
Greenbelt Handbook

**for
Assessors of Property**



December 2011



Comptroller of the Treasury, Division of Property Assessments. Authorization No. 307381, 0 copies, December 2011. This public document was promulgated at a cost of \$0.00 per copy.

GREENBELT HANDBOOK FOR ASSESSORS OF PROPERTY

As of October 2010 (Revised as of December 2011)

TABLE OF CONTENTS

	Page
PURPOSE	1
DISCLAIMER	1
THE “AGRICULTURAL, FOREST AND OPEN SPACE LAND ACT OF 1976 (commonly referred to as “Greenbelt” or the “Greenbelt Law”)	1
I. AGRICULTURAL LAND	2
A. Definition	2
B. Gross Agricultural Income	2
C. Two Noncontiguous Tracts	3
D. Farm Unit	4
E. Home Site	4
F. Farming the Land	4
G. Family Farm Provision	5
II. FOREST LAND	5
A. Definition	5
B. Forest Management Plan	5
C. Appeal Procedure from the Denial of a Forest Management Plan	5
D. Home Site	6
III. OPEN SPACE LAND	6

A. Definition	6
B. Home Site	6
IV. OPEN SPACE EASEMENTS	6
A. Definition	6
B. Types of Open Space Easements	7
C. Application Requirements	7
D. Assessing an Open Space Easement	7
E. Qualified Conservation Organization	7
F. The Effect of a Conservation Easement on Property that is Qualified as Agricultural, Forest, or Open Space Land	7
G. Cancellation of an Easement for the Benefit of a Local Government	8
H. Property Reserved for Non-Open Space Use	8
V. COMBINING PARCELS	8
A. Combining Parcels to Meet Minimum Acreage Requirements	8
B. Land Hooks	10
C. Ownership Issues between Parcels	11
D. Vacant Residential Subdivision Lots Contiguous to Property Classified as Agricultural, Forest, or Open Space Land	12
E. Combining Multiple Vacant Lots	12
F. Property in a Residential Subdivision Qualifying as Agricultural, Forest, or Open Space Land	12
VI. PROPERTY CROSSING THE COUNTY LINE	12
VII. MAPPING PROPERTY WHERE ONLY A PORTION IS USED	13
VIII. APPLICATION REQUIREMENTS	13
A. Filing an Application	13

B. Life Estate Owner	13
C. Application Deadline	14
D. Filing after the Deadline Date	14
E. Calculating the Thirty (30) Day Period for a Late Filed Application	15
F. Notice of Disqualification	15
G. Filing Fees	16
H. Reapplication	16
I. Appeal Procedures Concerning Applications	17
IX. ACREAGE LIMITATIONS	18
A. Acreage Limitation for Agricultural, Forest, and Open Space Land	18
B. Attributing Acres among Individuals	18
C. Attributing Acres among Artificial Entities and other Persons	18
D. Attributing Acres for Trusts	20
E. Attributing Acres among Husband and Wife	20
X. ROLLBACK TAXES	21
A. Calculating Rollback Taxes	21
B. Delinquency Date for Rollback Taxes	21
C. Circumstances Triggering Rollback Taxes	21
1. Reasons Land May Cease to Qualify as Agricultural, Forest, or Open Space Land	22
2. Requests for Property to be Withdrawn from Use Value Classification	22
3. Subdivision Plats or Plans of Development	22
4. Failure to File Application	23

5. Property Exceeding the Acreage Limitation	23
6. Property that is Conveyed and Thereby Becomes Exempt	23
D. Personal Liability for Rollback Taxes	24
E. Rollback Taxes are a First Lien on the Disqualified Land	24
F. Appealing Rollback Taxes	24
G. Appealing Property Values that are Used to Fix the Amount of Rollback Taxes	24
H. Appealing the Use Value	25
I. Rollback Tax Notice	25
J. When Only a Portion of a Parcel is Subject to Rollback Taxes	25
K. Determining the Years Subject to Rollback Taxes	26
L. Sending an Assessment Change Notice after Property has been Disqualified	26
M. Circumstances where Rollback Taxes are not Assessed	27
N. Voiding Rollback Taxes Imposed in Error	27
XI. EMINENT DOMAIN OR OTHER INVOLUNTARY PROCEEDING	27
A. Liability for Rollback Taxes	27
B. The Taking Results in the Property being too Small to Qualify	28
C. Property Acquired by a Lender in Satisfaction of a Debt	28

PURPOSE

The purpose of this handbook is to provide the assessor's office a reference to answers concerning the greenbelt law. Although this handbook will not answer every conceivable question, it should answer those questions that are asked by the public in general. Furthermore, it will help provide uniformity for the ninety-five (95) counties in administering this program.

DISCLAIMER

This handbook contains interpretations of the greenbelt law by legal staff of the state Division of Property Assessments. These interpretations should be considered general advice regarding assessment practices, not binding rulings of the Comptroller of the Treasury, the Division of Property Assessments, or the State Board of Equalization.

THE "AGRICULTURAL, FOREST AND OPEN SPACE LAND ACT OF 1976"

In 1976, the Tennessee General Assembly ("General Assembly"), "concerned about the threat to open land posed by urbanization and high land taxes,"¹ enacted the "Agricultural, Forest, and Open Space Land Act of 1976" ("Act").² The purpose of the Act was to help preserve agricultural, forest, and open space land.³ The General Assembly found, among other things, that the existence of such land was being threatened from urban sprawl which would "bring[] about land use conflicts, create[] high costs for public services, increase[] energy use, and stimulate[] land speculation"⁴ The preservation of agricultural and forest land was found to be important to help produce "food and fiber for a hungry world"⁵ and the preservation of open space would help benefit the public and those who might not have access to natural resources (e.g., water, air, and wildlife).⁶ Furthermore, the General Assembly found that "[m]any landowners [were] being forced by economic pressures to sell such agricultural, forest, or open space land for premature development by the imposition of taxes based, not on the value of the land in its current use, but on its potential for conversion to another use."⁷ Thus, land classified as agricultural, forest, or open space is valued on its current or present use rather than on its highest and best use because the Act assumes there is no possibility of the land being used for any other purpose and this is the land's immediate most suitable economic use.⁸

By enacting this legislation, the General Assembly had "issued an invitation to property owners to voluntarily restrict the use of their property for agricultural, forest, or open space purposes."⁹ By restricting the property in this manner, such property is "free from any artificial value attributed to its possible use for development."¹⁰ However, because owners of such land are receiving favorable tax treatment for assessment purposes if the use of the property changes, then these owners are "required to pay the taxes that would have been paid on the full unrestricted value of the land"¹¹ This is referred to as rollback taxes and is a recapture of the amount of taxes that would have otherwise been due and owing.

In addition, the General Assembly found that "a limit must be placed upon the number of acres that any one (1) owner within a tax jurisdiction can bring within the provisions of this [Act]."¹² This was to prevent an erosion of the tax base in a county because a single landowner may own a tremendous amount of land that would be classified as agricultural, forest, or open

space.¹³ Therefore, the General Assembly declared that the policy of the state was to limit each person to no more than one thousand five hundred (1,500) acres of land that may be classified under the provisions of the Act.¹⁴

To take advantage of this use valuation, an application must be completed and signed by an owner, approved by the assessor, and recorded in the register of deeds office in the county where the property is located.¹⁵ Because the application is recorded in the register's office, this provides notice to the world that this property is receiving favorable tax treatment for assessment purposes.

I. AGRICULTURAL LAND

A. Definition

In order for property to qualify as agricultural land, the property must be at least fifteen (15) acres or more, including woodlands and wastelands, and either:

- (1) constitutes a farm unit *engaged* in the production or growing of agricultural products; *or*
- (2) has been farmed by the owner or the owner's parent or spouse for at least twenty-five (25) years and is used as the residence of the owner and not used for any purpose inconsistent with an agricultural use.*¹⁶

As the first definition provides, the property must be *engaged* (i.e., the property must be actively farmed) in the production or growing of agricultural products. This includes the production or growing of crops, plants, animals, aquaculture products, nursery, or floral products. An owner merely intending to do these things will not qualify the property as agricultural land. In other words, the property cannot be held for use as agricultural land. The property must be actively engaged in farming. For example, property that was not being farmed as of the assessment date (January 1) or is being farmed after the assessment date cannot qualify for the current tax year.

Here is a general list for some of the most common agricultural products that will qualify. This is by no means an exhaustive list:

1. Crops: corn, wheat, cotton, tobacco, soybeans, hay, potatoes.
2. Plants: herbs, bushes, grasses, vines, ferns, mosses.
3. Animals: cattle, poultry, pigs, sheep, goats.
4. Aquaculture products: fish, shrimp, oyster.
5. Nursery: places where plants are grown.
6. Floral products: roses, poppies, irises, lilies, daisies.

B. Gross Agricultural Income

“Gross agricultural income” is defined as the

* This second definition is commonly referred to as the “Family Farm Provision” and will be discussed later.

total income, exclusive of adjustments or deductions, derived from the production or growing of crops, plants, animals, aquaculture products, nursery, or floral products, including income from the rental of property for such purposes and income from federal set aside and related agricultural management programs.¹⁷

The assessor may *presume* that a tract of land is being used as agricultural if the land produces “gross agricultural income” averaging at least one thousand five hundred dollars (\$1,500) per year over any three-year period in which the land is so classified.¹⁸ The assessor may request an owner to provide a Schedule F from the owner’s federal income tax return to substantiate this presumption. However, the presumption is rebuttable.¹⁹ For example:

An owner may be able to prove a “gross agricultural income” of \$1,500 or more per year, but the property is being simultaneously developed as a residential subdivision. This is contrary to one of the specific purposes of greenbelt as found by the General Assembly: “Many landowners are being forced by economic pressures to sell such agricultural . . . land for premature development by the imposition of taxes based, not on the value of the land in its current use, but on its potential for conversion to another use.”²⁰

In this example, the owner would not be forced to sell the property because of premature development because the owner is developing and converting the land to a use that is inconsistent with the Act. This is not speculation as the current use of the property is for development purposes; not agricultural purposes. This property should not qualify as agricultural land. If the property is currently classified as agricultural land, the property should be removed from this classification and rollback taxes should be assessed.

C. Two Noncontiguous Tracts

Two (2) noncontiguous tracts *within the same county*, including wastelands and wetlands, can qualify so long as one (1) tract is at least 15 acres and the other tract is at least ten (10) acres with both constituting a farm unit.²¹ Also, the 2 noncontiguous tracts must be owned by the same person or persons. Please review the following examples:

John Smith owns a 100-acre tract and a 12-acre tract in Greenbelt County. Because John is the owner of both tracts and both tracts are within the same county, and assuming that both tracts constitute a farm unit, these two tracts can qualify as agricultural land.

John Smith owns a 100-acre tract in Greenbelt County and a 12-acre tract in Urban County. The 12-acre tract cannot qualify with the 100-acre tract because both tracts are not within the same county.

John Smith owns a 100-acre tract in Greenbelt County. John Smith and Jane Doe own a 12-acre tract in Greenbelt County. Because the ownership is not

the same for the two tracts, the 12-acre tract cannot qualify. To qualify the 12-acre tract would give Jane a tax advantage that other owners of land with less than 15 acres cannot enjoy.

PLEASE NOTE: The law provides for 2 noncontiguous tracts only. Therefore, you cannot have three (3) noncontiguous tracts with one (1) tract having at least 15 acres and the other 2 tracts having at least 10, but fewer than 15, acres each. Also, this provision applies only to agricultural land and does *not* apply to forest or open space land.

D. Farm Unit

The law does not define “farm unit.” However, the word “unit” does connote being part of a whole or something that helps perform one particular function. Therefore, it must be determined whether both tracts are part of one farming operation. Please review the following example:

John Smith owns a 100-acre tract of land and a noncontiguous 12-acre tract of land in Greenbelt County. The 100-acre tract contains cows and horses. John uses the 12-acre tract to cut hay for the horses to eat. These two tracts are owned by the same person and used in one farming operation (i.e., both tracts constitute a farm unit). Therefore, both tracts will qualify as agricultural land.

E. Home Site

A tract of land that meets the 15-acre minimum but has a home site on it can still qualify as agricultural land.²² The assessor will value the home site and generally up to an acre of land – sometimes more depending on how much land is necessary to support the residential structure(s) – at fair market value. The remaining acreage will be classified and valued as agricultural land. There may be instances where the home site could be up to five (5) acres on a 15-acre tract. As long as the remaining 10 acres are *engaged* in agricultural use the property will qualify.

F. Farming the Land

There is no clear standard, rule, or test that would provide how much of the property must be actively farmed for an entire parcel to be classified as agricultural land. For example, a 15-acre tract with a 1-acre home site will still qualify as agricultural land. The assumption is that the remaining 14 acres, or a substantial portion of the 14 acres, are being actively farmed. However, land should not be classified as agricultural under the following example:

John Smith wants to qualify 50 acres of land as agricultural. John states that only 2 acres will be actively farmed as the rest of the land is woodlands and wastelands and is not suitable for any other type of farming. This property should not qualify as agricultural land. The owner should seek another classification, such as forest land, if the land meets those qualifications.

G. Family Farm Provision

The “Family Farm Provision” provides that property may qualify, or continue to qualify, as agricultural land if the property “has been farmed by the owner or the owner’s parent or spouse for at least twenty-five (25) years and is used as the residence of the owner and not used for any purpose inconsistent with an agricultural use.”²³ In other words, the agricultural use can cease and the property can still qualify as agricultural land. But this is conditioned on three things: (1) the property must have been farmed for at least 25 years by the owner or the owner’s parent or spouse; (2) the property must be used as the residence of the owner; *and* (3) the property cannot be used for any purpose inconsistent with an agricultural use. All three of these conditions must be met for an owner to qualify property under the “Family Farm Provision.”

PLEASE NOTE: It is not a requirement for the property to have been previously classified as agricultural land to meet the 25-year requirement. The requirement is that the property has been farmed for at least 25 years.

II. FOREST LAND

A. Definition

For land to qualify as a forest, the land must either (1) constitute a forest unit *engaged* in the growing of trees under a sound program of sustained yield management *or* (2) have at least fifteen (15) or more acres having tree growth in such quantity and quality and so managed as to constitute a forest.²⁴ Although there is no minimum acreage with the first requirement, the assessor should consult the state forester or a qualified forester to determine whether such land qualifies as a forest.²⁵ Generally speaking, if a qualified forester has written a forest management plan for land with less than 15 acres, then the property should qualify as forest land.

B. Forest Management Plan

A forest management plan is required for land to qualify as a forest. But sometimes an owner may not have a forest management plan or has requested a plan but the plan is not yet completed at the time application is made. It has been the policy to permit owners to apply and be approved for forest land classification before a forest management plan has been completed or submitted. But failure of the owner to submit the plan within three (3) years will cause the property to be disqualified as forest land and rollback taxes shall be due.

C. Appeal Procedure for Denial of Forest Land Classification

If an assessor denies a forest land application, then an owner *must appeal to the state forester* on a form prescribed by the state forester – do not appeal to the state board.²⁶ The state forester’s decision is then appealable to the chancery court for the county within ninety (90) days from the issuance of the state forester’s decision.²⁷

D. Home Site

The same consideration for a home site for agricultural land also applies to forest land.

III. OPEN SPACE LAND

A. Definition

Open space land is any area of land of not less than three (3) acres characterized principally by open or natural condition, and whose preservation would tend to provide the public with one (1) or more of the following benefits:²⁸

- (1) The use, enjoyment and economic value of surrounding residential, commercial, industrial or public use lands;
- (2) The conservation of natural resources, water, air, and wildlife;
- (3) The planning and preservation of land in an open condition for the general welfare;
- (4) A relief from the monotony of continued urban sprawl; and
- (5) An opportunity for the study and enjoyment of natural areas by urban and suburban residents who might not otherwise have access to such amenities.²⁹

Open space land also includes lands primarily devoted to recreational use,³⁰ but it does not include golf courses.

But for property to qualify as open space land, the planning commission³¹ for the county or municipality must designate areas that it recommends for preservation as areas of open space land.³² Once the planning commission adopts these areas, then such property may be classified as open space land.³³ If the planning commission has not designated such areas, then open space land classification would not be available.

B. Home Site

The same consideration for a home site for agricultural land also applies to open space land.

IV. OPEN SPACE EASEMENTS

A. Definition

An open space easement is defined as:

A perpetual right in land of less than fee simple that: (A) Obligates the grantor and the grantor's heirs and assigns to certain restrictions constituted to maintain and enhance the existing open or natural character of the land; (B) Is restricted to the area defined in the easement deed; *and* (C) Grants no right of physical access to the public, except as provided for in the easement.³⁴

B. Types of Open Space Easements

There are three different types of open space easements that may qualify: (1) an easement that has been donated to the state;³⁵ (2) an easement for the benefit of a local government;³⁶ and (3) an easement for the benefit of a qualified conservation organization.³⁷ If an easement has been donated to the state, the Commissioner of Environment & Conservation is required to record the easement and notify the assessor.³⁸

C. Application Requirements

An application must be filed with the assessor in order for land to be qualified and assessed as an open space easement.³⁹

D. Assessing an Open Space Easement

If an open space easement has been executed and recorded for the benefit of a local government, a qualified conservation organization, or the state, the property subject to the open space easement shall be valued on the basis of:

- (1) Farm classification and value in its existing use . . . taking into consideration the limitation on future use as provided for in the easement; *and*
- (2) Such classification and value . . . as if the easement did not exist; but taxes shall be assessed and paid only on the basis of farm classification and fair market value in its existing use, taking into consideration the limitation on future use as provided for in the easement.⁴⁰

Property that is qualified as open space land and contains at least fifteen (15) contiguous acres can be classified and assessed as an open space easement if an open space easement has been executed to a qualified conservation organization and the organization accepts the easement in writing.⁴¹

E. Qualified Conservation Organization

Tenn. Code Ann. § 67-5-1009(c)(5) provides that a “qualified conservation organization” is a nonprofit organization that is approved by the Tennessee heritage conservation trust fund board of trustees and meets the eligibility criteria established by the trustees for recipients of trust fund grants or loans.”⁴² An example of a qualified conservation organization is the Land Trust for Tennessee. Please contact the Tennessee Heritage Conservation Trust Fund Board at (423) 854-5471 for more information about other organizations that may have been approved as a qualified conservation organization.

F. The Effect of a Conservation Easement on Property that is Qualified as Agricultural, Forest, or Open Space Land

To determine whether a conservation easement would disqualify land as agricultural, forest, or open space land will require a reading of the conservation easement deed. For example:

Assume that a tract of land is currently classified as agricultural land. A conservation easement is recorded and provides that the property may be used for farming purposes. Because the conservation easement permits the property to be farmed, the underlying use of the property has not changed. Therefore, the property would still qualify and be assessed as agricultural land.

But if the easement provides that any type of farming is prohibited, then the property would be disqualified as agricultural land. In other words, the underlying use of the property has changed and is prohibited. The owner would then need to seek a different classification, if possible or permitted. Otherwise, the property will be disqualified and rollback taxes will be due.

If the easement prevents the property from being classified as agricultural, forest, or open space land or the owner of the land does not apply or qualify for classification as an open space easement, then the property is to be “assessed on the basis of the true cash value of the property or as otherwise provided by law, less such reduction in value as may result from the granting of the scenic easements.”⁴³

G. Cancellation of an Easement for the Benefit of a Local Government

Property subject to a cancelled open space easement for the benefit of a local government will be assessed rollback for the previous ten (10) years.⁴⁴ The rollback taxes will be based on the difference between the taxes actually paid and the taxes that would have been due if the property had been assessed at fair market value and classified as if the easement had not existed.⁴⁵

H. Property Reserved for Non-Open Space Use

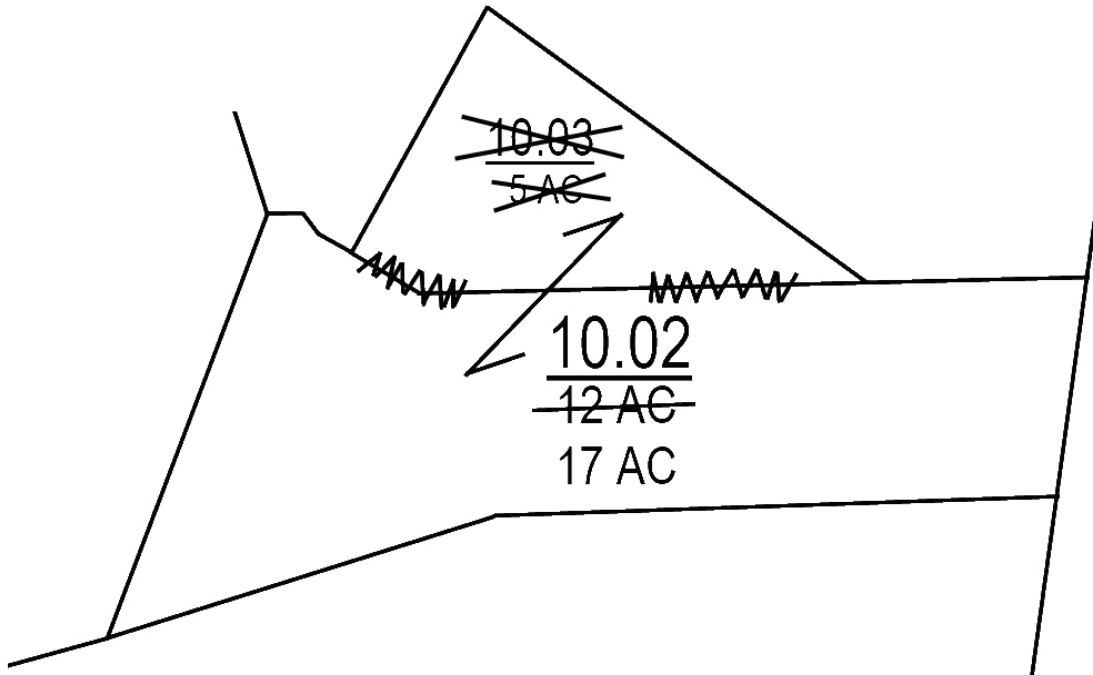
If an easement that benefits a qualified conservation organization that had previously qualified as open space land is assessed and classified as an open space easement and any part of such land is reserved for future development, construction of improvements for private use, or any other non-open space use, then upon the commencement of such non-open space use that portion of the property will be subject to rollback taxes for the previous ten (10) years plus an additional amount equal to ten percent (10%) of the taxes saved.⁴⁶

V. COMBINING PARCELS

A. Combining Parcels to Meet Minimum Acreage Requirements

Generally speaking in order to combine separate parcels of property, the parcels must be contiguous. Contiguous is defined as “touching at a point or along a boundary; adjoining.”⁴⁷ If an owner does not have a single parcel that meets the minimum acreage requirements but has multiple parcels that are contiguous that together would meet the minimum acreage requirements, then the parcels must be combined in order for the land to qualify. Please review the following examples:

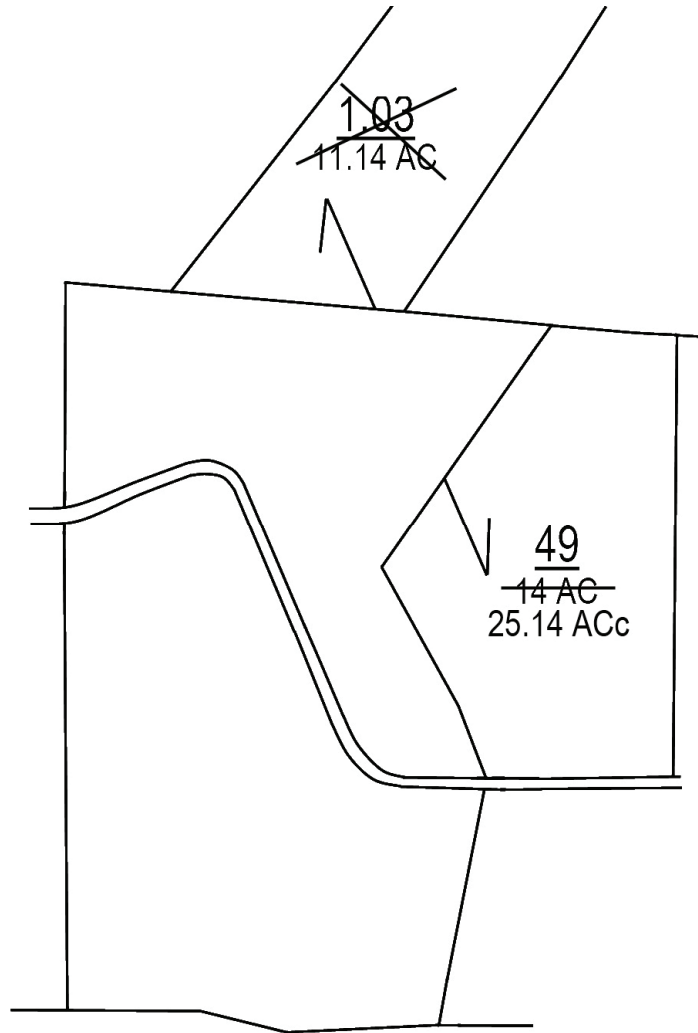
John Smith owns two parcels of property that are contiguous. One parcel is 12 acres and the other parcel is 5 acres. John is actively farming both parcels as a farm unit. John can combine these two parcels to have one (1) tract of land that is 17 acres. These 17 acres can now be classified as agricultural land.



John Smith owns two parcels of property that are contiguous. One parcel is 50 acres and the other parcel is 2 acres. The 2 acres cannot qualify on its own as it does not meet the minimum acreage requirements. Therefore, in order for the 2 acres to qualify, it must be combined with the 50-acre parcel to create a 52-acre tract of land.

But parcels that are separated by another parcel cannot be combined nor can the parcels be land hooked. For example:

John Smith owns two parcels, one of which is 14 acres and the other is approximately 11 acres. However, the two parcels are separated by land owned by Jane Doe. In other words, the two parcels are not contiguous. It is inappropriate to combine these parcels in any manner (e.g., land hook). The two parcels cannot be combined because they are not contiguous. Each parcel must qualify on its own. The following mapping example is unacceptable and any land mapped in this manner must be removed from use value classification and rollback taxes must be assessed.

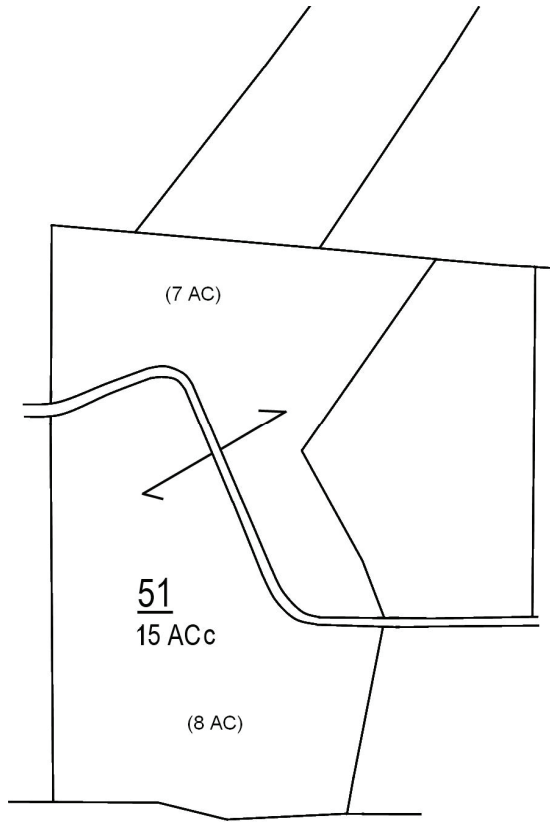


PLEASE NOTE: When combining parcels of property, the assessor will need to end up with one (1) parcel identification number. Also, the parcel identification number that has been discarded cannot be used again.

B. Land Hooks

Property that is separated by a road, a body of water, or some other public or private easement can be land hooked in order to combine two or more parcels to meet the minimum acreage requirements. For example:

John Smith owns two parcels of property that are separated by a public road. One parcel is 7 acres and the other parcel is 8 acres. John is actively farming both parcels as a farm unit. John can combine these two parcels by the use of a land hook in order for him to have one (1) tract of land that is 15 acres. These 15 acres can now be classified as agricultural land.



PLEASE NOTE: Parcels cannot be land hooked where such parcels are separated by land with different ownership. Property can only be land hooked when parcels are separated by a road, a body of water, or some other public or private easement and owned by the same person or persons. When parcels of property are land hooked, the assessor will need to end up with one (1) parcel identification number. Also, the parcel identification number that has been discarded cannot be used again.

C. Ownership Issues between Parcels

To combine parcels of property that are contiguous to each other or to land hook parcels, the ownership for each parcel must be the same. For example:

John Smith owns a parcel of property that is 10 acres. John Smith and Jane Doe own a parcel that is 10 acres and is contiguous with John's other 10 acres. Because the ownership of these two parcels is different, the parcels cannot be combined. To combine these parcels would subject Jane to taxes on John's 10 acres, a parcel in which Jane does not have an ownership interest. Also, it would give Jane a benefit on only 10 acres of property when the minimum acreage requirement for agricultural land is 15 acres. This same reasoning also applies to John. Neither parcel can qualify as agricultural land.

PLEASE NOTE: To combine parcels of property, the parcels must (1) be contiguous, (2) be owned by the same person or persons, and (3) constitute a farm unit. In order to land hook

parcels of property, the parcel must (1) be separated by a road, a body of water, or some other public or private easement and (2) be owned by the same person or persons.

D. Vacant Residential Subdivision Lots Contiguous to Property Classified as Agricultural, Forest, or Open Space Land

Vacant residential lots that are contiguous to or abut property that is classified as agricultural, forest, or open space land cannot be combined. Property that is being, or has been, developed as a residential subdivision cannot qualify as agricultural, forest, or open space land. In fact, property that is classified as agricultural, forest, or open space land and is being developed as a residential subdivision will be disqualified and rollback taxes will be due.⁴⁸

E. Combining Multiple Vacant Lots

Vacant lots in a residential subdivision cannot be combined to qualify those lots as agricultural, forest, or open space land. However, if no part of the plat is being or has been developed, then *all*, but not some or a few, of the lots can be combined to qualify the land as agricultural, forest, or open space. When any portion of the property is being developed or a lot is sold, then the entire property would be disqualified and rollback taxes will be due.⁴⁹

F. Property within a Residential Subdivision Qualifying as Agricultural, Forest, or Open Space Land

If a lot within a subdivision or plan of development meets the minimum acreage requirements and there are no restrictions, covenants, ordinances, etc. prohibiting the property from being farmed, maintained as a forest, or kept in its natural state, then such lot can qualify as agricultural, forest, or open space land. But the individual lot itself must meet the minimum acreage requirements.

VI. PROPERTY CROSSING COUNTY LINES

If a tract of land crosses a county line and is being actively farmed or managed as a forest and meets the minimum acreage requirements, then the tract can still qualify for use value classification. For example:

John Smith owns a 15-acre tract of land that crosses into another county with 10 acres being in County A and the remaining 5 acres being in County B. John is actively farming this 15-acre tract. In order to qualify, an application will need to be filed in both County A and County B. The deed references for both counties will need to be indicated on the application. If any portion of the property is sold, the assessor of one county will be able to know to contact the other in case the property becomes too small to qualify.

VII. MAPPING PROPERTY WHERE ONLY A PORTION IS USED

If only a portion of the property can qualify (e.g., one of the owners is at his or her 1,500-acre maximum thereby causing part of newly acquired property to not qualify), then that portion receiving use value classification should be clearly identified by the applicant and mapped accordingly by the assessor. This will help indicate what portion of the property is being assessed at use value and what portion is being assessed at market value. When only part of the property is sold, the assessor will be able to determine if any rollback taxes are due for that portion sold.

VIII. APPLICATION REQUIREMENTS

A. Filing an Application

Any owner of land is permitted to file an application with the assessor of property to have land classified as agricultural, forest, or open space.⁵⁰ An “owner” is defined as “the person holding title to the land.”⁵¹ A “person” is defined as “any individual, partnership, corporation, organization, association, or other legal entity.”⁵² The application does not require the signature of all owners of the land, but the person signing must be an owner. However, it is recommended that the names of all owners of the land appear on the application as this will help the assessor’s office keep track of the acreage limit for each person. For artificial entities an owner of the entity would need to sign and all owners of the entity should appear on the application. For trusts, it is the trustee, and not any of the beneficiaries, that would have to sign the application. The trustee holds legal title to the property for the benefit of the beneficiaries.

After the assessor approves the application, the application must be filed in the register of deeds office. The applicant must pay the applicable recording fee. The recorded application must then be taken to the assessor’s office so the assessor can make a copy for the file.

B. Life Estate Owner

The owner of a life estate – commonly known as a life tenant – is assessed and is legally responsible to pay taxes on the full value of property; nothing is assessed or taxed to the remainderman.⁵³ A life estate owner has the present right to possess and enjoy the property, whereas the remainderman must wait to possess and enjoy the property at some future date.⁵⁴ Therefore, only the life estate owner or owners, or those who have the present right to possess and enjoy the property, can file an application with the assessor. Please review the following example:

John Smith has a life estate on 50 acres of property and Jane Doe has the remainder. John has the present right to possess and enjoy the property. Jane cannot legally possess and enjoy the property until John’s life estate is terminated. Furthermore, John is the one who is legally responsible to pay the taxes on the property. Therefore, John is the only person who can file an application with the assessor.

PLEASE NOTE: Once John's life estate terminates, Jane must file an application as the ownership as of the assessment date has changed.⁵⁵

Also, there may be situations where property has been subdivided and then conveyed to different persons, but the grantor retains a life estate. Please review the following examples:

John Smith owns a 100-acre tract of land. John has four children. He subdivides the property into four 25-acre tracts and then conveys a 25-acre tract to each child but retains a life estate in each tract. Because John is the life estate owner of all four tracts, John is the only one who can file an application with the assessor. Therefore, the entire 100 acres can be qualified, or still qualify, as agricultural, forest, or open space land. However, once John's life estate terminates, each child will then need to file an application for his or her own 25-acre tract as the ownership as of the assessment date will have changed.

John Smith owns a 100-acre tract of land that is currently qualified as agricultural land. For estate planning purposes, John subdivides the property into four 25-acre tracts and then conveys a 25-acre tract to each child while retaining a life estate in each tract. No new application would be required to be filed as John, the life estate owner, is the only one with the present right to possess and occupy the entire 100 acres. John is still the owner of the 100 acres for taxation purposes. However, once John's life estate terminates, each child will then need to file an application for his or her own 25-acre tract as the ownership as of the assessment date will have changed.

C. Application Deadline

The law provides that an application must be filed with the assessor by March 1.⁵⁶ This has been interpreted to mean on or before March 1. However, if March 1 falls on a Saturday or Sunday, then an application filed on the following Monday will be deemed to have been timely filed. Additionally, applications sent through the U.S. mail are deemed to be timely filed if postmarked on or before the deadline date.⁵⁷

D. Filing after the Deadline Date

Owners of property who are applying for the first time for agricultural, forest, or open space land classification must apply on or before March 1. Applying for the first time means the property has not been previously qualified or that the property was assessed at fair market value for the previous tax year or years. For these owners failure to file by the deadline date will result in the property not qualifying for the current tax year. *There is no appeal procedure to the county board or state board for late filed applications.* For owners applying for the first time, March 1 is an absolute deadline.

But if an owner is applying to continue the previous classification – agricultural, forest, or open space – and fails to file by March 1, then the assessor can accept a late application if the application is filed within thirty (30) days of the assessor's notice that the property has been

disqualified. A late application fee of fifty dollars (\$50.00) must accompany the application.⁵⁸ The \$50.00 must be paid to the county trustee. If the 30 days have expired and the \$50.00 late fee has not been paid, the property will be disqualified and assessed at fair market value and rollback taxes will be due and owing. *There is no appeal procedure in the law after the 30 days have expired, and the \$50.00 late fee cannot be waived.*

PLEASE NOTE: The denial of a *timely* filed application is appealable to the county board of equalization.

E. Calculating the Thirty (30) Day Period for a Late Filed Application

The 30-day period begins when notice is sent by the assessor that the property has been disqualified as agricultural, forest, or open space land.⁵⁹ To compute the 30-day period, you must exclude the day the notice is sent and include the last day unless the last day is a Saturday, a Sunday, or a legal holiday.⁶⁰ Please review the following examples:

Assume that a notice of disqualification is sent by the assessor on Monday, March 9, 2009. You would begin counting the 30 days on Tuesday, March 10, 2009. The thirtieth day would be Wednesday, April 8, 2009. A property owner would have until Wednesday, April 8, 2009, to file a late application with the \$50.00 late fee to continue the previous classification.

Assume that a notice of disqualification is sent by the assessor on Thursday, March 5, 2009. You would begin counting the 30 days on Friday, March 6, 2009. The thirtieth day would be Saturday, April 4, 2009. However, because the thirtieth day falls on a Saturday, then the thirtieth day would be Monday, April 6, 2009. Therefore, the property owner would have until Monday, April 6, 2009, to file a late application with the \$50.00 late fee to continue the previous classification.

In both of these examples, the failure of the property owner to submit an application and pay the \$50.00 late fee by the end of the 30-day period will subject the property to rollback taxes.⁶¹ The property will then be assessed at market value for the current year. *There is no appeal procedure in the law after the expiration of the 30 days, and the \$50.00 late fee cannot be waived.*

F. Notice of Disqualification

The law does not specify what language is needed in the notice of disqualification. The assessment change notice required to be sent in accordance with Tenn. Code Ann. § 67-5-508 would appear to be sufficient to indicate that the property's classification has changed. However, this notice does not inform an owner that an application with the payment of a \$50.00 late fee will be accepted if made within 30 days. Therefore, it is suggested that the assessor send a notice that would inform a property owner that action must be taken within 30 days and that failure to act will result in the property being disqualified and rollback taxes will be due and owing. See Appendix "A" for an example of a notice of disqualification.

G. Filing Fees

The only filing fee applicable when applying is the recording fee that must be paid to the register of deeds office. This fee is paid by the applicant. In addition, those owners who desire to continue the previous classification as agricultural, forest, or open space land and whose application is filed after the March 1 deadline must also pay a \$50.00 late fee to the county trustee.⁶²

H. Reapplication

When property has been classified as agricultural, forest, or open space land, reapplication is not required so long as the ownership as of the assessment date (January 1) remains unchanged.⁶³ A new application must be filed when the ownership as of the assessment date changes. Failure to file a new application will result in the property being disqualified from use value classification and rollback taxes will be assessed.⁶⁴ Please review the following examples:

As of January 1, 2009, John Smith owns 20 acres that are classified as agricultural land. On May 1, 2009, John Smith sells these 20 acres to Jane Doe. A new application is required to be filed by March 1, 2010, with the assessor because the ownership as of the assessment date (January 1, 2009) has changed – Jane Doe is now the owner of the 20 acres.

As of January 1, 2009, John Smith and Jane Doe own 20 acres that are classified as agricultural land. On May 1, 2009, John Smith and Jane Doe sell a 1/3 interest to William Bonny. John, Jane, and William each own a 1/3 interest in the property. A new application is required to be filed by March 1, 2010, with the assessor because the ownership (John Smith and Jane Doe) as of the assessment date (January 1, 2009) has changed – John, Jane, and William now own the 20 acres.

As of January 1, 2009, John Smith and Jane Doe own 20 acres that are classified as agricultural land. On May 1, 2009, Jane sells her interest to John. John is now the sole owner of the 20 acres. A new application is required to be filed by March 1, 2010, with the assessor because the ownership (John Smith and Jane Doe) as of the assessment date (January 1, 2009) has changed – John is now the sole owner of the 20 acres.

As of January 1, 2009, John Smith, Jane Doe, and William Bonny own 1,500 acres that are classified as agricultural land. On May 1, 2009, John, Jane, and William create ABC, Inc. with each having a 1/3 ownership interest in the company. On June 1, 2009, John, Jane, and William convey all of their interest in the 1,500 acres to ABC, Inc. A new application is required to be filed by March 1, 2010, with the assessor because the ownership (John Smith, Jane Doe, and

William Bonny) as of the assessment date (January 1, 2009) has changed – an artificial entity (ABC, Inc.) now owns the 1,500 acres.

As of January 1, 2009, John Smith owns 500 acres that are classified as agricultural land. On April 1, 2009, John Smith conveys all 500 acres to Jane Doe and William Bonny. However, John retains a life estate on all 500 acres. A new application would not be required because John, as the life estate owner, is the only one who has a present right to possess the property and is the only one who can apply for the use value classification. Therefore, a new application is *not* required so long as John Smith's life estate is valid. Once John's life estate terminates, a new application will be required from Jane and William.

Although some of the owners in the examples remain the same, a new application is required for two reasons. First, when an owner sells his or her interest in property it does not automatically terminate the personal liability for rollback taxes. The filing of a new application by the remaining owners would terminate the personal liability of the previous owner(s) because this is a tax where the personal liability can be "shifted" to another party. Also, the remaining owners have more acreage attributable to each which may, for example, cause some of the property to be disqualified because one or more may exceed the 1,500-acre limitation.

Second, when a new owner is added as an owner to property, a new application is needed as this new owner needs to make an informed decision of whether he or she wants to be personally liable for rollback taxes. Again, the acreage that is attributable to each owner will change because the ownership as of the assessment date has changed.

PLEASE NOTE: When property is conveyed into a revocable trust, *it does not result in a change of ownership requiring a new application.* The reason for this is that a revocable trust is a living trust which means that it can be revoked at any time by the person who created it. The creator of the trust is the trustee and the beneficiary. It is not until a revocable trust becomes irrevocable that a new application will be required. A revocable trust will become irrevocable upon the death of the person who created it. "It is the responsibility of the applicant to promptly notify the assessor of any change in the use or ownership of the property that might affect its eligibility" ⁶⁵

I. Appeal Procedures Concerning Applications

Any owner of property may appeal the denial of a *timely* filed greenbelt application. Appeal is to be made first to the local board of equalization; then appeal may be made to the state board of equalization. *There is no appeal procedure for first time late filed applications.*

Late filed applications from owners desiring to continue the previous use value classification must pay the \$50.00 late fee within the 30-day period that is provided in the notice sent by the assessor – see Appendix "A" for an example of the notice. Failure to pay the \$50.00 late fee within the 30-day period will cause the property to be disqualified from use value classification and subject the property to rollback taxes. *Once the 30-day period expires, there is no appeal procedure available.*

IX. ACREAGE LIMITATIONS

A. Acreage Limitation for Agricultural, Forest, and Open Space Land

The law provides that no “person” may place more than one thousand five hundred (1,500) acres of land within any one (1) taxing jurisdiction.⁶⁶ A “person” is defined as “any individual, partnership, corporation, organization, association, or other legal entity.”⁶⁷ Therefore, no individual, partnership, corporation, organization, association, or other legal entity can have more than 1,500 acres in any one county.

PLEASE NOTE: According to Tenn. Code Ann. § 67-5-1003(3), the 1,500-acre maximum does not apply to an *agricultural* classification that an owner obtained prior to July 1, 1984.⁶⁸ However, Tenn. Code Ann. § 67-5-1008(g) operates to remove from use value classification any *forest* or *open space* land in excess of the 1,500-acre maximum where such land was classified prior to July 1, 1984.⁶⁹ Therefore, *forest* or *open space* land in excess of the 1,500-acre maximum must be removed from the use value classification and rollback taxes must be assessed.

B. Attributing Acres among Individuals

As it applies to individuals, the number of acres attributed to each person shall equal the percentage of such person’s ownership interest in the parcel.⁷⁰ Please review the following example:

John Smith, Jane Doe, and William Bonny own a 1,500-acre tract of land. John, Jane, and William each have a one-third (1/3) interest in the property. The number of acres attributed to each shall equal the ownership interest each has in the property. Therefore, John would be attributed 500 acres, Jane would be attributed 500 acres, and William would be attributed 500 acres. *Please note that each can still qualify an additional 1,000 acres before each reaches the 1,500-acre maximum.*

C. Attributing Acres among Artificial Entities and Individuals

Artificial entities, such as partnerships, corporations, LLCs, or other legal entities, are also subject to the 1,500-acre maximum.⁷¹ For example:

ABC, Inc. owns a 1,500-acre tract that is qualified as agricultural land. ABC, Inc. cannot qualify any more acres as agricultural, forest, or open space land.

Persons having an ownership interest in an artificial entity are attributed a percentage of the total acreage that equals that person’s percentage interest in the ownership or net earnings of the entity.⁷² For example:

Assume John Smith, Jane Doe, and William Bonny each own a one-third (1/3) interest in ABC, Inc., and ABC, Inc. owns a 1,500-acre tract that is qualified as agricultural land. John, Jane, and William would each be attributed 500 acres as this represents their ownership interest in ABC, Inc. ABC, Inc. would be attributed 1,500 acres and, therefore, would be at its maximum acreage amount. *Please note that although ABC, Inc. is at its 1,500-acre maximum, John, Jane, and William can still qualify, individually, an additional 1,000 acres each.*

Artificial entities that own property qualified as agricultural, forest, or open space land shall be aggregated with other property owned by other artificial entities having fifty percent (50%) or more common ownership or control in determining the 1,500-acre maximum.⁷³ To the extent property is owned by a person who is at the maximum acreage limit, such property or portion of property is ineligible as agricultural, forest, or open space land.⁷⁴ Please review the following examples:

Assume ABC, Inc. is owned equally by John Smith, Jane Doe, and William Bonny. Further assume that ABC, Inc. owns a 1,500-acre tract that is qualified as agricultural land. ABC, Inc. is at its 1,500-acre maximum. Now assume that XYZ, Inc., which is owned equally by John Smith, Jane Doe, and James Davis, has purchased 1,500 acres and desires to have the land classified as agricultural land. There is more than fifty percent (50%) common ownership and control between ABC, Inc. and XYZ, Inc. as both John and Jane own two-thirds (2/3s), more than 50%, in each. ABC, Inc. and XYZ, Inc.'s property would be aggregated together to determine the total acreage. Therefore, XYZ, Inc. cannot qualify any of its 1,500 acres as agricultural land because it is aggregated with ABC, Inc.'s property which is already at its 1,500-acre maximum.

Assume ABC, Inc. is owned equally by John Smith, Jane Doe, and William Bonny. Further assume that ABC, Inc. owns a 1,500-acre tract of land that is qualified as agricultural land. ABC, Inc. is at its 1,500-acre maximum. Now assume that XYZ, Inc., which is owned equally by John Smith, Archibald Leach, and James Davis, has purchased 1,500 acres and desires to have the land classified as agricultural land. There is not more than 50% common ownership and control between ABC, Inc. and XYZ, Inc.'s property as John Smith is the only common owner between ABC, Inc. and XYZ, Inc. John only has a 1/3 interest in each company. Therefore, ABC, Inc. and XYZ, Inc.'s property would not be aggregated together to determine the total acreage. The acreage of all the individuals would be attributed as follows: ABC, Inc. has 1,500 acres; XYZ, Inc. has 1,500 acres; John has 1,000 acres; Jane has 500 acres; William has 500 acres; Archibald has 500 acres; and James has 500 acres.

John Smith and Jane Doe each own 1,000 acres that qualify as agricultural land. William Bonny currently owns 1,500 acres that qualify as agricultural land. As of now, John Smith is attributed with 1,000 acres, Jane Doe is attributed 1,000 acres, and William Bonny is attributed 1,500 acres. John, Jane, and William

acquire a 1,500-acre tract that they desire to qualify as agricultural land. Only 1,000 acres will qualify because William is at his 1,500-acre maximum.

D. Attributing Acres for Trusts

When attributing acres for property held in trust, it is the trustee who is subject to the acreage limitation and is the only one who can sign an application. The reason for this is because the “trustee holds legal title [to property] and in that sense, owns the property, holding it for the benefit of the beneficiary who owns the equitable title.”⁷⁵ The beneficiary has a beneficial interest in the property but does not hold legal title. Please review the following examples:

John Smith is trustee of the J.D. Rockefeller Trust. The Trust has three (3) beneficiaries. John Smith, as trustee, acquires a 3,000-acre tract and applies for forest land classification. Because John is the trustee and holds legal title to the property, only 1,500 acres can qualify.

John Smith and Jane Doe are co-trustees of the J.D. Rockefeller Trust. The Trust has three (3) beneficiaries. John and Jane, as co-trustees, acquire a 3,000-acre tract and apply for forest land classification. Because there are two (2) trustees, they hold legal title to the property. Therefore, all 3,000 acres can qualify. John, as one of the trustees, would be attributed 1,500 acres and Jane, as the other trustee, would be attributed 1,500 acres.

Successor trustees can be provided for in the trust instrument itself. Generally, “title vests in the successor trustees by virtue of the original trust instrument without necessity for a formal conveyance[.]”⁷⁶ (e.g., a deed).

E. Attributing Acres Among Husband and Wife

A husband and wife who own property as tenants by the entirety are limited to a maximum of 1,500 acres. This is because the husband and wife own the property in its entirety.⁷⁷ They do not own separate interests in the property.⁷⁸ “Neither . . . [the husband or the wife] can separately, or without the assent of the other, dispose of or convey away any part.”⁷⁹ In fact, upon the death of either the husband or wife

[t]he survivor . . . has no increase of estate or interest by the deceased having, before the entirety, been previously seised of the whole. The survivor, it is true, enjoys the whole, but not because any new or further estate or interest becomes vested, but because of the original conveyance, and of the same estate and same quantity of estate as at the time the conveyance was perfected.⁸⁰

If the husband and wife own the property as tenants in common, then each can be attributed 1,500 acres. However, the deed must explicitly state that the property is owned as tenants in common. Otherwise, the property is owned as tenants by the entirety.

PLEASE NOTE: No new application is required to be filed by a surviving spouse that held the property with the deceased spouse as tenants by the entirety.

X. ROLLBACK TAXES

A. Calculating Rollback Taxes

By statute the assessor of property must calculate rollback taxes.⁸¹ Rollback taxes are the amount of taxes saved by the difference of the use value assessment and the fair market value assessment.⁸² Rollback taxes are not a penalty; they are a recapture of the amount of taxes saved over a certain period of time that the land qualified as agricultural, forest, or open space. For agricultural and forest land rollback taxes are calculated each year for the preceding three (3) years, and for open space land rollback taxes are calculated each year for the preceding five (5) years.⁸³ For example:

As of January 1, 2008, a 15-acre tract has qualified as agricultural land for the last 10 years. On November 1, 2008, the 15-acre tract no longer qualifies as agricultural land. Rollback taxes are due for 2008, 2007, and 2006. Therefore, the amount of taxes saved by the difference of the use value assessment and fair market value assessment for each of those years would be the total amount of rollback taxes due and owing.

If the current year's tax rate is not yet known, then Tenn. Code Ann. § 67-5-1008(d)(2) provides how rollback taxes are to be calculated:

When the tax rate for the most recent year of rollback taxes is not yet available, the assessor shall calculate the amount of taxes saved for the most recent year by using the last made assessment and rate fixed according to law, and the trustee shall accept tender of the amount determined to be owing.⁸⁴

This situation arises when property is disqualified early in the tax year (e.g., February 1). The tax rate, and potentially the assessment, may not be known at that time. The amount of rollback taxes due for the current year would be the same amount that is calculated for the previous year (i.e., the last made assessment and rate fixed according to law).

B. Delinquency Date for Rollback Taxes

Rollback taxes are payable from the date written notice is provided by the assessor but are not delinquent until March 1 of the following year.⁸⁵

C. Circumstances Triggering Rollback Taxes

The law provides that rollback taxes are due if any of the following occur:

- (1) Such land ceases to qualify as agricultural land, forest land, or open space land as defined in § 67-5-1004;

- (2) The owner of such land requests in writing that the classification as agricultural land, forest land, or open space land be withdrawn;
- (3) The land is covered by a duly recorded subdivision plat or an unrecorded plan of development and any portion is being developed; except that, where a recorded plat or unrecorded plan of development contains phases or sections, only the phases or sections being developed are disqualified;
- (4) An owner fails to file an application as required by [law];
- (5) The land exceeds the acreage limitations of § 67-5-1003(3); or
- (6) The land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt.⁸⁶

1. Reasons Land May Cease to Qualify as Agricultural, Forest, or Open Space Land

Land that no longer meets the minimum acreage requirements will be disqualified from use value classification. Agricultural land no longer *engaged* in farming or that is being developed will be disqualified. Basically, when the land no longer meets the definition of agricultural, forest, or open space land, then the land will be disqualified from use value classification and rollback taxes will be assessed.

2. Requests for Property to be Withdrawn from Use Value Classification

If an owner is requesting property to be withdrawn, you must ask for such request in writing. **DO NOT ACCEPT A VERBAL REQUEST.** The writing should specify, at a minimum, the following: (1) who is(are) the current owner(s); (2) who is making the request; (3) parcel identification number(s); and (4) a current description of the property. A current description is particularly critical when only a portion of the property is being withdrawn. When only a portion of the property is being withdrawn, a description must be provided outlining the portion to be removed.

3. Subdivision Plats or Plans of Development

The mere recording of a subdivision plat or other plan of development does not automatically remove property from agricultural, forest, or open space land classification. But if any portion contained within the subdivision plat or plan of development is being developed, then the entire property would be disqualified from use value classification and rollback taxes would be due.⁸⁷ However, if the recorded plat or plan of development contains phases or sections, then only the phases or sections being developed would be disqualified.⁸⁸

It does not matter whether the subdivision plat or plan of development is recorded. If property is being developed in accordance with some plan of development, then the entire property will be disqualified and rollback taxes will be assessed.

PLEASE NOTE: It is the development of property in furtherance of a subdivision plat or other plan of development that will disqualify property from use value classification.

4. Failure to File Application

If a new application is required to be filed and no application is filed by the appropriate deadline date – March 1 of the following year or 30 days after notice of disqualification is sent – or, when applicable, there is a failure to pay the \$50.00 late fee, then the property will be disqualified from use value classification and rollback taxes shall be assessed.

5. Property Exceeding the Acreage Limitation

Rollback taxes are due for property that previously qualified for use value classification but will be disqualified because one or more of the owners exceed the maximum acreage limitation. This can occur when the ownership changes in property thereby increasing the percentage interest that each owner has. For example:

A, B, and C own 3,000 acres of land that are classified as agricultural. Each is attributed 1,000 acres each. A and B also own 1,000 acres of land that are classified as agricultural. A and B are attributed 500 acres each. A and B are now at their 1,500-acre maximum. Subsequently, C conveys his interest to A and B. Because of this conveyance, A and B are now attributed 1,500 acres each in the 3,000 acres. However, A and B were already at their 1,500 acre maximum. Therefore, 1,000 acres will be disqualified and rollback taxes will be due because A and B have increased their percentage interest in the 3,000 acres and are now exceeding their 1,500-acre maximum.

PLEASE NOTE: Tenn. Code Ann. § 67-5-1008(h) provides that no rollback taxes are due where property has passed to a lineal descendant and the new owner will exceed the maximum acreage. Assuming in the example above that A and B are lineal descendants of C, then no rollback taxes would have been due for those 1,000 acres. However, this assumes that no other disqualifying circumstances occur before the property has been assessed at market value for three years.⁸⁹

6. Property that is Conveyed and Thereby Becomes Exempt

If property becomes exempt because it is transferred or conveyed to an exempt governmental entity (e.g., property that is conveyed to the state of Tennessee or any of its political subdivisions), then rollback taxes are to be assessed.⁹⁰ Therefore, “all greenbelt property conveyed to the government that takes on exempt status is subject to assessment of rollback taxes regardless of whether the greenbelt use of that property is continued by the government after the conveyance.”⁹¹

But property that is purchased by the government through the State Lands Acquisition Fund (Tenn. Code Ann. § 67-4-409(j)) is not subject to rollback taxes.⁹² Tenn. Code Ann. § 11-14-406(b) specifically provides that acquisition of greenbelt property under the “U.A. Moore Wetlands Acquisition Act”⁹³ “shall not constitute a change in the use of the property, and no rollback taxes shall become due solely as a result of such acquisition.”⁹⁴

Also, property that is purchased under the Tennessee Heritage Conservation Trust Fund Act of 2005 (Tenn. Code Ann. §§ 11-7-101 *et seq.*) is not subject to rollback taxes because property acquired under this Act does not constitute a change in use.⁹⁵

D. Personal Liability for Rollback Taxes

Determining who is personally liable to pay rollback taxes will depend upon the facts and circumstances. Generally speaking, whoever changes the use of the property is personally liable.⁹⁶ If the sale of agricultural, forest or open space land will result in the property being disqualified, then the seller is liable for rollback taxes, *unless otherwise provided by written contract.*⁹⁷ Unlike most other taxes, you can pass the personal liability for rollback taxes to another person by written contract. If the buyer declares in writing at the time of sale an intention to continue the greenbelt classification but fails to file any form necessary to continue the classification within ninety (90) days from the sale date, the rollback taxes shall become solely the responsibility of the buyer.⁹⁸ For example, if the grantee in a deed agrees to assume the liability for rollback taxes, then the personal liability is shifted from the seller to the buyer.

E. Rollback Taxes are a First Lien on the Disqualified Land

Rollback taxes are a first lien on the disqualified land and are collected in the same manner as other property taxes.⁹⁹ Therefore, even if the personal liability of the rollback taxes is with the seller, the disqualified land is still subject to any unpaid rollback taxes.

F. Appealing Rollback Taxes

The liability for rollback taxes is appealed directly to the state board of equalization.¹⁰⁰ Appeal must be made by March 1 of the year following the date the assessor's notice is sent determining that rollback taxes are due.¹⁰¹

PLEASE NOTE: If property has been removed from use value classification and rollback taxes have been assessed, only the state board of equalization has the authority to remove the liability for rollback taxes and return the property to use value classification. *The local boards of equalization do not have the authority to remove rollback tax liability.*

G. Appealing Property Values that are Used to Fix the Amount of Rollback Taxes

Property values that fix the amount of rollback taxes can only be appealed as specifically provided by law.¹⁰² For example:

John Smith owns property that has been classified as agricultural land for several years. On October 1, 2009, the property no longer qualifies as agricultural land and rollback taxes are assessed. John would owe rollback taxes for tax years 2009, 2008, and 2007. John wants to dispute the amount of rollback taxes because he believes the fair market value, as determined by the assessor, is excessive for 2009, 2008, and 2007. In order for John to have challenged the fair market value in those tax years, John needed to appeal to the county board in 2007, 2008, and

2009. Because John failed to appeal, those values are deemed final and conclusive.¹⁰³

H. Appealing the Use Value

The use value is *not* appealable to the county boards of equalization. In fact, individual owners of greenbelt property cannot appeal the use value. Tenn. Code Ann. § 67-5-1008(c)(4) states that to appeal the use value a petition of at least ten (10) owners of greenbelt property, or a petition of any organization representing ten (10) or more owners of greenbelt property, must be filed with the state board of equalization “on or before twenty (20) days after the date the division of property assessments publishes notice of the availability of the proposed use value schedule in a newspaper of general circulation within the county.”¹⁰⁴ Once the state board has been petitioned, a hearing is to be held “to determine whether the capitalization rate has been properly determined by the division of property . . . assessments, whether the agricultural income estimates determined by the division of property . . . assessments are fair and reasonable, or if the farm land values have been determined in accordance with [§ 67-5-1008].”¹⁰⁵

I. Rollback Tax Notice

Once the assessor has made the determination that property should be disqualified from use value classification and rollback taxes have been calculated, written notice must be provided to the collecting official.¹⁰⁶ *Simply having the rollback taxes added to the tax bill will not meet the notice requirement of Tenn. Code Ann. § 67-5-1008(d).* The written notice must identify the following: (1) the amount of rollback taxes due; (2) the basis for the rollback taxes; and (3) the person the assessor finds to be personally liable.¹⁰⁷ If the person the assessor finds personally liable for the rollback taxes is a seller, then a copy of the notice should also be sent to the buyer (current owner) as rollback taxes are a first lien on the land. Any time there is a sale of property, the current owner should always be notified because rollback taxes are a first lien on the land. Please see Appendix “B” for an example of a rollback notice.

PLEASE NOTE: It is recommended that if an assessor disqualifies property from use value classification for any reason, the assessor should immediately send notice of the rollback assessment to all affected parties. Appendix “B” provides an example of a rollback tax notice. Owners of property tend to react more promptly to a tax notice for several thousand dollars than a notice that simply states to please apply for greenbelt or you may be subject to rollback taxes.

J. When Only a Portion of a Parcel is Subject to Rollback Taxes

When only a portion of a parcel is subject to rollback taxes, the assessor must still send the appropriate rollback tax notice. In addition, the assessor must apportion the assessment of the parcel on the first tax roll prepared after the rollback taxes become payable.¹⁰⁸ This apportioned amount must be entered on the tax roll as a separately assessed parcel.¹⁰⁹

K. Determining the Years Subject to Rollback Taxes

The years subject to rollback taxes depend on whether the property qualifies for use value classification as of the assessment date (January 1). Please review the following examples:

Fifty (50) acres have been classified as agricultural land for several years. As of January 1, 2009, the property still qualifies as agricultural land. On April 1, 2009, the owner requests, in writing, for the property to be removed as agricultural land. The use of this property did not change until after the assessment date (January 1, 2009). Because the property still qualifies as of January 1, 2009, the property will still receive the use value classification for tax year 2009. Therefore, rollback taxes would be due for 2009, 2008, and 2007. The property will be assessed at market value as of January 1, 2010.

Fifty (50) acres have been classified as agricultural land for several years. On December 15, 2008, the owner requests, in writing, for the property to be removed as agricultural land. As of January 1, 2009, the property is no longer being used as agricultural land. Therefore, rollback taxes would be due for 2008, 2007, and 2006. The property will be assessed at market value as of January 1, 2009.

L. Sending an Assessment Change Notice after Property has been Disqualified

The first year the disqualified property is assessed at market value is when an assessment change notice is required to be sent.¹¹⁰ Please review the following examples:

Fifty (50) acres have been classified as agricultural land for several years. As of January 1, 2009, the property still qualifies as agricultural land. On April 1, 2009, the owner requests, in writing, for the property to be removed as agricultural land. The use of this property did not change until after the assessment date (January 1, 2009). Because the property still qualifies as of January 1, 2009, the property will still receive the use value classification for tax year 2009. The first year the property will be assessed at market value will be as of January 1, 2010. Because the value and classification have changed, an assessment change notice is required to be sent for tax year 2010.

Fifty (50) acres have been classified as agricultural land for several years. On December 15, 2008, the owner requests, in writing, for the property to be removed as agricultural land. As of January 1, 2009, the property is no longer being used as agricultural land. The first year that the property will be assessed at market value will be as of January 1, 2009. Because the value and classification have changed, an assessment change notice is required to be sent for tax year 2009.

M. Circumstances where Rollback Taxes are not Assessed

Rollback taxes are not due if property passes to a lineal descendant[†] just because the maximum acreage is exceeded.¹¹¹ This is an exception to Tenn. Code Ann. § 67-5-1008(d)(1)(E) which provides that rollback taxes are due if the “land exceeds the acreage limitations”¹¹² However, rollback will be due if other disqualifying circumstances occur before the property has been assessed at market value for three (3) years.¹¹³

When property is taken by eminent domain and the taking results in the remaining acres being too small to qualify, the remaining acres will continue to qualify for use value classification (i.e., no rollback taxes are due from the remaining acres).¹¹⁴ The property will continue to qualify for use value classification so “long as the landowner continues to own the remaining portion of such parcel and for as long as the landowner’s lineal descendants collectively own at least fifty percent (50%) of the remaining portion of such parcel[.]”¹¹⁵

Property that is purchased by the government through the State Land Acquisition Fund (Tenn. Code Ann. § 67-4-409(j)) is not subject to rollback taxes. This fund is used to acquire property pursuant to the U.A. Moore Wetlands Acquisition Act (Tenn. Code Ann. § 11-14-406(b)). Property that is acquired pursuant to this Act shall not constitute a change in the use of the property.¹¹⁶ Therefore, no rollback taxes are due solely as a result of such an acquisition.

Also, property that is purchased under the Tennessee Heritage Conservation Trust Fund Act of 2005 (Tenn. Code Ann. §§ 11-7-101 *et seq.*) is not subject to rollback taxes because property acquired under this Act does not constitute a change in use.¹¹⁷

N. Voiding Rollback Taxes Imposed in Error

An assessor may void rollback taxes if it is determined that the taxes were imposed in error.¹¹⁸ *However, there shall be no refund of rollback taxes that have been collected at the request of a buyer or seller at the time of sale.*¹¹⁹ The statute does not provide a time limitation for when an assessor can no longer void rollback taxes. But if rollback taxes have been turned over for collection (i.e., the taxes have been turned over to the clerk and master), then the assessor cannot void the rollback taxes as the assessor no longer has control over the taxes.¹²⁰

XI. EMINENT DOMAIN OR OTHER INVOLUNTARY PROCEEDING

A. Liability for Rollback Taxes

If property that is qualified as agricultural, forest, or open space land is taken by eminent domain or other involuntary proceeding, then the agency or body doing the taking shall be responsible for the rollback taxes.¹²¹ Property that is transferred and converted to an exempt or nongreenbelt use is considered to have been converted involuntarily if the transferee or an agent for the transferee (1) sought the transfer *and* (2) had power of eminent domain.¹²² Please

[†] A lineal descendant is defined as a “blood relative in the direct line of descent. Children, grandchildren, and great-grandchildren are lineal descendants.” Black’s Law Dictionary, 9th Ed. p. 510. **PLEASE NOTE:** *A spouse is not a lineal descendant.*

remember that no rollback taxes are due if the property was acquired under the U.A. Moore Wetlands Acquisition Act¹²³ or the Tennessee Heritage Conservation Trust Fund Act of 2005.¹²⁴

B. The Taking Results in the Property Being too Small to Qualify

If the taking results in the property being too small to qualify, the property can still continue the use value classification so long as the landowner continues to own and use the remaining portion of the property and for so long as the landowner's "lineal descendants" (see footnote † on page 26 for the definition of "lineal descendant") collectively own at least fifty percent (50%) of the remaining portion.¹²⁵ However, if the property is conveyed to some other third party, rollback taxes will be automatically due because the property will not meet the minimum acreage requirements.

C. Property Acquired by a Lender in Satisfaction of a Debt

Property shall not be subject to rollback taxes when property is acquired by a lender in satisfaction or partial satisfaction of a debt.¹²⁶ Rollback taxes will only be assessed against a lender if the property is *used* for a non-greenbelt purpose.¹²⁷ Non-use of the property is permitted. In addition, the property will continue to receive use value classification. All of this also applies if the property is transferred to a trustee in bankruptcy.¹²⁸ *Please note that an application is not required to be filed by the lender or trustee.*

But when the lender sells the property, rollback taxes may be due under the following circumstances:

- (1) Such land ceases to qualify as agricultural land, forest land, or open space land as defined in § 67-5-1004;
- (2) The owner of such land requests in writing that the classification as agricultural land, forest land, or open space land be withdrawn;
- (3) The land is covered by a duly recorded subdivision plat or an unrecorded plan of development and any portion is being developed; except that, where a recorded plat or unrecorded plan of development contains phases or sections, only the phases or sections being developed are disqualified;
- (4) An owner fails to file an application as required by [law];
- (5) The land exceeds the acreage limitations of § 67-5-1003(3); or
- (6) The land is conveyed or transferred and the conveyance or transfer would render the status of the land exempt.¹²⁹

-
- ¹ *Marion Co. v. State Bd. of Equalization*, 710 S.W.2d 521, 522 (Tenn. Ct. App. 1986), *permission to appeal denied* April 21, 1986.
- ² Tenn. Code Ann. §§ 67-5-1001 – 1050.
- ³ Tenn. Code Ann. §§ 67-5-1002 and 1003.
- ⁴ Tenn. Code Ann. § 67-5-1002(1).
- ⁵ Tenn. Code Ann. § 67-5-1002(3).
- ⁶ *See* Tenn. Code Ann. §§ 67-5-1002(A) – (E).
- ⁷ Tenn. Code Ann. § 67-5-1002(4).
- ⁸ Tenn. Code Ann. § 67-5-1008(a); *see also* Tenn. Code Ann. § 67-5-1004(11) (“‘Present use value’ means the value of land based on its current use as either agricultural, forest, or open space land and assuming that there is no possibility of the land being used for another purpose.”).
- ⁹ *Marion Co.*, 710 S.W.2d at 523.
- ¹⁰ *Id.*
- ¹¹ *Id.* at 522.
- ¹² Tenn. Code Ann. § 67-5-1002(5).
- ¹³ *Id.*
- ¹⁴ Tenn. Code Ann. § 67-5-1003(3).
- ¹⁵ Tenn. Code Ann. §§ 67-5-1005(a)(1), 1006(a)(1), 1007(b)(1), and 1008(b)(1).
- ¹⁶ Tenn. Code Ann. § 67-5-1004(1)(A)(i) – (ii).
- ¹⁷ Tenn. Code Ann. § 67-5-1004(4).
- ¹⁸ Tenn. Code Ann. § 67-5-1005(a)(3).
- ¹⁹ *Id.*
- ²⁰ Tenn. Code Ann. § 67-5-1002(4).
- ²¹ Tenn. Code Ann. § 67-5-1004(1)(B).
- ²² *See Bertha L. Estes* (Williamson County, Final Decision & Order, July 13, 1993).
- ²³ Tenn. Code Ann. § 67-5-1004(1)(A)(ii).
- ²⁴ Tenn. Code Ann. § 67-5-1004(3).
- ²⁵ Tenn. Code Ann. §§ 67-5-1006(b)(2), (c), (d)(2) and (3).
- ²⁶ Tenn. Code Ann. § 67-5-1006(d)(1).
- ²⁷ Tenn. Code Ann. §§ 67-5-1006(e)(1) – (2).
- ²⁸ Tenn. Code Ann. § 67-5-1004(7).
- ²⁹ Tenn. Code Ann. §§ 67-5-1002(2)(A) – (F).
- ³⁰ Tenn. Code Ann. § 67-5-1004(7).
- ³¹ Tenn. Code Ann. § 67-5-1004(10) (“‘Planning commission’ means a commission created under § 13-3-101 or § 13-4-101.”).
- ³² Tenn. Code Ann. § 67-5-1007(a)(1).
- ³³ Tenn. Code Ann. § 67-5-1007(a)(2).
- ³⁴ Tenn. Code Ann. § 67-5-1004(6).
- ³⁵ Tenn. Code Ann. § 11-15-107; *see also* Tenn. Code Ann. § 67-5-1009.
- ³⁶ Tenn. Code Ann. § 67-5-1009.
- ³⁷ *Id.*
- ³⁸ Tenn. Code Ann. § 11-15-107(c).
- ³⁹ Tenn. Code Ann. § 67-5-1009(d); *see also* Tenn. Code Ann. § 67-5-1007(b)(1).
- ⁴⁰ Tenn. Code Ann. §§ 67-5-1009(a)(1) and (2).
- ⁴¹ Tenn. Code Ann. § 67-5-1009(c)(1).
- ⁴² Tenn. Code Ann. § 67-5-1009(c)(5).
- ⁴³ Tenn. Code Ann. § 11-15-105(a).
- ⁴⁴ Tenn. Code Ann. § 67-5-1009(b)(4).
- ⁴⁵ *Id.*
- ⁴⁶ Tenn. Code Ann. § 67-5-1009(c)(3).
- ⁴⁷ BLACK’S LAW DICTIONARY 362 (9th ed. 2009).
- ⁴⁸ Tenn. Code Ann. § 67-5-1008(d)(1)(C).
- ⁴⁹ *See* Tenn. Code Ann. § 67-5-1008(d)(1)(C).
- ⁵⁰ Tenn. Code Ann. §§ 67-5-1005(a)(1), 1006(a)(1), and 1007(b)(1).
- ⁵¹ Tenn. Code Ann. § 67-5-1004(8).

-
- ⁵² *Id.* 1004(9).
- ⁵³ *Sherrill v. Bd. of Equalization*, 452 S.W.2d 857, 858 (Tenn. 1970) (“[T]he life tenant is held to be under a duty to pay taxes which accrue during the period of his tenancy.”); *see also Hoover v. State Bd. of Equalization*, 579 S.W.2d 192, 196 (Tenn. Ct. App. 1978) *cert. denied* April 2, 1979 (“[T]he full value of the land is taxed in the hands of the life tenants, notwithstanding the fact that a life tenant has less than a full and unrestricted ownership of the land.”).
- ⁵⁴ *Sherrill*, 452 S.W. at 858 (“A remainder interest and a life interest in real estate are separate interests in that the holder of the vested remainder interest has the privilege of possession or enjoyment postponed to some future date, whereas the life tenant has the present right to possession or enjoyment.”).
- ⁵⁵ *See* Tenn. Code Ann. §§ 67-5-1005(a)(1), 1006(a)(1), and 1007(b)(1) (“Reapplication thereafter is not required so long as the ownership as of the assessment date remains unchanged.”).
- ⁵⁶ Tenn. Code Ann. §§ 67-5-1005(a)(1), 1006(a)(1), and 1007(b)(1).
- ⁵⁷ Tenn. Code Ann. § 67-1-107.
- ⁵⁸ Tenn. Code Ann. § 67-5-1005(a)(1).
- ⁵⁹ Tenn. Code Ann. §§ 67-5-1005(a)(1), 1006(a)(1), and 1007(b)(1).
- ⁶⁰ *See* Tenn. Code Ann. § 1-3-102.
- ⁶¹ Tenn. Code Ann. § 67-5-1008(d)(1)(D).
- ⁶² Tenn. Code Ann. §§ 67-5-1005(a)(1), 1006(a)(1), and 1007(b)(1).
- ⁶³ *Id.*
- ⁶⁴ Tenn. Code Ann. § 67-5-1008(d)(1)(D).
- ⁶⁵ Tenn. Code Ann. § 67-5-1008(a) (emphasis added).
- ⁶⁶ Tenn. Code Ann. § 67-5-1003(3); *see also* Tenn. Code Ann. § 67-5-1002(5): “The findings of subdivisions (1)-(4) must be tempered by the fact that in rural counties an over abundance of land held by a single landowner that is classified on the tax rolls by the provisions of this part could have an adverse effect upon the ad valorem tax base of the county, and thereby disrupt needed services provided by the county. To this end, a limit must be placed upon the number of acres that any one (1) owner within a tax jurisdiction can bring with the provisions of this part.”
- ⁶⁷ Tenn. Code Ann. § 67-5-1004(9).
- ⁶⁸ Tenn. Code Ann. § 67-5-1003(3).
- ⁶⁹ Tenn. Code Ann. § 67-5-1008(g).
- ⁷⁰ Tenn. Code Ann. § 67-5-1003(3).
- ⁷¹ *Id.*
- ⁷² *Id.*
- ⁷³ *Id.*
- ⁷⁴ *Id.*
- ⁷⁵ *Myers v. Myers*, 891 S.W.2d 216, 219 (Tenn. Ct. App. 1994), *permission to appeal denied* October 24, 1994.
- ⁷⁶ 76 Am. Jur. 2d Trusts § 237.
- ⁷⁷ *Tindell v. Tindell*, 37 S.W. 1105, 1106 (Tenn. Ct. App. 1896).
- ⁷⁸ *See Tindell*, 37 S.W. at 1105.
- ⁷⁹ *Tindell*, 37 S.W. at 1106.
- ⁸⁰ *Id.*
- ⁸¹ Tenn. Code Ann. § 67-5-1008(d)(1).
- ⁸² *See* Tenn. Code Ann. §§ 67-5-1004(12) and 1008(d).
- ⁸³ *See* Tenn. Code Ann. § 67-5-1008(d)(1).
- ⁸⁴ Tenn. Code Ann. § 67-5-1008(d)(2).
- ⁸⁵ Tenn. Code Ann. § 67-5-1008(d)(3).
- ⁸⁶ Tenn. Code Ann. §§ 67-5-1008(d)(1)(A) – (F).
- ⁸⁷ Tenn. Code Ann. § 67-5-1008(d)(1)(C).
- ⁸⁸ *Id.*
- ⁸⁹ Tenn. Code Ann. § 67-5-1008(h).
- ⁹⁰ Tenn. Code Ann. § 67-5-1008(d)(1)(F).
- ⁹¹ Tenn. Op. Atty. Gen. No. 10-71, 2010 WL 2127607 *3 (Tenn.A.G.).
- ⁹² Tenn. Code Ann. § 11-14-406(b).
- ⁹³ Tenn. Code Ann. §§ 11-14-401 – 407.
- ⁹⁴ *Id.*
- ⁹⁵ Tenn. Code Ann. § 11-7-109(b).

APPENDIX "A"

***** *County Assessor of Property*
123 Main Street, Courthouse
Hometown, TN 37777
(615) 555-5555

Date of Letter

Property Owner
123 Rural Road
Hometown, TN 37777

RE: APPLICATION FOR GREENBELT

Dear *[Property Owner]*:

The property located at *[property address and parcel id#]* was previously classified as *[agricultural]* land. To have continued this classification an application was required to have been filed by March 1, 20**. As of the date of this letter, no application has been filed. This failure to file has resulted in the property being disqualified from this classification and will be assessed at market value as of January 1, 20**. In addition, rollback taxes are now due in the amount of \$*,****. However, the rollback taxes can be voided and the property can still be assessed at its use value if you file an application accompanied by the statutory late fee of fifty dollars (\$50.00) by *[end of the thirty day period]*. **Your immediate attention is required.**

If you have any questions, please feel free to call our office to discuss.

Sincerely,

Property Assessor

This page left blank intentionally.

APPENDIX “B”

***** *County Assessor of Property*
123 Main Street, Courthouse
Hometown, TN 37777
(615) 555-5555

Date of Letter

Collecting Official
123 Main Street
Hometown, TN 37777

City Collector [if applicable]
456 Main Street
Hometown, TN 37777

RE: Rollback Taxes for *[disqualified property address]*
Parcel ID#

Dear *Collecting Official(s)*:

It has been determined by our office that the property located at *[disqualified property’s address and parcel id number]* no longer qualifies as *[agricultural land]* as the property is *[currently being developed as a residential subdivision]*. Therefore, rollback taxes are assessed against *[person assessor believes is personally liable]* in the amount of

\$*,**.*

These rollback taxes become delinquent on March 1, 20**, and are a first lien on the land.

If you desire to appeal the liability for rollback taxes, you must appeal to the State Board of Equalization by March 1, 20**. However, property values used to determine the amount of rollback taxes may only be appealed as otherwise provided by law.

cc: John Doe *[person assessor believes is personally liable]*
Jane Doe *[if the person responsible is the seller, then also copy the current owner of the property]*

This page left blank intentionally.