

# Clean and Green

The Pennsylvania Farmland and Forest Land Assessment Act of 1974, better known as “Clean and Green” or Act 319,<sup>1</sup> provides a real estate tax benefit to owners who have land in “agricultural use,” “agricultural reserve,” or “forest reserve” and are enrolled in the “Clean and Green Program.” In essence, Clean and Green enables their land to be assessed according to its use rather than its prevailing market value.

Clean and Green defines the types of uses as follows:

**Agricultural Use.** Land that has been producing an agricultural commodity or has been devoted to a soil conservation program under an agreement with the Federal Government for at least three years preceding the application for preferential assessment, and is:

1. Comprised of 10 or more contiguous acres, including any woodlot; or
2. Has an anticipated yearly gross income of at least \$2,000 from the production of an agricultural commodity.<sup>2</sup>



Agricultural use land includes a woodlot and land that is rented to another person for the purpose of producing an agricultural commodity.<sup>3</sup>

**Agricultural Reserve.** Land that is comprised of 10 or more contiguous acres, including any woodlot,<sup>4</sup> and is noncommercial open space for outdoor recreation or enjoyment of scenic or natural beauty and is open to the public for such use, without charge or fee, on a nondiscriminatory basis.<sup>5</sup>

**Forest Reserve.** Land that is presently stocked with trees and comprised of 10 or more contiguous acres. Forest reserve land includes land that is rented to another person for the purpose of producing timber or other wood products.<sup>6</sup>

Act 319 applies to all counties in Pennsylvania. Each county assessor's office is responsible for administering the program within its jurisdiction.

<sup>1</sup> 72 P.S. § 5490.1 et seq. (“Pennsylvania Farmland and Forest Land Assessment Act of 1974” [Act 319 of 1974])

<sup>2</sup> 7 Pa. Code § 137b.12.

<sup>3</sup> 72 P.S. § 5490.2 (Act 319 of 1974, Section 2).

<sup>4</sup> 7 Pa. Code § 137b.13.

<sup>5</sup> 72 P.S. § 5490.2.

<sup>6</sup> 7 Pa. Code § 137b.14.

As the state agency responsible for drafting and promulgating regulations and uniformly implementing the act, the Pennsylvania Department of Agriculture, Bureau of Farmland Preservation, has developed the following series of questions and answers to better clarify the provisions of Clean and Green:<sup>7</sup>

### **What is Clean and Green?**

- ◆ Clean and Green is a preferential tax assessment program, whereby property taxes are based on use values rather than fair market values. This ordinarily results in a tax savings for landowners.
- ◆ The Pennsylvania state legislature enacted the program in 1974 as a tool to encourage protection of the Commonwealth's valuable farmland, forestland, and open spaces.
- ◆ Currently, over 7 million acres are enrolled statewide.

### **What are the eligibility requirements?**

- ◆ A property must be 10 acres in size, and in agricultural use, agricultural reserve, or forest reserve.
- ◆ Agricultural use applications may be less than 10 acres in size if the property is capable of generating at least \$2,000 annually in farm income.

### **How are use values determined?**

- ◆ The Department of Agriculture supplies county assessment offices with county-specific use values annually. The county has the option of implementing these values, or using lower values.
  - ◆ Agricultural use and agricultural reserve values are based upon the income approach for land appraisal. The formula takes into consideration the state crop profit margin percentage for corn production, an average value of crop receipts per acre by county, a Soil Index Factor, and an average capitalization rate.
  - ◆ Forest reserve values are based on the average value of timber in a particular county, or the average value of six timber types by county. The Pennsylvania Department of Conservation and Natural Resources calculates this value annually.

### **Can I remove my property from Clean and Green after it has been enrolled?**

- ◆ A landowner cannot voluntarily remove their land from Clean and Green without a land use change. When a land use change takes place, and rollback taxes have been paid, the landowner has the option of removing any portion of land that remains eligible, or the land that remains eligible will be re-enrolled.

### **What is the penalty for a change in use of land?**

- ◆ A landowner who breaches the covenant is subject to seven years of rollback taxes at 6 percent interest per year. The rollback tax is the difference between what was paid under Clean and Green versus what would have been paid had the property not been enrolled, plus 6 percent simple interest per year.

### **May I sell or divide my property without having to pay rollback taxes?**

- ◆ The Act allows for two types of divisions or conveyances: "Split-offs" and "Separations."
  - ◆ "Split-off" is a division, by conveyance or other action of the owner, of land into two or more tracts for use of constructing a residence. Generally, no more than 2 acres may be split-off

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<sup>7</sup> The Local Government Commission staff amended the series of questions and answers by adding and addressing the following question: "How does Act 235 of 2004 change the Clean and Green law?"

per year. Cumulative split-offs from subsequent years may never exceed the lesser of 10 acres or 10 percent of the total land originally enrolled. Rollback taxes would be due only with respect to the split-off land. If any land is split-off, the resulting parcels must meet the act's requirements to qualify for preferential assessment. Land taken out of the permitted use becomes subject to a rollback tax, imposed for up to seven years, and an interest penalty.

- ◆ “Separation” is a division, by conveyance or other action of the owner, of land into two or more tracts of land, which continue to be in agricultural use, agricultural reserve, or forest reserve. The tracts must generally be 10 acres in size and continue to meet the qualifications. No rollback taxes would be due.

### **May I build a home on my Clean and Green property?**

- ◆ The split-off provision provides for the construction of a residence on enrolled property.

### **May I conduct nonagricultural activities on my Clean and Green property?**

- ◆ The act allows for a “rural enterprise incidental to the operational unit.”<sup>8</sup> This is defined as a commercial enterprise or venture that is conducted on 2 acres or less of enrolled land and, when conducted, does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of enrolled land that is not subject to roll-back taxes. The 2 acres on which this enterprise is conducted would be removed from preferential assessment, and rollback taxes would be due with respect to those 2 acres.

### **Must I allow public access to my Clean and Green property?**

- ◆ Of the three categories—agricultural use, agricultural reserve, and forest reserve—the only category that needs to remain open to the public for passive recreational uses and free of charge on a nondiscriminatory basis is agricultural reserve. However, a landowner may place reasonable restrictions on this. For example, a landowner need not allow access after dark, or carrying of firearms, or motorized vehicles.

### **How does Act 235 of 2004 change the Clean and Green law?**

- ◆ Act 235 excludes farmstead land<sup>9</sup> (“base acre”) from receiving a preferential assessment when lands are enrolled as either agricultural reserve or forest reserve unless certain conditions are met.<sup>10</sup> Act 235 continues the preferential assessment for farmstead land located within an area enrolled as agricultural use. County commissioners may adopt an ordinance to continue the preferential assessment of farmstead land that is enrolled in agricultural or forest reserve. Act 235 reverses a previous amendment made to the Clean and Green law by Act 156 of 1998. Among other things, Act 156 extended preferential assessment to any farmstead land enrolled in Clean and Green, regardless of whether the land was enrolled as agricultural or forest reserve or agricultural use.<sup>11</sup>

<sup>8</sup> 72 P.S. § 5490.8(d) (Act 319 of 1974, Section 8(d)).

<sup>9</sup> “Farmstead land.’ Any curtilage and land situated under a residence, farm building, or other building that supports a residence, including a residential garage or workshop.” 72 P.S. § 5490.2 (Act 319 of 1974, Section 2).

<sup>10</sup> “Farmstead land located within an area enrolled as agricultural reserve or forest reserve will be assessed at agricultural use value if either: (i) a majority of land in the application for preferential assessment is enrolled as agricultural use land; or (ii) in the circumstance that noncontiguous tracts of land are enrolled under one application, a majority of land on the tract where the farmstead land is located is enrolled as agricultural use land.” 72 P.S. § 5490.4b(d)(2) (Act 319 of 1974, Section 4.2(d)(2)).

<sup>11</sup> The impact of this aspect of Act 156 apparently caused a significant reduction in the property tax bases in many rural taxing jurisdictions and also resulted in an increase of the so-called mini-estates.

- ◆ Act 235 also authorizes an owner of agricultural or forest reserve land to allow certain “recreational activities” or “agritainment activities” to take place on the land and still maintain eligibility for the preferential assessment.<sup>12</sup>

### How do I apply for Clean and Green?

- ◆ Please contact your county tax assessment office in order to obtain an application.

### When is the deadline to apply for Clean and Green?

- ◆ The deadline for submission of applications is June 1 of each year in order to be considered for the following tax year. This deadline may be extended to October 15 in the year of a reassessment.

### Must I re-apply annually for Clean and Green?

- ◆ Once enrolled, a landowner need not reapply. Landowners must, however, notify their county tax assessment office of any changes to the status of their enrolled land.

For further information on Clean and Green, contact your local county tax assessment office. For more general information, you may also contact the Pennsylvania Department of Agriculture, Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408, (717) 783-3167.

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<sup>12</sup> The Clean and Green law defines “agritainment” and “recreational activity” as follows:

“Agritainment.” Farm-related tourism or farm-related entertainment activities, which are permitted or authorized by a landowner in return for a fee on agricultural land for recreational or educational purposes. The term includes, but is not limited to, corn mazes, hay mazes, farm tours and hay rides. The term does not include activities authorized under section 8(d) [relating to nonagricultural activities].

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“Recreational activity.” Includes, but is not limited to:

- (1) Hunting.
- (2) Fishing.
- (3) Swimming.
- (4) Access for boating.
- (5) Animal riding.
- (6) Camping.
- (7) Picnicking.
- (8) Hiking.
- (9) Agritainment activities.
- (10) Operation of nonmotorized vehicles.
- (11) Viewing or exploring a site for aesthetic or historical benefit or for entertainment.
- (12) Operation of motorized vehicles if the operation is:
  - (i) over an existing lane and incidental to an activity described in paragraphs (1) through (10); or
  - (ii) necessary to remove an animal which has been hunted under paragraph (1).

72 P.S. § 5490.2 (Act 319 of 1974, Section 2).