[376] When a farmland preservation agreement is relinquished before its expiration date with state and county approval or a transition area agreement expires, a lien is recorded against the land for all tax credits received during the last ten years that the land was eligible for such credit and interest is assessed starting at the time the credit was received until the lien is paid.[377]

Several methods may be used to integrate soil conservation programs into the differential assessment tax statutes for agricultural lands in the four states requiring restrictive agreements. Local governments in California could require that landowners have a conservation plan in effect as a prerequisite before entering into contracts to restrict land use to agriculture in agricultural preserves.[378] Contract provisions could also require the maintenance of soil conservation programs.[379] Failure to maintain such programs could cancel the contracts and subject the landowner to the cancellation fee.[380] Soil conservation programs could be required before dedication of land in Hawaii for agricultural purposes and failure to maintain such programs could cancel the dedication.[381] Increased productivity due to conservation measures could be eliminated when determining farmland value under the Hawaii classification scheme for differential assessment of agricultural land.[382]

The definition of farmland in Michigan could be amended to include conservation programs as a prerequisite for approval of agreements.[383] As soil conservation districts now have review authority over applications, the

household income. Threshold percentages vary with the household income so that greater threshold percentages are assigned to larger household incomes. Id. § 71.09(11)(b).

373. WIS. STAT. § 71.09(11)(b)(3)(c) (1981-1982).
374. WIS. STAT. §§ 71.09(11)(b)(3)(a), (b) (1981-1982).
375. WIS. STAT. § 71.09(11)(o) (1981-1982).
376. WIS. STAT. § 91.19(8) (1981-1982).
377. WIS. STAT. § 91-19(7) (1981-1982).
378. *See* CAL. GOV'T CODE §§ 51240, 51242 (1983).
379. *See* CAL. GOV'T CODE § 51243(a) (1983).
380. *See* CAL. GOV'T CODE § 51283 (1983).
381. *See* HAWAII REV. STAT. § 246-12(b), (d) (1976 & Supp. 1982).
382. *See* HAWAII REV. STAT. § 246-10(f)(2) (Supp. 1982).
383. *See* MICH. COMP. LAWS ANN. § 554.702(6) (Supp. 1983-1984).

statutes could be amended to provide that they could have approval authority over a conservation program.[384] Approval of agreements by local and state agencies could be based on implementation of soil conservation programs.[385] A provision could be added to the agreement requiring maintenance of soil conservation programs.[386] The state is empowered to relinquish its rights in the agreement early and that provision could be amended to permit the state to relinquish the agreement and subject the owner to rollback taxes for failure to maintain a conservation program.[387]

Wisconsin requires participation in a soil conservation program as a prerequisite for differential assessment under farmland preservation agreements. A farm conservation plan must be in effect before approval of an agreement.[388] Owners of land under a farmland preservation agreement failing to comply with the farm conservation plan are given one year to comply.[389] Compliance can be enforced by an injunction or civil penalty for actual damages up to double the value of the land at the time the agreement application was approved.[390] Also, if owners fail to renew a permanent agreement at its expiration date or relinquish it, with state approval, prior to expiration, deferred or rollback taxes for all credits received for up to ten years are assessed against the owners.[391]

Tax Incentives Under Combination of Deferred Taxation and Restrictive Agreements

Seven states, Maine, Maryland, New Hampshire, New York, Pennsylvania, Vermont, and Washington, have a combination of the deferred taxation and restrictive agreement approaches or use one approach for some qualifying lands and the other approach for other qualifying lands.[392] Uniformity clauses in Maryland and Washington provide taxes be uniform on the same class of property and in Pennsylvania be uniform on the same class of subjects.[393] None of these three have been amended. Maryland's constitution provides for separate assessment, classification, and subclassification of land and improvements on land and uniform taxation on each class or subclass of land improvements.[394] The Pennsylvania clause has been renumbered and the Washington one has remained the same.[395] The New York Constitution does not have a uniformity clause and the Vermont one

384. *See* MICH. COMP. LAWS ANN. § 554.705(2) (Supp. 1983-1984).
385. *See* MICH. COMP. LAWS ANN. §§ 554.705(4)-(7) (Supp. 1983-1984).
386. *See* MICH. COMP. LAWS ANN. §§ 554.705(7)(a)-(e) (Supp. 1983-1984).
387. *See* MICH. COMP. LAWS ANN. § 554.712(2)(a), (5) (Supp. 1983-1984).
388. WIS. STAT. § 91.13(8)(d) (1981-1982).
389. WIS. STAT. § 91.21(3) (1981-1982).
390. WIS. STAT. § 91.21(1) (1981-1982).
391. WIS. STAT. §§ 91.19(1), (2), (7), (8) (1981-1982).
392. *See supra* notes 217 to 223.
393. MD. CONST. DECL. OF RIGHTS art. 15 (1867, amended 1915); WASH. CONST. art. VII, § 1 (1889, amended 1830); PA. CONST. art. IX, § 1 (1874).
394. MD. CONST. DECL. OF RIGHTS art. 15.
395. PA. CONST. art. VIII, § 1; WASH. CONST. art. VII, § 1.

only requires fair distribution of government expenses.[396] Maine's former constitution provided that property be taxed according to its value and New Hampshire's provided that the legislature may impose proportional and reasonable assessments, rates, and taxes upon all persons within the state.[397] An amendment in Maine provides that agricultural and forest lands be assessed in accordance with current use-value and that deferred taxes be levied for up to the preceding five years if there was a land use change and in New Hampshire the amendment provides for assessment of any class based on current use-value.[398]

Maine, Vermont, and Washington have statutory provisions permitting deferred taxation for agricultural, forest, and open space lands,[399] in addition to permitting differential assessment when local governments require easements or development rights in agricultural, forest, and open space lands to preserve them.[400] New Hampshire and Pennsylvania permit deferred taxation of agricultural, forest, and open space lands[401] and have provisions for differential assessment when landowners convey covenants or discretionary easements to local governments to preserve farm, forest, and open space lands.[402] Maryland has deferred taxation for farmland and restrictive agreements to permit differential assessment for open space.[403] New York provides for deferred taxation for farmland in agricultural districts, but contracts must be entered into between the landowner and local government committing land to agricultural use if outside a district.[404]

In Maine the owners of farmland and open space land apply to the assessor to have their lands assessed at current use-value.[405] If accepted for classification as farmland[406] or open space land,[407] good farmland will be assessed at 100% of its current use-value, very good farmland at 120% of

396. VT. CONST. ch. I, art. 9.
397. ME. CONST. art. IX, § 9 (1819); N.H. CONST. pt. II, art. 5 (1784).
398. ME. CONST. art. IX, § 8; N.H. CONST. pt. II, art. 5-B.
399. ME. REV. STAT. ANN. tit. 36, §§ 1101-1110, 1112-1118 (1978 & Supp. 1982-1983); VT. STAT. ANN. tit. 32, §§ 3751-3760 (1981 & Supp. 1983); WASH. REV. CODE ANN. §§ 84.34.030-.160 (Supp. 1983-1984).
400. ME. REV. STAT. ANN. tit. 36, § 1111 (1978); VT. STAT. ANN. tit. 10, §§ 6301-6308 (1973 & Supp. 1983); WASH. REV. CODE ANN. §§ 84.34.200-.380 (Supp. 1983-1984).
401. N.H. REV. STAT. ANN. §§ 79-A:1 to :14 (Supp. 1981); PA. STAT. ANN. tit. 72, §§ 5490.1-.13 (Purdon Supp. 1983-1984).
402. N.H. REV. STAT. ANN. §§ 79-A:15 to :26 (Supp. 1981); PA. STAT. ANN. tit. 16, §§ 11941-47 (Purdon Supp. 1983-1984).
403. MD. ANN. CODE art. 81, §§ 19(b), (d), (e) (1980).
404. N.Y. AGRIC. & MKTS. art. 25AA, §§ 301-306 (McKinney Supp. 1982-1983).
405. ME. REV. STAT. ANN. tit. 36, §§ 1103, 1105 (1978). Farmland is any tract of at least ten contiguous acres producing from agricultural activities a gross income per year in one of the two or three of the preceding calendar years $1,000 for ten acres and $100 per acre for each acre over ten, with the total income required not to exceed $2,000. ME. REV. STAT. ANN. tit. 36, § 1102(4) (1978). Open space land is any area of land to conserve scenic resources, enhance recreation, promote game management, and preserve wildlife. *Id.* at (6). *See id.* tit. 36, § 1109 (1978 & West Supp. 1982-1983) (application procedures).
406. ME. REV. STAT. ANN. tit. 36, §§ 1109(1), (2) (1978 & West Supp. 1982-1983). If the required earning prerequisite has not been met, provisional approval may be given for a two year period. *Id.* tit. 36, § 1109(2) (1978). In deciding whether land should be classified as agricultural, productivity is one of the factors considered. *Id.* tit. 36, § 1109(1) (West Supp. 1982-1983).
407. ME. REV. STAT. ANN. tit. 36, § 1109(3) (1978). If open space is designated as such on a

good farmland, poor farmland at 80% of good farmland,[408] and open space land will be assessed in accordance with its use.[409] Deferred taxes are levied upon changes in land use which are based on the fair market value of the land on the date of change in classification. The amount levied is 10% of the fair market value if the change occurred during the first five years and 20 and 30% if the change occurred between the fifth and tenth year and after the tenth year, respectively.[410] Maine also has a provision permitting municipalities to acquire scenic easements or development rights for a period of at least ten years to preserve agricultural and open space lands, which lands are also entitled to use-value assessment.[411]

Agricultural and forest lands in Vermont meeting the qualifying criteria are eligible for appraisal according to their use-value.[412] Owners must apply for use-value assessment and, if approved, it remains in effect until the land use is changed.[413] The assessor considers class, type, grade, and location of land, together with productive and income producing capacity in determining use-value.[414] Land is subject to a land use change tax, which is 10% of the full market value of the land at the time of the change.[415] State and local units of government may acquire several different interests in agricultural, forest, and open space lands to preserve them.[416] Interests purchased in the land are not subject to property taxes.[417] Rights and interests purchased by the state or local government may be enforced by injunction proceedings or the contract or deed may provide for liquidated damages in the event of violation.[418]

Owners of agricultural, timber, and open space lands in Washington must make application to have their lands classified for current use-value

---

comprehensive plan or in any zoning ordinance, it is automatically classified as open space. *Id.* Otherwise, the land must comply with the definition of open space land. *See supra* note 403.

408. ME. REV. STAT. ANN. tit. 36, § 1105 (1978).

409. ME. REV. STAT. ANN. tit. 36, § 1109(3) (1978).

410. ME. REV. STAT. ANN. tit. 36, § 1112 (1978).

411. ME. REV. STAT. ANN. tit. 36, § 1111 (1978).

412. VT. STAT. ANN. tit. 32, § 3755(a) (1981). Agricultural land means land in active use to grow hay or cultivated crops, pasture livestock or cultivate trees bearing edible fruit and which is twenty-five acres or more in size. Agricultural purposes is presumed if owned by a farmer, or used by a farmer as part of his farming operations, or produced an annual gross income from sale of farm crops in one of two or three of the five preceding years of at least $2,000 for parcels of up to twenty-five acres and $75 per acre for each acre over twenty-five. VT. STAT. ANN. tit. 32, § 3752(1) (1981).

Managed forest land is at least twenty-five acres in size and under active forest management for purposes of growing and harvesting repeated forest crops in accordance with accepted forest management practices. Practices must be approved by either a state or local agency. VT. STAT. ANN. tit. 32, § 3752(9) (1981). Managed forest land must be under a ten-year forest management plan approved by the state. *Id.* § 3755(b).

413. VT. STAT. ANN. tit. 32, §§ 3756(a), (d) (1981).

414. VT. STAT. ANN. tit. 32, §§ 3756(b), (c) (1981).

415. VT. STAT. ANN. tit. 32, § 3757(a) (1981).

416. VT. STAT. ANN. tit. 10, §§ 6301, 6302(a) (1973 & Supp. 1983). See VT. STAT. ANN. tit. 10, § 6303 (1973) for the various interests in land that may be acquired.

417. VT. STAT. ANN. tit. 10, § 6306 (1973).

418. VT. STAT. ANN. tit. 10, § 6307 (1973). The contract or deed may provide for a specified number of years if the state or local government purchases less than a fee simple interest.

assessment.[419] In determining whether timber or open space land is eligible for classification, consideration is given to whether it will promote conservation of soils.[420] Current use-value of agricultural land is determined by considering the earning or productive capacity of comparable lands from crops typically grown in the area averaged over not less than five years, capitalized at a rate of interest charged on long term loans secured by a mortgage on agricultural land.[421] Land classified for use-value assessment remains in that classification until withdrawn, but for at least ten years.[422] Upon sale or change in use, a "rollback" tax equal to the difference between the tax paid and that which would have been paid is levied against the land for the current year and preceeding seven years, plus interest and a 20% penalty.[423]

Any local unit of government in Washington may acquire development rights, easements, covenants, or other contractual rights in agricultural or open space lands to conserve and preserve them in those uses or limit their future uses.[424] Land subject to easements or development rights is assessed in accordance with its current use-value, in addition, agricultural land is not subject to special benefit assessments.[425] Withdrawal of land from the agricultural classification will subject it to "rollback" taxes and a portion of the special benefit assessments.[426]

Definitions of agricultural,[427] forest,[428] and open space[429] lands in Maine, Vermont, and Washington could be amended to include implementation of soil conservation practices as a prerequisite to use-value assessment classification. Washington already has a provision that provides for the promotion of soil conservation as a determining factor in eligibility of timber

419. WASH. REV. CODE ANN. § 84.34.030 (Supp. 1983-1984). Farm or agricultural land is either (a) land in contiguous ownership of twenty or more acres devoted primarily to production of livestock or agricultural commodities for commercial purposes; (b) any parcel between five and twenty acres devoted primarily to agricultural which has produced a gross income of at least $100 per acre per year for three of the preceding five years; or (c) any parcel than five acres producing at least $1,000 per year for three of the preceding five years. WASH. REV. CODE ANN. § 84.34.020(2) (Supp. 1983-1984).

Timberland is any contiguous ownership of five or more acres devoted primarily to growth and harvest crops. *Id.* at (3).

Open space means (a) any land area designated by an official comprehensive land use plan adopted by a local government and zoned accordingly or (b) any area not less than five acres in size that is used to conserve, preserve, and enhance natural resources. *Id.* at (1).

Applications for agricultural land are submitted to the county assessor and those for timber and open space land to the county legislature authority. WASH. REV. CODE ANN. § 84.34.030 (Supp. 1983-1984).

420. WASH. REV. CODE ANN. § 84.34.037 (Supp. 1983-1984).

421. WASH. REV. CODE ANN. § 84.34.065 (Supp. 1983-1984).

422. WASH. REV. CODE ANN. § 84.34.070 (Supp. 1983-1984).

423. WASH. REV. CODE ANN. § 84.34.080, .100, .108(3) (Supp. 1983-1984).

424. WASH. REV. CODE ANN. §§ 84.34.210, .220 (Supp. 1983-1984).

425. WASH. REV. CODE ANN. §§ 84.34.220, .320 (Supp. 1983-1984).

426. WASH. REV. CODE ANN. § 84.34.340 (Supp. 1983-1984).

427. *See* ME. REV. STAT. ANN. tit. 36, § 1102(4) (1978); VT. STAT. ANN. tit. 32, § 3752(1) (1981); WASH. REV. CODE ANN. § 84.34.020(2) (Supp. 1983-1984).

428. *See* VT. STAT. ANN. tit. 32, § 3752(9) (1981); WASH. REV. CODE ANN. § 84.34.020(3) (Supp. 1983-1984).

429. *See* ME. REV. STAT. ANN. tit. 36, § 1102(6) (1978); WASH. REV. CODE ANN. § 84.34.020(1) (Supp. 1983-1984).

and open space land for use-value classification.[430] Maine has a provision providing for provisional approval if the prerequisite earning requirement has not been met and such a provision may possibly be amended to provide for provisional approval if the soil conservation requirements have not been met when applying for use-value assessment.[431] Productive and income producing capacity are factors in determining current use-value in Vermont and Washington.[432] Increases in productivity and income capacity due to soil conservation measures could be eliminated when determining use-value assessment. Maine values very good farmland higher than good farmland[433] and provisions could be made to eliminate any soil conservation factors that could cause land to be classified as very good farmland. Maintainance of soil conservation practices by landowners could be part of the contractual arrangements when local governments acquire easements or development rights in land.[434] Vermont has a provision that development rights can be enforced by injunctions.[435]

Land in New Hampshire classified as open space, which includes farm and forest lands, is assessed in accordance with its current use-value.[436] Farmland is land devoted to agriculture as determined and classified by the commissioner of agriculture and adopted by the current use advisory board.[437] This board meets annually to establish criteria for eligibility, including acreage requirements and land management practices, and the use-value for each category of the current year.[438] Each year the local assessor determines if previously classified lands have been reapplied or have undergone a change in use.[439] A deferred tax amounting to 10% of the full and true value of the land is levied when the use is changed to a nonqualifying one.[440] Owners of lands not meeting the criteria for open space land may apply for a permit conveying a discretionary easement to the local government.[441] If the conveyance is accepted, the land is assessed at its current use-value and that assessment is fixed for the term of the easement.[442] A penalty is levied if the landowner is released from the discretionary easement prior to its termination.[443]

---

430. *See supra* note 420.
431. *See supra* note 406.
432. *See supra* notes 414 and 421.
433. *See supra* note 408.
434. *See supra* notes 411, 416, and 424.
435. VT. STAT. ANN. tit. 10, § 6307 (1973).
436. N.H. REV. STAT. ANN. § 79-A:2(VII), :5(I) (Supp. 1981).
437. N.H. REV. STAT. ANN. § 79-A:2(III) (Supp. 1981).
438. N.H. REV. STAT. ANN. § 79-A:4(I) (Supp. 1981). *See* Blue Mtn. Forest Ass'n v. Town of Croydon, 119 N.H. 202, 205, 400 A.2d 55, 57 (1979).
439. N.H. REV. STAT. ANN. § 79-A:5(IV) (Supp. 1981).
440. N.H. REV. STAT. ANN. § 79-A:7(I) (Supp. 1981). *See* Appeal of Town of Peterborough, 120 N.H. 325, 329-30, 414 A.2d 1292, 1295 (1980).
441. N.H. REV. STAT. ANN. § 79-A:15(I) (Supp. 1981).
442. N.H. REV. STAT. ANN. § 79-A:18 (Supp. 1981).
443. N.H. REV. STAT. ANN. § 79-A:19(I) (Supp. 1981). The penalty is 12% of the true and full value of the property if the release is during the first half the easement's duration and 6% if during the last half.

Under one Pennsylvania differential taxation provision, owners of agricultural lands, agricultural reserves, and forest reserves must make a one time application to the county board of assessment appeals for differential assessment.[444] Rollback taxes are levied when the land use changes to a nonqualifying one in an amount equal to the difference between the taxes paid under differential assessment and the taxes that would have been paid had the land been valued similar to other lands in the taxing district for the current year and the preceding six years plus interest.[445]

The second differential taxing provision applies to land designated as farm, forest, or open space lands in a plan adopted by the planning commission of a local government.[446] All counties are authorized to enter into covenants with owners of designated farm, forest, and open space lands in the local plan. Owners may covenant that the land will remain in the designated use for a ten year period and the county covenants that the property tax assessment for the five year period will reflect the fair market value of the land restricted by the covenant.[447] Covenants are annually extended for one year on their anniversary date.[448] Changing the land use breaches the covenant and subjects the landowner to rollback taxes equal to the difference between the taxes paid and those that would have been paid absent the covenant for the preceding five years plus interest.[449]

Criteria for eligibility of agricultural land for classification and differential assessment in New Hampshire is determined by the commissioner of agriculture and current use advisory board.[450] Both of these agencies could require implementation of soil conservation programs as eligibility criteria without statutory amendments. The definition of agricultural land in Pennsylvania could be amended to include soil conservation programs as a prerequisite to classification.[451] Covenant instruments in New Hampshire and Pennsylvania could contain a provision requiring maintenance of soil conservation programs.

Land actively devoted to farm or agricultural use in Maryland must be

444. PA. STAT. ANN. tit. 72, §§ 5490.3(a), .4(b) (Purdon Supp. 1983). Agricultural land must have been devoted to agricultural use for the preceding three years and contain not less than ten contiguous acres or have an anticipated yearly gross income of $2,000. PA. STAT. ANN. tit. 72, § 5490.3(a)(1) (Purdon Supp. 1983).

Agricultural reserve land is noncommercial open space land used for outdoor recreation or the enjoyment of scenic or natural beauty and open to public use and contain at least ten acres. PA. STAT. ANN. tit. 72, §§ 5490.2, .3(a)(2) (Purdon Supp. 1983).

Forest reserves are not less than ten acres and stocked with trees capable of producing lumber or wood products. PA. STAT. ANN. tit. 72, §§ 5490.2, .3(a)(3) (Purdon 1983).

445. PA. STAT. ANN. tit. 72, § 5490.8 (Purdon 1983).

446. PA. STAT. ANN. tit. 16, § 11942 (Purdon Supp. 1983). A farm is land used to raise livestock or grow crops and is at least twenty acres in size. PA. STAT. ANN. tit. 16, § 11941(1) (Purdon Supp. 1983). A forest is defined as land used for growing timber crops and is at least twenty-five acres in size. *Id.* at (2). Open space land is either farm, forest, and water supply land at least ten acres in size and used to conserve and preserve natural resources. *Id.* at (4).

447. PA. STAT. ANN. tit. 16, § 11943 (Purdon Supp. 1983).

448. PA. STAT. ANN. tit. 16, § 11944 (Purdon Supp. 1983).

449. PA. STAT. ANN. tit. 16, § 11946 (Purdon Supp. 1983).

450. *See supra* notes 437 and 438.

451. *See supra* note 444.

assessed on the basis of such use and not as if it was subdivided.[452] Such land is valued at its full cash value less an allowance for inflation of 50% of the current value.[453] Owners of agricultural land need not make an application to have their farmland assessed in accordance with its use-value.[454] The State Department of Assessments and Taxation has established criteria for determining whether lands appearing to be actively devoted to farm or agricultural use are in fact *bona fide* farms qualifying for assessment as agricultural land.[455] A landowner whose land is assessed on the basis of agricultural use may not develop the land for any nonagricultural use without first paying a development tax equal to 10% of the difference between the most recent agricultural use assessment and the current nonagricultural use assessment.[456] Owners of open space land actively devoted to use as a country club may enter into an agreement with the state for a minimum term of ten years which permits the land to be assessed on the basis of club use and not as if subdivided or used for any other purpose.[457] Deferred taxes are due if part or all of the country club property is conveyed to a new owner or the property ceases to be used or qualify as a country club prior to the expiration of the agreement or extension of it.[458]

Maryland statutes permitting preferential use-value assessments for certain agricultural and open space lands could be easily amended to require the implementation of recommended soil conservation programs as a prerequisite for classifying land into categories eligible for use-value assessment. Deferred taxation provisions could also be amended to require the payment of a certain amount of rollback taxes for failure to maintain a recommended soil conservation program on the land just as if the land use was changed to a nonqualifying one. Failure to maintain conservation programs on open space land would be a breach of the restrictive agreements and require the payment of deferred taxes.

Owners of land in New York, provided they own at least 500 acres or 10% of the land, may submit a proposal to the county legislatistive body to create an agricultural district.[459] The Commissioner of Agriculture and Markets may create agricultural districts covering units of land 2,000 acres or more in size if the land encompassed in a proposed district is predominantly unique and irreplaceable agricultural land or if creating such districts would further the state environmental or comprehensive plans.[460] Land within an

452. MD. CONST. DECL. OF RIGHTS art. 43; MD. ANN. CODE art. 81, § 19(b)(1) (1980).
453. MD. ANN. CODE art. 81, § 14(b)(2) (1980).
454. MD. ANN. CODE art. 81, § 19(b)(1) (1980).
455. *Id.*
456. MD. ANN. CODE art. 81, § 19(b)(2)(B)(i) (1980).
457. MD. ANN. CODE art. 81, § 19(e) (1980).
458. MD. ANN. CODE art. 81, § 19(e)(7) (1980).
459. N.Y. AGRIC. & MKTS. LAW, § 303(1) (McKinney 1982-1983). *See id.* §§ 303(2), (4)-(7) (creation procedures); *id.* § 303(3) (criteria taken into consideration by county legislative authority in determining whether to create a district).
460. N.Y. AGRIC. & MKTS. LAW § 304(1) (McKinney 1982-1983). *See id.* §§ 304(2)-(4) (creation procedures).

agricultural district used for agricultural production is assessed in accordance with its use-value if such assessment is annually applied for by the owner.[461] That portion of the value of the land above its agricultural use is not subject to property taxes unless the land is converted to nonagricultural use.[462] Owners of agricultural land outside districts may sign a commitment and file it with the county clerk that they will continue to use the land for agricultural production for the next eight years. If such a commitment is accepted, the land will be assessed on the basis of use-value.[463] Maintenance of soil conservation programs can be required before the annual application for use-value assessment is approved and the maintenance of such programs can be required in the owner's commitment to use the land for agricultural production for eight years.

VI. FLEXIBILITY IN CLASSIFICATION OF PROPERTY TO ALLOW DIFFERENTIAL ASSESSMENT FOR SOIL CONSERVATION-PROGRAMS

A third method of overcoming state constitutional restrictions is to amend the uniformity clauses to allow legislatures to classify property for the purpose of imposing different ratios of assessed valuation or tax rates applied to assessed value among the classes of property, but requiring uniform treatment within each classification. Such an approach grants flexibility to legislatures because several differential and promotional tax devices could be used without the necessity of amending the constitutions in each instance.[464] Several states have clauses of this type that provide for uniformity in taxation upon the same class of subjects or property.[465] Of this group, Georgia and Missouri, however, permit real property to be divided into only one class.[466] Some states previously permitting general classification of property have recently amended their constitutions to specify classes into which property may be divided.[467] All of the uniformity clause amendments permitting differential taxation for agricultural, forest, or open space lands are specific for that purpose and none permit legislatures flexibility in imposing different ratios of valuation or rates of taxation.[468] Some

461. N.Y. AGRIC. & MKTS. LAW § 305(1) (McKinney 1982-1983). The land must be used for agricultural production for at least ten years and used for agricultural production in the preceding two years with an average gross sales value of $10,000 or more. N.Y. AGRIC. & MKTS. LAW § 301(3) (McKinney 1982-1983). *See id.* § 304-a (determination of agricultural value).

462. N.Y. AGRIC. & MKTS. LAW §§ 305(1)(b), (d) (McKinney 1982-1983).

463. N.Y. AGRIC. & MKTS. LAW § 306(1) (McKinney 1982-1983).

464. *See* Note, *Uniformity Clause*, *supra* note 44, at 94.

465. *See, e.g.*, ARIZ. CONST. art. IX, § 1; COLO. CONST. art. X, § 3; GA. CONST. art. VII, § 1, ¶ 3; KY. CONST. § 171; MD. CONST. DECL. OF RIGHTS art. 15; MINN. CONST. art. IX, § 1; MO. CONST. art. X, § 3; N.M. CONST. art. VII, § 1; N.C. CONST. art. V, § 2; N.D. CONST. art. V, § 2; N.D. CONST. art. X, § 5; OKLA. CONST. art. X, § 5; OR. CONST. art. I, § 32; PA. CONST. art. VIII, § 1; S.D. CONST. art. XI, § 2; VA. CONST. art. X, § 1; Wash. Const. art. VII, § 1.

466. GA. CONST. art. VII, § 1, ¶ 3; MO. CONST. art. X, § 4(a).

467. *See, e.g.*, DEL. CONST. art. VIII, § 1; KY. CONST. § 172A; LA. CONST. art. VII, § 3; MO. CONST. art. X, § 7.

468. See note 73 *supra* for a list of states.

state constitutions also provide that taxes are to be levied, assessed, and collected in accordance with general laws of the legislature.[469]

Adjustments in assessed valuation or rates applied to assessed value is a promising method of offering incentives for implementing soil conservation programs in some of those states where constitutional uniformity clauses permit general classification on basis of subject or property. Agricultural lands would have to be divided into two classes or subclasses with the implementation of a soil conservation program serving as the basis for the classification system. Assessed valuation or tax rates could be different for each class or subclass of agricultural land provided the taxes levied are uniform within each class or subclass.

Courts have held that legislatures in those states with uniformity clauses permitting general classification are free to classify property for taxation, so long as the classification is based on the nature and use of the property justifying it, is reasonable and not arbitrary, is based on natural reasons inherent in the property, real differences exist between the classes, and it bears some reasonable relationship to a legitimate state interest or policy.[470] Legislatures may exercise wide discretion in classifying property and selecting subjects of taxation.[471] The constitutional provision requiring that all taxes be uniform on the same class of property does not require that the legislature classify like items of property in the same class for property tax purposes.[472] Different rates of taxation and different methods may be used to assess value

469. COLO. CONST. art. X, § 3; DEL. CONST. art. VIII, § 1; KY. CONST. § 171; VA. CONST. art. X, § 1.

470. *See, e.g.*, Apache County v. Atchison, Topeka & Santa Fe Ry. Co., 106 Ariz. 356, 359-60, 476 P.2d 657, 660-61 (1970); American Mobilehome Ass'n, Inc. v. Dolan, 191 Colo. 433, 553 P.2d 758, 762 (1976); Western Elec. Co., Inc. v. Weed, 185 Colo. 340, 353-54, 524 P.2d 1369, 1376 (1974); District 50 Metropolitan Recreation Dist. v. Burnside, 167 Colo. 425, 430, 448 P.2d 788, 790 (1968); Foster v. Hart Consol. Mining Co., 52 Colo. 459, 471, 122 P. 48, 52 (1912); Ames v. People *ex rel.* Temple, 26 Colo. 83, 103, 56 P. 656, 663 (1899); Willmington Medical Center, Inc. v. Bradford, 382 A.2d 1338, 1344 (Del. 1978); Metropolitan Life Ins. Co. v. City of Paris, 138 Ky. 801, 803, 129 S.W. 112, 113 (1910); State Tax Commission v. Wakefield, 222 Md. 543, 549-50, 161 A.2d 676, 679 (1960); Oursler v. Tawes, 178 Md. 471, 483, 13 A.2d 763, 768 (1940); Stoltzmann v. County of Ramsey, 312 Minn. 186, 193, 251 N.W.2d 130, 135 (1977); State v. Donovan, 218 Minn. 606, 608-09, 16 N.W.2d 897, 898 (1944); Cherokee State Bank of St. Paul v. Wallace, 202 Minn. 582, 591, 279 N.W. 410, 415 (1938); State v. Minnesota Farmers' Mutual Ins. Co., 145 Minn. 231, 234, 176 N.W. 756, 757 (1920); Caldis v. Board of County Commissioners, 279 N.W.2d 665, 670 (N.D. 1979); Oklahoma Tax Comm'n v. Smith, 610 P.2d 794, 804-05 (Okla. 1980); Oklahoma City Hotel & Motor Hotel Ass'n Inc. v. Oklahoma City, 531 P.2d 316, 319 (Okla. 1974); Dutton Lumber Corp. v. Ellis, 228 Or. 525, 539-40, 365 P.2d 867, 874 (1961); Safeway Stores, Inc. v. City of Portland, 149 Or. 581, 595, 42 P.2d 162, 168 (1935).

471. Apache County v. Atchinson, Topeka & Santa Fe Ry. Co., 106 Ariz. 356, 359, 476 P.2d 657, 660 (1970) (only restraint placed on the legislature is that when property has once been classified the rate must be uniform upon all property of the same class); Caldis v. Board of County Commissioners, 279 N.W.2d 665, 672 (N.D. 1979) (legislature is invested with broad discretion to classify property into different categories of types and uses).

472. Apache County v. Atchinson, Topeka & Santa Fe Ry. Co., 106 Ariz. 356, 359, 476 P.2d 657, 660-61 (1970). Class is a grouping of persons or things possessing common attributes. Placing railroads into different tax classes than trucks and buses was upheld. *See* Magnano Co. v. Hamilton, 292 U.S. 40, 43 (1934) (upholding tax classifications based on difference between butter and oleomargarine); Heisler v. Thomas Colliery Co., 260 U.S. 245, 256-57 (1922) (between anthracite and bituminous coal).

for different types of property,[473] as long as the same rates and methods are uniformily applied to all property within the same class.[474] The application of soil conservation practices on some land while not on other land would serve as a sufficient difference between the two parcels of land to justify two separate classes. Legislatures in those states where the constitutional uniformity clauses provide that taxes are to be levied, assessed, and collected in accordance with general laws would probably find it simpler to amend their statutes implementing tax adjustments for conservation programs.

Statutes in many states could simply be amended to require the creation of two classes of agricultural land—one class for land upon which soil conservation practices have been implemented and another class for land upon which such practices have not been implemented. The valuation for assessment or tax rate of assessed value for each class could differ and agricultural land could move from one class to another depending upon the implementation of a soil conservation program. Legislatures in Arizona and North Dakota, for example, could amend their statutes to divide agricultural lands into two subclasses, one subclass to include those lands upon which soil conservation programs have been implemented and the other to include lands upon which soil conservation programs have not been implemented.[475] Property in each subclass could be assessed at different percentages of full cash value or true and full value depending upon the implementation of soil conservation programs.[476] Minnesota's statutes divide all agricultural land into three classes and have a different method of determining assessed value for each class.[477] A separate class of farmland may be provided for land where a conservation program has been implemented because the courts have held that the legislature has wide discretion in classifying property for taxation if the classification is based on differences which furnish a reasonable ground for making a distinction between different classes.[478]

Even though the basic uniformity clause in some state's constitutions permits general classification of property, agricultural land implementing soil conservation practices could not be put into a separate class without amending the constitution or the basic property tax statutes. For example,

473. *See* American Mobilehome Ass'n v. Dolan, 191 Colo. 433, 436-37, 553 P.2d 758, 761 (1976); Apache County v. Atchinson, Topeka & Santa Fe Ry. Co., 106 Ariz. 356, 361-63, 476 P.2d 657, 663-64 (1970); Caldis v. Board of County Commissioner's, 279 N.W.2d 665, 672 (N.D. 1979); McPherson v. Fisher, 143 Or. 615, 622, 23 P.2d 913, 915 (1933); Standard Lumber Co. v. Pierce, 112 Or. 314, 333-36, 228 P. 812, 819 (1924).

474. District 50 Metropolitan Recreation Dist. v. Burnside, 167 Colo. 425, 430, 448 P.2d 788, 790 (1968); Foster v. Hart Consol. Mining Co., 52 Colo. 459, 471, 122 P. 48, 52 (1912); Ames v. People *ex rel.* Temple, 26 Colo. 83, 103, 56 P. 656, 663 (1899); Board of County Comm'rs of Arapahoe County v. Rocky Mountain News Printing Co., 15 Colo. App. 189, 196, 61 P. 494, 497 (1900).

475. *See* ARIZ. REV. STAT. ANN. § 42-136(A)(4)(a) (1980); N.D. CENT. CODE § 47-02-27 (1983).

476. *See* ARIZ. REV. STAT. ANN. § 42-227(B)(4) (1980); N.D. CENT. CODE § 57-02-27(2) (1983).

477. MINN. STAT. ANN. §§ 273.111, .13 (subd. 4) (b), .13 (subd. 6) (West 1969 & Supp. 1983).

478. Stoltzmann v. County of Ramsey, 312 Minn. 186, 193, 251 N.W.2d 130, 135 (1977); State v. Donovan, 218 Minn. 606, 608-09, 16 N.W.2d 897, 898 (1944); Cherokee State Bank of St. Paul v. Wallace, 202 Minn. 582, 591, 279 N.W. 410, 415 (1938); State v. Minnesota Farmers' Mutual Ins. Co., 145 Minn. 231, 234, 176 N.W. 756, 757 (1920).

the Missouri constitution provides for the classification of all property and that real property is a separate class that cannot be further subclassified.[479] Real property is to be assessed for tax purposes at its value or such percentage of its value as fixed by law.[480] Use-value for agricultural lands permitted under the Agricultural Valuation and Assessment Act[481] are based on the constitutional provisions permitting the legislature to designate methods of determining value and not upon the classification of real property.[482] The Oklahoma Constitution, even though permitting general classification, further provides that all real property be assessed on the basis for which the property is actually used.[483] This would preclude subclassification of agricultural land on the basis of implementing soil conservation practices because both classes would be used for agricultural purposes. South Dakota's statute would have to be substantially amended because it now permits real property to be classified into only two classes as agricultural and nonagricultural.[484] Classification on the basis of soil conservation programs is difficult in those states where the constitutional uniformity clause has been amended to provide for assessment on the basis of use-value.[485] General classification is not permitted in these instances and the use of agricultural land is agricultural regardless of the presence of soil conservation practices.

VII. Exemptions of Soil Conservation Improvements From Taxation

Another method of overcoming constitutional restrictions to achieve property tax incentives for implementing soil conservation programs may be to consider conservation structures as improvements and, in those states where the uniformity clauses do not require a "universality of taxation" and improvements may be assessed separately from land, treat such improvements as property that may be fully or partially exempted from property taxation. Considering soil conservation measures, particularly structures, as improvements to the land and exempting those improvements from taxation involves three closely related factors—the definition of improvements, authority to assess improvements separately from the land, and the authority to fully or partially exempt improvements from taxation.

479. Mo. Const. art. X, §§ 3, 4(a). Drey v. State Tax Commission, 345 S.W.2d 228, 237 (Mo. 1961).

480. Mo. Const. art. X, § 4(b).

481. Mo. Ann. Stat. §§ 137.017-.026 (Vernon Supp. 1983).

482. *See* Mo. Const. art. X, §§ 3, 4(b). *See Differential Assessment, supra* note 22, at 380 (describing when agricultural lands can be assessed on a basis other than fair market value, such as use-value). *See also* State *ex rel.* Howard Elec. Coop. v. Riney, 490 S.W.2d 1, 9 (Mo. 1973) (difference in methods of assessment does not produce subclassification of property in violation of the constitution).

483. Okla. Const. art. X, §§ 5, 8.

484. S.D.C.L. § 10-6-31 (1982).

485. *See, e.g.*, Neb. Const. art. VIII, § 1 (agricultural and horticultural lands); N.J. Const. art. VIII, § 1, ¶ 1(b) (agricultural or horticultural lands not less than five acres and used for those purposes for at least the previous two successive years); Ohio Const. art. II, § 36 (forest and agricultural lands); Utah Const. art. XIII, § 3 (agricultural lands).

Some state statutes provide that improvements are included in valuing and assessing land,[486] while others provide that improvements are valued and assessed separately from the land for tax purposes.[487] Both the constitutional uniformity clause on property taxation and the statutes in Maryland, for example, provide that improvements on the land are to be valued and assessed separately from the land.[488] Constitutions and statutes in those states providing that improvements be valued and assessed with the land must be amended to provide for separate valuation and assessment if soil conservation improvements are to be exempt from taxation. Soil conservation structures may be considered as improvements on the land and must be sufficiently different from other improvements to justify putting them into a separate class or subclass. Such conservation improvements may then be assessed at a lower value or taxed at a lower rate than other improvements if the taxes levied are equal and uniform upon all structures within the same class or subclass.[489]

Exemptions from taxation of soil conservation improvements in a particular state is dependent upon whether only property expressly designated as exemptible in the constitution may be exempt, or whether the constitution gives the legislature discretionary power to exempt certain classes of property from taxation. Some state constitutions enumerate specific exemptions in the basic uniformity clauses,[490] while in other states specific exemptions are designated in other constitutional clauses.[491] Another method is for both the basic and other clause to specify the exemptions or to create an additional constitutional clause providing that only those exemptions specified in the basic or other clauses are exempt from taxation.[492] Constitutions would have to be amended in all of these states to permit property tax exemptions for soil conservation improvements because generally only those exemptions enumerated in the constitution are exempt.

Legislatures in those states where the constitutions fail to enumerate exemptions[493] or permit additional exemptions other than those enumerated[494] are generally given discretionary power to exempt certain classes of property from taxation. Generally, in these states property need only be reasonably classified to be exempt.[495] Courts in some states have provided

486. *See, e.g.*, KAN. STAT. ANN. § 79-102 (1977); ME. REV. STAT. ANN. tit. 36, § 551 (1978); UTAH CODE ANN. § 59-5-94 (1974).

487. *See, e.g.*, WIS. STAT. § 70.32(2) (1981-1982).

488. MD. CONST. DECL. OF RIGHTS art. 15; MD. ANN. CODE art. 81, § 19(a)(1) (1980).

489. *See, e.g.*, State Dep't of Assessments & Taxation v. Greyhound Computer Corp., 271 Md. 575, 590, 320 A.2d 40, 48 (1974); Marco Assoc., Inc. v. Comptroller, 265 Md. 669, 673-74, 291 A.2d 489, 492 (1972).

490. IND. CONST. art. X, § 1(a); TENN. CONST. art. II, § 28; W. VA. CONST. art. X, § 1.

491. CAL. CONST. art. XIII, § 3; FLA. CONST. art. VII, § 3; ILL. CONST. art. IX, § 6, NEB. CONST. art. VIII, § 2; N.C. CONST. art. V, § 2(3); UTAH CONST. art. XIII, § 2.

492. ARK. CONST. art. XVI, §§ 5(a), 6; COLO. CONST. art. X, §§ 4-6; S.D. CONST. art. XI, §§ 5-7.

493. ME. CONST. art. IX, § 8; N.H. CONST. pt. II, art. 6; WIS. CONST. art. VIII, § 1.

494. ALA. CONST. art. IV, § 91, art. XI, §§ 211, 217, *amended by* amend. 373; WYO. CONST. art. XV, § 12.

495. *See, e.g.*, Williams v. Mayor of Baltimore, 289 U.S. 36, 40 (1933); Aero Motors, Inc. v. Motor Vehicle Admin., 274 Md. 567, 593, 337 A.2d 685, 701 (1975); Ballard v. Supervisors of

further restrictions. In Massachusetts, for example, exemptions must fall into classes that do not offend the constitutional principle of proportional taxation of property.[496] Exemptions permitted by the legislature in New Hampshire must be supported by a "just reason" test, which is met when the public welfare is benefitted, in addition to being reasonable classifications.[497] Even though the Kansas and Michigan constitutions enumerate specific exemptions, courts have held that the legislature may further exempt reasonable classes of property from taxation.[498] Legislatures in these states would have to adopt statutes exempting soil conservation improvements from taxation.

Several states provide exemptions through varying methods for certain improvements to property that could be used as examples for exempting soil conservation structures from property taxation. One method is to just exempt such improvements from taxation. Connecticut, Massachusetts, Nevada, Tennessee, and Wisconsin have procedures to exempt structures, buildings, facilities, equipment, and other improvements constructed or installed in industrial plants to reduce, control, or eliminate air and water pollution.[499] Noise, air, and water pollution control and abatement facilities and equipment constructed or installed in industrial plants in South Carolina are exempt, as are improvements to control or abate air pollution in Hawaii.[500] Sprinkler irrigation systems are exempt in Montana and permanently installed irrigation systems of pipes or concrete-lined ditches and headgates designed to increase efficiency and water conservation are exempt in Nevada.[501] Alternate energy improvements installed in buildings in Hawaii and, in Tennessee, structures or equipment used for heating, cooling, or electrical generation by solar or wind power are exempt.[502] Local units of government are given the option in Rhode Island to exempt renewable energy systems from taxation.[503] Maryland and Wisconsin exempt property of

Assessments of Baltimore County, 269 Md. 397, 406, 306 A.2d 506, 511 (1973); State Tax Comm'n v. Wakefield, 222 Md. 543, 548, 161 A.2d 676, 678 (1960); Mayor of Baltimore v. Minister & Trustees of the Starr Methodist Protestant Church, 106 Md. 281, 286, 67 A. 261, 264 (1907); Board of Trustees of Lawrence University v. Outagamie County, 150 Wis. 244, 246, 136 N.W. 619, 620 (1912).

496. *See In re* Opinion of Justices, 324 Mass. 724, 729-33, 85 N.E.2d 222, 225-28 (1949).

497. *See In re* Opinion of Justices, 82 N.H. 561, 566-74, 138 A. 284, 287-91 (1927).

498. *See* KAN. CONST. art. XI, § 1; MICH. CONST. art. IX, § 4; Gunkle v. Killingsworth, 118 Kan. 154, 156, 233 P. 803, 804-05 (1925) (while the constitution provides that certain property shall be exempt from taxation, it does not declare that other exemptions may not be made; the enumerated exemptions must be made, but more exemptions may be made by the legislature); Lucking v. People, 320 Mich. 495, 504, 31 N.W.2d 707, 711 (1948) (the legislature has the power to exempt property from taxation). *See also* American Youth Found. v. Township of Benona, 8 Mich. App. 521, 532, 154 N.W.2d 554, 560 (1967), (the legislature has the power to prescribe the subject of tax exemptions).

499. CONN. GEN. STAT. ANN. §§ 12-81(51), (52) (1981); MASS. ANN. LAWS ch. 59, § 5, ¶ 44 (Michie/Law. Co-op 1978); NEV. REV. STAT. § 361.077(1)(a) (1981); TENN. CODE ANN. § 67-511 (Supp. 1982); WIS. STAT. § 70.11(21) (1981-82).

500. S.C. CODE ANN. § 12-37-220(8) (Law. Co-op. Supp. 1982); HAWAII REV. STAT. § 246-34.5 (1976).

501. MONT. CODE ANN. § 15-6-206(2) (1981); NEV. REV. STAT. § 361.077(1)(b) (1981).

502. HAWAII REV. STAT. § 246-34.7(a) (1976); TENN. CODE ANN. § 67-511(b) (Supp. 1982).

503. R.I. GEN. LAWS § 44-3-21 (Supp. 1982).

public housing authorities.[504]

Exemptions can take the form of a specified monetary amount or a specified number of years. Improvements to real property due to constructing radiation fall-out shelters are exempt up to $1,500 per shelter in Oregon.[505] Pollution control facilities are exempt in Oregon for the first twenty years after construction and air and water pollution control facilities are exempt in New Hampshire for the first twenty-five years after construction.[506] Solar energy generating systems are exempt in Connecticut for the first fifteen years and solar or wind power systems used in Massachusetts to produce energy are exempt for the first ten years.[507] Kansas provides that the increase in valuation of reclaimed surface mine land during the first five years is exempt.[508]

Another method of providing exemptions for improvements is to assess the real property with the improvement at no more value than the real property would have been assesssed without the improvement. Buildings in which solar or wind heating and cooling systems are installed are assessed at no more value than if the building had a conventional system in several states.[509] Air and noise control facilities are not considered improvements on the land in Ohio for real property taxation purposes.[510] The same tax considerations are given to solar, solid waste, and thermal energy conversion facilities.[511] South Dakota provides that land upon which any artesian well is located is not to be assessed at any greater value by reason of the improvement and that certain trees planted are not to be considered as improvements on land for the purpose of taxation.[512]

In some states, such as Nebraska and Utah, exemptions for soil conservation measures are impossible because their constitutions provide that only property specified in the constitutions may be exempt.[513] In addition, Utah statutes make it very clear that any improvements are to be assessed with the land.[514] Texas statutes also are very specific in providing that improvements such as those resembling conservation structures be considered in assessing the land.[515]

A possibility exists that a method can be found to exempt soil conservation structures as improvements in some of those states with the "universal-

504. MD. ANN. CODE art. 81, § 9(p) (1980); WIS. STAT. § 70.11(18) (1981-82).
505. OR. REV. STAT. § 307.169 (1981).
506. OR. REV. STAT. §§ 307.405-.430 (1981); N.H. REV. STAT. ANN. § 72:12a (Supp. 1981).
507. CONN. GEN. STAT. ANN. § 12-81(57)(a) (1981); MASS. ANN. LAWS ch. 59, § 5, ¶ 45 (Michie/Law. Co-op. Supp. 1983).
508. KAN. STAT. ANN. § 79-201e (1977).
509. CONN. GEN. STAT. ANN. § 12-81(56)(a) (1981); ILL. ANN. STAT. ch. 120, § 501d-3 (Smith-Hurd Supp. 1983-1984); N.J. STAT. ANN. § 54:4-3.119 (West Supp. 1982-1983); R.I. GEN. LAWS § 44-3-18(B) (Supp. 1983).
510. OHIO REV. CODE ANN. § 5709.25(B)(1) (Page 1980).
511. OHIO REV. CODE ANN. § 5709.50(B)(1) (Page 1980).
512. S.D.C.L. §§ 10-4-4, -5 (1982).
513. *See* NEB. CONST. art. VIII, § 2; UTAH CONST. art. XIII, § 2.
514. UTAH CODE ANN. § 59-5-94 (1974).
515. TEX. TAX CODE ANN. § 23.41(e) (Vernon 1982).

ity rule." The North Carolina courts have held that because the constitution enumerates permissible exemptions from taxation[516] the state has a universality rule and forbids the exemption of other property.[517] North Carolina has circumvented this universality rule by using its classification provision in the constitution[518] and permitting the legislature to designate special classes for taxation at reduced rates[519] or reduced valuation.[520] An example that could be used for soil conservation measures is a statute designating buildings equipped with a solar energy heating or cooling system a special class and the buildings are assessed as if they had a conventional system and no additional value is assigned for the difference in cost between the solar energy system and a conventional system.[521]

The Colorado Constitution specifically exempts certain types of property from taxation and forbids the legislature from exempting any type of property not listed.[522] In this situation, a method must be found of classifying soil conservation structures that has the effect of designating them as "improvements" assessed separately from the land and exempting them from property taxation. Colorado does have some statutes that have the effect of exempting improvements from taxation that can be used as models for soil conservation structures. One example is that any increase in the value of private lands arising from planting trees is not taken into account in determining the actual value of the land for thirty years after the date of planting.[523] In another example, the state legislature gives a temporary financial incentive for the purchase of alternative energy devices[524] by providing that the installation of such devices will not cause an increase in the valuation for assessment for property tax purposes for the years 1980 to 1989.[525] Any increase in the valuation of structures, buildings, or improvements in or on which an alternative energy device is installed shall not be included in determining the actual value of the structures, buildings, or im-

516. N.C. CONST. art. V, § 2(3).

517. Rockingham County v. Board of Trustees of Elon College, 219 N.C. 342, 345-47, 13 S.E.2d 618, 620-22 (1941); Sir Walter Lodge No. 411, I.O.O.F. v. Swain, 217 N.C. 632, 637-38, 9 S.E.2d 365, 368-69 (1940).

518. N.C. CONST. art. V, § 2(2).

519. N.C. GEN. STAT. § 105-277 (1979).

520. N.C. GEN. STAT. § 105-277.1 (Supp. 1981).

521. N.C. GEN. STAT. § 105-277(g) (1979).

522. COLO. CONST. art. X, §§ 4-6. *See* Logan Irrigation Dist. v. Holt, 110 Colo. 253, 260, 133 P.2d 530, 533 (1943) (statutes exempting property from taxation, other than property specified in the constitution, were an unauthorized exercise of legislative power and unconstitutional).

523. COLO. REV. STAT. § 39-3-103 (1973).

524. An alternative energy device is a system, mechanism, or device using solar energy or geothermal, renewable biomass, or wind resources, including any passive structural design element that is an integral part of the system, mechanism, or device. The term does not include any system, mechanism, or device for the direct combustion of wood. COLO. REV. STAT. § 39-1-104(6)(b) (1982).

525. COLO. REV. STAT. § 39-1-104(6)(c) (1982). The legislature found that the alternative energy sources reduce consumption of irreplaceable fossil fuels; reduce the need for capital, land, water, and other resources used in convential energy systems; reduce air and water pollution from conventional energy systems; offer the potential for increased jobs and new business opportunities; and reduce oil and gas imports. COLO. REV. STAT. §§ 39-1-104(6)(a)(I)(A)-(E) (1982).

provements.[526] A third example provides that the inclusion on the state register of historic properties does not increase the valuation for assessment of the property.[527]

New legislation could be adopted in Colorado to provide tax incentives for soil conservation structures by exempting from the assessed valuation any increase in value caused by the structures. The same justification could be made for soil conservation structures as was made for forestry and alternative energy devices.[528] Technically, a new classification may have to be created to accommodate property with soil conservation structures. This would not be contrary to the uniformity clause because the state supreme court held that except for the constitutional provision prohibiting the taxation of ditches, canals, and flumes separately from the land they irrigate, the legislature is wholly unrestricted in dividing property into classes for purposes of taxation.[529] In addition, there is no constitutional requirement that taxes be levied under a plan which secures full valuation. Therefore, a valuation, however low, which is equal and uniform, is a just valuation and meets the constitutional requirement.

VIII. CREDITS AGAINST PROPERTY TAXES FOR SOIL CONSERVATION PROGRAM

Another possibility for providing tax incentives for implementing soil conservation practices is to enact legislation providing for credits of a specified amount against property taxes levied by a local governmental unit while the owner is implementing and maintaining a soil conservation program. The amount of credit could be based on the type of program implemented or on the cost of implementing the program amortized over a number of years. Some examples of this type of tax credit exist with regard to other programs. For example, in Maryland, local governments adopting ordinances or resolutions may give credits in amounts up to 75% against property taxes imposed by political subdivisions on certain woodlands and agricultural lands where the owners have conveyed easements to the federal, state, or local governments that preserve the character of such lands.[530]

Minnesota could follow its example of providing credits against property taxes for wetlands and native prairie lands and provide such credits for soil conservation programs.[531] Wetlands and native prairie lands are exempt

526. COLO. REV. STAT. § 39-1-104(6)(d) (1982).

527. COLO. REV. STAT. § 39-1-104(5) (1982).

528. The purpose of the legislation concerned with alternative energy devices was to promote public health, safety, and welfare by providing a temporary financial incentive for the purchase of such devices through reducing the financial barriers which might inhibit rapid development and utilization of alternative systems. COLO. REV. STAT. § 39-1-104(6)(a)(II) (1982).

529. Ames v. People *ex rel.* Temple, 26 Colo. 82, 103, 56 P. 656, 663 (1899).

530. MD. ANN. CODE art. 81, § 12E-1(C) (1980).

531. *See* MINN. STAT. ANN. §§ 273.115, .116 (West 1983). *See* Note, *Preserving Minnesota Wetlands: Plugging the Leaks in the Minnesota Water Management Law*, 6 WM. MITCHELL L. REV. 137, 158-59 (1980) (discusses the wetlands tax credit).

from property taxes,[532] but landowners maintaining them are given credits of a certain amount based on their size against property taxes applicable to tillable lands.[533] Total amount of revenue loss because of the exemptions and tax credits is paid to the local government by the state.[534] A South Dakota statute approaches the tax credit differently by providing that the property tax assessment credit for a residential application of a renewable resource energy system is a sum equal to the assessed valuation of the real property with the renewable resource energy system minus the assessed valuation of the real property without the system.[535]

IX. Property Tax Credits Against Income Taxes for Soil Conservation Programs

A sixth method of providing tax incentives for soil conservation programs would be for states to enact legislation providing that a certain portion of property taxes paid on lands where soil conservation programs have been implemented could be credited against the landowners' or lessees' state income taxes. Since the Wisconsin Constitution was amended in 1974 to allow tax treatment of agricultural and undeveloped lands to differ from the tax treatment of other real property, credits against income taxes can be used as an incentive for implementing soil conservation programs.[536] Such tax credits, because they relate to income taxes, are not dependent upon whether the constitutional amendment allows for nonuniformity of treatment within the classification for agricultural land.[537] The legislature could enact a statute providing that a certain portion of the property taxes paid on lands where the owners have implemented soil conservation practices be deducted from the owners' state income taxes. As with the Farmland Preservation Act,[538] the amount of deduction would relate to the amount of household income. Rollback or deferred taxes could also be imposed for failure to maintain the conservation program.

Colorado has an income tax credit provision for pollution control property that could be used as an example for soil conservation programs.[539] After an owner or lessee applies for the tax credit in Colorado, the Department of Health certifies the property's eligibility as "pollution control prop-

532. Minn. Stat. Ann. §§ 272.02 (subd. 1) (cl. 15), (cl. 16) (West 1983).
533. Minn. Stat. Ann. §§ 273.115 (subd. 1), .116 (subd. 1) (West 1983).
534. Minn. Stat. Ann. §§ 273.115 (subd. 2), .116 (subd. 2) (West Supp. 1983).
535. S.D.C.L. § 10-6-35.12 (1982).
536. Wis. J. Res. 39 (1971); Wis. J. Res. 29 (1973). Wis. Const. art. VIII, § 1.
537. *See* 66 Op. Wis. Att'y Gen. 337, 340-42 (1977).
538. Wis. Stat. §§ 20.115, 71.09(11), 91.01-.79 (West Supp. 1983-1984).
539. *See* Colo. Rev. Stat. § 39-5-131(7) (1982). Pollution control property includes all owned or leased property acquired or first used after January 1, 1970, that is installed, constructed, or used for the primary purpose of eliminating, reducing, or preventing the release of pollutants into the air or water. Such property includes any treatment works, control devices, disposal system, machinery, equipment, structures, land, or other property installed, constructed, or used for the primary purpose of reducing, controlling, or disposing of air and water pollutants. Colo. Rev. Stat. §§ 39-1-102 (12.1)(a)(I), (II) (1982).

erty" to the county assessor and its qualification for tax credits.[540] When the property taxes levied upon pollution control property or that portion of any lease payment providing revenue for a payment in lieu of taxes has been paid, and upon request of the owner or lessee; the assessor or, in case of a lease payment in lieu of taxes the county treasurer, endorses the receipt of that portion of the taxes or lease payment in lieu of taxes, and the owner or lessee is entitled to credit against income taxes.[541] Colorado taxpayers are entitled to a state income tax credit equal to 30% of the amount of general property taxes or that portion of lease payments providing revenue for payments in lieu of taxes.[542] If adopted for conservation program purposes, the amount of the income tax credit could be either the additional property taxes paid on the land due to increased assessed value because of the implementation of a conservation program, or a certain percent of general property taxes like the state uses for pollution control property. Constitutional difficulties associated with credits against income taxes for the erection of conservation structures are no greater than for the installation of pollution control property. In Rhode Island, a portion of the cost of renewable energy systems installed in either a residence or business may be deducted as a credit against either an individual's or business' income taxes.[543]

SUMMARY AND CONCLUSIONS

Various "uniformity clauses" pertaining to property taxation are found in most state constitutions. These rigid uniformity provisions mandate uniform and equal tax treatment within a particular taxing jurisdiction. Uniformity clauses involve three potential restrictions on the exercise of legislative power to tax real property. The first restriction involves the uniformity required in taxing the property itself which concerns the degree legislatures are free to pick and choose among classes of property for taxation. A requirement of "universality of taxation" exists if all property must be selected for taxation and no property is exempt unless it is expressly designated as exemptible in the constitution. The second restriction concerns the uniformity required for the effective rate of property taxation, which is a combination of the assessed value and tax rate on that assessed value. A third restriction involves the method of taxation, that is, whether the uniformity clause requires that property be taxed only in accordance with its value (ad valorem method) or permits specific property taxes to be imposed.

Property tax incentives may be a new approach for promoting farmer participation in soil conservation programs if methods can be found to overcome the rigid restrictions placed on property taxation by the uniformity

540. COLO. REV. STAT. §§ 39-5-131(1)-(3) (1982). The department may certify all or part of the property as eligible pollution control property for tax credits. COLO. REV. STAT. § 39-5-131(3) (1982). *See* COLO. REV. STAT. §§ 39-5-131(1)-(5) (1982) (certifying procedures).
541. COLO. REV. STAT. § 39-4-131(7) (1982).
542. COLO. REV. STAT. § 39-22-508(1) (1982).
543. R.I. GEN. LAWS §§ 44-39-2(a), -3(a) (Supp. 1982).

clauses in state constitutions. Several possible methods are available to overcome uniformity clause restrictions and allow property tax incentives. Some methods would require constitutional amendments, while in other instances the constitutional authority is available and only enabling legislation need be provided. The methods include amending the constitution to permit classification of property upon which soil conservation programs have been implemented for separate tax treatment; exempting agricultural, forest, and open space lands from the uniformity clause restrictions and making participation in soil conservation programs a requirement for differential assessment eligibility; and permitting general classification of property so different ratios of assessed valuation or tax rates can be applied to various classes. Other possible methods include consideration of conservation measures as improvements and exempting those improvements from taxation; providing credits of a specified amount against property taxes for soil conservation programs; and providing that a portion of the property taxes be credited against state income taxes.

The most direct method of removing constitutional restrictions to allow property tax incentives for implementing soil conservation programs would be to adopt a constitutional amendment permitting the legislature to classify property upon which conservation programs have been implemented for special tax treatment. Several state constitutions now allow such special handling for certain types of properties for taxation purposes. A specific constitutional amendment allowing classification of property based on the implementation of soil conservation programs would merely add another explicit exception to the strict uniformity rule and permit legislatures to adopt different assessment methods or tax rates applied to the assessed value for the soil conservation class.

Constitutions in virtually all states now permit a general classification of real property for tax purposes or have been amended to provide for differential assessment of agricultural, forest, or open space lands. All states, except Georgia and Mississippi, have adopted one of three types of statutes providing for differential assessment of agricultural, forest, and open space lands. Statutes authorizing differential assessment for agricultural, forest, and open space lands could be easily amended to require implementation of recommended soil conservation programs as a prerequisite for eligibility for differential assessment.

Several advantages exist regarding the property tax incentive method that requires implementation of a soil conservation program as a prerequisite for differential assessment. Differential assessment statutes are already in existence and have been held constitutional under the uniformity clauses. A statute requiring conservation programs as a prerequisite for differential assessment, and the repayment of deferred taxes for failure to maintain such programs, would not create new classes of property, and therefore would not conflict with the uniformity clause restrictions. Local governments would not lose as much potential property tax revenue under this method of pro-

moting participation in soil conservation programs as with some other methods, because extra tax incentives are not given for participating in conservation programs. Soil Conservation Service and soil and water conservation district technical assistance and Agricultural Conservation Program cost-share funds can be easily used in conjunction with the prerequisite for differential assessment method. States could even make the implementation of soil conservation programs dependent upon the availability of technical assistance and cost-share funds to avoid hardships. Another advantage of the differential assessment method is that many states include open space, forest, planned development, and country club lands in addition to agricultural lands under their differential assessment program, thereby permitting broad coverage of land subject to conservation programs. The concept of requiring adoption of soil conservation programs by landowners as a prerequisite for differential assessment differs little from requiring conservation practices by subdividers as a prerequisite for subdivision plat approval.

Factors used in determining assessed value could also be redefined under differential assessment statutes to provide tax incentives for soil conservation programs. Assessed value based on capacity to produce may run counter to promoting conservation programs because more care given land may cause an increase in value. Deferred or rollback taxes may be levied against landowners failing to maintain conservation programs in those states permitting such levies similar to a change in land use. Enforcement of conservation programs can be accomplished in those states requiring restrictive agreements as a prerequisite for differential assessment or in some instances failure to maintain conservation programs could be deemed a breach of the agreements and subject the landowners to deferred taxes.

A third possible method of overcoming constitutional restrictions is to amend the uniformity clauses to allow legislatures to classify property for the purpose of imposing different ratios of assessed valuation or tax rates applied to assessed value among the various classes of property, but requiring uniformity within each class. Such an approach grants flexibility to legislatures because several differential and promotional tax devices could be used without the necessity of amending the constitutions in each instance. Land upon which soil conservation programs have been implemented could be put into a separate class and assessed by a different method or have a different tax rate applied to it. Courts in some states are very flexible in permitting classification of property if the classification is reasonable.

Another possible method of providing property tax incentives is to consider soil conservation structures as improvements and assess such improvements at a lower value or tax them at a lower rate than other property or exempt them altogether from taxation. Issues involved with this method of providing a tax incentive for soil conservation programs include the definition of improvements and the authority to assess them separately from the land, classify them, and exempt them from taxation. The constitutional uni-

formity clauses and statutes must permit improvements to be assessed separately from land and must permit improvements to be classified and exempt from taxation. Several states provide exemptions from taxation for certain improvements, particularly for pollution control facilities, that could be used as examples.

Other types of property tax incentives for soil conservation programs are to provide for credits against property taxes and property tax credits against state income taxes. Credits of a specified amount could be given against local property taxes while the owner is implementing and maintaining a soil conservation program. Examples of these types of credits exist in Minnesota for wetlands and native prairie lands. For this method to be effective, the constitutional uniformity clause must provide that taxation of lands upon which conservation programs have been implemented need not be uniform with taxation of other lands. A certain portion of property taxes paid on lands where soil conservation practices have been implemented could be credited against the landowners' or lessees' state income taxes. Some states provide this type of incentive for pollution control facilities. Credits against income taxes are not hampered by the constitutional uniformity clauses.