

**AUDITOR OF STATE BULLETIN 96-023
OCTOBER 22, 1996**

TO: ALL COUNTY AUDITORS
ALL INDEPENDENT PUBLIC ACCOUNTANTS

SUBJECT: AGRICULTURAL LAND USE

Substitute House Bill No. 516 was enacted by the General Assembly to be effective September 3, 1996. This legislation amends Sections 929.02 and 5713.34 of the Revised Code to exempt, under specified circumstances, from the conversion charge that otherwise would apply, the conversion of land taxed for agricultural use that is acquired by a public entity by means other than eminent domain and thereafter is used exclusively for public, active or passive, outdoor education, recreation, or similar open space uses and contains only the structures, roadways, and other facilities that are necessary for such uses. The legislation further exempts, under specified circumstances when the conversion charge continues to apply, public entities that acquire by means other than eminent domain and convert land taxed for agricultural use to use for public educational, recreational, or similar open space uses from the prohibition against directly or indirectly transferring the conversion charge to the person from whom the land was acquired. The legislation also changes the amount of the penalty required to be paid for withdrawal of land from an agricultural district.

Recoupment of tax savings on converted agricultural land

Section 36, Article II of the Ohio Constitution provides that laws may be passed to encourage agriculture, including laws to provide that land devoted exclusively to agricultural use be valued for real property tax purposes at the current value the land has for the agricultural use. This section also provides that laws may be passed to provide for the deferral or recoupment of any part of the difference in the dollar amount of real property tax levied in any year on land valued in accordance with its agricultural use and the dollar amount of real property tax that would have been levied on the land had it been valued for that year in accordance with Section 2, Article XII of the Ohio Constitution.

Former law, without exception, provided for such recoupment by stating that upon the conversion of all or any portion of a tract, lot, or parcel of land devoted exclusively to agricultural use, a portion of the tax savings upon that converted land must be recouped by levying a conversion charge on the land in an amount equal to the amount of the tax savings on the converted land during the three tax years immediately preceding the year in which the conversion occurs. Under continuing law, a recoupment charge constitutes a lien of the state upon the converted land as of the first day of January of the tax year in which the charge is levied and continues until discharged as provided by law.

Definitions

Division (B) of Section 5713.30 (B) of the Revised Code, which was not affected by this legislation, defines “conversion of land devoted exclusively to agricultural use” to mean any of the following:

- (1) The failure of the owner of land devoted exclusively to agricultural use during the next preceding calendar year to file a renewal application under Section 5713.31 of the Revised Code without good cause as determined by the board of revision;
- (2) The failure of the new owner of such land to file an initial application under that section without good cause as determined by the board of revision;
- (3) The failure of such land or portion thereof to qualify as land devoted exclusively to agricultural use for the current calendar year as requested by an application filed under such section;
- (4) The failure of the owner of the land described in division (A)(4) of this section to act on such land in a manner that is consistent with the return of the land to agricultural production after three years.

Division (C) of Section 5713.30 of the Revised Code also defines “tax saving” as the difference between the dollar amount of real property taxes levied in any year on land valued and assessed in accordance with its current agricultural use value and the dollar amount of real property taxes that would have been levied upon the land if it had been valued and assessed for that year in accordance with Section 2 of Article II, Ohio Constitution.

Payment of Conversion Charge

Former law, without exception, required a public entity that acquired by any means and converted land devoted exclusively to agricultural use and a private entity granted the power of eminent domain that acquired by any means and converted land devoted exclusively to agricultural use to pay the conversion charge described above under “recoupment of tax savings” and prohibited the entity from directly or indirectly transferring the charge to the person from whom the land was acquired.

Exemption from Conversion Charge

The new legislation provides that, under specified circumstances, the conversion charge does not apply to the conversion of land acquired by a public entity by means other than eminent domain and thereafter used exclusively for a public purpose that leaves the land principally un- developed. In the case of land so acquired and converted by a park district

created under Chapter 1545 of the Revised Code, the conversion charge does not apply when the land is located within the district's boundaries. In the case of land so acquired and converted by a public entity other than such a park district, the conversion charge does not apply when the land is located within the boundaries of any city, local, exempted village, or joint vocational school district that is wholly or partially located within the boundaries of the public entity. (Section 5713.34 (C) of the Revised Code).

If all or any portion of a tract, lot, or parcel of land exempted from the conversion charge is later developed or otherwise converted to a purpose other than one of those enumerated in the definition of "principally undeveloped," the conversion charge must be levied against the developed or converted land.

The legislation requires the county auditor of the county in which the exempted land is located to determine annually whether all or any portion of a tract, lot, or parcel of that land has been developed in such a way or converted to such a purpose as to require the conversion charge to be levied against the land.

The legislation defines "public entity" as any political subdivision of this state or any agency or instrumentality of a political subdivision. "Principally undeveloped" is defined as referring to a parcel of real property that is used for public, active or passive, outdoor education, recreation, or similar open space uses and contains only the structures, roadways, and other facilities that are necessary for those uses. (Section 5713.34 (E)(1) and (2) of the Revised Code.)

Economic Units

The new legislation requires that upon conversion of an adequately described portion of a tract, lot, or parcel of land, the county auditor divide any numbered permanent parcel into economic units and value each unit individually for the purpose of levying against only the converted portion the conversion charge that applies when land taxed for agricultural use is converted to another use. (Section 5713.34 (A)(2) of the Revised Code.)

Exemption from requirement that public entities pay agricultural use conversion charge for certain lands acquired for public open space uses

Former law, without exception, required a public entity that acquires by any means and converts land devoted exclusively to agricultural use to pay the conversion charge levied against the land, and prohibited the entity from directly or indirectly transferring the conversion charge to the person from whom the land was acquired. The new legislation, under specified circumstances, exempts from that prohibition and from paying the conversion charge a public entity that acquires such agricultural land by means other than eminent domain and converts the land for use for public educational, recreational, or similar open space uses. Additionally, under this legislation, a park district created under Chapter

1545 of the Revised Code, is exempted from the prohibition and from paying the conversion charge with respect to agricultural land so acquired and converted that is located outside the park district's boundaries. In the case of other types of public entities, the exemption applies to agricultural land so acquired and converted that is located outside the boundaries of any city, local, exempted village, or joint vocational school district wholly or partially located within the boundaries of the public entity. (Section 5713.34 (D))

Penalty for withdrawal of land from an agricultural district

Former law provided that if, at any time during which land is in an agricultural district, the owner withdraws the land from the district, the owner must notify the county auditor of the withdrawal and must pay to the county auditor a withdrawal penalty calculated as follows:

(1) If the owner's action also results in conversion of land devoted exclusively to agricultural use, and thus disqualifies the land for tax savings, as defined herein under "Definitions," the owner was required to pay 25% of the amount of the conversion charge as described herein under "Recoupment of tax savings on converted agricultural land."

The new legislation changes the amount of the withdrawal penalty by requiring the owner to pay a percentage of the conversion charge that is equal to the average bank prime rate at the time the conversion charge is required to be paid. The withdrawal penalty continues to be in addition to the conversion charge.

(2) Under former law, if the land had not been receiving the tax saving described herein, or if the owner's action does not disqualify the land for tax savings, the owner was required to pay an amount equal to 25% of the conversion charge that would have been charged if the owner's land had been receiving tax savings and became disqualified for them.

This legislation changes the amount of the withdrawal penalty by requiring the owner to pay a percentage of the conversion charge that is equal to the average bank prime rate at the time the conversion charge would have been required to be paid. (Section 929.02 (D)(1) and (2))

For the purposes of calculating the withdrawal penalty under this legislation, the county auditor must determine the average bank prime rate using Statistical Release H.15, "Selected Interest Rates," a weekly publication of the Federal Reserve Board, or any successor publication. If the Statistical Release H.15, or its successor, ceases to contain the bank prime rate information or ceases to be published, the county auditor must request a written statement of the average bank prime rate from the Federal Reserve Bank of Cleveland or the Federal Reserve Board. (Section 929.02 (D))

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This bulletin summarizes the major amendments to the Revised Code by Am. Sub. H. B. No. 516 and is not intended to be used as a substitute for the actual legislation. For additional details, public offices are encouraged to obtain a copy of the legislation.

If you should have any questions, please contact the Legal Division of the Auditor of State's Office at (800) 282-0370.