An Agricultural Law Research Article

Taxation Affecting Agricultural Land Use

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TAXATION AFFECTING AGRICULTURAL LAND USE

> While taxation has as its primary purpose the raising of revenue, a revenue act may be motivated by other than revenue-raising designs. Indeed, taxation has been used for many purposes other than the raising of revenue since the Constitution was adopted. As such, taxation has proved an efficient means of effecting ancillary policies by varying the weight of a common burden to favor or discourage certain action, to the end that desired social or economic results are achieved.[1]

Governmental action directed at preserving the nation's valuable land resources, a recognized public goal,[2] has taken many forms. One such form of action has been the drafting of tax laws designed to effectuate an ancillary policy of proper agricultural land use. Generally, this policy is reflected in grants of tax concessions accorded the farmer and forester. The purpose of this Note is to survey briefly federal and state tax allowances which are aimed directly at the agricultural sector. In so doing the reasonableness and justification for them will be explored and, in addition, constitutional problems which arise in connection with certain state tax exemptions will be considered. This examination should reveal that the motives for preferential tax treatment granted to farmers and foresters are usually discernible. However, adequate data do not exist for evaluating with any degree of certainty the efficiency with which and the extent to which these ancillary taxing policies have affected agricultural land use.

I. FEDERAL INCOME TAX

There are numerous means by which the federal government encourages landowners to conserve their land and to utilize it in a manner that is most beneficial to the entire economy.[3] In addition to giving farm owners direct subsidies,[4] the federal government has attempted to promote certain desirable agricultural land uses by means of preferential taxing devices. Whether these attempts are referred to as incentive taxation[5] or as a regulatory effect of taxation, the same re-

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[1] Schmidt, *Federal Taxation—A Lesson in Direct and Indirect Sanctions*, 49 IOWA L. REV. 474, 485 (1964). Also see PAUL, TAXATION FOR PROSPERITY 214-19 (1947).

[2] [P]rovision for the welfare of society must be the continuing long-range goal. Thus the problems of agriculture effect not only farmers, but all segments of the population. Conservation of agricultural land like all resources, requires total national effort. HIGHSMITH, JENSEN & RUDD, CONSERVATION IN THE UNITED STATES 48 (1962).

See COYLE, CONSERVATION 118-36 (1957); PARSON, CONSERVING AMERICAN RESOURCES 8-9 (1956).

[3] For a general discussion of the role of the federal government in promoting agriculture see Coffman, *Federal Aid in the Development of Agriculture*, 21 FED. B.J. 399 (1961).

[4] Coffman, *supra* note 3, at 416. "A third type of conservation activity in which the federal government engages, in addition to the direct administration of government-owned lands, and technical assistance to farmers in developing land use plans, consists of subsidies paid by the Government to induce better conservation practices." *Ibid.*

[5] In speaking of incentive taxation, Senator Jack Miller of Iowa stated:

> The word "incentive" has been rather loosely applied in tax policy. Usually

sult should be produced.[6]

A. Cropland

The life of a farm is divided into three definite periods, namely: (1) preparatory, (2) developmental, and (3) productive.[7] Generally all expenditures incurred for the purpose of preparing land for farming must be capitalized, while during the productive period of farming ordinary business expenses cannot be capitalized but must be deducted as current business expenses.[8] During the developmental period a farmer has an option either to capitalize ordinary and necessary business expenses or deduct them as current expenses.[9] Like any other taxpayer, farmers generally may not deduct capital expenditures as current expenses.[10] Exceptions to this rule are found in three sections of the Internal Revenue Code which are designed to encourage proper utilization of cropland by allowing farmers to deduct certain capital expenditures as ordinary business expenses. All three sections are optional in that the expenditure which satisfies the statutory requirements can either be capitalized or deducted as a current expense. The three sections which allow such a deduction are: section 175—soil and water conservation, section 180—fertilizer, and section 182—land clearing.

1. Conservation Expenditures

Section 175 of the Internal Revenue Code, designed to promote proper cropland usage,[11] provides a deduction under which farmers can elect to treat as current expense capital expenditures paid or incurred during the year for nondepreciable improvements which promote the conservation of soil and water or prevent erosion of "land used in

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it is associated with tax reduction—either through outright tax reduction or through so-called tax-reform, or both. It assumes that tax reduction will automatically be followed by economic growth, but there is no guarantee that this will happen. 108 CONG. REC. 18588 (1962) (remarks of Senator Miller).

[6] See PAUL, TAXATION IN THE UNITED STATES 650 (1954).

[7] See O'BYRNE, FARM INCOME TAX MANUAL § 430 (1954).

[8] *Ibid.* Capital expenditures are defined as those expenditures "for replacements, alterations, improvements or additions which prolong the life of the property, increase its value, or make it adaptable to a different use." Illinois Merchants Trust Co., 4 B.T.A. 103, 106 (1926).

[9] O'BYRNE, *op. cit. supra* note 7, § 430.

[10] *Ibid.*

[11] *Hearings on H.R. 8300 Before the House Ways & Means Committee,* 83d Cong., 1st Sess., pt. 2, at 921-59 (1953). In the congressional hearings and debate concerning this section, various reasons were given as to why an income tax deduction for soil and water conservation expenditures should be allowed. The primary reason was that the federal government should encourage farmers to practice proper soil and water conservation methods which benefit not only the farmer but also the nation as a whole. One advocate of allowing this deduction indicated the important incentive effect which this deduction was intended to foster: "This small tax incentive could well make the difference between good conservation practices and no conservation." *Id.* at 947.

farming."[12] Prior to the enactment of this section, these expenditures had to be capitalized, and because they often did not constitute outlays for depreciable assets, they could only be recovered when the land was either sold or exchanged.[13]

Generally, soil and water conservation expenses are capital expenditures because they increase the value of the property affected.[14] Soil and water conservation expenditures include, but are not limited to, "leveling, grading and terracing, contour furrowing, the construction, control, and production of diversion channels, drainage ditches, earthen dams, watercourses, outlets, and ponds, the eradication of brush, and the planting of windbreaks."[15] Leveling land prior to irrigating,[16] earthen dams increasing the value of the land,[17] and the planting of trees to prevent soil erosion[18] have been held to be capital expenditures. However, it has been held that an expenditure for terracing a farm, where "the terracing did not increase the value of the land or its products," was deductible as an ordinary business expense.[19] The deduction of capital expenditures for conservation is limited annually to twenty-five per cent of gross income derived from farming, but the excess may be carried forward for any number of years, provided that the twenty-five per cent limitation is followed.[20]

2. *Fertilizer Expenses*

Another federal income tax deduction which may tend to encourage proper cropland usage is Section 180 of the Internal Revenue Code,[21] which allows a deduction "for the purchase or application of fertilizer, lime, ground limestone, marl, or other materials" which are used "to enrich, neutralize, or condition land used in farming."[22] However, if expenditures for these materials would result in benefits extending over a period longer than one year and would thereby be capital expenditures, they can either be capitalized and a part of the costs recovered each year or the total expenditure may be deducted under section 180 in the year it is paid or incurred.[23] If the expenditure is capitalized, the amount deductible in the years immediately following

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[12] INT. REV. CODE OF 1954, § 175.

[13] O'BYRNE, *op. cit. supra* note 7, § 420, at 206.

[14] 4 RIA TAX COORDINATOR ¶ N-1312 (1964).

[15] INT. REV. CODE OF 1954, § 175.

[16] Beltzer v. United States, 4 Am. Fed. Tax R.2d 5595 (D.C. Neb. 1959).

[17] Winfield A. Coffin, 41 T.C. 83 (1963).

[18] J. G. Stoller, 53 P-H Tax Ct. Mem. 959 (1953).

[19] J. H. Collingwood, 20 T.C. 937 (1953).

[20] Treas. Reg. § 1.175-1 (1957).

[21] The only debate on the floor of either the House or Senate on this provision leads one to the conclusion that farmers, even prior to the enactment of this deduction, did actually deduct expenditures for fertilizer as a current business expense. This provision was enacted with the intent of "legalizing" this practice and also with the intent of putting the farmer "in the same position . . . as a businessman or a salesman who has to deduct the cost of his operations from his net income." 106 CONG. REC. 18059 (1960) (remarks of Senator Mundt).

[22] INT. REV. CODE OF 1954, § 180.

[23] Treas. Reg. § 1.180-1 (1961).

the expenditure for fertilizer may be greater than in later years, provided that the benefits resulting from the fertilizer are proportionately high during the early years.[24] If these expenditures are deducted as current expenses, there is neither a limitation on the amount of the deduction taken nor a carry-over provision.

3. Land-Clearing Expense

In 1962 Congress granted another income tax deduction that was apparently intended to foster cropland use.[25] Section 182 of the Internal Revenue Code gives the farmer the option to deduct as ordinary business expense those expenditures which are paid or incurred for clearing land in order to make it suitable for farming.[26] However, expenditures for depreciable improvements or expenditures which could be deducted without regard to section 182 are not deductible under 182.[27] This provision is an exception to the general rule that expenditures incurred during the preparatory period cannot be deducted as current expense.

Land-clearing expenditures include "the eradication of trees, stumps, and brush, the treatment or moving of earth, . . . the diversion of streams and watercourses,"[28] and depreciation on machinery used in clearing land.[29] The election to treat such expenditures as current expenses applies whether the land is suitable for use by the owner or his tenant.[30] The deduction is limited annually to 5,000 dollars or twenty-five per cent of taxable income derived from farming, whichever is less,[31] and any excess must be capitalized because there is no carry-over provision.

4. Evaluation of Federal Cropland Deductions

Factors which may influence a decision to make capital outlays for soil and water conservation, fertilizer, or land-clearing naturally include the farmer's financial status, the fertility of his soil, the availa-

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[24] O'BYRNE, FARM INCOME TAX MANUAL § 408, at 192.1 (Supp. 1961).

[25] 76 Stat. 1063 (1962). The revenue bill passed by the House of Representatives contained no provision for this deduction, but it was subsequently added to the House bill by Senate amendment. The Senate Finance Committee Report stated that this provision dealt with the same type of problem that was encountered when the tax deduction for soil and water conservation was considered. Thus, without directly stating that this provision was to encourage land-clearing and subsequent use of the land for agriculture, such an intention can be inferred. S. REP. No. 1881, 87th Cong., 2d Sess. 126 (1962).

[26] INT. REV. CODE OF 1954, § 182(a). As of the present time there have been no regulations issued pertaining to this section of the Code.

[27] INT. REV. CODE OF 1954, § 182(d).

[28] INT. REV. CODE OF 1954, § 182(c).

[29] O'BYRNE, FARM INCOME TAX MANUAL § 430, at 240.2 (Supp. 1963).

[30] *Ibid.*

[31] INT. REV. CODE OF 1954, § 182(b). In order to determine taxable income for this purpose the deductions for soil and water conservation expenditures, fertilizer expense, and all other itemized deductions for individuals and corporations are subtracted from gross income. *Ibid.*

bility of direct government subsidies,[32] and even potential nonfarm uses. It seems fair to assume that the cropland deductions may also be an influencing factor, even though there are no studies indicating that these deductions have any appreciable incentive effect on agricultural land use.[33] An analysis of statutory and regulatory limitations on the applicability of the cropland deductions should aid in defining the class of taxpayers benefited by the deductions. Taxpayers thus benefited may be encouraged to finance conservation, fertilizer, or land-clearing programs.

Generally, taxpayers benefited by the cropland deductions are those who are in the "business of farming."[34] Either an owner or tenant satisfies this requirement if he "cultivates, operates, or manages a farm for gain or profit."[35] A landlord also satisfies the requirement of being in "the business of farming" if he receives rental payments, either in cash or crop shares, based on farm production.[36] If rental payments are not related to production, the farm owner must materially participate in the operation or management of the farm in order to qualify for the deductions.[37] Thus, a distinction has been drawn between a nonmanager landlord whose rent is apportioned according to production and one who rents on a fixed basis. This distinction has been attacked as unreasonable because the land which would be affected by conservation, fertilizer, or land-clearing expenditures obviously does not vary with the nature of the rental payment.[38] Nevertheless, the result of this distinction is that a nonmanager landlord who leases on a rental not measured by a share of production would not be encouraged by these sections of the Code to make capital expenditures for soil and water conservation, fertilizer, or land-clearing. To this extent it seems

[32] Under the Agricultural Conservation Program, which is designed to encourage sound conservation practices, the federal government will share a part of the cost of various conservation programs with the individual farmer. For example, under an exemplary program the federal government will share "70 per cent of the cost of graded or level terraces but not in excess of $5.00 per 100 linear feet." U.S. AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, DEP'T OF AGRICULTURE, AGRICULTURAL CONSERVATION PROGRAM FOR IOWA 33 (1963).

[33] See generally Hannah & Krausz, *The Role of Law in the Development of Land Resources,* in MODERN LAND POLICY 325 (1960). As Professors Hannah and Krausz have pointed out:

> The effects of taxes on agricultural development, and on agriculture as compared to other parts of the economy, are not too well known. Few would doubt, however, that taxes have a substantial influence on types of ownership, land tenure, investment in land, credit, transfer of resources within agriculture and between industry and agriculture and on production. *Id.* at 335.

[34] INT. REV. CODE OF 1954, §§ 175(a), 180(a), 182(a).

[35] Treas. Reg. § 1.175-3 (1957) (defines "business of farming" for purposes of conservation deduction). The regulations under § 180 indicate that for the purposes of § 180 the phrase "business of farming" will be defined as it is under § 175. Treas. Reg. § 1.180-1(b) (1961). As yet there are no regulations under § 182, but for purposes of this discussion it is assumed that "business of farming" would be defined in connection with § 182 in the same way as it is under § 175.

[36] *Ibid.*

[37] *Ibid.*

[38] See O'BYRNE, *op. cit. supra* note 7, § 420, at 209.

that the cropland deductions cannot achieve their full potential effect on agricultural land use.

Another limitation on the applicability of the conservation and fertilizer deductions is that expenditures for these purposes must be for "land used in farming."[39] This means that the land must be used either by "the taxpayer or his tenant for the production of crops, fruits, or other agricultural products or for the sustenance of livestock."[40] Additionally, at the time the expenditures are made the farm owner or tenant must be presently using the land for farming or must have so used the land in the past.[41] A taxpayer who uses newly acquired farm land satisfies this requirement if he substantially continues the same use of the land as the previous owner.[42] However, if he uses the newly acquired land for a farming operation different than that of the previous owner, he does not qualify under these sections.[43] The latter regulation is not applicable to the farmer who changes farming operations on a farm which he previously owned and used for a different type of farming.[44] This seemingly unreasonable inconsistency appears to be a further restriction on the effectiveness of the cropland deductions in encouraging proper cropland usage.

As noted, the dollar amounts deductible under both the conservation and land-clearing sections are limited. The restriction is most severe in the case of land-clearing, where the deduction is limited to twenty-five per cent of taxable income or 5,000 dollars, whichever is less.[45] The conservation deduction is simply limited to twenty-five per cent of gross income.[46] Nevertheless, in order to benefit from either of these deductions, the taxpayer must have earned "income derived from farming."[47] The meaning of the phrase "income derived from farming," as well as the enforcement of a deductible-amount limitation, is illustrated by one of the few cases decided under the cropland provisions. In *Coffin v. Commissioner*[48] the facts indicated that the petitioner had spent over 8,000 dollars to have an earthen dam built and gullies filled on some eighty-eight acres of land. Petitioner was assisted in his conservation plan by a 2,000-dollar payment from the Department of Agriculture. The petitioner sought to deduct his expenditures as current business expenses under Section 162 of the Internal

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[39] INT. REV. CODE OF 1954, §§ 175(a), 180(a). Section 182 allows the land-clearing deduction for expenditures to make "land suitable for use in farming." INT. REV. CODE OF 1954, § 182(a).

[40] INT. REV. CODE OF 1954, §§ 175(c)(2), 180(b).

[41] Treas. Reg. § 1.175-4(a) (1957) (defines "land used in farming" for purposes of conservation deduction). Section 180 regulations incorporate by reference those regulations under § 175 which define "land used in farming."

[42] *Ibid.*

[43] *Ibid.* For example, a taxpayer's expenses in shifting the use of newly acquired property from grazing to a citrus grove would not be deductible. Treas. Reg. § 1.175-4(b) example (3) (1957).

[44] See 4 RIA TAX COORDINATOR ¶ N-1314.3 (1964).

[45] INT. REV. CODE OF 1954, § 182(b).

[46] INT. REV. CODE OF 1954, § 175(b).

[47] INT. REV. CODE OF 1954, §§ 175(b), 182(b).

[48] 41 T.C. 83 (1963).

Revenue Code, but the court held that section 175, the conservation deduction, was applicable. The court also held that the petitioner's only income derived from farming was the 2,000-dollar government payment, of which only twenty-five per cent could be deducted under section 175. Thus, out of taxable expenditures in excess of 8,000 dollars, the petitioner's only deductible expense was 500 dollars.[49]

Like any tax deductions, the cropland deductions should theoretically produce an incentive effect commensurate with the tax saving to the individual taxpayer. Accordingly, it may be argued that the cropland deductions will significantly benefit and encourage only the farmer operating at a substantial profit to make capital expenditures for land-clearing, conservation, or fertilizer. For example, if the petitioner in *Coffin* had earned 32,000 dollars gross income from the business of farming, he would have been able to deduct all of the 8,000 dollars of conservation expenses in the year the expenditures were made. However, since the petitioner had earned only 2,000 dollars from farming, his deduction was limited to 500 dollars, or one-sixteenth of his actual expenditures. The disproportionate benefits available to the "big" farmer under the cropland deductions are particularly apparent with respect to the land-clearing deduction where no provision is made by which the farmer can carry deductible expenditures over to future years. In the case of the conservation deduction, the advantage of the "big" farmer over the "little" farmer is lessened because conservation expenditures in excess of twenty-five per cent of gross farming income may be carried over for an unlimited number of years.[50] Hence, the petitioner in *Coffin* could, over a period of time, deduct the full 8,000 dollars of his conservation expenditure. Even so, the farmer earning a large gross income, who could deduct all his conservation expenses in one year, would seem to have an advantage over the "small" farmer. Nevertheless, it is not suggested that as a matter of policy the legislature should not have given greater tax benefits to the "big" farmer than to the "small" farmer. It is suggested, however, that the limitations producing these advantages tend to restrict the class benefited by the deductions and presumably the deductions' incentive effect on agricultural land use.

B. Timber Land

The federal income tax law contains special provisions designed to benefit timber owners and encourage good forestry practices.[51] While grants of tax deductions have been made to prompt specific uses of cropland, the principal means of encouraging the utilization of forest land has been the allowance of capital gains treatment of certain transactions. Sections 631(a) and 631(b) of the Internal Revenue Code are specifically designed to give capital gains treatment to various timber transactions.[52] Prior to the enactment of section 631(a), if timber

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[49] *Id.* at 85.

[50] INT. REV. CODE OF 1954, § 175(b).

[51] See generally Murray, *Current Capital Gains Problems: Timber and Cattle*, N.Y.U. 22D INST. ON FED. TAX 185 (1964).

[52] INT. REV. CODE OF 1954, § 631(a)-(b). See generally Bohannon, *Tax Treatment of Gains and Losses in Timber and Coal Transactions*, 27 GEO. WASH. L. REV. 37

was held for sale in the ordinary course of business, a taxable event did not occur until the timber was actually sold; and when a sale was made, the transaction resulted in ordinary income and not capital gains.[53] Section 631(a) provides an election whereby the cutting of timber may be treated as a fictional sale, and the difference between the market value of the timber and its adjusted depletion basis may be treated as a capital gain.[54] The taxpayer must own the timber or have a contract right to cut it for a period of more than six months before the beginning of the year during which this section is to be applied.[55]

While section 631(a) provides for tax treatment that may be selected at the taxpayer's option, section 631(b) is mandatory.[56] The latter section treats the "disposal" of timber with a "retained economic interest" as a capital gains transaction irrespective of any taxpayer election.[57] The timber must be held for more than six months prior to disposal before this section is operative.[58] It has been held that a typical stumpage-cutting contract, whereby the logger agrees to pay a percentage of the gross profit to the owner, satisfies the requirement that the owner must retain an economic interest.[59]

The reason for enacting section 631[60] was to encourage timber-cut-

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(1958). The term "timber" includes evergreen trees such as Christmas trees which are more than six years old when they are severed. But the sale of standing trees or the sale of only a part of any standing tree does not qualify. See Treas. Regs. §§ 1.631-1(b)(2), 1.631-2(e)(3) (1957).

[53] However, if the timber was held for investment purposes or if the timber was used in the taxpayer's business, a sale would receive capital gains treatment. See Lefevre, *Tax Aspects of Timber Transactions*, N.Y.U. 18TH INST. ON FED. TAX 577 (1960).

[54] Treas. Reg. § 1.631-1(d)(1) (1957). If this election is made, the fair market value of the timber on the first day of the year in which it is cut becomes the taxpayer's basis and any gain or loss on a subsequent sale is treated as ordinary income or loss. See 4 CCH 1964 STAND. FED. TAX REP. ¶ 3588.03.

Section 631 does not directly grant capital gains to timber transactions. Section 1231(a) gives capital gains treatment to net gains from the aggregate of profits and losses of "property used in the trade or business," and then § 1231(b)(2) expressly provides that timber transactions to which § 631 applies come within this section. INT. REV. CODE OF 1954, §§ 631(a)-(b), 1231(a), 1231(b)(2).

[55] Treas. Reg. § 1.631-1(b)(1) (1957).

[56] *Compare* Treas. Reg. § 1.631-1(a) (1957), *with* Treas. Reg. § 1.631-2(a) (1957).

[57] This section applies to "any person who owns an interest in timber, including a sublessor and a holder of a contract to cut timber." Treas. Reg. § 1.631-2(e)(2) (1957).

[58] Treas. Reg. § 1.631-2(a)(1) (1957).

[59] See Boeing v. United States, 98 F. Supp. 581 (Ct. Cl. 1951).

[60] Section 631 was originally enacted as § 117(k) of the 1939 Internal Revenue Code. For a general discussion of this section, see Stoel, *Timber Cutting and Timber Sales Under Sec. 117(k) of the Internal Revenue Code*, 30 ORE. L. REV. 306 (1951). President Roosevelt vetoed the revenue act which contained § 117(k), stating that the bill granted too many special privileges, including capital gains treatment for timber. However, the bill was subsequently passed over the presidential veto. See 90 CONG. REC. 1958-59, 2013, 2050 (1944).

ting because lumber was urgently needed for the World War II effort.[61] At least one argument for the retention of section 631 has been that it encourages not only cutting of timber but also reforesting after trees have been cut.[62] That capital gains treatment of timber transactions should promote the harvesting of trees appears to be an obvious conclusion. The only real question is whether this provision encourages reforestation. It seems that the increased profit potential from forestry occasioned by capital gains treatment for timber should prompt reforesting. However, there is no assurance that new trees will be planted to replace those harvested. One means of encouraging reforestation would be to give capital gains treatment only if additional trees were planted within a specified period of time. Such a legislative step could be analogized to section 1034 of the Code, which permits a taxpayer to reduce his recognized gain on the sale of his residence if he invests in a new residence within a period of one year from the date of sale of his old residence.[63] Section 1034, thus, encourages a person to reinvest proceeds from the sale of one asset in a new asset and the same result could seemingly be achieved under section 631. If this change were enacted timber owners would still be benefited because they would be given capital gains treatment with the obligation to reforest their lands in order to provide timber for future use.

II. State and Local Taxation of Real Property

Although real property taxes have been declining in importance since the nineteenth century and no longer constitute a major source of state revenue, local governmental units still rely heavily upon these taxes for their fiscal support.[64] As a direct tax upon land, real property taxation naturally lends itself to use as a governmental tool with which to influence the utilization of land. The employment of this device to encourage certain land uses can be seen from an examination of the preferential treatment accorded both crop and forest lands with respect to generally rising property taxes.

A. Cropland

State attempts to mitigate the adverse effects of rising property taxes upon cropland usage often take the form of tax exemptions[65] which

[61] In United States v. Brown Wood Preserving Co., 275 F.2d 525 (6th Cir. 1960), the court stated:

> At the time this legislation was being considered the country was in the midst of World War II, and wood and paper products were vital to the war effort. The refusal of the timber owners to cut their timber could only result in a shortage of such commodities. If the timber operator was unable to obtain a reasonable profit he would not be likely to plant additional trees. The result of that would be a slow-down in reforestation, which would not only hamper the war effort, but also increase the difficulties of a successful post-war recovery. *Id.* at 527-28.

[62] *Hearings on H.R. 8300 Before the Senate Committee on Finance,* 83d Cong., 2d Sess. 183-86, 2226-28 (1954).

[63] See generally Bowen, *Tax Consequences of the Sale, Purchase, or Exchange of a Personal Residence,* 7 U. Fla. L. Rev. 285 (1954).

[64] See Leonard, *State and Local Governmental Revenue Structures—A National and Regional Analysis,* 11 Nat'l Tax J. 67 (1958).

[65] For a general discussion of property tax exemptions see Stimson, *The Exemp-*

partially reduce the real property tax on lands used for agricultural purposes. While some exemptions are designed to promote proper cropland usage, others are specifically aimed at preserving agricultural land use on the "rural-urban fringe."[66]

1. Exemptions

A variety of tax exemptions have been enacted which benefit cropland generally. Besides reducing property taxes, they are designed to promote or encourage certain types of land use.[67] For example, in some states ditches and canals are exempt from property tax[68] for the purpose of encouraging farmers to irrigate their land. In order to encourage clearance and subsequent agricultural use of swampland, New Hampshire allows a ten-year exemption for any such land that is reclaimed and utilized for farming.[69] Likewise, an exemption for structures and improvements located on agricultural land would seemingly encourage the development of farmland.[70] The overall effect of any of the noted exemptions is somewhat doubtful. Perhaps the only conclusion which can be drawn with respect to these exemptions is that, although they may not be a substantial stimulus to any particular agricultural land use, they do remove a tax which might be one of many deterrents from such usage.

The "urban-fringe" farm owner is particularly concerned with increasing property taxation, because as the outer limits of metropolitan centers steadily creep outward the potential use value of the "fringe" farmer's land climbs upward.[71] When property taxes increase at a

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tion of Property From Taxation in the United States, 18 MINN. L. REV. 411 (1934). The granting of property tax exemptions to encourage certain types of economic activity has been criticized. See RENNE, LAND ECONOMICS 572 (1947).

[66] See U.S. ECONOMIC RESEARCH SERVICE, DEP'T OF AGRICULTURE, STATE ACTION RELATING TO TAXATION OF FARMLAND ON THE RURAL-URBAN FRINGE 4-5 (1961).

[67] Various reasons for granting property tax exemptions are recognized in Stimson, *supra* note 65, at 412.

[68] See, *e.g.*, COLO. REV. STAT. ANN. § 137-1-17 (1953); IDAHO CODE ANN. § 63-1051 (Supp. 1963); NEV. REV. STAT. § 361.070 (1963).

[69] N.H. REV. STAT. ANN. § 72:14 (1955).

[70] N.D. CENT. CODE § 57-02-08 (1960). In interpreting this statute exempting farm structures and improvements from taxation, the Supreme Court of North Dakota concluded that the statutory provision clearly reflected the legislature's intention to encourage the construction of buildings and improvements on agricultural land. Eisenzimmer v. Bell, 75 N.D. 733, 738, 32 N.W.2d 891, 892-93 (1948).

Improvements which may fall under the purview of such a tax exemption include clearing, grading, or excavation of land. Mazel v. Bain, 272 Ala. 640, 643, 133 So. 2d 44, 47 (1961) (by implication). Improvements such as fencing, tiling, and draining the premises may also qualify for an exemption. Kauffman v. Miller, 214 Ill. App. 213, 216 (1919) (by implication).

[71] One authority has described the situation in the following terms:

> The new tax levels are onerous additions to the operating expenses of the farmer on the periphery of the expanding city. They may, however, have a more serious effect than that represented by a simple raising of the overhead costs of the farmer. In some areas, particularly around our largest eastern cities, tax rates and assessed valuations of land may in-

proportionately faster rate than increases in income to be derived from using the land for agricultural purposes, the profit-motivated farmer may be forced either to sell his land[72] or shift its use to one which will produce income commensurate with increased property taxes. In attempting to prevent what may often be a premature sale or shift in use of cropland located in the "rural-urban fringe," a few states have enacted preferential-assessment statutes to afford partial tax exemption.[73] These statutes provide that farmland is to be valued according to its agricultural use, and potential or prospective uses of the land are not taken into consideration.[74] Thus, if farmland which is located near urban land could also be used for residential housing, shopping centers, or industrial purposes, these additional uses of the land which normally would raise the market value of the land are disregarded when an assessor values the land for property tax purposes. In light of indications that absent such assessment practices property taxes on "fringe" farmland are twice as high and increasing twice as fast as taxes on other farmland,[75] it can hardly be questioned that a preferential assessment may be a substantial influencing factor in prolonging the agricultural use of land located on the "fringe" of a burgeoning metropolis. Thus, in theory, at least, the preferential-assessment statute would appear to be a satisfactory solution to a growing problem. However, before such a statute or any similar exemption can be put into practical operation, its constitutionality must be established.

2. *Constitutionality of Cropland Exemptions*

While all states grant property tax exemptions to religious, educational, and charitable institutions,[76] the power of a state legislature to

crease to a point where farm land can be said to be "confiscated" for urban purposes. The valuations for taxing purposes and the taxes themselves may quickly increase to a point where normal agricultural operations can no longer be profitable. Farm land is prematurely put on the market for conversion to urban purposes and the sprawl of the city continues. Fellmann, *Some Agricultural Consequences of the New Urban Explosion*, in MODERN LAND POLICY 157, 160 (1960).

[72] A farm owner may be further encouraged to sell his land, since a profit from the sale of agricultural land results in a capital gain under the federal income tax laws. See INT. REV. CODE OF 1954, § 1231.

[73] In 1956 Maryland became the first state to enact legislation providing preferential tax assessments for farm land. See Walker & Gardner, Assessing Farm Land Under Maryland's Use Value Assessment Law 4 (Dep't of Agricultural Economics, University of Maryland, Misc. Pub. No. 522, 1964).

[74] See, *e.g.*, ARK. STAT. ANN. § 84-479 (Supp. 1963); CAL. REV. & TAX CODE § 402.5; ORE. REV. STAT. § 308.237 (1961). For a discussion of preferential tax assessments designed to preserve agricultural lands, see Wershow, *Ad Valorem Taxation and Its Relationship to Agricultural Land Tax Problems in Florida*, 16 U. FLA. L. REV. 521 (1964).

[75] See U.S. ECONOMIC RESEARCH SERVICE, DEP'T OF AGRICULTURE, PREFERENTIAL ASSESSMENT OF FARMLAND IN THE RURAL-URBAN FRINGE OF MARYLAND 1-2 (1961). When property is annexed to a city there is almost certain to be a sharp increase in property taxes. See Andrews & Dasso, *The Influence of Annexation on Property Tax Burdens*, 14 NAT'L TAX J. 88, 96 (1961).

[76] See Stimson, *supra* note 65, at 412.

grant exemptions to other persons or institutions varies among the states.[77] A few state constitutions enumerate what property shall be exempt and then provide that no other exemptions can be made.[78] Other state constitutions simply empower the legislature to provide for exemptions.[79] Still other state constitutions provide for a number of exemptions but do not mention the power of the legislature to grant additional exemptions.[80] While most courts have held that such an enumeration is exclusive and that the legislature can grant no additional exemptions,[81] other courts have held that the enumeration of exemptions is not exclusive and that the legislature can grant further exemptions if there is a reasonable classification and the exemption is for a public purpose.[82]

In those states where property tax exemptions in addition to those enumerated in the state constitutions are permitted, exemptions for agricultural lands must still meet the typical state constitutional requirements of uniformity and equality.[83] Both total exemptions and partial-exemption measures such as preferential assessments have, on occasion, been held violative of these constitutional requirements.[84] The constitutionality of preferential-assessment statutes has only recently been determined in a number of states, and a split of authority has resulted. The Maryland and New Jersey courts have held unconstitutional attempts in preferential-assessment statutes to adopt the separate classification of agricultural land for tax purposes.[85] The

[77] For a general discussion regarding the power of states to exempt property from taxation, see 2 COOLEY, TAXATION §§ 657-71 (4th ed. 1924) [hereinafter cited as COOLEY].

[78] See, *e.g.*, ARK. CONST. art. XVI, § 6; LA. CONST. art. X, § 4; OKLA. CONST. art. V, § 50.

[79] See, *e.g.*, DEL. CONST. art. VIII, § 1; IDAHO CONST. art. VII, § 5; N.Y. CONST. art. XVI, § 1 (power to alter or repeal exemptions not extended to religious, educational, or charitable exemptions).

[80] See, *e.g.*, CAL. CONST. art. XIII, § 1; MONT. CONST. art. XII, § 2; TEX. CONST. art. 8, §§ 1-2.

[81] See, *e.g.*, Daly Bank & Trust Co. v. Board of County Comm'rs, 33 Mont. 101, 81 Pac. 950 (1905); City of Wichita Falls v. Cooper, 170 S.W.2d 777 (Tex. Civ. App. 1943); Judge v. Spencer, 15 Utah 242, 48 Pac. 1097 (1897). For a complete listing of early cases which established the proposition that a legislature has no power to exempt from taxation property which has not been so exempted by the state constitution, see 2 COOLEY § 661 n.57.

[82] See Alpha Tau Omega Fraternity v. Board of County Comm'rs, 136 Kan. 675, 18 P.2d 573 (1933) (nonconstitutional exemption must promote public welfare in substantial manner); Reed v. Bjornson, 191 Minn. 254, 253 N.W. 102 (1934); State v. Snyder, 29 Wyo. 199, 212 Pac. 771 (1923) (public interest must be served by a legislative exemption).

[83] For a comprehensive analysis of the basic types of state uniformity clauses, see NEWHOUSE, CONSTITUTIONAL UNIFORMITY AND EQUALITY IN STATE TAXATION 9-48 (1959).

[84] See, *e.g.*, City of Westport *ex rel.* Kitchen v. McGee, 128 Mo. 152, 30 S.W. 523 (1895); Boyne v. State, 390 P.2d 225 (Nev. 1964); Custer County Excise Bd. v. St. Louis-San Francisco Ry., 201 Okla. 528, 207 P.2d 774 (1949).

[85] State Tax Comm'n v. Gales, 222 Md. 543, 563, 161 A.2d 676, 686-87 (1960); Switz v. Kingsley, 37 N.J. 566, 585-86, 182 A.2d 841, 851 (1962). Shortly after these

Nevada court has also held such a classification unconstitutional by reasoning that the statute created an unreasonable and unfairly discriminatory tax.[86] A contrary view was taken by the Supreme Court of Indiana, which noted that "agricultural usage was a proper basis of classification for tax purposes."[87]

Generally, state uniformity and equality constitutional requirements are satisfied when there is a reasonable classification and the tax is applied uniformly within that class.[88] When the uniformity and equality requirements are the basis for challenging the constitutionality of exemptions generally and preferential-assessment statutes in particular, the issue for decision is whether a state legislature could rationally classify agricultural land on a different basis than other land. It should be remembered that in making a classification for the purpose of taxation the legislature has, subject to constitutional limitations, a broad discretion, and its enactments should be liberally construed by the courts.[89] It seems that a legislature could, in the public interest, rationally establish a property tax classification based upon agricultural usage in order to preserve and encourage a struggling, yet vital, state business. In the landmark case of *Dickinson v. Porter*,[90] the Supreme Court of Iowa, upholding the validity of a statute which created a partial tax exemption for agricultural land, pointed out: "The power of state legislatures to adjust their tax laws in order to encourage an industry or undertaking deemed vital to the welfare of the state or in furtherance of some related principle of public policy has frequently been upheld."[91] The court added:

> It is not debatable that it is part of the public policy of this state, evidenced by our constitution and numerous statutes, to encourage agriculture. It seems equally plain the encouragement of our basic industry

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decisions, constitutional amendments were adopted in both Maryland and New Jersey in order to permit preferential assessment of agricultural lands in the rural-urban fringe areas. See MD. CONST. art. 43; N.J. CONST. art. 8, § 1, para. 1.

[86] Boyne v. State, 390 P.2d 225 (Nev. 1964). In this case the Supreme Court of Nevada was considering NEV. REV. STAT. §§ 361.313-.314 (1961). This provision allowed "urban-fringe" farmland to be taxed at its "full cash value for agricultural purposes only."

[87] State v. Madison Circuit Court, 193 N.E.2d 251, 254 (Ind. 1963). The court in this case was considering the constitutionality of a municipal ordinance. Significantly, the presumption of constitutionality is not as strong with respect to an ordinance as it is with respect to legislative enactments. Coe v. Duffield, 185 Pa. Super. 532, 138 A.2d 303 (1958). The Supreme Court of Florida has also upheld the validity of a preferential assessment statute. See Tyson v. Lanier, 156 So. 2d 833 (Fla. 1963).

[88] See, *e.g.*, Byrd v. Blue Ridge Elec. Co-op., 215 F.2d 542, 547 (4th Cir. 1954); A. C. Dutton Lumber Corp. v. State Tax Comm'n, 228 Ore. 525, 539-40, 365 P.2d 867, 874 (1961); State Bank v. Calvert, 357 S.W.2d 160, 162 (Tex. Civ. App. 1962).

A general discussion concerning classifications for tax purposes may be found in 1 COOLEY §§ 330-34.

[89] See, *e.g.*, Chun King Sales, Inc. v. County of St. Louis, 256 Minn. 375, 381, 98 N.W.2d 194, 198-99 (1959); Goldstein v. School Dist., 372 Pa. 188, 93 A.2d 243 (1953); Schmitt v. Nord, 71 S.D. 575, 27 N.W.2d 910 (1947).

[90] 240 Iowa 393, 35 N.W.2d 66 (1948).

[91] *Id.* at 408, 35 N.W.2d at 76.

> serves the public interest. We are not convinced the legislature might not fairly conclude this law in its pracical operation will both benefit and encourage agriculture.[92]

As the court noted, its holding may be substantiated by analogizing statutory exemptions which benefit agriculture to those statutes which grant limited property tax exemptions to other industries in an attempt to promote the industrial growth of the state.[93] These statutes have generally been upheld.[94] In speaking of the power of the legislature to grant property tax exemptions to an industry, one court has stated: "The legislative power to exempt industrial plants from taxation for a limited period as an inducement to the location of same in the state is not to be questioned. Whether the benefits to accrue warrant such exemption is a matter of legislative policy."[95] Of course, in a heavily industrialized state, the state legislature may determine that the state's public policy does not warrant any preferential taxing treatment for agriculture. However, if a state legislature does determine that a tax exemption to encourage agricultural land use is in the public interest, it seems that the state courts could uphold enactments to that effect upon the same rationale they have generally applied in upholding exemptions which benefit other industries.

B. Timber Land

There has been an increasing concern during the last half-century with destructive practices that have tended to deplete our nation's forests.[96] This concern has been reflected in the number of regulatory

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[92] *Id.* at 409, 35 N.W.2d at 76. See Leicht v. City of Burlington, 73 Iowa 29, 34 N.W. 494 (1887). In the *Leicht* case the Iowa court upheld the constitutionality of a statute which exempted from municipal taxation lots of more than ten acres included within a territory annexed to a city or town and used for agricultural purposes. Also see Note, 23 IOWA L. REV. 67, 70-71 (1937).

[93] For an examination of how tax exemptions are employed to promote industrial activity see Note, *Legal Limitations on Public Inducements to Industrial Location,* 59 COLUM. L. REV. 618, 625-29 (1959). Studies examining the effect of taxes on industrial location in certain areas have been conducted. See Campbell, *Taxes and Industrial Location in the New York Metropolitan Region,* 11 NAT'L TAX J. 195 (1958).

[94] See Crow v. General Cable Corp., 223 Ala. 611, 137 So. 657 (1931); Crafts v. Ray, 22 R.I. 179, 46 Atl. 1043 (1900); 16 MCQUILLIN, MUNICIPAL CORPORATIONS § 44.75, at 229 (3d ed. 1963).

[95] Crow v. General Cable Corp., *supra* note 94, at 613, 137 So. at 658. It may be argued that property tax exemptions granted to industries normally are effective for only a limited period of time, while preferential assessment statutes provide no such limitation. However, it should be recognized that there is an implicit time limitation in preferential assessment statutes. These statutes typically are designed as transitional devices which promote agricultural land use only during the period immediately before actual metropolitan development is begun. Moreover, the preferential assessment statute provides only a partial exemption from taxation, because the agricultural land affected is still taxed according to its agricultural-use value. The same rationale can be relied upon to justify other exemptions directed at promoting a particular agricultural land use, for such exemptions, as noted, do not totally exempt agricultural land from property taxation.

[96] See generally Spaeth, *Forest Land Resources and Projected Timber Needs,* in

measures which affect timber land.[97] One such regulatory device is taxation. The importance of timber taxation becomes apparent with the realization that there are 530 million acres of commercial forests in the United States and that about seventy per cent of this land is privately owned and, hence, is subject to property taxation.[98] The states have employed many different forms of preferential taxation with the purpose, in addition to raising revenue, of controlling forestry practices.[99]

1. Property Tax

Traditionally, growing timber has been subject to general property tax.[100] This method of taxing timber has been subjected to a great deal of criticism[101] because the property tax is increased each year to account for the increasing value of the growing trees.[102] This increase in taxes may tend to encourage premature harvesting of timber. Thus, instead of encouraging good forestry practices, wasteful severance of timber is rewarded. Some states have attempted to remedy this problem by either totally or partially exempting growing trees from property taxation.

a. Total Exemption

At least eleven states have enacted some type of total tax exemption statute which generally exempts growing trees from property tax but preserves the tax on the land itself.[103] Requirements for and limita-

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MODERN LAND POLICY 215-22 (1960). As the author states:

> A substantial contribution to an adequate future supply of wood can be made by reducing the losses attributable to destructive agents. It is estimated that the growth loss in sawtimber resulting from diseases, insects, fire, and other agents affecting our forests in a typical year is greater than the volume of sawtimber cut and utilized. In other words, if these losses could have been prevented, the growth would have been twice as great as the cut, and a net volume would have been accumulated to meet future need. *Id.* at 221.

[97] See Quinney, *Small Private Forest Landownership in the United States—Individual and Social Perception*, 3 NATURAL RESOURCES J. 379, 384 n.18 (1964); Note, *Constitutional Aspects of Timber Conservation Legislation*, 25 NOTRE DAME LAW. 673, 677-78 (1950).

[98] U.S. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 681 (85th ed. 1964).

[99] For a general analysis of the forest taxation laws of each state, see FALK, TIMBER AND FOREST PRODUCTS LAW 45-68 (1958).

[100] See Williams, *Trends in Forest Taxation*, 14 NAT'L TAX J. 113, 116 (1961). Even at the present time, "the property tax continues to apply to roughly 90 per cent of our private commercial timber stand and to virtually all of our private commercial forest land area." *Ibid.*

[101] See Wager, *Forest Taxation*, 10 N.C.L. REV. 255, 261-63 (1932); Note, *Timber Taxation in New Hampshire*, 16 ME. L. REV. 189, 190-92 (1964).

[102] *Ibid.*

[103] CAL. CONST. art. XIII, § 12¾; COLO. REV. STAT. ANN. § 137-1-17 (1953); CONN. GEN. STAT. REV. §§ 12-96 to -102 (1958); DEL. CODE ANN. tit. 7, § 3502 (1953); HAWAII REV. LAWS § 19-5 (Supp. 1963); ME. REV. STAT. ANN. ch. 91-A, § 10 (Supp.

tions on the granting of such exemptions vary widely from state to state. Generally, these exemptions are of a permanent nature, but some states limit the exemption to a certain number of years.[104] While a majority of these exemption statutes are mandatory, some states require an affirmative act on the part of the owner before granting the exemption.[105] Still other states impose the prerequisite that a certain number of trees must be planted per acre before the exemption becomes effective.[106]

Both the "limited number of years" exemption and a permanent exemption appear undesirable, but for different reasons. The objectionable nature of the former exemption arises from the fact that this exemption is generally applicable only during the timber's early growth period when the trees are of relatively little value. Because trees have a long growth period, by the time they are of any commercial value the exemption period has usually long since expired. Consequently, it seems that the value of a limited-term timber exemption as a measure to curb premature forest harvesting is at best minimal. On the other hand, the permanent exemption of timber, without a compensating tax, is unsatisfactory because potential revenue is permanently lost. Although the permanent exemption would undoubtedly encourage cutting trees only at maturity, this advantage appears to be countered by the seemingly inequitable result of timber's not bearing a share of the local property tax burden.

b. Partial Exemption

In order to avoid the objectionable aspects of total exemptions, several state legislatures have enacted some form of partial property tax exemption or modified property taxes.[107] In two states, Indiana and

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1963); N.J. ANN. STAT. § 54:4-3.28 (1960); N.Y. TAX LAW § 13; N.C. GEN. STAT. § 105-294 (1958); ORE. REV. STAT. § 321.300 (1963); R.I. GEN. LAWS ANN. § 44-3-8 (1956).

In addition to exemption laws, two other methods have been used to encourage forestry. Bounty laws provide for a small payment to a person who plants and cultivates trees. South Dakota is the only state having such a law at the present time, and the bounty is limited to $5 per acre, on not more than ten acres, for not more than a five-year period. S.D. CODE § 4.1301 (Supp. 1960). The other method employed is a rebate system whereby a partial abatement of taxes is provided for by statute. New Hampshire is the only state having such a provision at the present time. Under this law the rebate declines as the timber matures. N.H. REV. STAT. ANN. § 221.9 (1964).

[104] See, *e.g.*, COLO. REV. STAT. ANN. § 137-1-17 (1953) (30 years); ME. REV. STAT. ANN. ch. 91-A, § 10 (Supp. 1963) (20 years); R.I. GEN. LAWS ANN. § 44-3-8 (1956) (15 years).

[105] See Williams, *supra* note 100, at 121-22.

[106] See, *e.g.*, CONN. GEN. STAT. REV. § 12-98 (1958); ME. REV. STAT. ANN. ch. 91-A, § 10 (Supp. 1963); N.Y. TAX LAW § 13.

[107] See IND. ANN. STAT. § 32-303 (1949); IOWA CODE § 441.22 (1962); OHIO REV. CODE ANN. § 5713.23 (Page 1953); WASH. REV. CODE ANN. § 84.32.050 (1962); WIS. STAT. ANN. § 77.16 (1957).

Iowa,[108] certain timber land is assessed at a nominal figure. In another state, while the assessment basis is uniform, classified forest land is taxed at a lower per cent of the local tax rate than is other land.[109] The partial-exemption laws seem preferable to the total permanent exemption statutes because the former produce some revenue each year and at the same time should provide an incentive not to harvest premature timber. The partial exemption also seems to be superior to total exemptions which are limited to a number of years. Under the latter type of statute, upon expiration of the limited period the timber land is subject to what may be a substantial general property tax. However, under the modified property tax laws there are tax payments each year which are relatively low in comparison to the general real property tax.

2. Compensating Tax—Yield Tax

In order to encourage good forestry practices and insure that forest lands bear their tax burden, many states have enacted so-called "yield" taxes.[110] The yield tax is levied on the proceeds derived from harvested timber. This tax is not a supplement to a real property tax but is applied as a substitute for a real property tax on growing timber.[111] The real property tax on the land which nurtures the growing timber is usually retained.[112] The yield tax is advantageous not only because it tends to correlate tax payment with the income-producing event, but also because by postponing tax payment it encourages harvesting timber at its maturity. The principal disadvantage with a yield tax law is that the realization of tax revenues may vary with the rotation programs of the foresters and thus create a sporadic source of local income. As to the effectiveness of the yield taxes as a source of local revenue, one authority has critically noted: "A feast and famine fiscal policy is not suited to the needs of local government administration."[113] Although the yield tax may have disadvantageous effects on

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[108] IND. ANN. STAT. § 32-303 (1949) ($1 per acre); IOWA CODE § 441.22 (1962) ($4 per acre).

[109] OHIO REV. CODE ANN. § 5713.23 (Page 1953) (50% of local tax rate). Wisconsin permits timber tracts of less than forty acres to be taxed at twenty cents an acre. WIS. STAT. ANN. § 77.16 (1957). Washington has a unique provision which allows a deferred payment plan whereby a tax is levied, but the actual payment of the tax plus interest is deferred until some specified time in the future. WASH. REV. CODE ANN. § 84.32.050 (1962).

[110] See, *e.g.*, ALA. CODE tit. 8, §§ 189-201 (1958); MICH. COMP. LAWS § 320.305 (1948); ORE. REV. STAT. §§ 321.255-.355 (1961).

[111] See Williams, *supra* note 100, at 129-30. The yield tax is distinguishable from a severance tax which is levied in addition to the general property tax on timber. The severance tax is primarily a revenue-raising measure. At the present time six states have severance taxes, and while the tax itself does not encourage conservation of forest resources, the revenue from the tax is generally used to develop better forestry methods. Thus, this tax is of some benefit to timber owners. *Ibid.*

[112] See *id.* at 124.

[113] WEHRWEIN & BARLOWE, THE FOREST CROP LAW AND PRIVATE FOREST TAXATION IN WISCONSIN 30 (Wis. Conservation Dep't, Bull. No. 519, 1945).

local tax administration, these consequences seem to be outweighed by the maintenance of a revenue source and the encouragement of proper forest land use resulting from the tax.

3. *Constitutionality of Preferential Timber Taxes*

Having examined the present status of various attempts on the part of state legislatures to encourage forest conservation through tax concessions, consideration must be given to the constitutionality of these endeavors. Such a consideration naturally raises issues similar to those dealt with in the above consideration of exemptions for cropland. Thus, where state courts permit property exemptions only as specifically provided by their state constitutions or where the courts strictly interpret constitutional requirements of uniformity and equality to prohibit classification for property tax purposes, exempting timber from taxation would be unconstitutional.[114] Of course, as has been done in some states, the constitution may be amended to provide for special tax treatment of forests and forest lands.[115]

In those states which permit property tax exemptions other than those specifically enumerated in their constitutions, there seems to be little doubt that a tax exemption enacted for forests is permissible as a reasonable classification within the public interest.[116] The Supreme Court of Errors of Connecticut, in upholding such an exemption, stated: "Our woodlands protect sources of rivers and lesser streams. Upon our forests largely rests the beauty of our New England scenery. The lumbering industry of this state is one of vast importance to a locality whose forests have been rapidly disappearing."[117] Although none of the taxing methods yet devised for accomplishing the purpose of forest conservation is entirely satisfactory because it may reduce revenues or hamper local tax administration, in light of the strong

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[114] See Opinion of the Justices, 76 N.H. 609, 85 Atl. 757 (1913); Christley v. Butler County, 37 Pa. Super. 32 (1908).

[115] New Hampshire, for example, amended its constitution in 1942 and enacted the following provision: "For the purpose of encouraging conservation of the forest resources of the state, the general court may provide for special assessments, rates, and taxes of growing wood and timber." N.H. CONST. pt. 2, art. 5. For an analysis of the problem and its solution in New Hampshire, see Note, *Timber Taxation in New Hampshire, supra* note 101, at 196-99. Wisconsin amended its constitution in 1927 to allow classification of timber land. See SOLBERG, NEW LAWS FOR NEW FORESTS 103 (1961).

[116] In Opinion of the Justices, 99 N.H. 532, 114 A.2d 327 (1955), the court stated:

> It is generally recognized today that the encouragement of reforestation and forest conservation affects the public interest and the public welfare so that the General Court may enact legislation which will prevent the indiscriminate damage or destruction of the forests and water resources of the state even though this may involve some regulation and control over the private ownership of such property. *Id.* at 534, 114 A.2d at 328.

[117] Baker v. Town of West Hartford, 89 Conn. 394, 399, 94 Atl. 283, 284-85 (1915). This case held that an exemption of certain forest lands from taxation did not create a special privilege and was not against public policy. There were no state constitutional provisions relevant to the validity of the exemption statute in this case.

public policy in favor of such taxing programs, it seems desirable that growing timber should be either partially or totally exempt from the burden of real property taxation.

III. Conclusion

As evidenced from this survey, the current interest of the federal and numerous state governments in various aspects of agricultural land use has been reflected in their taxing statutes. Although it has not been the purpose of this Note to evaluate the advisability of using the taxing power to promote ancillary public policies, it seems reasonable to assume that the taxing power could be properly used as a part of an integrated plan to promote proper agricultural land use. Difficulties with and shortcomings of present attempts to achieve this end have been indicated. Unfortunately, because of the absence of necessary data, the amount or extent to which agricultural land use is actually affected by preferential tax treatment is very difficult, if not impossible, to ascertain. If further use is to be made of the taxing power to promote proper agricultural land use, it is recommended that studies be undertaken with the hope of determining whether present tax laws directed toward that goal actually accomplish the ends for which they were enacted.