ACKNOWLEDGEMENTS

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Answers to Frequently Asked Questions about Agricultural Preferential Assessment, Current Use Valuation, and Timber Taxation

May 1995

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INTRODUCTION

Presently in Georgia there are over 40,000 Current Use Valuation and Agricultural Preferential Assessment covenants in use by agricultural and forestry landowners. These landowners earn almost $19,000,000 annually in property tax benefits from these two property tax programs as an alternative to fair market value (FMV). Each year in Georgia thousands more qualified landowners enter covenant agreements with their county governments for Agricultural Preferential Assessment and Current Use Valuation. Tens-of-thousands of Georgia landowners pay county ad valorem taxes that total over $13,000,000 annually on timber harvested or sold for harvest.

This publication contains a listing of questions and answers collected over the past several years dealing with these ad valorem tax issues. A careful reading of these contents will foster a better understanding among taxpayers and elected officials of how these property tax programs work.

AGRICULTURAL PREFERENTIAL ASSESSMENT AND CURRENT USE VALUATION

Which is better for me as a Georgia landowner: fair market value (FMV), Agricultural Preferential Assessment, or Current Use Valuation of my land?

It really depends on your planned use for the land over the life of the 10 year covenant (legal agreement) you would enter with the county. For qualified landowners planning to continue the land use in agricultural or forest production, either program can earn tax benefits and serve as an incentive for continued agricultural and forest production. Agricultural Preferential Assessment generally provides a 25 percent tax advantage over fair market value (FMV) all across Georgia.

Current Use Valuation can offer significant savings, in some cases greater than 50 percent from FMV in North Georgia. Current Use Valuation and FMV come closer together in South Georgia. Thus, there may be smaller tax advantages for Current Use Valuation in some South Georgia counties compared to Agricultural Preferential Assessment.

Alternatively, to maintain greater flexibility over the use of your land, accept FMV as a basis for your ad valorem taxes. Check with your county tax assessor to get exact figures for tax benefits under either program.

Why should I be interested in Agricultural Preferential Assessment for ad valorem taxation?

All land owners in Georgia who qualify for Agricultural Preferential Assessment are entitled to have their property valued for assessment at 75 percent of FMV for ad valorem taxation. In most cases, a 25 percent tax savings will be realized with Agricultural Preferential Assessment. However, Agricultural Preferential Assessment values change as fast as FMV changes and offer no degree of certainty on the property tax burden.

Why should I be interested in Current Use Valuation for ad valorem taxation?

All land owners in Georgia who qualify for Current Use Valuation are entitled to have their land valued according to its current use (agriculture, forestry, or environmentally sensitive) instead of FMV for ad valorem taxation. In North Georgia counties, Current Use Valuation can reap large tax benefits. In some South Georgia areas, Current Use Valuation is closer to FMV. An additional benefit of Current Use Valuation is that value changes are limited to +/- 3 percent per year and a total +/- 34.39 percent over the life of the 10 year covenant.

Who is eligible for Agricultural Preferential Assessment and/or Current Use Valuation?

U.S. citizens (natural or naturalized) and family farm corporations with at least 80 percent of corporate income from farming, who own qualified land in Georgia are eligible to apply for these assessments. Non-profit conservation organizations, estates, and trusts may also be eligible.

How do I sign up for Agricultural Preferential Assessment and/or Current Use Valuation?

Sign up forms and details are available at your county tax assessor's office. You enter a 10 year covenant with the county whereby you agree to continue your property in agricultural or forestry production.

When I sign-up for either an Agricultural Preferential or a Current Use covenant, is it in some way recorded with the deed to my land?

At present there is no state-wide mechanism in use to record these covenants with the deed to your property in the county courthouse. Perhaps, over time this need will be recognized and provided for. Otherwise, persons purchasing land in Georgia can examine the county tax digest to determine if property is in a covenant.

What are the Conservation Uses for Current Use Valuation?

Conservation Uses required for Current Use Valuation are good faith agricultural/forest production, and environmentally sensitive land including: "raising, harvesting or storing crops; feeding, breeding or managing livestock or poultry; producing plants, trees, fowl or animals; or the production of aquaculture, horticulture, floriculture, forestry, dairy, livestock, poultry and apiarian products".

What is the time frame for sign-up for Agricultural Preferential Assessment or Current Use Valuation of my land?

The earliest anyone may sign up for Agricultural Preferential and Current Use is January 1 of each year. The length of the regular sign up period varies by county from March 1 to April 1. It is April 1 in most counties. So, check with your county tax assessor's office. In addition, landowners may apply for covenants during any property tax appeal following reassessment.

How much land can I enter into Agricultural Preferential or Conservation Use covenants?

Up to 2,000 acres in Georgia can be entered in Conservation Use covenants. At the same time, up to 2,000 <u>other</u> acres in Georgia may be entered into Agricultural Preferential Assessment. Presently, there appears to be no minimum acreage for Current Use Valuation. But, landowners with less than 10 acres must give additional proof that they really farm. In addition, Georgia law prohibits family farm corporations owning more than 3,000 acres in Georgia from entering <u>any</u> Current Use covenant.

What happens if I am presently enrolled in a Current Use covenant, own less than 3,000 acres in Georgia, but plan to purchase additional land in Georgia that would raise my total owned above 3,000 acres?

The 3,000 acre owned acres limit applies only to family farm corporations. The best guess is that these type owners would be allowed to keep the present covenants without a breach. However, they probably would not be permitted to enter land in additional covenants once family farm corporation ownership exceeds 3,000 acres. Consult your tax advisor or attorney.

How many Current Use covenants can I have? Does all of my land have to be in the same county?

You may have a separate covenant for each legally definable tract of land you own. No one covenant can cross county lines or state boundaries. Separate covenants can be held in separate Georgia counties. Tract means a parcel of property with boundaries designated by tax assessors to facilitate proper identification of the property on their maps and records. So, for your particular situation find out what the tax assessor requires for tract definition.

What do I need to take to the county tax assessor's office to sign up for the Current Use covenant?

You need evidence of legal ownership of the property. Also, identification of your property on Soil Conservation Service soil survey maps is desirable. Then, the intended conservation use of the property must be listed, i.e. agriculture, forestry, or environmentally sensitive. You should also be prepared to provide supporting data to give evidence of the property's past use.

What if I want to change between Agricultural Preferential Assessment and Current Use Valuation?

There is no apparent time limit set by Georgia law on when you can change from an existing Agricultural Preferential covenant to a Current Use covenant. However, you can change from Preferential Assessment to Conservation Use, for a particular covenant, only once. You cannot change from an existing Current Use covenant to a new Agricultural Preferential Assessment covenant except at the end of the Current Use agreement.

What happens if I want to get out of the Current Use covenant before the 10 year period is up?

You are bound by a legal agreement with your county for the duration of the 10 year covenant to maintain the Conservation Use. There are three conditions under which you can end a covenant without penalty. First, if you die during the covenant period, the covenant ends. If you become

medically unable to continue the land in its qualifying use, the covenant ends. Finally, if your land is taken from you through foreclosure or condemnation, the covenant ends. Otherwise, to get out of the covenant early you must pay a tax penalty equal to twice the tax benefit enjoyed to date plus interest.

What are the penalties for breach of the Agricultural Preferential and Current Use covenants? Who pays the penalties?

Penalties for the Agricultural Preferential covenant are assessed as the tax benefits enjoyed during only the year of the breach, times a factor of: 5 if breached during the 1st or 2nd year, 4 if breached during the 3rd or 4th year, 3 if breached during the 5th or 6th year, or 2 if breached during the 7th, 8th, 9th, or 10th year. The land owner in the original covenant pays the penalty.

Breaching a Conservation Use covenant results in a penalty that applies to the entire tract under the original covenant, even if the breach occurred on only a small area under covenant. The penalty paid by the original covenant holder will be an amount equal to twice the property tax savings incurred from the year the covenant was entered until it was breached, plus interest.

In the event that a portion of the land under a Conservation Use covenant is sold to a qualifying landowner, who later breaks the covenant, penalties also apply to the entire tract under the original covenant. Under this condition, there will be a pro-rata assessment of the penalty against each of the parties of the covenant in proportion to the tax benefit enjoyed. This means that the original covenant holder will pay a fine based on the tax benefits enjoyed for all the acres from beginning of the covenant up to the time of sale of land and of the breach. The subsequent covenant holder would pay a fine based on the tax benefits enjoyed from the time of covenant land purchase up to the time of the covenant breach. Please note that the penalty plus interest constitutes a lien against the property.

Can I change agricultural/forestry uses of the Current Use covenant land during the 10 year covenant period?

Yes. You can change among good faith production of agriculture or forestry crops provided that you notify the county tax assessor in writing of the intended use change. Failure to notify constitutes a breach of the covenant with penalties as described above. You can only change to the

third Conservation Use, environmentally sensitive, by filing a new covenant application with your county.

Can I sell land that has a Current Use covenant?

Yes. But, to avoid a penalty, as described above, the buyer must continue the terms of the original covenant and enter a new Current Use covenant for the land purchased. The sign-up period for the new owner is during the next year's regular sign-up period, January 1 - April 1 for most counties. The landowner under the original covenant remains in that covenant, unless all land under that covenant was sold. But the original covenant holder still remains legally responsible for any penalty assessed against benefits earned before the sale.

When selling land under covenant, it may be wise to have your attorney include language with the property deed requiring the new owner to continue land use under provisions of the original covenant.

What happens if my spouse and I jointly own property entered in a Current Use covenant and we divorce during the covenant period with one of us gaining the deed to the property?

Department of Revenue regulations state that when there is a change in ownership of property receiving current use assessment, the new owner must apply for a continuation of the current use assessment. This application must be made on or before the deadline for filing county ad valorem tax returns in the year following the year in which the transfer occurred. If the application is not made by the deadline, the board of assessors may consider that there has been a breach of the original covenant. The board of assessors shall send both the transferor and the transferee a notice of the board's intent to assess a penalty for the breach of the covenant.

The notice shall be entitled "Notice of Intent to Assess Penalty for Breach of a Conservation Use Covenant" and shall set forth the following information:

a) the requirement of the new owner of the property currently receiving current use assessment to apply for a continuation of the current use assessment within 15 days of the date of postmark of the notice;

b) the requirement of the new owner of the property currently receiving current use assessment to continuously devote the property to an applicable bona fide qualifying use for the duration of the covenant;
c) the change to the assessment if the covenant is breached; and,
d) the amount of the penalty if the covenant is breached.

In the event of divorce, the original parties to the covenant remain liable for any breach of the covenant. Responsibility for penalties due to a covenant breach should be specified in divorce decrees, contracts, etc.

What is the status of my house and yard if I am currently enrolled in an Agricultural Preferential or Current Use covenant and also live on the property?

For Agricultural Preferential covenants, the home and up to 5 acres surrounding the house are excluded from the covenant. Therefore, the house and up to 5 acres of contiguous land are valued according to FMV and face no covenant restrictions. Furthermore, the value of the house and lot can fluctuate annually with FMV.

With Current Use Valuation, Georgia law states that the land underlying the house is part of the covenant and is valued according to the Current Use table of values. The house in which you live is also part of the covenant, but is valued according to FMV. More importantly, total value changes under a Current Use covenant (~~including~~ excluding the house) are limited to +/- 3 percent per year up to +/-34.39 percent over the 10 year life of the covenant.

Can I sell my house and yard that is located on Agricultural Preferential or Current Use covenant land, or rent it out, without breaking my covenant agreement, even when the remaining land stays in the qualifying use?

Agricultural Preferential assessment does not apply to a residence and lot located on the agricultural or forest property. Therefore, it appears that the house and yard may be considered separately from the Agricultural Preferential covenant. Renting the residence does not appear to violate the covenant if use of the remaining land is not affected. However, be sure to check with your county tax assessor <u>before</u> making any changes in ownership, or renting, of the house and yard.

Current Use valuation does not apply to a residence but does apply to the lot on which the house is located on the agricultural or forest property under covenant. Therefore, it appears that the house and yard may not be considered for sale separately from the Conservation Use covenant. Renting the residence does not appear to violate the covenant if use of the remaining land is not affected. However, be sure to check with your county tax assessor before making any changes in ownership, or renting, of the house and yard.

Are there any special cases where Agricultural Preferential Assessment may be a better deal for me than Current Use Valuation?

Yes, there are at least two. First, in some South Georgia counties Current Use values and FMV are relatively close together. This is because much land in South Georgia is already in its highest and best use in the current market, agriculture and forestry. In these situations Agricultural Preferential Assessment, with a 25 percent tax break over FMV, may be better for you than Current Use valuation. Check with your county tax assessor on the exact figures.

Another special case where Agricultural Preferential Assessment could be a better tax break for you than Current Use valuation is where there are relatively few acres in a tract but a large value in buildings. An example of these conditions could be poultry houses built on a few acres. With Current Use Valuation the land under the poultry houses would be valued according to its Current Use, agriculture. However, under the covenant the poultry houses would be valued according to FMV. Then, the allowable change in total value under covenant, land plus buildings, etc. (not items individually) would be limited to +/- 3 percent per year, or +/- 34.39 percent over the 10 year life of the covenant. If the poultry houses are relatively new you may want to set up an annual depreciation schedule over their useful life for property tax purposes. This schedule of building value changes will likely be in excess of the 3 percent allowed annually by Current Use Valuation. With the poultry houses valued according to FMV and with annual value changes limited to +/- 3 percent under Current Use Valuation, and only a few acres to benefit from the lower values of Current Use Valuation, you may face a relative disadvantage compared to Agricultural Preferential Assessment.

Consider the above example using Agricultural Preferential Assessment. Agricultural Preferential Assessment for the example of land and poultry

houses would be as follows: The Agricultural Preferential value would be 75 percent of FMV for all the land and for the first $100,000 value of buildings, and 100 percent of FMV for any building value in excess of $100,000. There is no covenant-imposed limit on how fast you can depreciate the buildings for ad valorem tax purposes with Agricultural Preferential Assessment. Therefore, Agricultural Preferential Assessment could be better for you in this example. Remember also, with Agricultural Preferential Assessment there is no limit on how fast FMV can increase. Be sure to check with your county tax assessor to determine the best ad valorem tax method for your particular case.

Note, both examples above show the importance of keeping up each year with the FMV of your property, even when enrolled in an alternative valuation covenant. If you have reasons to believe the FMV of your property is not uniform or contains errors, ask your county tax assessor to explain your rights under Georgia law to appeal those values. Also, ask the tax assessor to explain the appeal process to you. Note the references and related publications listed at the end of this bulletin.

Can I lease or rent my covenant land out for hunting, pine straw harvest, agricultural or tree crop production, or other qualifying uses without penalty?

Yes, these rights are specifically spelled out in the law. However, the person with whom you lease or rent land must otherwise qualify for the program.

The law for Current Use Valuation says something about at least 50 percent of the property has to be in the qualifying use. What does this mean about the other one-half of the property? Can smaller portions be in other uses as long as at least 50 percent is maintained in the qualifying use?

The law states that no other type business may be operated on the unused portion. In addition, the unused portion must be minimally managed to prevent significant erosion or other environmental problems. If you have questions about your specific case, check with your county tax assessor before you change use on any portions of your covenant lands.

Can members of my family build a home and live on Current Use covenant land?

Yes. Any family member, who is kin to the original covenant holder, at least to the forth degree of civil reckoning, can build a home and live on land (up to 5 acres) enrolled in a Current Use covenant, without penalty during the life of the original covenant. The forth degree of civil reckoning is defined as: brother/sister, father/mother, grand father/grand mother, son/daughter, grand son/grand daughter. After transfer of covenant property to the family member, the home must be built and occupied by the family member within one year and remain so for the duration of the original covenant.

What happens if the original covenant holder dies during the life of the covenant or cannot carry out the requirements of the covenant?

If the original covenant holder dies before the Current Use covenant or the Agricultural Preferential covenant expires, the agreement is nullified. Also, when a public body (government) acquires the land through eminent domain, the covenant is canceled. If the covenant is breached because of foreclosure or medically documented illness, the covenant is breached. But, only the property tax savings incurred in that particular year will be forfeited.

What do I do if I want to enter my land in a Current Use covenant but feel that I may want to develop some of the land before the 10 years is up?

The best approach would be to enroll only land that you intend to keep in the qualifying uses for the life of the covenant. This means to create a new legal description for separate tracts.

How much is my land worth under a Current Use covenant? Who decides what it is worth? How is a particular piece of land given a value?

Current Use land value is based on its use, location and soil productivity. Annually the Georgia Department of Revenue publishes a table of values for all Conservation Use land in Georgia. The table of values is available from your county tax assessor's office, your University of Georgia Cooperative Extension Service County Office, the Georgia Forestry Association, the Georgia Farm Bureau Federation, and the Georgia Forestry Commission.

Sixty-five percent of the value is derived from an income capitalization formula and the remaining thirty-five percent of value is derived from a market study carried out by the Georgia Department of Revenue.

What do I do if I am turned down for a Current Use covenant?

You may appeal in the same manner, according to the same time requirements and decision processes, that other ad valorem tax assessment appeals are made. (See list of related publications at the end of this bulletin:)

While my land is in a Current Use covenant, how do I keep up with its fair market value (FMV)?

The county tax assessor will continue to notify the tax payer of any changes to the FMV of the covenanted property. Remember, the difference between FMV and Current Use value is the basis for calculating any penalty. So, pay careful attention each year to the FMV of your land, even while in a protective covenant.

How does the value of my land under the Current Use covenant change: per year, per 10 years?

Current Use values for land entered in 1992 cannot change more than +/- 4 percent a year or more than +/- 25 percent over the life of the covenant. Current Use values for land entered after 1992 cannot change more than +/- 3 percent a year or more than +/- 34.39 percent over the life of the covenant. But remember, your land will be taxed according to FMV at the end of the covenant unless you renew the covenant.

What is residential transitional property? How do I know if I have some? What is it worth?

It is an owner occupied single family residence and up to five acres of contiguous land in an area that is changing rapidly from residential to a more commercial or industrial use. The value of residential transitional property is determined by the county board of tax assessors by the consideration, as applicable, of the current use of the property, its annual productivity and sales data of comparable real property with and for the

same existing use. A qualified applicant enters a 10 year covenant with the county to keep the property in residential use.

What is environmentally sensitive property? How do I find out if I have some? What are the advantages/disadvantages of having land classified as environmentally sensitive? How is it valued?

It is mountain lands, wetlands, ground water recharge areas, undeveloped barrier islands, habitats of endangered species and river corridors. The landowner must submit a certification by the Department of Natural Resources that the specific property is environmentally sensitive. It is valued according to the Conservation Use group of agricultural or forest land that it most nearly resembles. Classifying land as environmentally sensitive and entering a Current Use covenant provides a tax break for maintaining that land in its natural condition. However, there are tax penalties if the natural condition is not maintained.

TIMBER TAXATION

What is this timber harvest tax I have been hearing about?

Starting on January 1, 1992, standing timber will be assessed only once for ad valorem tax purposes upon its sale or harvest if there was no sale. Timber will not be assessed annually as in the past. However, land used for growing timber will continue to be subject to annual ad valorem taxation. The new timber tax is computed by multiplying 100% of the timber's fair market value (sales price) times the applicable millage rate for each taxing jurisdiction.

What kind of timber is taxed?

All standing timber (stumpage) is taxable when sold or harvested for processing into softwood and hardwood pulpwood, chip-and-saw logs, sawtimber, poles, posts and fuel wood. The raw forest products themselves (e.g., sawlogs) are not taxable, only the standing timber. Other items that are nontaxable under this law include orchard trees, ornamental or Christmas trees; straw, cones, leaves or turpentine; bark or stumps not

included in the sales price; and fuel wood harvested by the owner for his own use. Also, a simultaneous sale of land and timber is not taxable.

Who pays the tax?

Generally, the landowner/seller is responsible for paying the tax. Thus, this property tax is deductible on Federal Income Tax returns.

How is the tax collected on lump sum sales?

The tax is computed by multiplying the lump sum sales price times the county millage rate. It is figured mutually by the seller and purchaser. At the closing of the sale, the seller will remit to the purchaser a check, made out to the local tax commissioner, for the amount of taxes due. The purchaser must then remit the tax and form PT-283T to the local county tax commissioner within 5 business days. The purchaser must also give the Board of Tax Assessors a copy of the PT-283T. Purchaser's failure "to make such remittance" from the seller will result in the purchaser being held personally liable for the tax. The local county tax commissioner will mail the seller a receipt showing that the tax has been paid. Purchasers cannot record a timber deed on the sale without an attached certificate from the tax commissioner showing that the taxes have been paid.

How is the tax collected on unit price (per cord, per MBF, etc.) sales?

The tax on unit price sales is paid quarterly as the timber is harvested, rather than at the time of sale. Within 45 days after the end of the calendar quarter of harvest, the purchaser must notify via PT-283T both the seller and the local county Board of Tax Assessors of the volume of timber cut that quarter and the total dollar value paid for the timber cut. To confirm the harvest, the seller must provide the local county Board of Tax Assessors with a signed copy of the same PT-283T report. The seller must do this within 60 days of the end of the quarter. The local county tax collector will then bill the seller for the taxes due. The tax is computed by multiplying the total dollar value paid in that quarter times the millage rate. The taxes are payable by the seller within 30 days of the receipt of the bill.

How is the tax collected when the owner harvests timber from his own lands rather than selling it on the open market?

Until January 1, 1996 the owner who harvests his own timber is required to file form PT-283T quarterly to the Board of Tax Assessors in each county from which timber was harvested. Reports are due within 45 days of the end of the calendar quarter and shall contain the volume of timber harvested by product class (softwood pulpwood, softwood chip-n-saw, etc). The tax is computed by the local county Board of Tax Assessors who will multiply the volume of each product class times an average price per product class unit ($/cord, $/MBF, etc.) as supplied by the Department of Revenue. The total value of all product classes will then be multiplied by the millage rate to determine the tax. The local county tax commissioner will then bill the owner for the tax in that quarter. The owner has 30 days from receipt of the bill to pay the tax.

Beginning January 1, 1996 owners harvesting their own timber will use the annual millage rate used for the previous year in the county rather than the millage rate at harvest. Also, the assessor will supply the owner harvester with an annual table of harvest values rather than quarterly values. In addition, the owner harvester shall pay the harvest tax within 45 days of the end of the quarter when harvest occurred when submitting the PT-283T form to the county assessor's office.

What will be the source of the price information used in computing tax liability on owner harvested timber?

The Department of Revenue is charged with preparing a table of standing timber values (unit prices). In preparing this table the DOR may consider three sources of information: commercially available reports, information prepared by the Georgia Forestry Commission and reports received by the DOR. Form PT-283TQ supplied to the DOR by timber purchasers on a quarterly basis will be an important source of price information. The local board of tax assessors will use the most recent price table to determine the fair market value of owner harvested timber.

How is the tax collected when the sale or harvest cannot be readily classified as a lump sum sale, a unit price sale or an owner harvest?

Every sale and every harvest of standing timber is a taxable event. When the classification is unclear, the sale or harvest shall be reported and taxed under whichever of the three methods is most nearly applicable.

How long do I have to harvest timber after the sale?

Timber must be harvested within three years after the date of the sale or it will be assessed a second time following its future harvest or sale. In the event it is later harvested by the original purchaser, it will be taxed as an owner harvest. If it is resold by the seller, it will be taxed accordingly as a lump sum or unit price sale.

Is the timber harvest tax paid on the total lump sum sale price or on the sale price minus marketing expenses?

The tax is paid on 100% of the fair market value of standing timber. Thus, it is computed on the total sale price. No deductions are allowed for consulting fees, advertising, etc.

My property is inside the city limits. Do I have to include the city's component of the millage rate in computing the timber harvest tax?

Yes. The applicable millage rate is the total of <u>all</u> the local taxing jurisdictions including county, municipality and board of education.

Are timber values included in the land assessment?

No. Timber is only assessed once at sale or harvest. Timber values are not to be included in the land assessment. To ensure that timber is excluded from annual assessment, some tax practitioners advocate that the landowner file a return with the local county Board of Tax Assessors as to the bare land value of his woodlands.

Who pays the timber harvest tax on lump sum sales made before January 1, 1992?

Where timber has been acquired prior to January 1, 1992, the harvest of such timber shall be a taxable event and shall be treated as an owner harvest unless it has been previously taxed in which case there is no tax liability. However, the reporting requirement and payment of taxes is the responsibility of the owner of the standing timber instead of the underlying landowner. The lump sum sale could have been made on December 31, 1991, or July 4, 1988, there is no difference; the timber is taxable at harvest in either case.

I intend to sell my timber on a per unit basis with a large advance payment on the sale. Will this be handled as a lump sum sale, unit price sale or combination of the two?

This will be handled as a unit price sale with quarterly filing and payment of taxes as cutting progresses. If the advance payment is a large percentage of the total anticipated sales revenue, it may be advisable to set aside sufficient monies from the advance to make the quarterly tax payments.

My tax consultant has suggested that I split the payment for a timber sale between two years for Federal tax purposes. Do I pay the ad valorem tax up front on the whole amount or can I pay the tax as I receive future payment(s)?

The ad valorem tax will be due on the entire amount when the sale is final. The future payments can be thought of as a "loan" to the purchaser. To split the ad valorem tax between two years would require that two separate sales be made.

How confidential are these PT-283T and PT-283TQ reports? I don't want everybody to know my business.

Form PT-283T states that "Reports to the local county authorities shall be confidential, shall not be revealed to any person other than authorized officials and shall be exempt from disclosure under Article 4 of Chapter 18 of Title 50." PT-283TQ goes directly to the Revenue Commissioner in Atlanta and is confidential under O.C.G.A. Section 48-2-15.

RESOURCES

Association County Commissioners of Georgia, John Keys, Fiscal Policy Analyst, 50 Hurt Plaza, SE # 1000, Atlanta, Georgia 30303, Tel. 404/522-5022, FAX 404/525-2477.

Cooperative Extension Service, the University of Georgia, Coleman Dangerfield Jr., Extension Agricultural Economics, Coliseum, Athens, Georgia 30602, Tel. 706/542-7602, FAX 706/542-3342.

Georgia Association of Assessing Officials, James R. Davis, Chairman Macon/Bibb County Assessors, Room 300 - 439 Cotton Avenue, Southern Trust Building, Macon, Georgia 31201, Tel. 912/742-2254, FAX 912/742-2839.

Georgia Department of Revenue, Larry M. Griggers, Director, Property Tax. Division, 405 Trinity-Washington Building, Atlanta, Georgia 30334, Tel. 404/656-4240, FAX 404/651-8689.

Georgia Farm Bureau Federation, Robert Ray Jr., Legislative Director, P.O. Box 7068, 1620 Bass Road at I-75, Macon, Georgia 31298, Tel. 1-800-342-1192, FAX 912/474-8750.

Georgia Forestry Association, Bob Izlar, Executive Director, 500 Pinnacle Court, Suite 505, Norcross, Georgia 30071-3634, Tel. 404/416-7621, FAX 404/840-8961.

Georgia Forestry Commission, Kevin Johnson, Box 819, Macon, Georgia 31298-4599, Tel. 1-800-GA-TREES or 912/751-3480, Fax 912/751-3465.

Georgia House of Representatives, Monnie Sellars, Research Analyst, Ways and Means Committee, Room 133, State Capitol, Atlanta, Georgia 30034, Tel. 404/656-5103, FAX 404/657-8277.

Official Code of Georgia Annotated (O.C.G.A.) and Georgia Laws can be best accessed through your local library or county courthouse law library. O.C.G.A. is now available on CD-ROM.

RELATED PUBLICATIONS

TAX INCENTIVES FOR THE GEORGIA LANDOWNER, University of Georgia Cooperative Extension Service, Bulletin 1089, Athens, May 1993.

FUNDAMENTALS OF APPEALING PROPERTY TAXES, University of Georgia Cooperative Extension Service, Extension Agricultural Economics, Bulletin AG.ECON.94-033, May 1994.

HOW AGRICULTURAL AND FORESTRY PROPERTY AND IMPROVEMENTS ARE VALUED FOR COUNTY AD VALOREM TAXES IN GEORGIA, University of Georgia Cooperative Extension Service, Extension Agricultural Economics, Bulletin AG.ECON.92-026R, Revised July 1994.

"GEORGIA CONSERVATION USE TABLES OF VALUES FOR 1995," FOREST RESOURCE NOTES, No. 73, University of Georgia Cooperative Extension Service, Extension Forest Resources, January 1995.

COUNTY AD VALOREM TAXES AFFECTING AGRICULTURE AND FORESTRY: HISTORY, TRENDS, LEGISLATION, AND RELATED ISSUES IN GEORGIA, University of Georgia Cooperative Extension Service, Extension Agricultural Economics, Bulletin AG.ECON.95-039, May 1995.

O.C.G.A. § 48-5-7.4 (Copy w/ Cite) Pages: **13**

O.C.G.A. § 48-5-7.4

*** Current Through the 2012 Regular Session ***

TITLE 48. REVENUE AND TAXATION
CHAPTER 5. AD VALOREM TAXATION OF PROPERTY
ARTICLE 1. GENERAL PROVISIONS

O.C.G.A. § 48-5-7.4 (2012)

§ 48-5-7.4. Bona fide conservation use property; residential transitional property; application procedures; penalties for breach of covenant; classification on tax digest; annual report

(a) For purposes of this article, the term "bona fide conservation use property" means property described in and meeting the requirements of paragraph (1) or (2) of this subsection, as follows:

(1) Not more than 2,000 acres of tangible real property of a single person, the primary purpose of which is any good faith production, including but not limited to subsistence farming or commercial production, from or on the land of agricultural products or timber, subject to the following qualifications:

(A) Such property includes the value of tangible property permanently affixed to the real property which is directly connected to such owner's production of agricultural products or timber and which is devoted to the storage and processing of such agricultural products or timber from or on such real property;

(A.1) In the application of the limitation contained in the introductory language of this paragraph, the following rules shall apply to determine beneficial interests in bona fide conservation use property held in a family owned farm entity as described in division (1)(C)(iv) of this subsection:

(I) A person who owns an interest in a family owned farm entity as described in division (1)(C)(iv) of this subsection shall be considered to own only the percent of the bona fide conservation use property held by such family owned farm entity that is equal to the percent interest owned by such person in such family owned farm entity; and

(II) A person who owns an interest in a family owned farm entity as described in division (1)(C)(iv) of this subsection may elect to allocate the lesser of any unused portion of such person's 2,000 acre limitation or the product of such person's percent interest in the family owned farm entity times the total number of acres owned by the family owned farm entity subject to such bona fide conservation use assessment, with the result that the family owned farm entity may receive bona fide conservation use assessment on more than 2,000 acres;

(B) Such property excludes the entire value of any residence and its underlying property; as used in this subparagraph, the term "underlying property" means the minimum lot size

required for residential construction by local zoning ordinances or two acres, whichever is less. This provision for excluding the underlying property of a residence from eligibility in the conservation use covenant shall only apply to property that is first made subject to a covenant or is subject to the renewal of a previous covenant on or after May 1, 2012;

(C) Except as otherwise provided in division (vii) of this subparagraph, such property must be owned by:

(i) One or more natural or naturalized citizens;

(ii) An estate of which the devisees or heirs are one or more natural or naturalized citizens;

(iii) A trust of which the beneficiaries are one or more natural or naturalized citizens;

(iv) A family owned farm entity, such as a family corporation, a family partnership, a family general partnership, a family limited partnership, a family limited corporation, or a family limited liability company, all of the interest of which is owned by one or more natural or naturalized citizens related to each other by blood or marriage within the fourth degree of civil reckoning, except that, solely with respect to a family limited partnership, a corporation, limited partnership, limited corporation, or limited liability company may serve as a general partner of the family limited partnership and hold no more than a 5 percent interest in such family limited partnership, an estate of which the devisees or heirs are one or more natural or naturalized citizens, or a trust of which the beneficiaries are one or more natural or naturalized citizens and which family owned farm entity derived 80 percent or more of its gross income from bona fide conservation uses, including earnings on investments directly related to past or future bona fide conservation uses, within this state within the year immediately preceding the year in which eligibility is sought; provided, however, that in the case of a newly formed family farm entity, an estimate of the income of such entity may be used to determine its eligibility;

(v) A bona fide nonprofit conservation organization designated under Section 501(c)(3) of the Internal Revenue Code;

(vi) A bona fide club organized for pleasure, recreation, and other nonprofitable purposes pursuant to Section 501(c)(7) of the Internal Revenue Code; or

(vii) In the case of constructed storm-water wetlands, any person may own such property;

(D) Factors which may be considered in determining if such property is qualified may include, but not be limited to:

(i) The nature of the terrain;

(ii) The density of the marketable product on the land;

(iii) The past usage of the land;

(iv) The economic merchantability of the agricultural product; and

(v) The utilization or nonutilization of recognized care, cultivation, harvesting, and like practices applicable to the product involved and any implemented plans thereof; and

(E) Such property shall, if otherwise qualified, include, but not be limited to, property used for:

(i) Raising, harvesting, or storing crops;

(II) Feeding, breeding, or managing livestock or poultry;

(III) Producing plants, trees, fowl, or animals, including without limitation the production of fish or wildlife by maintaining not less than ten acres of wildlife habitat either in its natural state or under management, which shall be deemed a type of agriculture; provided, however, that no form of commercial fishing or fish production shall be considered a type of agriculture; or

(IV) Production of aquaculture, horticulture, floriculture, forestry, dairy, livestock, poultry, and apiarian products; or

(2) Not more than 2,000 acres of tangible real property, excluding the value of any improvements thereon, of a single owner of the types of environmentally sensitive property specified in this paragraph and certified as such by the Department of Natural Resources, if the primary use of such property is its maintenance in its natural condition or controlling or abating pollution of surface or ground waters of this state by storm-water runoff or otherwise enhancing the water quality of surface or ground waters of this state and if such owner meets the qualifications of subparagraph (C) of paragraph (1) of this subsection:

(A) Environmentally sensitive areas, including any otherwise qualified land area 1,000 feet or more above the lowest elevation of the county in which such area is located that has a percentage slope, which is the difference in elevation between two points 500 feet apart on the earth divided by the horizontal distance between those two points, of 25 percent or greater and shall include the crests, summits, and ridge tops which lie at elevations higher than any such area;

(B) Wetland areas that are determined by the United States Army Corps of Engineers to be wetlands under their jurisdiction pursuant to Section 404 of the federal Clean Water Act, as amended, or wetland areas that are depicted or delineated on maps compiled by the Department of Natural Resources or the United States Fish and Wildlife Service pursuant to its National Wetlands Inventory Program;

(C) Significant ground-water recharge areas as identified on maps or data compiled by the Department of Natural Resources;

(D) Undeveloped barrier islands or portions thereof as provided for in the federal Coastal Barrier Resources Act, as amended;

(E) Habitats as certified by the Department of Natural Resources as containing species that have been listed as either endangered or threatened under the federal Endangered Species Act of 1973, as amended;

(F) River or stream corridors or buffers which shall be defined as those undeveloped lands which are:

(I) Adjacent to rivers and perennial streams that are within the 100 year flood plain as depicted on official maps prepared by the Federal Emergency Management Agency; or

(II) Within buffer zones adjacent to rivers or perennial streams, which buffer zones are established by law or local ordinance and within which land-disturbing activity is prohibited; or

(G) (I) Constructed storm-water wetlands of the free-water surface type certified by the Department of Natural Resources under subsection (k) of Code Section 12-2-4 and approved for such use by the local governing authority.

(II) No property shall maintain its eligibility for current use assessment as a bona fide

conservation use property as defined in this subparagraph unless the owner of such property files an annual inspection report from a licensed professional engineer certifying that as of the date of such report the property is being maintained in a proper state of repair so as to accomplish the objectives for which it was designed. Such inspection report and certification shall be filed with the county board of tax assessors on or before the last day for filing ad valorem tax returns in the county for each tax year for which such assessment is sought.

(a.1) Notwithstanding any other provision of this Code section to the contrary, in the case of property which otherwise meets the requirements for current use assessment and the qualifying use is pursuant to division (1)(E)(iii) of subsection (a) of this Code section, when the owner seeks to renew the covenant or reenter a covenant subsequent to the termination of a previous covenant which met such requirements and the owner meets the qualifications under this Code section but the property is no longer being used for the qualified use for which the previous covenant was entered pursuant to division (1)(E)(iii) of subsection (a) of this Code section, the property is not environmentally sensitive property within the meaning of paragraph (2) of subsection (a) of this Code section, and the primary use of the property is maintenance of a wildlife habitat of not less than ten acres either by maintaining the property in its natural condition or under management, the county board of tax assessors shall be required to accept such use as a qualifying use for purposes of this Code section.

(b) Except in the case of the underlying portion of a tract of real property on which is actually located a constructed storm-water wetlands, the following additional rules shall apply to the qualification of conservation use property for current use assessment:

(1) When one-half or more of the area of a single tract of real property is used for a qualifying purpose, then such tract shall be considered as used for such qualifying purpose unless some other type of business is being operated on the unused portion; provided, however, that such unused portion must be minimally managed so that it does not contribute significantly to erosion or other environmental or conservation problems. The lease of hunting rights or the use of the property for hunting purposes shall not constitute another type of business. The charging of admission for use of the property for fishing purposes shall not constitute another type of business;

(2) The owner of a tract, lot, or parcel of land totaling less than 10 acres shall be required by the tax assessor to submit additional relevant records regarding proof of bona fide conservation use for qualified property that on or after May 1, 2012, is either first made subject to a covenant or is subject to a renewal of a previous covenant. If the owner of the subject property provides proof that such owner has filed with the Internal Revenue Service a Schedule E, reporting farm related income or loss, or a Schedule F, with Form 1040, or, if applicable, a Form 4835, pertaining to such property, the provisions of this paragraph, requiring additional relevant records regarding proof of bona fide conservation use, shall not apply to such property. Prior to a denial of eligibility under this paragraph, the tax assessor shall conduct and provide proof of a visual on-site inspection of the property. Reasonable notice shall be provided to the property owner before being allowed a visual, on-site inspection of the property by the tax assessor;

(3) No property shall qualify as bona fide conservation use property if such current use assessment would result in any person who has a beneficial interest in such property, including any interest in the nature of stock ownership, receiving in any tax year any benefit of current use assessment as to more than 2,000 acres. If any taxpayer has any beneficial interest in more than 2,000 acres of tangible real property which is devoted to bona fide conservation uses, such taxpayer shall apply for current use assessment only as to 2,000 acres of such land;

(4) No property shall qualify as bona fide conservation use property if it is leased to a person or entity which would not be entitled to conservation use assessment;

(5) No property shall qualify as bona fide conservation use property if such property is at the

time of application for current use assessment subject to a restrictive covenant which prohibits the use of the property for the specific purpose described in subparagraph (a)(1)(E) of this Code section for which bona fide conservation use qualification is sought; and

(6) No otherwise qualified property shall be denied current use assessment on the grounds that no soil map is available for the county in which such property is located; provided, however, that if no soil map is available for the county in which such property is located, the owner making an application for current use assessment shall provide the board of tax assessors with a certified soil survey of the subject property unless another method for determining the soil type of the subject property is authorized in writing by such board.

(c) For purposes of this article, the term "bona fide residential transitional property" means not more than five acres of tangible real property of a single owner which is private single-family residential owner occupied property located in a transitional developing area. Such classification shall apply to all otherwise qualified real property which is located in an area which is undergoing a change in use from single-family residential use to agricultural, commercial, industrial, office-institutional, multifamily, or utility use or a combination of such uses. Change in use may be evidenced by recent zoning changes, purchase by a developer, affidavits of intent, or close proximity to property which has undergone a change from single-family residential use. To qualify as residential transitional property, the valuation must reflect a change in value attributable to such property's proximity to or location in a transitional area.

(d) No property shall qualify for current use assessment under this Code section unless and until the owner of such property agrees by covenant with the appropriate taxing authority to maintain the eligible property in bona fide qualifying use for a period of ten years beginning on the first day of January of the year in which such property qualifies for such current use assessment and ending on the last day of December of the final year of the covenant period. After the owner has applied for and has been allowed current use assessment provided for in this Code section, it shall not be necessary to make application thereafter for any year in which the covenant period is in effect and current use assessment shall continue to be allowed such owner as specified in this Code section. At least 60 days prior to the expiration date of the covenant, the county board of tax assessors shall send by first-class mail written notification of such impending expiration. Upon the expiration of any covenant period, the property shall not qualify for further current use assessment under this Code section unless and until the owner of the property has entered into a renewal covenant for an additional period of ten years; provided, however, that the owner may enter into a renewal contract in the ninth year of a covenant period so that the contract is continued without a lapse for an additional ten years.

(e) A single owner shall be authorized to enter into more than one covenant under this Code section for bona fide conservation use property, provided that the aggregate number of acres of qualified property of such owner to be entered into such covenants does not exceed 2,000 acres. Any such qualified property may include a tract or tracts of land which are located in more than one county. A single owner shall be authorized to enter qualified property in a covenant for bona fide conservation use purposes and to enter simultaneously the residence located on such property in a covenant for bona fide residential transitional use if the qualifications for each such covenant are met. A single owner shall be authorized to enter qualified property in a covenant for bona fide conservation use purposes and to enter other qualified property of such owner in a covenant for bona fide residential transitional use.

(f) An owner shall not be authorized to make application for and receive current use assessment under this Code section for any property which at the time of such application is receiving preferential assessment under Code Section 48-5-7.1 except that such owner shall be authorized to change such preferential assessment covenant in the manner provided for in subsection (s) of Code Section 48-5-7.1.

(g) Except as otherwise provided in this subsection, no property shall maintain its eligibility for current use assessment under this Code section unless a valid covenant remains in effect and

unless the property is continuously devoted to an applicable bona fide qualifying use during the entire period of the covenant. An owner shall be authorized to change the type of bona fide qualifying conservation use of the property to another bona fide qualifying conservation use and the penalty imposed by subsection (i) of this Code section shall not apply, but such owner shall give notice of any such change in use to the board of tax assessors.

(h) If any breach of a covenant occurs, the existing covenant shall be terminated and all qualification requirements must be met again before the property shall be eligible for current use assessment under this Code section.

(i) (1) If ownership of all or a part of the property is acquired during a covenant period by a person or entity qualified to enter into an original covenant, then the original covenant may be continued by such acquiring party for the remainder of the term, in which event no breach of the covenant shall be deemed to have occurred.

(2) (A) As used in this paragraph, the term "contiguous" means real property within a county that abuts, joins, or touches and has the same undivided common ownership. If an applicant's tract is divided by a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track, then the applicant has, at the time of the initial application, a one-time election to declare the tract as contiguous irrespective of a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track.

(B) If a qualified owner has entered into an original bona fide conservation use covenant and subsequently acquires additional qualified property contiguous to the property in the original covenant, the qualified owner may elect to enter the subsequently acquired qualified property into the original covenant for the remainder of the ten-year period of the original covenant; provided, however, that such subsequently acquired qualified property shall be less than 50 acres.

(j) (1) All applications for current use assessment under this Code section, including the covenant agreement required under this Code section, shall be filed on or before the last day for filing ad valorem tax returns in the county for the tax year for which such current use assessment is sought, except that in the case of property which is the subject of a reassessment by the board of tax assessors an application for current use assessment may be filed in conjunction with or in lieu of an appeal of the reassessment. An application for continuation of such current use assessment upon a change in ownership of all or a part of the qualified property shall be filed on or before the last date for filing tax returns in the year following the year in which the change in ownership occurred. Applications for current use assessment under this Code section shall be filed with the county board of tax assessors who shall approve or deny the application. If the application is approved on or after July 1, 1998, the county board of tax assessors shall file a copy of the approved application in the office of the clerk of the superior court in the county in which the eligible property is located. The clerk of the superior court shall file and index such application in the real property records maintained in the clerk's office. Applications approved prior to July 1, 1998, shall be filed and indexed in like manner without payment of any fee. If the application is not so recorded in the real property records, a transferee of the property affected shall not be bound by the covenant or subject to any penalty for its breach. The fee of the clerk of the superior court for recording such applications approved on or after July 1, 1998, shall be paid by the owner of the eligible property with the application for preferential treatment and shall be paid to the clerk by the board of tax assessors when the application is filed with the clerk. If the application is denied, the board of tax assessors shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees advanced by the owner. Appeals from the denial of an application by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(2) In the event such application is approved, the taxpayer shall continue to receive annual notification of any change in the fair market value of such property and any appeals with respect to such valuation shall be made in the same manner as other property tax appeals are made pursuant to Code Section 48-5-311.

(k) (1) The commissioner shall by regulation provide uniform application and covenant forms to be used in making application for current use assessment under this Code section. Such application shall include an oath or affirmation by the taxpayer that he or she is in compliance with the provisions of paragraphs (3) and (4) of subsection (b) of this Code section, if applicable.

(2) The applicable local governing authority shall accept applications for approval of property for purposes of subparagraph (a)(2)(G) of this Code section and shall certify property to the local board of tax assessors as meeting or not meeting the criteria of such paragraph. The local governing authority shall not certify any property as meeting the criteria of subparagraph (a)(2)(G) of this Code section unless:

(A) The owner has submitted to the local governing authority:

(i) A plat of the tract in question prepared by a licensed land surveyor, showing the location and measured area of such tract;

(ii) A certification by a licensed professional engineer that the specific design used for the constructed storm-water wetland was recommended by the engineer as suitable for such site after inspection and investigation; and

(iii) Information on the actual cost of constructing and estimated cost of operating the storm-water wetland, including without limitation a description of all incorporated materials, machinery, and equipment; and

(B) An authorized employee or agent of the local governing authority has inspected the site before, during, and after construction of the storm-water wetland to determine compliance with the requirements of subparagraph (a)(2)(G) of this Code section.

(k.1) In the case of an alleged breach of the covenant, the owner shall be notified in writing by the board of tax assessors. The owner shall have a period of 30 days from the date of such notice to cease and desist the activity alleged in the notice to be in breach of the covenant or to remediate or correct the condition or conditions alleged in the notice to be in breach of the covenant. Following a physical inspection of property, the board of tax assessors shall notify the owner that such activity or activities have or have not properly ceased or that the condition or conditions have or have not been remediated or corrected. The owner shall be entitled to appeal the decision of the board of tax assessors and file an appeal disputing the findings of the board of tax assessors. Such appeal shall be conducted in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

(l) A penalty shall be imposed under this subsection if during the period of the covenant entered into by a taxpayer the covenant is breached. The penalty shall be applicable to the entire tract which is the subject of the covenant and shall be twice the difference between the total amount of tax paid pursuant to current use assessment under this Code section and the total amount of taxes which would otherwise have been due under this chapter for each completed or partially completed year of the covenant period. Any such penalty shall bear interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

(m) Penalties and interest imposed under this Code section shall constitute a lien against the property and shall be collected in the same manner as unpaid ad valorem taxes are collected. Such penalties and interest shall be distributed pro rata to each taxing jurisdiction wherein current use assessment under this Code section has been granted based upon the total amount

by which such current use assessment has reduced taxes for each such taxing jurisdiction on the property in question as provided in this Code section.

(n) The penalty imposed by subsection (l) of this Code section shall not apply in any case where a covenant is breached solely as a result of:

(1) The acquisition of part or all of the property under the power of eminent domain;

(2) The sale of part or all of the property to a public or private entity which would have had the authority to acquire the property under the power of eminent domain; or

(3) The death of an owner who was a party to the covenant.

(o) The transfer of a part of the property subject to a covenant for a bona fide conservation use shall not constitute a breach of a covenant if:

(1) The part of the property so transferred is used for single-family residential purposes, starting within one year of the date of transfer and continuing for the remainder of the covenant period, and the residence is occupied by a person who is related within the fourth degree of civil reckoning to an owner of the property subject to the covenant; and

(2) The part of the property so transferred, taken together with any other part of the property so transferred to the same relative during the covenant period, does not exceed a total of five acres;

and in any such case the property so transferred shall not be eligible for a covenant for bona fide conservation use, but shall, if otherwise qualified, be eligible for current use assessment as residential transitional property and the remainder of the property from which such transfer was made shall continue under the existing covenant until a terminating breach occurs or until the end of the specified covenant period.

(p) The following shall not constitute a breach of a covenant:

(1) Mineral exploration of the property subject to the covenant or the leasing of the property subject to the covenant for purposes of mineral exploration if the primary use of the property continues to be the good faith production from or on the land of agricultural products;

(2) Allowing all or part of the property subject to the covenant to lie fallow or idle for purposes of any land conservation program, for purposes of any federal agricultural assistance program, or for other agricultural management purposes;

(3) Allowing all or part of the property subject to the covenant to lie fallow or idle due to economic or financial hardship if the owner notifies the board of tax assessors on or before the last day for filing a tax return in the county where the land lying fallow or idle is located and if such owner does not allow the land to lie fallow or idle for more than two years of any five-year period;

(4) (A) Any property which is subject to a covenant for bona fide conservation use being transferred to a place of religious worship or burial or an institution of purely public charity if such place or institution is qualified to receive the exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41. No person shall be entitled to transfer more than 25 acres of such person's property in the aggregate under this paragraph.

(B) Any property transferred under subparagraph (A) of this paragraph shall not be used by the transferee for any purpose other than for a purpose which would entitle such property to the applicable exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41 or subsequently transferred until the expiration of the term of the covenant

period. Any such use or transfer shall constitute a breach of the covenant;

(5) Leasing a portion of the property subject to the covenant, but in no event more than six acres, for the purpose of placing thereon a cellular telephone transmission tower. Any such portion of such property shall cease to be subject to the covenant as of the date of execution of such lease and shall be subject to ad valorem taxation at fair market value;

(6) Allowing all or part of the property subject to the covenant on which a corn crop is grown to be used for the purpose of constructing and operating a maze so long as the remainder of such corn crop is harvested; or

(7) (A) Allowing all or part of the property subject to the covenant to be used for agritourism purposes.

(B) As used in this paragraph, the term "agritourism" means charging admission for persons to visit, view, or participate in the operation of a farm or dairy or production of farm or dairy products for entertainment or educational purposes or selling farm or dairy products to persons who visit such farm or dairy.

(q) In the following cases, the penalty specified by subsection (l) of this Code section shall not apply and the penalty imposed shall be the amount by which current use assessment has reduced taxes otherwise due for the year in which the covenant is breached, such penalty to bear interest at the rate specified in Code Section 48-2-40 from the date of the breach:

(1) Any case in which a covenant is breached solely as a result of the foreclosure of a deed to secure debt or the property is conveyed to the lienholder without compensation and in lieu of foreclosure, if:

(A) The deed to secure debt was executed as a part of a bona fide commercial loan transaction in which the grantor of the deed to secure debt received consideration equal in value to the principal amount of the debt secured by the deed to secure debt;

(B) The loan was made by a person or financial institution who or which is regularly engaged in the business of making loans; and

(C) The deed to secure debt was intended by the parties as security for the loan and was not intended for the purpose of carrying out a transfer which would otherwise be subject to the penalty specified by subsection (l) of this Code section;

(2) Any case in which a covenant is breached solely as a result of a medically demonstrable illness or disability which renders the owner of the real property physically unable to continue the property in the qualifying use, provided that the board of tax assessors shall require satisfactory evidence which clearly demonstrates that the breach is the result of a medically demonstrable illness or disability;

(3) Any case in which a covenant is breached solely as a result of an owner electing to discontinue the property in its qualifying use, provided such owner has renewed without an intervening lapse at least once the covenant for bona fide conservation use, has reached the age of 65 or older, and has kept the property in a qualifying use under the renewal covenant for at least three years. Such election shall be in writing and shall not become effective until filed with the county board of tax assessors; or

(4) Any case in which a covenant is breached solely as a result of an owner electing to discontinue the property in its qualifying use, provided such owner entered into the covenant for bona fide conservation use for the first time after reaching the age of 67 and has either owned the property for at least 15 years or inherited the property and has kept the property in a qualifying use under the covenant for at least three years. Such election shall be in writing

and shall not become effective until filed with the county board of tax assessors.

(r) Property which is subject to current use assessment under this Code section shall be separately classified from all other property on the tax digest; and such separate classification shall be such as will enable any person examining the tax digest to ascertain readily that the property is subject to current use assessment under this Code section. Covenants shall be public records and shall be indexed and maintained in such manner as will allow members of the public to locate readily the covenant affecting any particular property subject to current use assessment under this Code section. Based on information submitted by the county boards of tax assessors, the commissioner shall maintain a central registry of conservation use property, indexed by owners, so as to ensure that the 2,000 acre limitations of this Code section are complied with on a state-wide basis.

(s) The commissioner shall annually submit a report to the Governor, the Department of Agriculture, the Georgia Agricultural Statistical Service, the Georgia Forestry Commission, the Department of Natural Resources, and the University of Georgia Cooperative Extension Service and the House Ways and Means, Natural Resources and Environment, and Agriculture and Consumer Affairs committees and the Senate Finance, Natural Resources and Environment, and Agriculture and Consumer Affairs committees and shall make such report available to other members of the General Assembly, which report shall show the fiscal impact of the assessments provided for in this Code section and Code Section 48-5-7.5. The report shall include the amount of assessed value eliminated from each county's digest as a result of such assessments; approximate tax dollar losses, by county, to all local governments affected by such assessments; and any recommendations regarding state and local administration of this Code section and Code Section 48-5-7.5, with emphasis upon enforcement problems, if any, attendant with this Code section and Code Section 48-5-7.5. The report shall also include any other data or facts which the commissioner deems relevant.

(t) A public notice containing a brief, factual summary of the provisions of this Code section shall be posted in a prominent location readily viewable by the public in the office of the board of tax assessors and in the office of the tax commissioner of each county in this state.

(u) Reserved.

(v) Reserved.

(w) At such time as the property ceases to be eligible for current use assessment or when any ten-year covenant period expires and the property does not qualify for further current use assessment, the owner of the property shall file an application for release of current use treatment with the county board of tax assessors who shall approve the release upon verification that all taxes and penalties with respect to the property have been satisfied. After the application for release has been approved by the board of tax assessors, the board shall file the release in the office of the clerk of the superior court in the county in which the original covenant was filed. The clerk of the superior court shall file and index such release in the real property records maintained in the clerk's office. No fee shall be paid to the clerk of the superior court for recording such release. The commissioner shall by regulation provide uniform release forms.

(x) Notwithstanding any other provision of this Code section to the contrary, in any case where a renewal covenant is breached by the original covenantor or a transferee who is related to that original covenantor within the fourth degree by civil reckoning, the penalty otherwise imposed by subsection (l) of this Code section shall not apply if the breach occurs during the sixth through tenth years of such renewal covenant, and the only penalty imposed shall be the amount by which current use assessment has reduced taxes otherwise due for each year in which such renewal covenant was in effect, plus interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

(y) The commissioner shall have the power to make and publish reasonable rules and regulations for the implementation and enforcement of this Code section. Without limiting the commissioner's authority with respect to any other such matters, the commissioner may prescribe soil maps and other appropriate sources of information for documenting eligibility as a bona fide conservation use property. The commissioner also may provide that advance notice be given to taxpayers of the intent of a board of tax assessors to deem a change in use as a breach of a covenant.

(z) The governing authority of a county shall not publish or promulgate any information which is inconsistent with the provisions of this Chapter.

HISTORY: Code 1981, § 48-5-7.4, enacted by Ga. L. 1991, p. 1903, § 6; Ga. L. 1992, p. 6, § 48; Ga. L. 1993, p. 947, §§ 1-6; Ga. L. 1994, p. 428, §§ 1, 2; Ga. L. 1996, p. 1021, § 1; Ga. L. 1998, p. 553, §§ 3, 4; Ga. L. 1998, p. 574, § 1; Ga. L. 1999, p. 589, § 2; Ga. L. 1999, p. 590, § 1; Ga. L. 1999, p. 656, § 1; Ga. L. 2000, p. 1338, § 1; Ga. L. 2002, p. 1031, §§ 2, 3; Ga. L. 2003, p. 271, § 2; Ga. L. 2003, p. 565, § 1; Ga. L. 2004, p. 360, § 1; Ga. L. 2004, p. 361, § 1; Ga. L. 2004, p. 362, §§ 1, 1A; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 222, §§ 1, 2/HB 1; Ga. L. 2006, p. 685, § 1/HB 1293; Ga. L. 2006, p. 819, § 1/HB 1502; Ga. L. 2007, p. 90, § 1/HB 78; Ga. L. 2007, p. 608, § 1/HB 321; Ga. L. 2008, p. 1149, §§ 1, 2, 3/HB 1081; Ga. L. 2012, p. 763, § 1/HB 916.