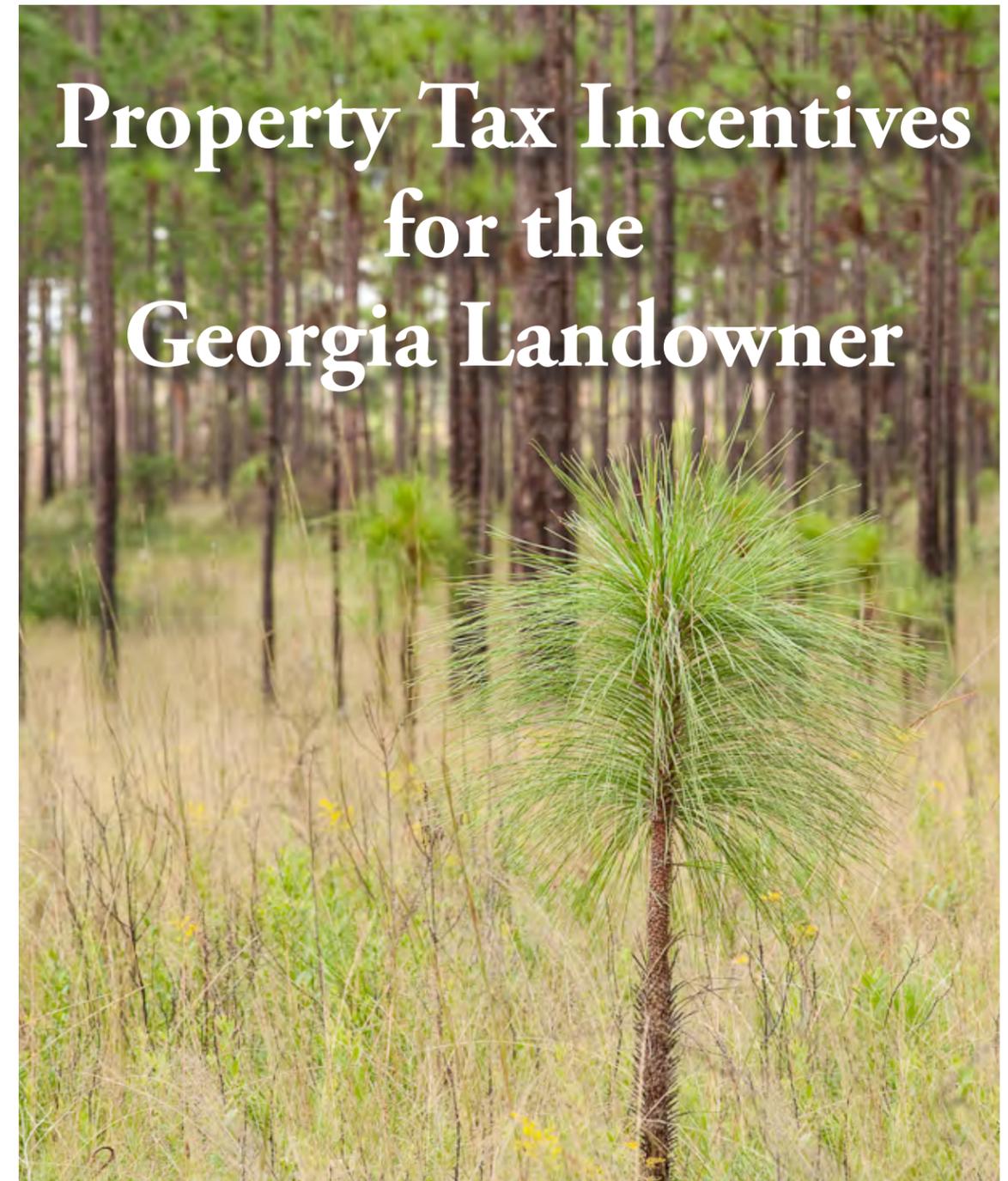


**Property Tax Incentives for the Georgia Landowner**  
Center for Forest Business Research Note No. 3



# Property Tax Incentives for the Georgia Landowner

**Center for Forest Business Research Note No. 3,  
Revised June 2012**

Bob Izlar, Director, Center for Forest Business  
Coleman Dangerfield, Professor Emeritus  
Jack Izard, MFR  
Carter Coe, MFR

## FOREWORD

Ad valorem taxes continue to be the most important source of revenue for financing local governments. With ever increasing demands for infrastructure, economic development and quality service delivery; local governments must rely heavily on property tax revenues. Even though local option and special purpose sales taxes have been important sources of local revenue, these taxes are sometimes unreliable due to fluctuations in the economy, as we are experiencing now, and the fact that special purpose sales taxes have expiration dates and must be renewed through public referenda with no guarantee of acceptance.

Property owners have become very concerned with increases in valuations on their properties. When higher valuations on property occur, higher tax bills are the end result. One of the most common complaints heard is the lack of uniformity from one taxing jurisdiction to another in terms of fair market value. To complicate the issue, many local legislative delegations are imposing local homestead exemptions which have the effect of freezing values on certain properties. There can be no uniformity with this type of tax incentive and the question of fairness also becomes an issue.

On the bright side, the Georgia General Assembly has been successful in offering property tax incentives which provide significant tax relief for agricultural lands, forest lands, environmentally sensitive areas and residential transitional properties which have saved landowners millions of dollars in tax relief. Additionally, these conservation incentives have benefitted the environment and welfare of all Georgians.

Property owners will continue to demand fair and equitable property tax administration and the General Assembly will be sympathetic to their call. Local governments will continue to be hard pressed for revenue to maintain growth and quality service delivery. It is my hope that Georgia lawmakers will continue in their efforts to bring about uniformity and equity in tax administration.



Honorable A. Richard Royal  
Chairman Emeritus Ways and Means Committee  
Georgia House of Representatives

## PREFACE

This 2011 is the fifth revision of the popular *Property Tax Incentives for the Georgia Landowner*, University of Georgia Center for Forest Business Research Note Number 3. It expands the May 2005 revision to include an exhaustive treatment of all pertinent ad valorem taxation legislation, Department of Revenue rules and regulations and some court cases through the 2011 General Assembly legislative session. Each intervening year has seen some change to ad valorem tax law relating to farm and forest owners including the landmark 2008 Forest Land Protection Act.

We decided that the May 2005 version needed updating to include those very important changes. Many of these legislative changes were driven by a growing dissatisfaction with rising property taxes in a down economy and perceived treatment of taxpayers by taxing officials. Policy must reflect the values of the citizenry. If policy does not stay current with changing values, then there will be a groundswell of public opinion to make it change. This has certainly been true of Georgia ad valorem taxation since 2005. This upheaval in property tax law is perhaps best exemplified by Senate Bill 346 (S.B. 346) which passed in 2010 and became effective January 1, 2011. This law provided for a comprehensive overhaul of notice of assessment, appeal and calculation of real property taxation procedures including an expanded definition of fair market value.

We continue to use the format popularized in earlier versions of this book. Each page usually has a simplified “slide” summary of the law with a detailed explanation below so the reader can easily see if the section is of interest. The first version was issued in 1993 as Cooperative Extension Bulletin 1089 with Coleman Dangerfield, Jr., John Gunter, Warren Kriesel, Bob Ray, Jr., Bob Izlar, Dennis Martin and Hans Neuhaeuser as the original authors. It was revised and reissued under the same title in 2000 with Coleman Dangerfield, Jr., David Newman and Bob Izlar as authors. As Center for Forest Business Research Note Number 3, it was subsequently updated in 2001 and 2004 with the same authors and in 2005 with James Baxter.

We would like to especially thank Dr. John Gunter, Dr. Warren Kriesel, Bob Ray, Dennis Martin, Hans Neuhaeuser, Jim Baxter and Dr. David Newman for their efforts and support in bringing this much needed information to the Georgia landowner through their scholarly contributions in the previous editions.

While we do not foresee the need to revise this book for several years, we will try to keep the online version updated. We welcome any suggestions to improve it.

Naturally, we take full responsibility for all errors.

Bob Izlar  
Coleman Dangerfield, Jr.  
Carter Coe  
Jack Izard

Athens, Georgia

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### Acknowledgements

The Center for Forest Business is indebted to numerous cooperators and contributors who helped make this educational document possible. These entities include Georgia Farm Bureau Federation, Georgia Forestry Association, Georgia Forestry Commission, Georgia Department of Revenue, and Georgia Department of Agriculture among others.

Cover photo credits: Jason Kinsey Photography.



## **PROPERTY TAX INCENTIVES FOR THE GEORGIA LANDOWNER**

All Georgia landowners have a real need to learn more about the property tax laws that affect their county *ad valorem* property taxes. For example, some can reduce the annual property taxes on their farm and forest land by enrolling in **Conservation Use Assessment**. Others can benefit similarly from **Agricultural Preferential Assessment**. For some, **Fair Market Value assessment** is the preferable method. If you own rural land in Georgia, live in a house whose property taxes have been affected by commercial or industrial development, or are growing timber for harvest or sale for harvest, you need to learn more about property tax laws. This book will help you do just that.

**USE OF THIS EDUCATIONAL MATERIAL** - This a general guide to property tax incentives in Georgia. As such, it contains the authors' interpretations of statutory law, Department of Revenue regulations, and judicial decisions. Please note, however, that this is **not a legal document** and opinions of the authors are not legally binding -- none of the authors are attorneys. Furthermore, many technical points are open to other interpretations. This book is not a substitute for the expert advice of a legal or tax professional regarding your individual situation.

## *Property Tax Incentives for the Georgia Landowner*

### OUTLINE

- **Ad valorem Property Taxes**
- **Fair Market Value (FMV)**
- **Agricultural Preferential Assessment (Ag. Pref.)**
- **Conservation Use Valuation for ag. land and timberland, and Forest Land Protection Act**
- **Ad valorem Tax Legislation**
- **Timberland Valuation**
- **Timber Taxes at Harvest, or at Sale for Harvest**

<https://etax.dor.ga.gov/ptd/adm/taxguide/gen/assessment.aspx>

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### OUTLINE

To make better, informed decisions about property tax alternatives, landowners should understand the basic details of *ad valorem* property taxes and requirements. Three assessment program options are listed here (we discuss Residential Transitional Property on page 65).

In addition to certain rights, landowners may also have alternatives for the manner in which value is determined. As of January 1, 1992, owners of eligible land have three options for determining bare land value.

These alternatives, as discussed in this presentation, include:

- **Fair Market Value (FMV)**, the primary property valuation method in use in Georgia;
- **Preferential Assessment for Agricultural and Forestry Property (Preferential Assessment); and,**
- **Current Use Valuations of Conservation Use Properties (Conservation Use Valuation) Residential Transitional Properties, and Forestland Protection Act.**

Land may only be valued for ad valorem taxation under one of the above alternatives. No combination of programs is allowed on the same land. The Agricultural Preferential Assessment and Current Use Valuation and Forest Land Protection Act programs require certain commitments on behalf of landowners and are available to owners of qualifying properties only.

Each of these three ad valorem property tax alternatives will be reviewed to cover: Background of Valuation Method; Participation Requirements and Eligibility; and, Determination of Value.

Then, there will be a discussion of *ad valorem* property taxes on timber at harvest or at sale for harvest. Lump sum sales, unit price sales and owner harvests are covered here.

# Are *ad valorem* Property Taxes Important ??

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## **ARE *ad valorem* PROPERTY TAXES IMPORTANT?**

In Georgia, property taxes play a major role in funding the operations of county and city governments and public school systems. These "ad valorem" taxes, meaning taxes levied "on the basis of value," are determined for tangible property - "real and personal property such as land, buildings, cars, aircraft, watercraft, mobile homes, etc."

The value assigned to individual property parcels provides a basis for distributing the burden of funding among all property owners. Therefore, major concerns of property owners are drawn from the assignment of value and procedures used to determine that value.

The tax assessor establishes values for taxable property. The tax commissioner (tax collector) sends out tax bills based on the values established by the tax assessor, and collects those taxes. In most counties the tax assessor and the tax commissioner are separate tax officials. In some counties these two functions are combined.

## Math of Property Taxes

- **Assessed Value = FMV X 40%**
- **Tax Digest = Total of All Assessments**
- **Tax Digest = County Budget ÷ Millage**
- **Property Tax = Assessed Value X Millage**
- **Millage = County Budget ÷ Tax Digest**
- **County Budget = All County Funding**
- **County Budget = Millage X Tax Digest**
- **Millage is \$'s per \$1,000 of Assessed Value**  
ex., 25 Mills = \$25/\$1,000 = 2.5% of \$1,000

(O.C.G.A. \* 48-5-6) (O.C.G.A. 48-5-7. (a)) (O.C.G.A. 48-5-7. (e))

<https://etax.dor.ga.gov/ptd/adm/taxguide/gen/assessment.aspx>

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SUSTAINABLE IS THE BOTTOM LINE

### MATHEMATICS OF PROPERTY TAXES

(O.C.G.A. 48-5-6) (O.C.G.A. 48-5-7. (a)) (O.C.G.A. 48-5-7. (e))

While analyzing the property valuation alternatives, keep in mind the basic purpose of each method is to determine a **representative** value for the property. As previously stated, value assigned to the land provides a basis for distributing the costs of running local government and supporting the county school system. Property tax bills for land owners, no matter which alternative is chosen, are based upon the following formula:

- **Assessed Value = Property Fair Market Value (FMV) x. 40%**
- **Tax Digest = Sum of all Assessments.**
- **Tax Digest = County Budget ÷ Millage**
- **County Budget = All county-level funding needs.**
- **Millage = County Budget ÷ Tax Digest**
- **County Budget = All County Funding**
- **County Budget = Millage X Tax Digest**
- **Millage is \$'s per \$1,000 of Assessed Value,**
- **ex., 25 Mills = \$25/\$1,000 = 2.5% of \$1,000**

## Math of Property Taxes, cont.

- **Then: If Assessed Value increases and county budget stays constant, millage decreases.**
- **Conversely: If Assessed Value stays constant and county budget increases, millage increases.**

(O.C.G.A. \* 48-5-6) (O.C.G.A. 48-5-7. (a)) (O.C.G.A. 48-5-7. (e))

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### MATHEMATICS OF PROPERTY TAXES

(O.C.G.A. 48-5-6) (O.C.G.A. 48-5-7. (a)) (O.C.G.A. 48-5-7. (e))

**Then: If Assessed Value increases and county budget stays constant, millage decreases.**

**Conversely: If Assessed Value stays constant and county budget increases, millage increases.**

The County Commissioners set the millage rate for the part of the budget going to operate county government and provide county-based services. The County Board of Education sets the millage rate for the school system. Almost all public school systems in Georgia are capped at 60 mills by the Georgia Constitution.

***Official Code of Georgia Annotated (O.C.G.A.)*** Contains the Official Code of Georgia; Georgia Administrative Code; and Georgia court rules, court orders, session laws, and law review references.

(O.C.G.A. \* 48-5-6) (O.C.G.A. 48-5-7. (a)) (O.C.G.A. 48-5-7. (e))

# Fair Market Value (FMV)

**“The amount a knowledgeable buyer would pay for the property and a willing seller would accept for the property in an arm’s length, bona fide sale.”**

**(O.C.G.A. 48-5-2 (3))**

**FMV is determined  
by the County Tax Assessor’s based on arm’s  
length transactions which also include:  
1) Distressed Sales; 2) Short Sales; 3) Bank  
Sales; or 4) Sales at Public Auction**

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## **DEFINING FAIR MARKET VALUE (O.C.G.A. 48-5-2 (3))**

The system of taxing property, according to the current definition of "Fair Market Value" (FMV), has been in place in Georgia since 1968. The basis of FMV is **the belief** that the real estate market, combined with other factors, offers a gauge of property worth. The system functions well where a large number of comparable sales are available to value similar types of property. For example, homeowner to homeowner sales would be used to determine residential values in a primarily residential area. Likewise, farmer to farmer sales would be used to determine property values in a primarily agricultural area.

The more comparable sales of similar property available to a county tax assessor, the more reliable the valuation data generated. In practice, FMV is typically determined by actual property sales occurring in the county within the last 12 to 18 months. When "good" comparable sales are limited in a county, the assessor can extend the time period for usable sales beyond 18 months. Another acceptable strategy for a county tax assessor to increase the number of usable comparable sales is to collect sales data in adjacent counties through cooperation with assessors in other counties.

The sales are separated into their respective classes and then compiled to establish a range of values. An additional step is often added to include a "location influence factor." This factor takes into account access to roads, utilities, area development and other factors that may enhance the land's value. Finally, a table of values is set to appraise similar property based upon the acreage, as well as other chosen influence factors.

An important consideration for determining fair market value of farm and forest land is tract size. Typically, as tract size decreases, per acre value increases. This is true because of increased demand for smaller size acreage units of farm and forest land. In counties where comparable sales for farm and forest properties are dominated by sales of smaller size tracts, per acre dollar values for larger acreage tracts can be unfairly, and **unlawfully**, biased upward.

Once an area with predominately residential or agricultural land uses fails to generate a sufficient number of sales for those particular categories, the FMV method allows the use of any other market factors deemed pertinent to determine FMV. These other factors can include potential for development demonstrated by local sales other than the predominant residential or agricultural uses. Development sales can inflate values for that particular land class. For example, farmer to developer sales would show higher values for agricultural property than would farmer to farmer sales, as would forest land to developer sales.

### **“Arm’s Length, Bona Fide Sale”**

45-5-2 (1) 'Arm's length, bona fide sale' means a transaction which has occurred in good faith without fraud or deceit carried out by unrelated or unaffiliated parties, as by a willing buyer and a willing seller, each acting in his or her own self-interest, including but not limited to a distress sale, short sale, bank sale, or sale at public auction."

## **FMV – Value Determination**

- **Tax assessor will use comparable sales method to assign value to property**
- **For income-producing properties, will use income approach where data are available**
- **A record of sales must be kept and documented for the county each year**
- **If sales data is insufficient for accurate valuation, the assessor will go outside of the jurisdiction to obtain complete sales data**
- **Site analysis must be complete for a property, all factors taken into account including access and desirability of the land**
  - **O.C.G.A. 560-11-10.09 (2) (d)**

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## FMV – Value Determination, cont.

- **Fair Market Value will be determined based on:**
  - 1) **Comparable real properties (including foreclosures, bank sales, distressed sales)**
  - 2) **Decreased value due to conservation easement**
  - 3) **Other existing factors affecting FMV**

### O.C.G.A 48 -5-2 (B)

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### O.C.G.A 48 -5-2 (B)

Fair Market Value Determination

(B) The tax assessor shall consider the following criteria in determining the fair market value of real property:

(iv) Foreclosure sales, bank sales, other financial institution owned sales, or distressed sales, or any combination thereof, of **comparable real property**;

(v) Decreased value of the property **based on limitations and restrictions** resulting from the property **being in a conservation easement**; and

(iv)(vi) Any other **existing** factors deemed pertinent in arriving at fair market value.

# FMV - Tax Assessor Will Apply:

- **Zoning, access, location**
- **Present and future use**
- **Covenants and restrictions on the property**
- **Property size and acreage**
- **Bank sales or distressed sales of comparable real property**
- **Existing conservation easements**
- **Any other factors, provided by law or commissioners' rule, deemed pertinent**
- **Leverett et. al v. Jasper County Board of Tax Assessors (O.C.G.A. 48-5-2 (3) (B) (i) - (vi))**

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## DETERMINING FAIR MARKET VALUE (O.C.G.A. 48-5-2 (3) (B) (i) - (vi))

Local governments, through the county tax assessor, are charged with the responsibility of determining FMV. Georgia law and Department of Revenue regulations provide very broad and general guidelines for valuing land under this system.

**Tax assessors are to consider: (1) zoning; (2) existing use; (3) covenants and restrictions on the property; and, (4) "any other factors deemed pertinent" to determine FMV.** Fair market value of farm and forest land for *ad valorem* taxes is also required by Georgia law to be bare land value. This means that improvements are to be separated from the bare land value. The value of any standing timber is also required by state law to be completely separated from the underlying bare land value before any *ad valorem* property tax is applied.

**Leverett et. al v. Jasper County Board of Tax Assessors** - Since a Constitutional amendment was passed by the people in the autumn of 1990 requiring the *ad valorem* taxation of standing timber only when it was harvested or sold for harvest, there has been considerable concern by forest landowners that their bare land values still inherently include some standing timber value. Another way of simply looking at the issue is that the Constitution was amended to take standing timber off the digest.

In 1998, the Georgia Court of Appeals decided a landmark case firmly resolving this issue.\* Since the case was not appealed, the Appellate Court's ruling is the law in Georgia. In reversing the trial court's ruling in favor of the Board of Tax Assessors, the Appellate Court held, "...Thus, the Assessors, in not subtracting the value of growing timber from the fair market value of the land used in the sales ratio as comparables, refused to treat growing timber as tax-exempt and caused what is exempt from taxation until sold or harvested to be a part of the assessed value of the land." In other words, your forest land's valuation must have *no* timber value attributed to it. Timber value can not be "...reflected in the price of the land."

But the Court went even further. It said "stump land" (land which has not been site prepared to plant in trees) has a lower value than cleared cultivatable land, pasture land or growing timberland. Stump land has a substantially different value than cleared land because there is a cost to get it to an improved state. The Court held, "...thus, improved land has a higher acreage fair market value which reflects the cost of clearing and replanting pines or of fencing.

This case was a significant finding for all timberland owners because it undisputedly said *all* value attributable to timber must be removed from the value of the land for assessment.

\*233 Ga. App. 470.

48-5-2 (B) (i-vi) The tax assessor shall apply the following criteria in determining the fair market value of real property: (i) Existing zoning of property; (ii) Existing use of property, including any restrictions or limitations on the use of property resulting from state or federal law or rules or regulations adopted pursuant to the authority of state or federal law; (iii) Existing covenants or restrictions in deed dedicating the property to a particular use; (iv) Bank sales, other financial institution owned sales, or distressed sales, or any combination thereof, of comparable real property; (v) Decreased value of the property based on limitations and restrictions resulting from the property being in a conservation easement; and (vi) Any other existing factors provided by law or by rule and regulation of the commissioner deemed pertinent in arriving at fair market value."

## **FMV – Location and Size Adjustments**

- **When large acreage sale data is not available for valuation, the assessor will determine adjustment factors in homogeneous areas throughout the county to correctly account for size**
- **These factors can be estimated in a number of ways:**
  - A) estimate a rate of absorption for smaller tracts
  - B) divide large tract into smaller, marketable tracts
  - C) develop a sales schedule with estimated income by year to reflect absorption rate and characteristics of small tracts
  - D) discount income schedule to the present,
  - E) and summing resulting values for an estimated property value
    - O.C.G.A. 560-11-10.09 (2) (iii) (iv)

**Fair Market Value**  
**Bare Land Property Tax Example**

**Land FMV = \$500/Acre**

**Millage = 25 mills = .025 = 2.5%**

**Assessed Value = FMV\*40%**

**= \$500 \* .40**

**= \$200/Acre**

**Tax = Assessed Value \* Millage**

**= \$200/Acre \* .025**

**= \$5.00/Acre**

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**FMV Property Tax Example:**

FMV of bare land = \$500/acre

Millage = 25 mills = .025

Assessed Value = FMV x 40%

= \$500/acre x 40%

= \$200/acre on bare land

Tax on Land = Assessed Value x County Millage Rate

= \$200 x .025 = \$5.00/acre for bare land.

## Ad Valorem Notices

- Taxpayer shall receive annual assessment of taxable real property.
- Written notice shall be received if any corrections or changes have been made to personal property tax returns.

O.C.G.A. 48-5-306 (a)

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### **O.C.G.A. 48-5-306 (a)**

(a) The board shall give **annual notice** to the taxpayer of the current assessment of taxable real property. When any corrections or changes, including valuation increases or decreases, or 50 equalizations have been made by the board to personal property tax returns, **the board shall give written notice to the taxpayer of any such changes made in such taxpayer's returns.**

## Ad Valorem Notices (cont.)

- Taxpayer may request copies of public records and information, including, but not limited to:
    - Documents used in making assessment
    - Address and parcel identification number of properties used as comparable properties
    - All factors used to establish new assessment.
- O.C.G.A 48-5-306 (d)1

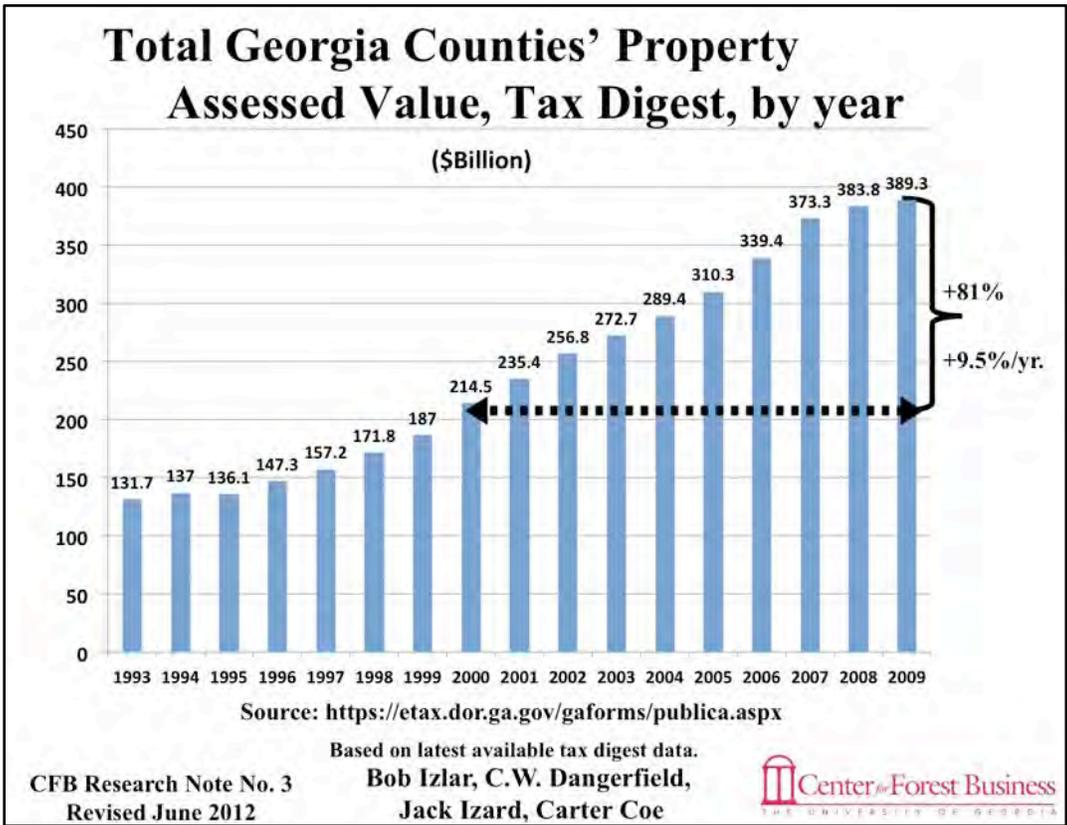
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### **O.C.G.A 48-5-306 (d)1**

(1) The taxpayer may request, and the county Board of Tax Assessors shall provide within ten business days, copies of such public records and information, including, but not limited to, all documents reviewed in making the assessment, the address and parcel identification number of all real property utilized as qualified comparable properties, and all factors considered in establishing the new assessment.

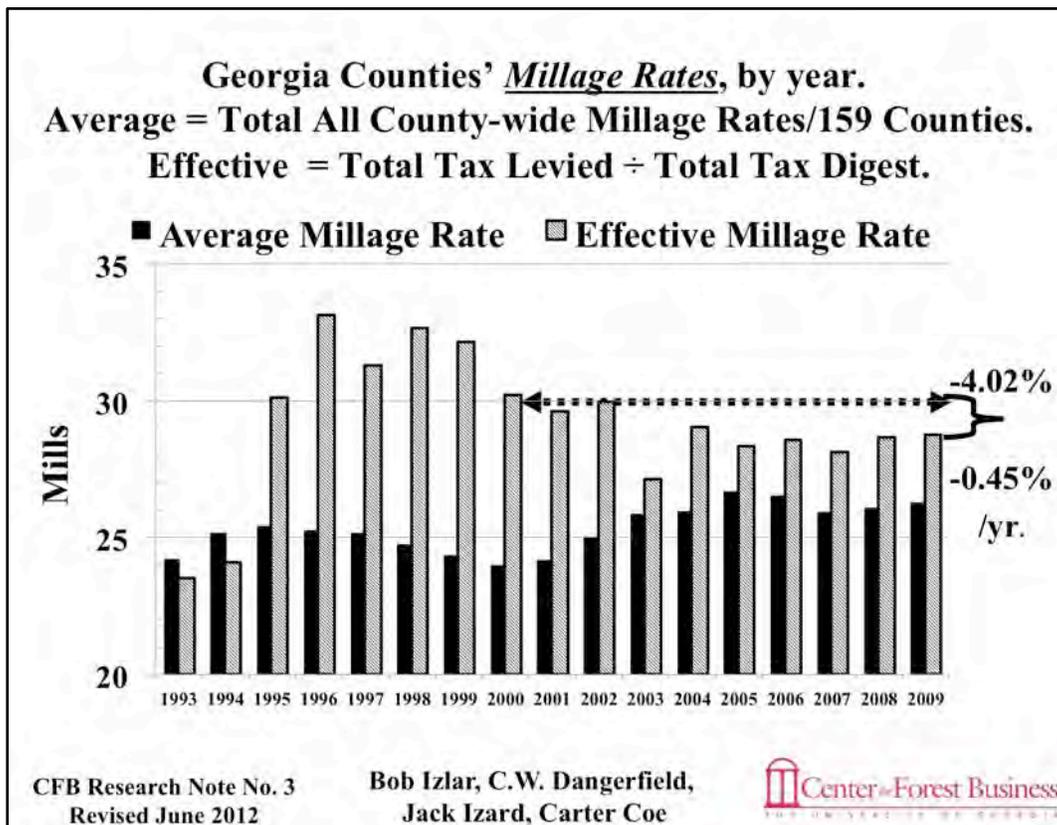


**TOTAL GEORGIA COUNTIES' PROPERTY ASSESSED VALUE**

Tax Digest = Sum of all Assessments

**Property Tax Digest Changes**

The sum of all Georgia county property tax digests increased from \$214.5 billion in 2000, to \$389.3 billion in 2009, a 81 percent increase over the nine-year period, an average of 9.5 percent per year. These are the most current data available from DOR for this and the charts following.



### AVERAGE and EFFECTIVE GEORGIA MILLAGE RATES

The average millage rate was computed by the Georgia Department of Revenue by summing individual county millage rates and dividing by the number of Georgia counties (159). While this gives the average millage rate for the state, it does not account for the large differences across all the individual county budgets. Therefore, the average millage rate (as calculated) can misstate the effective millage at the state level.

A more accurate, state millage rate, the effective millage rate is calculated by dividing the total property tax revenue collected in Georgia by the total tax digest for the state. The effective millage rate accurately assesses millage changes.

For example, use the year 2002 and see the difference between average and effective millage rates. As reported by the Georgia Department of Revenue, the average state millage rate is 25.01 mills (or  $0.02501 \times \$1,000 = \$25.01$  tax for each \$1,000 assessed value), total assessed value is \$256.08 billion, total property tax revenue is \$7.690 billion.

The formula used in our calculation with the average millage rate is:

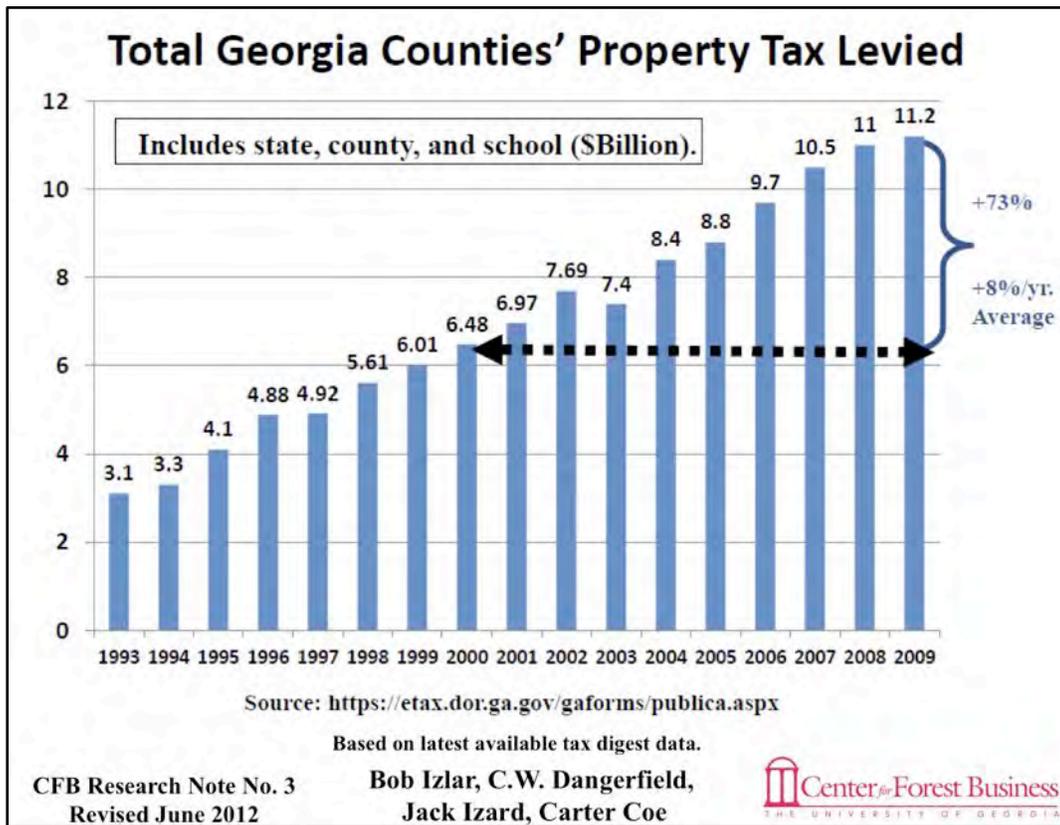
**Av. Millage (25.01) X Total Tax Digest (\$256.80 billion) = Total Property Tax Collected (\$6.40 billion).**

The effective millage rate calculation is:

Total Property Tax Collected (\$7.69 billion) / Total Tax Digest (\$256.80 billion) = Effective Millage Rate (0.02994548).

Or, **Effective Millage Rate (0.02994548) X Total Tax Digest (\$256.80 billion) = Total Property Tax Collected (\$7.69 billion).**  $\$7.69 - \$6.40 = \$1.29$  billion (16.78%) understatement

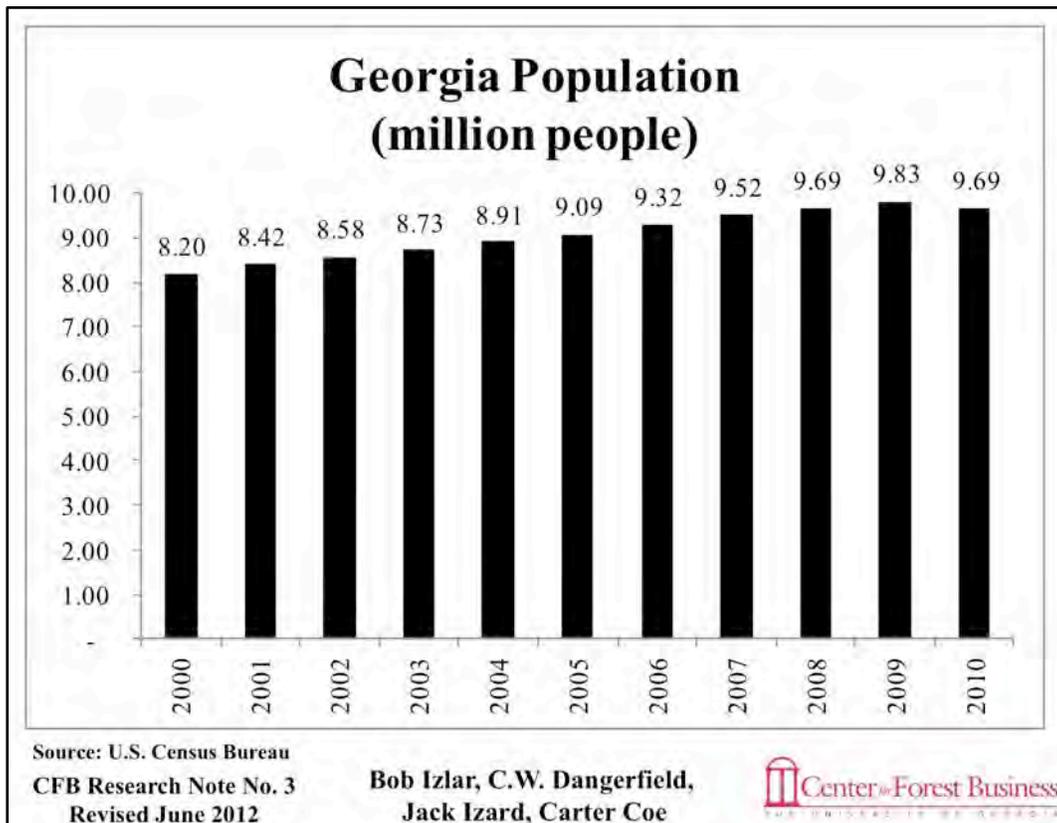
**Remember, one mill is .1 Penny, or \$0.001. So, 29.94548 mills is  $0.02994548 \times \$1,000 = \$29.94548$  tax for each \$1,000 assessed value. And remember, Assessed Value = FMV X 40%.**



### TOTAL GEORGIA COUNTIES' PROPERTY *AD VALOREM* TAX REVENUE

Property Tax = Assessed Value X Millage

Total Georgia property tax revenues increased 73 percent, from \$6.48 billion in 2000 to \$11.2 billion in 2009, a simple average of an 8 percent increase per year. Property tax continues to be the primary revenue source for local governments and county-level public school systems.



### Georgia Population Changes

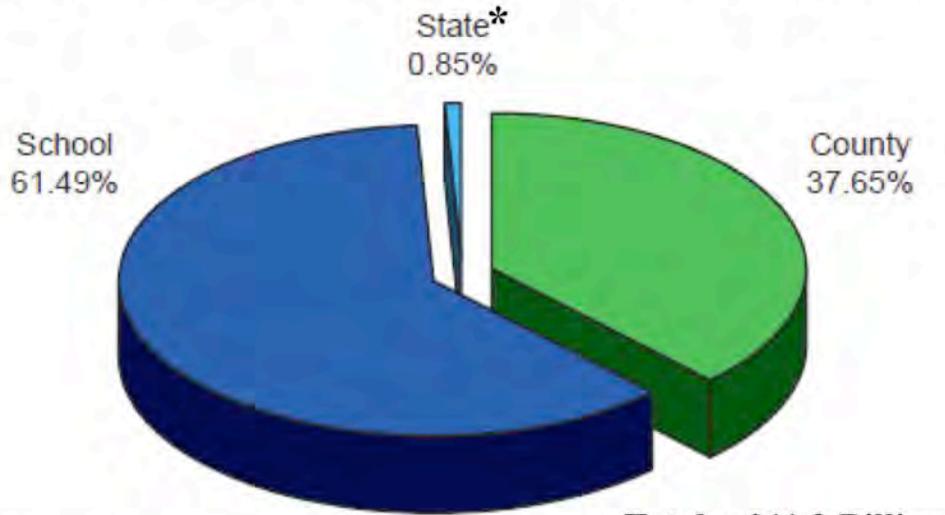
Population increase is a major contributing factor to increases in property tax levied. Population increases lead to increased demand for county-based services by residential property owners. Population increases also lead to greater demands being placed on the county school system. In this case, Georgia population has increased 20 percent from 2000 to 2009, or 2.2 percent per year. Property tax levied has increased 73 percent, eight percent average per year or 2.65 times the population increase, over the same time period. Certainly, other factors not identified here have contributed to the increase in property tax levied since 2000.

The Consumer Price Index (CPI) program produces monthly data on changes in the prices paid by urban consumers for a representative basket of goods and services. The CPI for All Urban Consumers (CPI-U) is the index most often reported by the national media. The CPI for Urban Wage Earners and Clerical Workers (CPI-W) is the index most often used for wage escalation agreements. From 2000 to 2010, CPI-U and CPI-W each increased 28 percent. Thus, CPI-U increased a simple average of 2.8 percent per year.

To consider the double effects of population and CPI-U changes, use  $2.8 \times 2.2 = 6.16$  percent per year for combined population and CPI-U increases compared to an 8 percent average per year increase for property taxes.

**Certainly, county budget changes across time include items in addition to CPI and population.**

## Where Georgia Property Tax Levied is Spent, by Taxing Authority (*Tax Use*), 2009



<https://etax.dor.ga.gov/gaforms/publica.aspx>

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### Property Tax Levied, by Taxing Authority, 2001

In 2009, 37.65 percent of property tax levied went to support county government services. 61.49 percent of taxes were levied to support public schools at the county level. City property tax collections were not tracked by the state for 2009. State government collected 0.82 percent. Therefore, the majority of property taxes are levied by the County School System, not the County Government.

Much discussion is ongoing in the state concerning the most appropriate tax revenue source for funding public schools. Prominent funding options discussed are property taxes, income taxes, and sales taxes, or some combination of options.

**Participation Requirements** - As provided by the Georgia Constitution and general law, all property is subject to *ad valorem* taxes based upon Fair Market Value (FMV), unless the property is specifically exempted by the Constitution, or the property is identified as eligible for and entered into an alternative valuation program. Therefore, all land in Georgia will continue to receive annual property tax bills based upon FMV, unless the landowner chooses to apply for one of the alternatives discussed here.

<http://www2.state.ga.us/departments/dor/ptd/cas/anrep/index.html>

\*The law provides that  $\frac{1}{4}$  of a mill in total property taxes is allocated to the state for administration of the total digest.

## Georgia Major Tax Revenues, 2009

Total = \$23,685,428,000



<https://etax.dor.ga.gov/gaforms/publica.aspx>

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These are Georgia's major revenue sources. The property tax is locally used to support each county's maintenance and operation (M&O) budget and local school systems. The income and sales and use tax generally supports state operations. However, local governments may, with voter approval, levy additional sales taxes to support specific projects like schools and roads. Counties can enact local income taxes but none have.

# Landowner Rights

- *Declare your property value each year with your tax returns.*
- *If you are not happy with the assigned value – Appeal.*

**(O.C.G.A. 48-5-306 & 311)**

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## LANDOWNER RIGHTS

When focusing on real property values, specifically the "bare land" values of real property, (bare land meaning land exclusive of any improvements or attachments) **landowners should be aware of tax-related rights and valuation alternatives.**

For example, each year property owners have the right to **declare the value of property** when they enter a property tax return with the local Board of Tax Assessors. The return offers the owner's estimate of property value or changes in value, which the county is to consider when a property revaluation is conducted.

Property taxes are due on property that was owned on January 1 for the current tax year. The law provides that **property tax returns** are due to be filed with the county tax receiver or the county tax commissioner between **January 1 and April 1 (O.C.G.A. 48-5-18)**. <https://etax.dor.ga.gov/ptd/adm/taxguide/payment.aspx>

A second landowner right exists with the opportunity to **challenge or appeal values assigned to property** by the local Board of Tax Assessors. Georgia law outlines the procedures and basis for filing appeals. This second landowner right is not limited to county-wide or state mandated revaluations. It is available every time the tax value of a landowner's property is changed by the board.

**O.C.G.A. 48-5-306 & 311**

## Taxpayer Bill of Rights

- **Prevention of Indirect Increases**
    - Rollback of Millage Rate to Offset Inflationary Increases.
  - **Notification of Tax Increase With Three Public Hearings**
    - Publish Notice in Paper One Week Before Each Hearing
    - Press Release to Explain Tax Increase.
- (O.C.G.A. 48-5-306 & 311)

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### TAXPAYER BILL OF RIGHTS FOR THE GEORGIA TAXPAYER

Revised sections of O.C.G.A. 48-5-306 & 311, effective January 1, 2000. The bill has two main thrusts:

**1.) Prevention of Indirect Tax Increases:** Each year there are two types of value increases made to a county tax digest, increases due to inflation, and increases due to new or improved properties. The law now imposes no additional requirements if the levying authority rolls back the millage rate each year to offset any inflationary increases in the digest. If it does not, a local levying authority must notify the public that taxes are being increased. Local levying authorities would include the county governing authorities, school boards and municipal governing authorities. The Revenue Commissioner will not authorize the collection of taxes on any digest without a showing by the official submitting the digest that the local levying authorities have complied with the current law.

• **Rollback of Millage Rate to Offset Inflationary Increases**

If the county elects to set their millage rate higher than the rollback rate, then the law imposes some requirements. These requirements are to hold three public hearings, place notices of the increase in the paper, and issue press releases.

• **Notification of Tax Increase With Three Public Hearings**

Two of these public hearings may coincide with other required hearings associated with the millage rate process, such as the public hearing required when the budget is advertised, and the public hearing required when the millage rate is finalized. One of the three public hearings must begin between 6:00 PM and 7:00 PM in the evening.

• **Publish Notice in Paper One Week Before Each Hearing**

• **Press Release to Explain Tax Increase**

<https://etax.dor.ga.gov/ptd/adm/taxguide/rights.aspx>

# Taxpayer Bill of Rights

- **Enhanced rights during appeal**
    - Explain change of assessment
    - Rejection grounds
    - Burden of proof on the Board of Tax Assessors (BOA)
    - Option to reschedule hearing
    - Property owner recover costs & fees
    - Property owner record conversations
    - Tax commissioner to provide brochure.
- (O.C.G.A. 48-5-306 & 311)

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## TAXPAYER BILL OF RIGHTS, cont.

### 2.) Enhanced Taxpayer Rights During Appeal

#### •Explanation With Change of Assessment Notice

The change of assessment notice must give the property owner a name and telephone number to call if they have questions. If the increase exceeds 15%, the notice must include a simple, non-technical explanation.

#### •Assessors Must Provide Grounds for Rejection of Property Owner's Appeal

The board must include in their rejection notice the grounds for the rejection. Thereafter, the Board of Tax Assessors must stick to those grounds and not assert new grounds later in the appeal process. If the property owner asserts a new position, the Board of Tax Assessors may assert new grounds for rejecting the new position.

#### •Burden of Proof on the Board of Tax Assessors

When the board changes the value returned by a property owner, the new law places on the board the burden of proving, by a preponderance of the evidence, the validity of the change.

#### •One Time Option to Reschedule Hearing and Superior Court Proceeding

The property owner has a one time option to request a different and more convenient hearing time, even one occurring as early as 8:00 AM or as late as 7:00 PM.

#### •Property Owner Could Recover Court Costs and Fees

If the court finds the final value to be 85% or less than the Board of Equalization's determination of value.

#### •Property Owner Can Record Conversations

The property owner can make an audio recording of any conversations with assessors or appraisers when such recordings are relative to the owner's assessment, appeal, arbitration or related proceedings.

#### •Tax Commissioner to Provide Brochure About Property Tax Laws and Procedures

This brochure will contain information about exemptions and preferential assessment programs available in the county along with instructions on how to apply.

<https://etax.dor.ga.gov/ptd/adm/taxguide/rights.aspx>

## Property Tax Appeal Process

- **Landowners may appeal property tax at the county level.**
- **Appeals may be filed based on the following issues:**
  - 1) **Taxability**
  - 2) **Uniformity of assessment**
  - 3) **Appraised value**
  - 4) **Denial of homestead exemption**
  - 5) **Parcel of non-homesteaded property with a FMV > \$1 Million**

<https://etax.dor.ga.gov/ptd/adm/taxguide/appeals.aspx>

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The Georgia General Assembly has significantly increased the rights of property owners whose values are changed by the board of tax assessors. The highlights of these changes are listed below.

### **Explanation with Change of Assessment Notice**

The change of assessment notice must give the property owner a name and telephone number of a knowledgeable person to call if they have questions about the value change or appeal procedures. If the increase exceeds 15%, the notice must include a simple, non-technical explanation of the basis for the change along with a statement informing the property owner that they may view, or have inexpensive copies made of those tax records used by the assessors to determine the value change.

### **Assessors Must Provide Grounds for Rejection of Property Owner's Appeal**

When a property owner elects to assert a position as the basis for their appeal and the board of tax assessors rejects this position, the board must include in their rejection notice back to the property owner the grounds for the rejection. Thereafter, the board of tax assessors must stick to those grounds and not assert new grounds later in the appeal process. If the property owner asserts a new position, the board of tax assessors may assert new grounds for rejecting the new position.

### **Burden of Proof on the Board of Tax Assessors**

When the board of tax assessors changes the value returned by a property owner, the board has the burden of proving, by a preponderance of the evidence, the validity of the change. This burden continues to be on the board of tax assessors even if the appeal goes to superior court, although the judge is not bound to either the board of tax assessors' or the property owner's value when determining, or having determined by a jury, the question of final value.

### **One Time Option to Reschedule Hearing and Superior Court Proceeding**

If the board of equalization, which hears property owner appeals, schedules the appeal at a time inconvenient to the property owner, there is a one-time option for the owner to request a different and more convenient time, even one occurring as early as 8:00 AM or as late as 7:00 PM. This property owner accommodation is extended to the superior court proceeding, should the appeal go that far, where the owner may request a hearing at a convenient time.

### **Property Owner Could Recover Court Costs and Fees**

In certain instances, the property owner may recover court costs and reasonable attorney fees incurred in the appeal hearing before the superior court. The property owner could recover these costs and fees if the court finds the final value to be 85% or less (80% for commercial property) of the board of equalization's determination of value. This would not apply, however, if the property owner had failed to return the property for taxation.

### **Property Owner Can Record Conversations**

The property owner has the right to make an audio recording of any conversations with assessors or appraisers when such recordings are relative to the owner's assessment, appeal, arbitration or related proceedings. The owner must provide his or her own equipment.

### **Tax Commissioner to Provide Brochure about Property Tax Laws and Procedure**

The tax commissioner, assisted by the board of tax assessors, is required to develop and make available an informational brochure that explains the county's property tax laws and procedures. This brochure will contain information about exemptions and preferential assessment programs available in the county along with instructions on how to apply. The brochure will be available in the tax offices and will also be mailed to individuals purchasing property. If the General Assembly creates a new exemption or preferential assessment program, the brochure will be mailed to everyone who may be eligible for the new program.

# Property Tax Appeal Process

- 1) Start the Appeal
- 2) Written objection sent to BOA
- 3) Board of Equalization (BOE) hearing date set
- 4) Written notification to BOE
- 5) Additional tax due or tax refunded
- 6) Appeals to arbitrator(s)
- 7) Notice of arbitration
- 8) Appeals to Superior Court
- 9) *Ad valorem* taxes must be paid
- 10) Appeals heard by Superior Court
- 11) Audio recordings.

<https://etax.dor.ga.gov/ptd/adm/taxguide/appeals.aspx>

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## How to appeal property taxes

The information presented here covers laws passed by the Georgia General Assembly up to and including the 2000 legislative session. This information is being paraphrased. Please refer to the Official Code of Georgia Annotated (O.C.G.A.) 48-5-311 for specific inclusions and limitations.

**How to Appeal** - Each year property owners in Georgia receive tax notices from their local county Tax Commissioner. Any resident or nonresident taxpayer may appeal from an assessment by the county Board of Tax Assessors (BOA) to the county Board of Equalization (BOE) or to an arbitrator or arbitrators as to matters of taxability, uniformity of assessment (values are the same within the same class of property), and value (if the BOA changed the appraised value of the owner's property this year). Residents can also appeal denials of homestead exemptions. The taxpayer may appeal to the Superior Court after a decision has been made by the county BOE or an arbitrator(s).

**Starting the appeal** - The taxpayer can start the appeals process by sending a written objection to an assessment of real property received by the BOA stating a *returned value* (the value the taxpayer puts on the property), the location of the real property and the identification number, if any, contained in the tax notice, under the grounds listed above. The taxpayer can file this initial notice of appeal to an assessment within 45 or 30 days from the date on which the notice was mailed to the taxpayer by mailing a notice of appeal to the BOA. In counties where the governing authority allows payment of taxes in installments, a notice of appeal must be filed or mailed within 30 days. If the BOA disagrees with the taxpayer's returned value, they will change the value and a written change of assessment notice will be sent to the taxpayer. The written notice shall contain a statement of the grounds for rejection by the BOA of any position the taxpayer has asserted with regard to the valuation of the property. The BOA shall have the burden of proving their opinions of value and the validity of their proposed assessment by a preponderance of evidence. No change in reasons for rejection of the taxpayer's *returned value* by the BOA shall be allowed when the appeal goes before the BOE or in any arbitration proceedings. The notice will also state that if the taxpayer is still not satisfied after these changes or corrections, they may now appeal to the BOE by mailing or filing with the BOA a written notice of appeal within 21 days of the date on which the change or correction in the *returned value* was mailed. The BOA shall send or deliver the notice of appeal and all necessary papers to the BOE. If no corrections or changes are made a written notice is sent to the taxpayer and BOE. The taxpayer does not need to take any further action if the BOA does not make any corrections or changes to their appeal.

**BOE hearing date set** - The BOE will set a hearing date for the appeal within 15 days of receipt of the notice of appeal and will notify the taxpayer and the BOA in writing. A hearing will be held no earlier than 20 days and no later than 30 days after notification. Such appeal proceedings shall be conducted between the hours of 8:00 A.M. and 7:00 P.M. on a business day. The taxpayer is authorized to exercise a one-time option of changing the date and time of the taxpayer's scheduled hearing to a day and time acceptable to the taxpayer.

**Written notification by BOE** - The three members of the county BOE will specifically decide and vote upon all questions presented by the appeal. The county Board of Equalization will notify the taxpayer and the BOA in writing by sending a copy of the decision by registered or certified mail. A decision by the BOE can be appealed to the Superior Court.

**Additional tax due or tax refunded** - If the county's tax bills are issued before the BOE has made a decision on the appeal, the county Tax Commissioner will issue a temporary tax bill based on the return valuation or 85 percent of the valuation set by the county Board of Tax Assessors that year--whichever amount is higher. Upon resolution of the appeal, there may be additional tax due or tax refunded.

<https://etax.dor.ga.gov/ptd/adm/taxguide/appeals.aspx>

## Fair Market Value *Problems*

- Bias of system toward development prices
- Services vs. taxes paid
- Thus, Ag. Pref.

(O.C.G.A. 48-5-7 & 306)

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### FAIR MARKET VALUE PROBLEMS

In the early 1980s, attention was called to the bias of the FMV system whereby sales of property for development purposes in an area formerly devoted to agricultural or forestry uses would inflate general land values above the level supported by farming or forestry. The problem was particularly noted in farm and forest land categories of North Georgia. Further consideration was given to the fact that farm and forest owners typically hold large acreage tracts that require little or no services from the county.

Therefore, a system was devised to give a reduced property assessment to landowners willing to dedicate their land to farming or forestry. This new system was named Agricultural Preferential Assessment.

#### *Preferential Assessment for Agricultural and Forestry Property*

House Bill 230, Rep. Collins, Effective January 1, 1983, Act 568, Georgia Laws 1983, Vol. 1, p. 586.

*ad valorem* taxation of real property devoted to bona fide agricultural purposes.

This legislation amended O.C.G.A. 48-5-7 & 306.

## Agricultural Preferential Assessment

- Law effective April 8, 1983.
- Applies to all tax years beginning on or after January 1, 1984.
- In general, property still assessed at 40% of its FMV.
- Ag. Pref. = Assessed Value X 75%.

**(O.C.G.A. 48-5-7.1)**

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### AG. PREF. BACKGROUND

In 1983, following passage of a constitutional amendment, House Bill 230 outlined provisions for the "Preferential Assessment Program for Agricultural Properties" (Ga. Laws 1983, p. 1850, Section 3).

By statute, all real property is assessed at 40% of fair market value, however, House Bill 230 provided for a 30% level of assessment or 75% of the value at which other taxable real property is assessed. The owner's actual tax bill is calculated as follows:

Preferential Appraised Value = FMV x 75%

Preferential Assessed Value = Preferential Appraised Value x 40%

Tax Owed = Preferential Assessed Value x County Millage Rate.

Since adopted, the program has been amended to lessen the penalty, to improve the application process and to encourage participation.

## **Agricultural Preferential Assessment**

- **10-Year Covenant with County.**
- **Qualified landowners only.**
- **Agricultural and forestry uses.**
- **Penalties for breach of covenant.**

**(O.C.G.A. 48-5-7.1)**

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### **AG. PREF. ASSESSMENT**

**Determination of Value** - Land value under the Preferential Assessment Program is based upon calculations of the FMV system. As required by law, 75 percent of the FMV equals the appraised value for Preferential Assessment.

#### **PARTICIPATION REQUIREMENTS AND ELIGIBILITY**

Participation in the Preferential Assessment Program requires the landowner to make application to the local Board of Tax Assessors for enrollment. The owner must:

Dedicate the land to an eligible use for 10 years by signing a covenant; meet certain requirements relating to property use and sale; and pay penalties if a change in land use occurs to a non-qualifying use.

## **Ag. Pref. - To Qualify Property**

- **Owned by one or more individuals.**
- **or Family farm corp. w/80% or more gross income from Georgia Ag.**
- **No minimum acres.**
- **Maximum is 2,000 acres.**
- **Residence and surrounding lot not in Ag. Pref.**
- **Storage & processing bld. on property included up to FMV of \$100,000.**

(O.C.G.A. 48-5-7.1)

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### **AG. PREF. REQUIREMENTS**

(O.C.G.A. 48-5-7.1.)

- (a) For purposes of this article, "tangible real property which is devoted to 'bona fide agricultural purposes'":
- (1) Is tangible real property, the primary use of which is good faith commercial production from or on the land of agricultural products, including horticultural, floricultural, forestry, dairy, livestock, poultry, and apiarian products and all other forms of farm products; but
  - (2) Includes only the value which is \$100,000.00 or less of the fair market value of tangible real property which is devoted to the storage or processing of agricultural products from or on the property; and
  - (3) Excludes the entire value of any residence located on the property.
- (b) No property shall qualify for the preferential ad valorem property tax assessment provided for in subsection (b) of Code Section 48-5-7 unless:
- (1) It is owned by one or more natural or naturalized citizens; or
  - (2) It is owned by a family-farm corporation, the controlling interest of which is owned by individuals related to each other within the fourth degree by civil reckoning, and such corporation derived 80 percent or more of its gross income for the year immediately preceding the year in which application for preferential assessment is made from bona fide agricultural pursuits carried out on tangible real property located in this state, which property is devoted to bona fide agricultural purposes.
- (c) No property shall qualify for said preferential assessment if such assessment would result in any person who has a beneficial interest in such property, including any interest in the nature of stock ownership, receiving in any tax year any benefit of preferential assessment as to more than 2,000 acres. If any taxpayer has any beneficial interest in more than 2,000 acres of tangible real property which is devoted to bona fide agricultural purposes, such taxpayer shall apply for preferential assessment only as to 2,000 acres of such land.

## **Bona Fide Ag. Pref. Uses**

- **Horticultural**
- **Floricultural**
- **Livestock**
- **Forestry**
- **Dairy**
- **Poultry**
- **Apiarian  
(Beekeeping)**
- **All other forms of  
farm products.**

(O.C.G.A. 48-5-7.1)

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### **BONA FIDE AG. PREF. USES**

(O.C.G.A. 48-5-7.1.) With regard to eligible property uses, Georgia law states that the primary use of property must be:

"...good faith commercial production from or on the land of agricultural products, including horticultural, floricultural, forestry, dairy, livestock, poultry, and apiarian products and all other forms of farm products."

## Ag. Pref. Approval Process

- **Submit application,**
- **Sign 10-year covenant,**
- **Sign-up January 1 - April 1,**
- **If denied, you have the right to appeal,**
- **Maintain qualifying use for 10-years,**
- **After 10-years, reapply for new covenant, or MUST file application w/Assessor for release from Ag. Pref.**

**(O.C.G.A. 48-5-7.1. (d), (e), (k), (t))**

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### AG. PREF APPROVAL PROCESS

**O.C.G.A. 48-5-7.1. (d)** No property shall qualify for preferential assessment unless and until the owner of such property agrees by covenant with the appropriate taxing authority to maintain the eligible property in bona fide agricultural purposes for a period of at least ten years beginning on the first day of January of the year in which such property qualifies for preferential assessment and ending on the last day of December of the tenth year of the covenant period. After the expiration of any ten-year covenant period, the property shall not qualify for further preferential assessment until and unless the owner of the property enters into a renewal covenant for an additional period of ten years.

**(e)** No property shall maintain its eligibility for preferential assessment unless a valid covenant remains in effect and unless the property is continuously devoted to bona fide agricultural purposes during the entire period of the covenant.

**(k)** Applications for preferential assessment shall be filed with the county Board of Tax Assessors who shall approve or deny the application. If the application is denied, the Board of Tax Assessors shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees advanced by the owner. Appeals from the denial of an application by the Board of Tax Assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311. covenant agreement required under this Code section, shall be filed on or before the last day for filing ad valorem tax returns in the county for the tax year for which such preferential assessment shall be first applicable. If the application is approved on or after July 1, 1998, the county Board of Tax Assessors shall file a copy of the approved application in the office of the clerk of the Superior Court in the county in which the eligible property is located. The clerk of the Superior Court shall file and index such application in the real property records maintained in the clerk's office. Applications approved prior to July 1, 1998, shall be filed and indexed in like manner without payment of any fee. If the application is not so recorded in the real property records, a transferee of the property affected shall not be bound by the covenant or subject to any penalty for its breach. The fee of the clerk of the Superior Court for recording such applications approved on or after July 1, 1998, shall be paid by the owner of the eligible property with the application for preferential treatment and shall be paid to the clerk by the Board of Tax Assessors when the application is filed with the clerk.

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

## **Allowed Ag. Pref. *Transfers***

**If covenanted property sold during  
the 10-year covenant,**

**NEW OWNER MUST**

**meet qualifications again to  
continue ORIGINAL covenant.**

**(O.C.G.A. 48-5-7.1. (f), (k))**

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### **ALLOWABLE AG. PREF. LAND TRANSFERS**

**O.C.G.A. 48-5-7.1. (f)** If any change in ownership of such qualified property occurs during the covenant period, all qualification requirements must be met again before the property shall be eligible to be continued for preferential assessment. If ownership of the property is acquired during a covenant period by a person qualified to enter into an original covenant, by a newly formed corporation the stock in which is owned by the original covenantor or others related to the original covenantor within the fourth degree by civil reckoning, or by the personal representative of an owner who was a party to the covenant, then the original covenant may be continued by such acquiring party for the remainder of the term, in which event no breach of the covenant shall be deemed to have occurred.

**O.C.G.A. 48-5-7.1. (k)** An application for continuation of preferential assessment upon a change in ownership of the qualified property shall be filed on or before the last date for filing tax returns in the year following the year in which the change in ownership occurred.

## Allowed Ag. Pref. Transfers, cont.

- **For single-family residential purposes for family member related within the fourth degree of civil reckoning, then:**
  - **3 acres if transferred before 7/1/88**
  - **5 acres if transferred on or after 7/1/88.**

**(O.C.G.A. 48-5-7.1. (n))**

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### ALLOWABLE AG. PREF. LAND TRANSFERS

#### O.C.G.A. 48-5-7.1. (n)

- (1) The transfer prior to July 1, 1988, of a part of the property subject to a covenant shall not constitute a breach of a covenant entered into before or after July 1, 1984, if:
  - (A) The part of the property so transferred is used for single-family residential purposes and the residence is occupied by a person who is related within the fourth degree of civil reckoning to an owner of the property subject to the covenant; and
  - (B) The part of the property so transferred, taken together with any other part of the property so transferred during the covenant period, does not exceed a total of three acres.
- (2) The transfer on or after July 1, 1988, of a part of the property subject to a covenant shall not constitute a breach of a covenant entered into before or after July 1, 1988, if:
  - (A) The part of the property so transferred is transferred to a person who is related within the fourth degree of civil reckoning to an owner of the property subject to the covenant; and
  - (B) The part of the property so transferred, taken together with any other part of the property transferred to the same relative during the covenant period, does not exceed a total of five acres.

**NOTE:** The fourth degree of civil reckoning is defined for these purposes as related to the covenant holder as: Child, Grandchild, Parent, Grandparent.

# Allowed Ag. Pref. Activities & Changes

- **Mineral Exploration.**
- **Fallow land for conservation.**
- **One-time change to Conservation Use.**

**(O.C.G.A. 48-5-7.1.(o), (s), (t))**

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## AG. PREF APPROVAL PROCESS

In general, the Preferential Assessment Program aims to benefit small family farmers and tree growers with long range plans to continue the property's existing use.

**O.C.G.A. 48-5-7.1.(o)** The following shall not constitute a breach of a covenant entered into before or after July 1, 1984:

- (1) **Mineral exploration** of the property subject to the covenant or the leasing of the property subject to the covenant for purposes of mineral exploration if the primary use of the property continues to be the good faith commercial production from or on the land of agricultural products; or
- (2) Allowing all or part of the property subject to the covenant to **lie fallow or idle for purposes of any land conservation** program, for purposes of any federal agricultural assistance program, or for other agricultural management purposes.

**O.C.G.A. 48-5-7.1. (s)** Property which is subject to preferential assessment and which is subject to a covenant under this Code section may be **changed from such covenant and placed in a covenant for bona fide conservation use** under Code Section 48-5-7.4 if such property meets all of the requirements and conditions specified in Code Section 48-5-7.4. Any such change shall terminate the covenant under this Code section, shall not constitute a breach of the covenant under this Code section, and shall require the establishment of a new covenant period under Code Section 48-5-7.4. No property may be changed under this subsection more than once.

**O.C.G.A. 48-5-7.1. (t)** At such time as the property ceases to be eligible for preferential assessment or when any ten-year covenant period expires and the property does not qualify for further preferential assessment, the owner of the property shall file an application for release of preferential treatment with the county Board of Tax Assessors who shall approve the release upon verification that all taxes and penalties with respect to the property have been satisfied. After the application for release has been approved by the Board of Tax Assessors, the board shall file the release in the office of the clerk of the Superior Court in the county in which the original covenant was filed. The clerk of the Superior Court shall file and index such release in the real property records maintained in the clerk's office. No fee shall be paid to the clerk of the Superior Court for recording such release. The commissioner shall by regulation provide uniform release forms.

## Ag. Pref Breached!

- **Covenant is breached if owner CHANGES USE FROM a bona fide ag. purpose during any part of the 10-year period.**
- **Breach penalty has interest and is a property lien.**

**(O.C.G.A. 48-5-7.1. (h), (i))**

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### DETERMINING BREACH OF AG. PREF. COVENANT

The Preferential Assessment Program aims to benefit those owners of property dedicated to a specific use. In an effort to discourage speculators or developers from entering the program, **penalties and interest are established in the event the covenant is broken and a change in property use to a non-qualifying activity occurs.**

**O.C.G.A. 48-5-7.1. (h)** A penalty imposed under subsection (g) of this Code section shall bear interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

**O.C.G.A. 48-5-7.1. (i)** Penalties and interest imposed under this Code section shall constitute a lien against the property and shall be collected as other unpaid ad valorem taxes are collected. Such penalties and interest shall be distributed pro rata to each taxing jurisdiction wherein the preferential assessment has been granted based upon the total amount by which such preferential assessment has reduced taxes for each such taxing jurisdiction on the property in question as provided in this Code section.

## Ag. Pref. *Penalties!*

- **Penalty for *breaching* the Ag. Pref. Covenant is equal to the tax savings incurred in the year the *breach* occurred multiplied by a factor.**

**(O.C.G.A. 48-5-7.1. (g))**

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### **PENALTIES FOR BREACH OF AG. PREF. COVENANT**

The penalty is based upon the amount of tax savings realized during the year in which the covenant is broken. The amount of savings is then multiplied by a factor which is determined by the year of covenant breach.

**O.C.G.A. 48-5-7.1. (g)** A penalty shall be imposed under this subsection if during the period of the covenant entered into by a taxpayer the covenant is breached. The penalty shall be computed by multiplying the amount by which the preferential assessment has reduced taxes otherwise due for the year in which the breach occurs times a factor, as follows on the next page.

## Ag. Pref. *Penalty Factors!*

**Penalty = Tax savings incurred in the year the *breach* occurred X a factor of:**

**5 in the 1<sup>st</sup> or 2<sup>nd</sup> year**

**4 in the 3<sup>rd</sup> or 4<sup>th</sup> year**

**3 in the 5<sup>th</sup> or 6<sup>th</sup> year**

**2 in the 7<sup>th</sup> - 10<sup>th</sup> year.**

**(O.C.G.A. 48-5-7.1. (g))**

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### AG. PREF. PENALTY FACTORS

**O.C.G.A. 48-5-7.1. (g)** A penalty shall be imposed under this subsection if during the period of the covenant entered into by a taxpayer the covenant is breached. The penalty shall be computed by multiplying the amount by which the preferential assessment has reduced taxes otherwise due for the year in which the breach occurs times:

- (1) A factor of five if the breach occurs in the first or second year of the covenant period;
- (2) A factor of four if the breach occurs during the third or fourth year of the covenant period;
- (3) A factor of three if the breach occurs during the fifth or sixth year of the covenant period;  
or
- (4) A factor of two if the breach occurs in the seventh, eighth, ninth, or tenth year of the covenant period.

## Ag. Pref. - **Breach w/Reduced Penalty!**

- **Bank foreclosure on property.**
- **Owner physical disability.**

**(O.C.G.A. 48-5-7.1. (q) (r))**

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### AG. PREF. Breach w/REDUCED PENALTY

**O.C.G.A. 48-5-7.1. (q) (1)** In any case in which a covenant is breached solely as a result of the **foreclosure of a deed to secure debt**, or the property is conveyed to the lien holder without compensation and in lieu of foreclosure, the penalty specified by paragraph (2) of this subsection shall apply and the penalty specified by subsection (g) of this Code section shall not apply if:

- (A) The deed to secure debt was executed as a part of a bona fide commercial loan transaction in which the grantor of the deed to secure debt received consideration equal in value to the principal amount of the debt secured by the deed to secure debt;
  - (B) The loan was made by a person or financial institution who or which is regularly engaged in the business of making loans; and
  - (C) The deed to secure debt was intended by the parties as security for the loan and was not intended for the purpose of carrying out a transfer which would otherwise be subject to the penalty specified by subsection (g) of this Code section.
- (2) When a breach occurs solely as a result of a foreclosure, the penalty imposed shall be the amount by which preferential assessment has reduced taxes otherwise due for the year in which the covenant is breached.
- (3) A penalty imposed under this subsection shall bear interest from the date the covenant is breached.

**O.C.G.A. 48-5-7.1. (r)(1)** In any case in which a covenant is breached solely as a result of a **medically demonstrable illness or disability** which renders the owner of the real property physically unable to continue the property in agricultural use, the penalty specified by paragraph (2) of this subsection shall apply and the penalty specified by subsection (g) of this Code section shall not apply. The penalty specified by paragraph (2) of this subsection shall likewise be substituted for the penalty specified by subsection (g) of this Code section in any case in which a covenant is breached solely as a result of a medically demonstrable illness or disability which renders the operator of the real property physically unable to continue the property in agricultural use, provided that the alternative penalty shall apply in this case only if the operator of the real property is a member of the family owning a family-farm corporation which owns the real property.

- (2) When a breach occurs, the penalty imposed shall be the amount by which preferential assessment has reduced taxes otherwise due for the year during which the covenant is breached.
- (3) A penalty imposed under this subsection shall bear interest from the date the covenant is breached.
- (4) Prior to the imposition of the alternative penalty, the Board of Tax Assessors shall require satisfactory evidence which clearly demonstrates that the breach is the result of a medically demonstrable illness or disability which meets the qualifications of paragraph (1) of this subsection.

## Ag. Pref. - **Breach w/No Penalty!**

- **Acquisition of property under power of eminent domain.**
- **Death of landowner party to covenant.**

**(O.C.G.A. 48-5-7.1. (j))**

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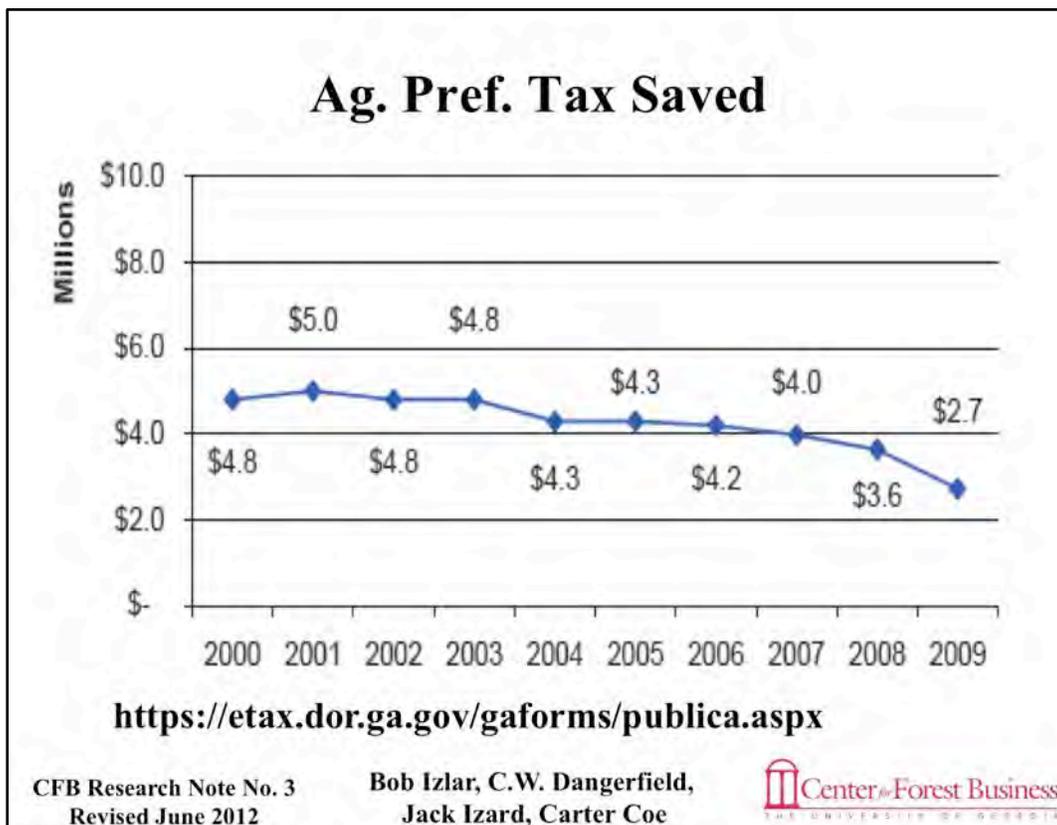
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### **AG. PREF. REDUCED OR NO PENALTY**

**O.C.G.A. 48-5-7.1. (j)** The penalty imposed by subsection (g) of this Code section shall not apply in any case where a covenant is breached solely as a result of:

- (1) The acquisition of part or all of the property under the power of **eminent domain**;
- (2) The sale of part or all of the property to a public or private entity which would have had the authority to acquire the property under the power of eminent domain; or
- (3) The **death of an owner** who was a party to the covenant.



#### AGRICULTURAL PREFERENTIAL ASSESSMENT

Ag. Pref. grew in its early years from 1984 to 1991. After 1991, Conservation Use (covered in the next section) claimed more protective covenants.

Landowners participating in the Preferential Assessment Program realize a benefit from the 25 percent savings. These tax savings started at \$1.6 million per year in 1984 and totaled \$4.8 million per year in 1999 and were back down to \$2.7 million in 2009, the last year for which data is available from the Georgia Department of Revenue Local Government Services Division.

Currently, this \$2.7 million Ag. Pref. tax savings for 2009 equals **0.0241 percent of the \$11.2 Billion** in property taxes collected for that year.

<https://etax.dor.ga.gov/gaforms/publica.aspx>

## Ag. Pref. Assessment - Tax Example

**Land FMV = \$500/Acre**

**Millage = 25 mills = .025**

**Assessed Value = FMV\*40%**  
**= \$500 \* .40 = \$200/Acre**

**FMV Tax = Assessed Value \* Millage**  
**= \$200/Acre \* .025 = \$5.00/Acre**

**Ag. Pref. = (Assessed Value) \* 75% = \$150**

**Ag. Pref. Tax = Ag. Pref. Assess. Value \* Mill**  
**= \$150/Acre \* .025 = \$3.75/Acre**

**Ag. Pref. Tax = 25% tax savings over FMV.**

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### AG. PREF. ASSESSMENT TAX EXAMPLE

Preferential Appraised Value = FMV x 75%

Preferential Assessed Value = Preferential Appraised Value x 40%

Tax Owed = Preferential Assessed Value x County Millage Rate

Under current law, a short-cut calculation to determine Preferential Assessed Value under the Preferential Assessment Program may also be done by taking the assigned Fair Market Value multiplied by 30 percent (Preferential Assessed Value = FMV x 30 percent). The amount of tax owed would then be determined by multiplying the Preferential Assessed Value times the county millage rate (Tax Owed = Preferential Assessed Value x Millage Rate). The bottom line result of entering the Preferential Assessment Program is a 25 percent savings from the FMV system of taxing the bare land.

## **Ag. Pref. - Remember!**

- **Up to 2,000 acres, no minimum.**
- **Storage &/or processing bld. on property included up to FMV of \$100,000.**
- **Residence and surrounding lot not included.**

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### **AG. PREF. REQUIREMENTS**

Eligible landowners may enter up to 2,000 acres into the program (no minimum tract size). However, Preferential Assessment does not apply to a residence located on the property. The program does allow that up to \$100,000 (based on FMV) of buildings, dedicated to storage and/or processing may be included in Ag. Pref. Assessment. Any building value greater than \$100,000 is assessed according to FMV.

For example, a farmer enrolling 15 acres of land (FMV = \$10,000), on which there are 3 chicken houses with a total FMV of \$125,000, would see the Preferential Assessed value apply on all of the land value, but only on the first \$100,000 of the buildings' value. Then, FMV would apply on the remaining \$25,000 of chicken house value.

## Ag. Pref. - **PROBLEMS!**

- **Thus, Conservation Use.**
- **Still has issue of services vs. taxes paid as with FMV.**
- **Still has bias of FMV system toward development prices.**

(O.C.G.A. 12-2-4, 20-2-164, 48-5-1, 48-5-7.4)

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### AG. PREF. FAILS TO ADDRESS FMV VALUATION PROBLEMS

Landowners participating in the Preferential Assessment Program realize a benefit from the 25 percent savings. However, determination of value continues to rely on the FMV system which displays bias in favor of highest value use in certain areas of the state. Increased values established by tax assessors in certain areas, because of the land's development potential, effectively reduce the intended tax benefit for landowners who qualified for the reduced property assessment covenant. Nevertheless, landowners should give due consideration to the possible bare land and limited building property tax savings that could be realized under the Preferential Assessment Program. The Georgia General Assembly created Conservation Use Valuation to remedy problems still found with FMV under Ag. Pref.

***Conservation (Current) Use Valuation.* House Resolution 836, Rep. Coleman and others, Effective January 1, 1991, Act 95, Georgia Laws 1990, Vol. 1, p. 2437. ad valorem taxation of conservation use property, agricultural and timber lands, environmentally sensitive property, residential transitional property, and standing timber. Amendment Resolution — In 1990, the Georgia General Assembly passed House Resolution 836 (H.R. 836, Ga. Laws 1990, p. 2437, et seq.). This resolution proposed a constitutional amendment to allow revision of the taxation of rural land and residential transitional property. It also proposed to defer the taxation of standing timber until owners sell or cut the trees.**

Legislators placed the resolution on the November 1990 ballot as Amendment # 3. After much debate, **62 percent** of Georgia's citizens passed the Amendment. This was the culmination of a 25-year effort by farm, forest and conservation interests. These interests labored to have land valued for tax purposes based on its productivity.

**House Bill 283, Rep. Dover, Effective January 1, 1992, Act 592, Georgia Laws 1991, Vol. 1, p. 1903. Conservation use property; Residential transitional property; Timber; Appraisal, valuation, and assessment; Millage rates; Equalized adjusted school property tax digest, local fair share funds.** This bill amended O.C.G.A. 48-5-1, 12-2-4, and 20-2-164 as the Enabling Legislation for House Resolution 836.

## Conservation Use

- **Current Use Valuation (CUV)\*.**
  - **10-Year Covenant with County.**
  - **Qualified landowners only.**
  - **Agricultural and forestry uses (plus environmentally sensitive and residential transitional properties).**
  - **Penalties for breach of covenant.**
- (O.C.G.A. 48-5-2)

<https://etax.dor.ga.gov/ptd/cas/cuse/index.aspx>

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### CONSERVATION USE BACKGROUND

**O.C.G.A. 48-5-2** The state of Georgia introduced a current use taxation program for qualified properties in 1992, called **Conservation Use Valuation (CUV)**. On the one hand, it was initiated in response to concerns regarding urban sprawl, land use transition, and the resulting environmental impacts from these changes. On the other hand, it was also instituted to provide tax relief for a broad class of Georgia property owners. Under CUV, a landowner signs a **10-year covenant** with the county to receive current use, as opposed to fair market valuation of property for taxation purposes.

The details of Current Use Valuation of **Conservation Use Properties and Residential Transitional Properties** were spelled out by the 1991 General Assembly in H.B. 283 and in 1993 by H.B. 66. As defined, Conservation Use Properties include: **Agricultural and Forestry Property; and, Environmentally Sensitive Property.**

**Since January 1, 2011, conservation use for forestry requires at least 200 contiguous acres as detailed in the following section titled Forest Land Protection Act.**

**Residential Transitional Property** is also defined for Current Use Valuation, but is not classified as Conservation Use Property.

In reviewing details of the Conservation Use Program, please note that values determined under the program are bare land values only, except residential transitional property. The value of any residence located on the property will receive a separate fair market value, except residential transitional property. Also, farm and forest related structures will receive a separate FMV too, but will be subject to other increase/decrease limitations (discussed below). Orchard trees, vineyards, etc. are considered improvements to the bare land and separately valued.

\*Also widely known as CUVA (Conservation Use Valuation Assessment).

# Current Use Assessment

- **"Current use value" of bona fide conservation use property:**
  - amount a knowledgeable buyer would pay continuing existing use in an arm's length, bona fide sale, and subsection (b) of Code Section 48-5-269.
- **Not highest and best use.**

**(O.C.G.A 48-5-2.(1))**

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## ELIGIBLE CU PROPERTY USES

The decision of eligibility by local tax assessors is intended to be more heavily weighted upon the existing use of property. Whether the property is entered as agricultural or forestry, environmentally sensitive, or residential transitional, the owner must be able to support the property's "good faith use" in the specified area.

**O.C.G.A 48-5-2.** As used in this chapter, the term:

(1) **"Current use value"** of bona fide conservation use property means the amount a knowledgeable buyer would pay for the property with the intention of continuing the property in its existing use and in an arm's length, bona fide sale and shall be determined in accordance with the specifications and criteria provided for in subsection (b) of Code Section 48-5-269.

# Conservation Use Property

## Land Owned By:

- 1) U.S. Citizens, Estates, Trusts
- 2) U.S. Family Owned Farm Entity
- 3) Non-profit Conservation Organizations
- 4) Non-profit clubs organized for pleasure.

(O.C.G.A. 48 57.4. (a) (1) (C))

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### Eligible Landowners - O.C.G.A. 48-5-7.4.

(a) (1) (C) Such property must be owned by:

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

**(Note, the legal definition of forth degree of civil reckoning is as follows: Child, Grandchild, Parent, Grandparent)**

- (v) A bona fide nonprofit conservation organization designated under Section 501 (c) (3) of the Internal Revenue Code; or
- (vi) A bona fide club organized for pleasure, recreation, and other nonprofitable purposes pursuant to Section 501 (c) (7) of the Internal Revenue Code;

## Conservation Use Property Qualifying Requirements

- **Includes subsistence farming or commercial production of agricultural or timber products,**
- **☒ 2,000 acres may be entered in CUV, Includes improvements at FMV,**
- **Land value included in CUVA covenant, residence value excluded.**

**(O.C.G.A. 48-5-7.4. (a))**

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### AGRICULTURE AND FOREST PROPERTY

Qualifying elements of agricultural or forest property depend on the "good faith production" of the land, including **subsistence farming and commercial production of agricultural products or timber.**

**O.C.G.A. 48-5-7.4. (a)** For purposes of this article, the term "bona fide conservation use property" means property described in and meeting the requirements of paragraph (1) or (2) of this subsection, as follows:

- (1) **Not more than 2,000 acres** of tangible real property of a single owner, the primary purpose of which is any good faith production, including, but not limited to, subsistence farming or commercial production from or on the land of agricultural products or timber, subject to the following qualifications:
  - (A) Such property **includes the value of tangible property permanently affixed to the real property** which is directly connected to such owner's production of agricultural products or timber and which is devoted to the storage and processing of such agricultural products or timber from or on such real property;
  - (B) Such property **excludes the entire value of any residence** located on the property.

## Conservation Use Considerations

- **Nature of terrain.**
- **Past usage.**
- **Density of marketable product on the land.**
- **Economic merchantability of product.**
- **Recommended practices followed.**

(O.C.G.A. 48-5-7.4. (a) (1) (D))

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### CONSERVATION USE CONSIDERATIONS

**O.C.G.A. 48-5-7.4. (a) (1) (D)** Factors which may be considered in determining if such property is qualified may include, but not be limited to:

- (i) The nature of the terrain;
- (ii) The density of the marketable product on the land;
- (iii) The past usage of the land;
- (iv) The economic merchantability of the agricultural product; and
- (v) The utilization or non-utilization of recognized care, cultivation, harvesting, and like practices applicable to the product involved and any implemented plans thereof.

## Qualifying for Agricultural or Timber Land

- **Limited to a maximum of 2,000 acres of tangible real property.**
- **Must manage land for its qualifying use throughout the entire 10-year covenant.**
- **Barns and Silos may be included in value, residence and underlying property value excluded.**
- **Must be owned by at least one natural citizen or family owned farm entity.**

### **O.C.G.A. 48-5-7.4(a)(1)(A.1.)**

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**O.C.G.A 48-5-7.4 (a)(1)(A.1.)** Not more than 2,000 acres of tangible real property of a single person, the primary purpose of which is any good faith production, including but not limited to subsistence farming or commercial production, from or on the land of agricultural products or timber, subject to the following qualifications: (A) Such property includes the value of tangible property permanently affixed to the real property which is directly connected to such owner's production of agricultural products or timber and which is devoted to the storage and processing of such agricultural products or timber from or on such real property; (B) Such property excludes the entire value of any residence and its underlying property; as used in this subparagraph, the term 'underlying property' means the minimum lot size required for residential construction by local zoning ordinances or two acres, whichever is less. This provision for excluding the underlying property of a residence from eligibility in the conservation use covenant shall only apply to property that is first made subject to a covenant or is subject to the renewal of a previous covenant on or after the effective date of this subparagraph. (C) Except as otherwise provided in division (vii) of this subparagraph, such property must be owned by: (i) One or more natural or naturalized citizens; (ii) An estate of which the devisees or heirs are one or more natural or naturalized citizens; (iii) A trust of which the beneficiaries are one or more natural or naturalized citizens; (iv) A family owned farm entity, such as a family corporation, a family partnership, a family general partnership, a family limited partnership, a family limited corporation, or a family limited liability company, all of the interest of which is owned by one or more natural or naturalized citizens related to each other by blood or marriage within the fourth degree of civil reckoning, except that, solely with respect to a family limited partnership, a corporation, limited partnership, limited corporation, or limited liability company may serve as a general partner of the family limited partnership and hold no more than a 5 percent interest in such family limited partnership, an estate of which the devisees or heirs are one or more natural or naturalized citizens, or a trust of which the beneficiaries are one or more natural or naturalized citizens and which family owned farm entity derived 80 percent or more of its gross income from bona fide conservation uses, including earnings on investments directly related to past or future bona fide conservation uses, within this state within the year immediately preceding the year in which eligibility is sought; provided, however, that in the case of a newly formed family farm entity, an estimate of the income of such entity may be used to determine its eligibility; (v) A bona fide nonprofit conservation organization designated under Section 501(c)(3) of the Internal Revenue Code; (vi) A bona fide club organized for pleasure, recreation, and other non-profitable purposes pursuant to Section 501(c)(7) of the Internal Revenue Code; or (vii) In the case of constructed storm-water wetlands, any person may own such property.

## Qualifying for Agricultural or Timber Land

- **Conservation Uses Include:**
- **Raising, harvesting, or storing crops;**
- **Feeding, breeding, or managing livestock or poultry;**
- **Producing plants, trees, fowl or animals;**
- **Production of aquaculture, horticulture, floriculture, forestry, dairy, livestock, poultry and apiarian (honeybee) products.**

**(O.C.G.A. 48-5-7.4. (a) (1) (E))**

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O.C.G.A. 48-5-7.4 (a) (1) (E) Such property shall, if otherwise qualified, include, but not be limited to, property used for: (i) Raising, harvesting, or storing crops; (ii) Feeding, breeding, or managing livestock or poultry; (iii) Producing plants, trees, fowl, or animals, including without limitation the production of fish or wildlife by maintaining not less than ten acres of wildlife habitat either in its natural state or under management, which shall be deemed a type of agriculture; provided, however, that no form of commercial fishing or fish production shall be considered a type of agriculture; or (iv) Production of aquaculture, horticulture, floriculture, forestry, dairy, livestock, poultry, and apiarian products.

## Applying for Conservation Use

- **File by last day for *ad valorem* returns.**
- **Can apply in conjunction with or in lieu of appeal of any reassessment.**
- **Any change in ownership, reapply!**
- **Assessor file covenant w/clerk of court.**
- **If application is denied, can appeal.**
- **Will get FMV notice yearly.**

(O.C.G.A. 48-5-7 (e), 48-5-7.4. (j))

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### Applying for Conservation Use

**O.C.G.A. 48-5-7.4. (j) (1)** All applications for current use assessment under this Code section, including the covenant agreement required under this Code section, shall be **filed on or before the last day for filing ad valorem tax returns** in the county for the tax year for which such current use assessment is sought, except that in the case of property which is the subject of a reassessment by the Board of Tax Assessors an application for current use assessment **may be filed in conjunction with or in lieu of an appeal of the reassessment**. An application for continuation of such current use assessment **upon a change in ownership** of all or a part of the qualified property shall be filed on or before the last date for filing tax returns in the year following the year in which the change in ownership occurred. Applications for current use assessment under this Code section shall be filed with the county Board of Tax Assessors who shall approve or deny the application. If the application is approved on or after July 1, 1998, the county Board of Tax Assessors **shall file a copy of the approved application in the office of the clerk of the Superior Court** in the county in which the eligible property is located. The clerk of the Superior Court shall file and index such application in the real property records maintained in the clerk's office. Applications approved prior to July 1, 1998, shall be filed and indexed in like manner without payment of any fee. If the application is not so recorded in the real property records, a transferee of the property affected shall not be bound by the covenant or subject to any penalty for its breach. The fee of the clerk of the Superior Court for recording such applications approved on or after July 1, 1998, shall be paid by the owner of the eligible property with the application for preferential treatment and shall be paid to the clerk by the Board of Tax Assessors when the application is filed with the clerk. If the application is denied, the Board of Tax Assessors shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees advanced by the owner. **Appeals from the denial of an application** by the Board of Tax Assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

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

## Additional Rules for CUV

- **At least 1/2 of property in qualifying use, w/ remainder minimally managed.**
- **May lease for hunting.**
- **Less than 10 acres for Ag. required to give proof via additional records unless the owner provides proof of filing with the IRS a Schedule E or Schedule F, with Form 1040 (or Form 4835, if applicable).**
- **Up to 2,000 acres with beneficial interest.**
- **Restrictive-use covenant prohibits CUV.**
- **Published soil map not required.**
- **Lessee must qualify also.**

(O.C.G.A. 48-5-7.4. (b))

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### Additional Rules for Conservation Use

**O.C.G.A. 48-5-7.4. (b)** The following additional rules shall apply to the qualification of conservation use property for current use assessment:

- (1) When **one-half or more of the area** of a single tract of real property is used for a qualifying purpose, then such tract shall be considered as used for such qualifying purpose unless some other type of business is being operated on the unused portion; provided, however, that such unused portion must be minimally managed so that it does not contribute significantly to erosion or other environmental or conservation problems. The lease of hunting rights shall not constitute another type of business;
- (2) ) The owner of a tract, lot, or parcel of land totaling less than 10 acres shall be required by the tax assessor to submit additional relevant records regarding proof of bona fide conservation use for qualified property that on or after the effective date of this paragraph is either first made subject to a covenant or is subject to a renewal of a previous covenant. If the owner of the subject property provides proof that such owner has filed with the Internal Revenue Service a Schedule E, reporting farm related income or loss, or a Schedule F, with Form 1040, or, if applicable, a Form 4835, pertaining to such property, the provisions of this paragraph, requiring additional relevant records regarding proof of bona fide conservation use, shall not apply to such property. Prior to a denial of eligibility under this paragraph, the tax assessor shall conduct and provide proof of a visual on-site inspection of the property; Reasonable notice shall be provided to the property owner before being allowed a visual, on-site inspection of the property by the tax assessor.
- (3) No property shall qualify as bona fide conservation use property if it is **leased to a person** or entity which would not be entitled to conservation use assessment;
- (4) No property shall qualify as bona fide conservation use property if such property is at the time of application for current use assessment subject to a **restrictive covenant which prohibits** the use of the property for any purpose described in subparagraph (a)(1)(E) of this Code section; and
- (5) No otherwise qualified property shall be denied current use assessment on the grounds **that no soil map is available** for the county in which such property is located; provided, however, that if no soil map is available for the county in which such property is located, the owner making an application for current use assessment shall provide the Board of Tax Assessors with a certified soil survey of the subject property unless another method for determining the soil type of the subject property is authorized in writing by such board.

## Additional Rules for CUV, cont.

- **One-time application w/10-year covenant with county Tax Assessor;**
- **Owner must continue qualifying uses for 10 years, 15 years for FLPA;**
- **Multiple covenants allowed in multiple counties up to 2,000 acres in beneficial interest.**

(O.C.G.A. 48-5-7.4. (d), (e))

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### PARTICIPATION REQUIREMENTS AND ELIGIBILITY

Landowners desiring to be considered for Current Use Valuation may do so by submitting an application to the local Board of Tax Assessors. There should be no prerequisites or no documents required to simply file an application requesting participation in the Current Use Valuation Program. In reality, any property owner in Georgia could apply for the program. However, those properties not falling within the bounds of qualified uses will be denied by the local Board of Tax Assessors. Landowners are encouraged to help supply all relevant information to the tax assessors upon making application, but Georgia law does not mandate specific documentation.

**O.C.G.A. 48-5-7.4. (d)** No property shall qualify for current use assessment under this Code section unless and until the owner of such property agrees by covenant with the appropriate taxing authority to **maintain the eligible property in bona fide qualifying use for a period of ten years** beginning on the first day of January of the year in which such property qualifies for such current use assessment and ending on the last day of December of the final year of the covenant period. After the owner has applied for and has been allowed current use assessment provided for in this Code section, **it shall not be necessary to make application thereafter** for any year in which the covenant period is in effect and current use assessment shall continue to be allowed such owner as specified in this Code section. Upon the expiration of any covenant period, the property shall not qualify for further current use assessment under this Code section unless and until the owner of the property has entered into a renewal covenant for an additional period of ten years.

**O.C.G.A. 48-5-7.4. (e)** A single owner shall be authorized to enter into **more than one covenant** under this Code section for bona fide conservation use property, provided that the aggregate number of acres of qualified property of such owner to be entered into such covenants **does not exceed 2,000 acres**. Any such qualified property may include a tract or tracts of land which are located in **more than one county**. A single owner shall be authorized to enter qualified property in a covenant for bona fide conservation use purposes and to enter simultaneously the residence located on such property in a covenant for bona fide residential transitional use if the qualifications for each such covenant are met. A single owner shall be authorized to enter qualified property in a covenant for bona fide conservation use purposes and to enter other qualified property of such owner in a covenant for bona fide residential transitional use.

## Additional Rules for CUV, cont.

- **May have up to 2,000 acres in CUV, and**
- **May also have up to 2,000 other acres in Ag. Pref.**
- **Can move land from Ag. Pref. To CUV, only one time. No limit when.**
- **Can change from one qualifying CUV use to another CUV qualifying use, IF notify Assessor in writing first.**

(O.C.G.A. 48-5-7.4. (e), (f), (g))

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### PARTICIPATION REQUIREMENTS AND ELIGIBILITY

The Conservation Use Program is very similar to Preferential Assessment in participation requirements. Landowners may enter up to 2,000 acres into a land use covenant, thereby dedicating the land to a specific qualifying use for a period of 10 years. While no minimum size tract is specified, uses of the property are restricted and tracts of less than 10 acres shall require "additional relevant records." Also, any event that causes the covenant to be broken will trigger a significant penalty based upon the property tax savings.

Documentation Providing Evidence of the Property's Use - When applying for the program, the landowner should provide evidence of the property's use. As stated above, Georgia law does not require specific documents. However, owners can consider presenting information such as:

- Evidence of farm or forest income;
- Evidence of participation in a USDA farm program;
- Copy of a lease to an eligible party;
- Farm or forest management plan;
- Farm conservation plan; or,
- Any proof of property use that is reasonable to indicate the property's use.

**O.C.G.A. 48-5-7.4. (f)** An owner shall not be authorized to make application for and receive current use assessment under this Code section for any property which at the time of such application is receiving preferential assessment under Code Section 48-5-7.1 except that such owner shall be authorized to change such preferential assessment covenant in the manner provided for in subsection (s) of Code Section 48-5-7.1.

**O.C.G.A. 48-5-7.4. (g)** Except as otherwise provided in this subsection, no property shall maintain its eligibility for current use assessment under this Code section unless a valid covenant remains in effect and unless the property is continuously devoted to an applicable bona fide qualifying use during the entire period of the covenant. An owner shall be authorized to change the type of bona fide qualifying conservation use of the property to another bona fide qualifying conservation use and the penalty imposed by subsection (l) of this Code section shall not apply, but such owner shall give notice of any such change in use to the Board of Tax Assessors.

## Additional Rules for CUV, cont.

- **Only legally definable tracts**
  - *Property may be identified by legal description, existing property tax parcel # , or other boundary that is acceptable to County Tax Assessor.*
- **After 10-years, reapply for new covenant, or MUST file application w/Assessor for release from CUV. CUV may reapply in 9<sup>th</sup> yr.**

**(O.C.G.A. 48-5-7.4 (w))**

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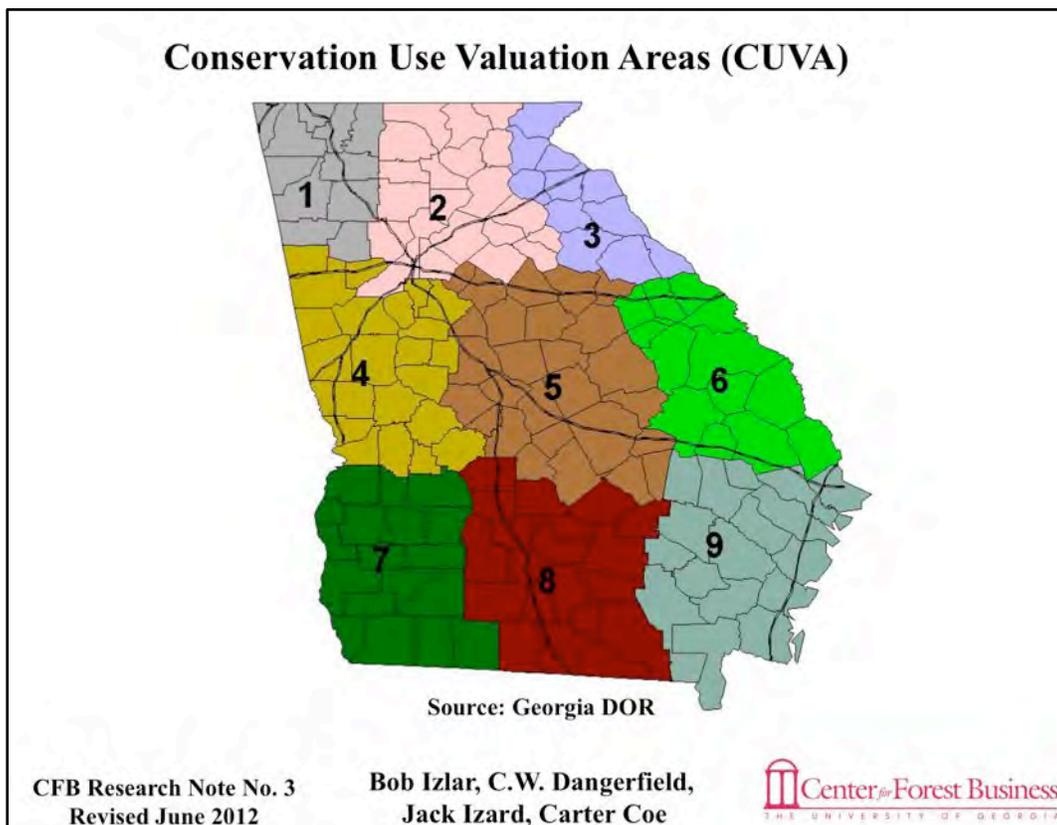
### The application forms require:

- \* Identification of the property tract;
- \* Certification of intended property use; and,
- \* Documentation providing evidence of the property's use is always helpful.

Identification of the Property Tract - To make a proper valuation of enrolled property, tax assessors must be able to identify the property on county tax maps, as well as soil maps, when available, that identify the various soil types. Counties without soil maps may utilize alternative means of determining soil productivity class, as agreeable to the tax assessor and the landowner. The property may be identified by a legal description, existing property tax parcel or other boundary that is acceptable to the tax assessor.

Conservation Use rules and regulations allow landowners to "survey-out" portions of a larger tract and create separate tracts. Each tract may be entered into a separate covenant, but any one entire tract must be enrolled. This example leads to the conclusion that if there are acres that the owner considers will be converted to a non-qualifying use within the 10-year covenant period, those acres should be surveyed into a separate tract and left out of the protective covenant.

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



### Conservation Use Valuation Areas (CUVA)

The above map shows the 9 Conservation Use Valuation Areas (CUVA's) by county with a table containing values to be used for the more than 65,000 Conservation Use covenants in Georgia. All new CUV covenants entered by qualified landowners after January 1, 2002 are no longer called "1993-Style". They are simply "Conservation Use" covenants. Qualified landowners with these Conservation Use covenants earn almost \$38 million annually in *ad valorem* property tax savings.

The "Conservation Use" Georgia map with an accompanying value table that gives the Conservation Use land values are available, by year, on the World Wide Web page of the Daniel B. Warnell School of Forest Resources at UGA, <http://www.forestry.uga.edu> Look under "Forest Business" to find the most recent year Conservation Use Tables of Values.

Maps and tables are available also in your County Tax Assessor office along with program details and sign-up procedures. These tables show \$/acre for class 1-9 land (1 is most- and 9 is least-productive land).

**O.C.G.A. 48-5-7.4 (v)** The commissioner shall continue to compute a table of values established under subsection (a) of Code Section 48-5-269, in accordance with the law applicable to the tax year beginning on January 1, 1992, to be used to value property entered into a covenant during that tax year and the covenants valued thereunder for the remainder of the covenant period applicable to such persons shall be known as "92-Style" conservation use covenants. Such duty shall terminate with the tax year beginning January 1, 2001. With respect to any county for which the "A2" benchmark value for agricultural land in the table of values established by the commissioner for the tax year beginning on January 1, 1993, exceeds by 50 percent or more the "C2" benchmark value for cropland in the table of values established by the commissioner for the tax year beginning on January 1, 1992, a person within such county desiring to enter into a conservation use covenant for any taxable year beginning on or after January 1, 1994, shall be authorized, at such person's option, to enter a 92-Style conservation use covenant. A person entering such covenant shall be governed by the prior law applicable to such covenants and the applicable table of values and such covenant shall expire on December 31, 2001.

**2011 CUVA VALUES – <https://etax.dor.ga.gov/ptd/cas/cuse/year.aspx>**

Productivity										
Region	Land Class	1	2	3	4	5	6	7	8	9
1	Ag.	\$1225	\$1159	\$1072	\$983	\$889	\$795	\$707	\$621	\$533
	Timber	\$676	\$607	\$551	\$505	\$464	\$431	\$404	\$371	\$338
2	Ag.	\$1342	\$1196	\$1066	\$942	\$843	\$754	\$676	\$614	\$552
	Timber	\$915	\$828	\$747	\$677	\$624	\$586	\$552	\$507	\$462
3	Ag.	\$1022	\$929	\$833	\$738	\$644	\$582	\$477	\$400	\$338
	Timber	\$915	\$828	\$747	\$677	\$624	\$571	\$481	\$392	\$328
4	Ag.	\$839	\$751	\$689	\$616	\$541	\$450	\$390	\$303	\$220
	Timber	\$661	\$592	\$536	\$492	\$429	\$400	\$348	\$301	\$246
5	Ag.	\$623	\$542	\$504	\$462	\$412	\$351	\$289	\$228	\$167
	Timber	\$564	\$521	\$479	\$439	\$398	\$357	\$314	\$272	\$227
6	Ag.	\$705	\$619	\$567	\$521	\$462	\$385	\$314	\$241	\$170
	Timber	\$557	\$512	\$467	\$426	\$381	\$337	\$293	\$248	\$203
7	Ag.	\$819	\$743	\$661	\$575	\$493	\$414	\$321	\$208	\$166
	Timber	\$597	\$543	\$495	\$445	\$393	\$344	\$293	\$241	\$192
8	Ag.	\$828	\$783	\$707	\$631	\$555	\$479	\$371	\$301	\$224
	Timber	\$648	\$588	\$527	\$467	\$407	\$348	\$288	\$228	\$187
9	Ag.	\$767	\$740	\$664	\$592	\$519	\$445	\$371	\$297	\$224
	Timber	\$656	\$592	\$536	\$477	\$416	\$359	\$299	\$239	\$187

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These values are calculated each year using the capitalization of net income formula prescribed by law and using data from Georgia Department of Revenue sales comparisons, University of Georgia Timber Mart-South timber product prices, and forest management costs.

## CUV Changes in Value

- **CUV +/- 3%/yr. & +/- 34%/10-yr.**
- **Change in DOR CUV table of values +/-3%/yr.**
- **When covenant expires, change to FMV, Ag. Pref., or new CUV.**
- **County Tax Assessor will help land owners make valuation method choices.**

(O.C.G.A. 48-5-269 (b)(3), (c))

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### **Changes in value for “1992-Style” Conservation Use Covenants**

H.B. 66 created a new conservation use program for 1993. The 1993 program limits the Conservation Use tables of values, and the total value under the covenant, to increases or decreases of a maximum of three percent per year, after 1993, to a maximum change of 34.39% during the 10-year covenant. **Additional questions about how much your CUV changes each year can be addressed to your local County Tax Assessor.**

**When your present CUV covenant expires, your land valuation will automatically revert to FMV if you do nothing. Alternatively, if you still qualify, you may choose Agricultural Preferential Assessment or Conservation Use Valuations (under a new 10-year covenant). Your local County Tax Assessor will help you make change-over choices.**

## CUV Values & Limits

- **CUV on bare land only.**
- **Buildings are included at FMV & land surrounding at CUV.**
- **Value change limits apply to buildings also.**
- **Residence is not included, but its surrounding lot is included.**

(O.C.G.A. 48-5-7.4 (a) (1), 48-5-269 (b) (3), (c))

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### VALUE CHANGE LIMITATIONS ON BUILDINGS

**48-5-7.4. (a)** For purposes of this article, the term "bona fide conservation use property" means property described in and meeting the requirements of paragraph (1) or (2) of this subsection, as follows: (1) Not more than 2,000 acres of tangible real property of a single owner, the primary purpose of which is any good faith production, including, but not limited to, subsistence farming or commercial production from or on the land of agricultural products or timber, subject to the following qualifications: (A) Such property includes the value of tangible property permanently affixed to the real property which is directly connected to such owner's production of agricultural products or timber and which is devoted to the storage and processing of such agricultural products or timber from or on such real property; (B) Such property excludes the entire value of any residence located on the property;

**48-5-269 (c)** In no event may the current use value of any conservation use property increase or decrease during a covenant period by more than 3 percent from its current use value for the previous taxable year or increase or decrease during a covenant period by more than 34.39 percent from the first year of the covenant period. The limitations imposed by this subsection shall apply to the total value of all the conservation use property that is the subject of an individual covenant including any improvements that meet the qualifications set forth in paragraph (1) of subsection (a) of Code Section 48-5-7.4; provided, however, that in the event the owner changes the use of any portion of the land or adds or removes therefrom any such qualified improvements, the limitations imposed by this subsection shall be recomputed as if the new uses and improvements were in place at the time the covenant was originally entered.

## Conservation Use Land Valuation

- **Soil productivity and geographic area.**
  - **By DOR Commissioner.**
  - **Three major land classes:**
    - **agricultural and forest**
    - **environmentally sensitive**
    - **residential transitional.**
- (O.C.G.A. 48-5-7.4 (a), 48-5-269 (b) (1))

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### LAND VALUATION

Georgia law goes further to distinguish Current Use Values from FMV or Preferential by requiring:

The Current Use Value to be determined by a formula which considers income capitalization based on **soil productivity and market sales for different regions of the state**; and,

The actual Current Use bare land values are to be calculated centrally by the **Department of Revenue**, which in turn distributes a table of values to each county in the state annually.

The mandate of law is applied to the respective Current Use Property classes as follows:

**Agricultural and forest property** - Current Use Values for these Conservation Use Properties are calculated annually by the Department of Revenue for agricultural land and woodland and distributed to the counties;

**Environmentally sensitive property** - Presently, Current Use Values for environmentally sensitive Conservation Use Properties are determined by using the forest table of values. Local assessors will take the forest property description for the lowest productivity class, and use the same value; and,

**Residential transitional** - This Current Use Property class is unique. The Current Use Value is determined by the local tax assessors. The primary goal of valuing residential transitional properties is to remove the influence of location and development from the value.

## Qualifying for Environmentally Sensitive Property

- **Same qualifications as agricultural or timber land**
- **Eligible types of property are as follows:**
  - 1) **Crests, summits, ridge tops**
  - 2) **Wetlands**
  - 3) **Ground-water recharge areas**
  - 4) **Undeveloped barrier islands**
  - 5) **Endangered and threatened species habitat**
  - 6) **River corridors within 100-year flood plain.**

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O.C.G.A. 48-5-7.4 (a) (2) (A) Environmentally sensitive areas, including any otherwise qualified land area 1,000 feet or more above the lowest elevation of the county in which such area is located that has a percentage slope, which is the difference in elevation between two points 500 feet apart on the earth divided by the horizontal distance between those two points, of 25 percent or greater and shall include the crests, summits, and ridge tops which lie at elevations higher than any such area; (B) Wetland areas that are determined by the United States Army Corps of Engineers to be wetlands under their jurisdiction pursuant to Section 404 of the federal Clean Water Act, as amended, or wetland areas that are depicted or delineated on maps compiled by the Department of Natural Resources or the United States Fish and Wildlife Service pursuant to its National Wetlands Inventory Program; (C) Significant ground-water recharge areas as identified on maps or data compiled by the Department of Natural Resources; (D) Undeveloped barrier islands or portions thereof as provided for in the federal Coastal Barrier Resources Act, as amended; (E) Habitats as certified by the Department of Natural Resources as containing species that have been listed as either endangered or threatened under the federal Endangered Species Act of 1973, as amended; (F) River or stream corridors or buffers which shall be defined as those undeveloped lands which are: (i) Adjacent to rivers and perennial streams that are within the 100 year flood plain as depicted on official maps prepared by the Federal Emergency Management Agency; or (ii) Within buffer zones adjacent to rivers or perennial streams, which buffer zones are established by law or local ordinance and within which land-disturbing activity is prohibited; or (G)(i) Constructed storm-water wetlands of the free-water surface type certified by the Department of Natural Resources under subsection (k) of Code Section 12-2-4 and approved for such use by the local governing authority. (ii) No property shall maintain its eligibility for current use assessment as a bona fide conservation use property as defined in this subparagraph unless the owner of such property files an annual inspection report from a licensed professional engineer certifying that as of the date of such report the property is being maintained in a proper state of repair so as to accomplish the objectives for which it was designed. Such inspection report and certification shall be filed with the county board of tax assessors on or before the last day for filing ad valorem tax returns in the county for each tax year for which such assessment is sought.

## Qualifying Environmentally Sensitive Property in 5 Steps:

1. Qualify for CUV 1<sup>st</sup>.
2. DNR certification as environmentally sensitive.
3. DNR certification land in natural state.
4. Enter up to 2,000 acres in CUV.
5. 10-year covenant, 15-year FLPA.

(O.C.G.A. 48-5-7.4.)

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### ENVIRONMENTALLY SENSITIVE COVENANT

Georgia law provides property tax incentives to qualified landowners to keep **environmentally sensitive land** in its natural condition for 10 years. Incentives include a property tax assessment based on the land's existing or current use. This is also called conservation use assessment. Normally, assessment is based on the highest and best use. Environmentally sensitive provisions are similar to those available for agricultural and forest land under conservation use assessment, but the qualification procedures are different.

You must meet five conditions to qualify for a current use assessment for environmentally sensitive land. These conditions are:

1. **The landowner must qualify** to participate in the conservation use program;
2. **The Georgia Department of Natural Resources (DNR)** must certify that the land is environmentally sensitive as defined by H.B. 283. Lands that may qualify are steep mountain slopes, wetlands, flood plains, river corridors, habitats containing endangered species, significant ground water recharge areas and undeveloped barrier islands;
3. **The Georgia Department of Natural Resources** must also certify that the environmentally sensitive land be in its natural condition;
4. **Each landowner can place up to 2,000 acres** of land in the current use assessment program; and,
5. **The landowner must enter a legally binding agreement** with the local taxing authority to maintain the land in its natural condition. This agreement remains in effect for 10 years.

# Residential Transitional Property

- **Current use value is based on:**
  - The current use of such property
  - Annual productivity
  - Sales data of comparable real property with and for the same existing use.
- **Property shall be assessed for property tax purposes at 40 percent of its current use value.**
- **Property shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of the property's current use value.**

O.C.G.A. 48-5-2 and O.C.G.A. 48-5-7

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## O.C.G.A. 48-5-2

"**Current use value**" of bona fide conservation use property means the amount a knowledgeable buyer would pay for the property with the intention of continuing the property in its existing use and in an arm's length, bona fide sale and shall be determined in accordance with the specifications and criteria provided for in subsection (b) of Code Section 48-5-269.

"Current use value" of bona fide **residential transitional property** means the amount a knowledgeable buyer would pay for the property with the intention of continuing the property in its existing use and in an arm's length, bona fide sale. The tax assessor shall consider the following criteria, as applicable, in determining the current use value of bona fide **residential transitional property**: The current use of such property; Annual productivity; and, Sales data of comparable real property with and for the same existing use.

## O.C.G.A. 48-5-7

Tangible real property located in a transitional developing area which is devoted to bona fide residential uses and which otherwise conforms to the conditions and limitations imposed in this chapter for bona fide **residential transitional property** shall be assessed for property tax purposes at 40 percent of its current use value and shall be taxed on a levy made by each respective tax jurisdiction according to 40 percent of the property's current use value.

# Qualifying Residential Transitional Property

- **Not more than 5 acres.**
- **Private, single family private ownership.**
- **Located in area converting from residential to agriculture, commercial, industrial, office-institutional, multifamily, or utility.**
- **Change in use must be evidenced.**
- **Valuation must reflect a change in value attributable to such property's proximity to or location in a transitional area.**

**O.C.G.A. 48-5-7.4**

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## **O.C.G.A. 48-5-7.4**

The term "bona fide **residential transitional property**" means not more than five acres of tangible real property of a single owner which is private single-family residential owner occupied property located in a transitional developing area. Such classification shall apply to all otherwise qualified real property which is located in an area which is undergoing a change in use from single-family residential use to agricultural, commercial, industrial, office-institutional, multifamily, or utility use or a combination of such uses.

Change in use may be evidenced by recent zoning changes, purchase by a developer, affidavits of intent, or close proximity to property which has undergone a change from single-family residential use. To qualify as **residential transitional property**, the valuation must reflect a change in value attributable to such property's proximity to or location in a transitional area. No property shall qualify for current use assessment under this Code section unless and until the owner of such property agrees by covenant with the appropriate taxing authority to maintain the eligible property in bona fide qualifying use for a period of ten years. This period begins on the first day of January of the year in which the property qualifies for current use assessment and ends on the last day of December of the final year of the covenant period. After the owner has applied for and has been allowed current use assessment provided for in this Code section, it shall not be necessary to make application thereafter for any year in which the covenant period is in effect and current use assessment shall continue to be allowed such owner as specified in this Code section. At least 60 days prior to the expiration date of the covenant, the county Board of Tax Assessors shall send by first-class mail written notification of such impending expiration. Upon the expiration of any covenant period, the property shall not qualify for further current use assessment under this Code section unless and until the owner of the property has entered into a renewal covenant for an additional period of ten years. The owner may enter into a renewal contract in the ninth year of a covenant period so that the contract is continued without a lapse for an additional ten years. The transfer of a part of a CUV property in a covenant is not breached if several conditions are met. If the part of the property transferred is used for single-family residential purposes, starting within one year of the date of transfer and continuing for the remainder of the covenant period. This residence must be occupied by a person who is related within the fourth degree of civil reckoning to an owner of the property subject to the covenant. The part of the property transferred, taken together with any other part of the property transferred to the same relative during the covenant period, must not exceed a total of five acres. Finally, the property transferred shall not be eligible for a covenant for bona fide conservation use, but shall, if otherwise qualified, be eligible for current use assessment as **residential transitional property**. The remainder of the property from which the transfer was made shall continue under the existing covenant until a terminating breach occurs or until the end of the specified covenant period.

## **Qualifying Residential Transitional Property (cont.)**

- **Owner must maintain property in qualifying use for a period of ten years.**
- **Owner may enter into a renewal contract in the ninth year of a covenant period so that the contract is continued without a lapse for an additional ten years.**
- **Part of CUV property can be transferred in several conditions are met.**

**O.C.G.A. 48-5-7.4**

CFB Research Note No. 3  
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 **Center for Forest Business**  
UNIVERSITY OF GEORGIA

**Allowable CUV Transfers**  
**If the Conservation Use covenanted**  
**property is sold or changes**  
**ownership during the 10-year**  
**covenant, the**  
**NEW OWNER MUST**  
**meet qualifications again and apply**  
**to continue the existing covenant.**

(O.C.G.A. 48-5-7.4. (h), (i), & (j)(1))

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## ALLOWABLE CONSERVATION USE LAND TRANSFERS

If any part or all of the Conservation Use covenanted property is sold or there are any changes in ownership during the 10-year covenant, to avoid breaching the existing covenant, the NEW OWNER (or new ownership pattern) MUST meet qualifications again and apply to continue the original ten-year covenant. Changes in ownership pattern can include changes in partnerships, or even divorce from a spouse, among other possible changes. Such a change in ownership does not break the existing covenant, provided the new owner qualifies for the program, and there is no penalty provided the qualified new landowner then applies to continue the existing covenant. Upon such change in ownership pattern, the qualified new landowner must make application to continue the existing covenant during the first sign-up period following the ownership change.

**O.C.G.A. 48-5-7.4. (h)** If any breach of a covenant occurs, the existing covenant shall be terminated and all qualification **requirements must be met again** before the property shall be eligible for current use assessment under this Code section.

**O.C.G.A. 48-5-7.4. (i)** If ownership of all or a part of the property is acquired during a covenant period by a person or entity qualified to enter into an original covenant, then the original covenant may be continued by such acquiring party for the remainder of the term, in which event no breach of the covenant shall be deemed to have occurred.

**O.C.G.A. 48-5-7.4. (j) (1)** . . . . An application for continuation of such current use assessment upon a change in ownership of all or a part of the qualified property shall be filed on or before the last date for filing tax returns in the year following the year in which the change in ownership occurred. . . .

## Allowable CUV Transfers, cont.

- **Transfer to a family member.**
- **Single-family residential use.**
- **Up to 5 acres per transfer.**
- **Occupied w/in 1 year for remainder of covenant.**

(O.C.G.A. 48-5-7.4. (o) (1), (2))

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### ALLOWABLE CONSERVATION USE LAND TRANSFERS

**O.C.G.A. 48-5-7.4. (o)** The transfer of a part of the property subject to a covenant for a bona fide conservation use **shall not constitute a breach of a covenant if:**

- (1) The part of the property so transferred is used for **single-family residential purposes, starting within one year** of the date of transfer and **continuing for the remainder of the covenant period**, and the residence is **occupied by a person who is related within the fourth degree of civil reckoning** to an owner of the property subject to the covenant; and
- (2) The part of the property so transferred, taken together with any other part of the property so transferred to the same relative during the covenant period, does **not exceed a total of five acres**;

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

**NOTE:** The fourth degree of civil reckoning is defined for these purposes as related to the covenant holder as: Child, Grandchild, Parent, Grandparent.

## MORE Allowable CUV Transfers

- **Mineral exploration.**
- **Lie fallow for land conservation.**
- **Lie fallow for financial hardship.**
- **Transfer to Church or charity.**
- **Maintain qualifying use.**

(O.C.G.A. 48-5-7.4. (p))

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### ALLOWABLE CONSERVATION USE LAND TRANSFERS

O.C.G.A. 48-5-7.4. (p) The following shall not constitute a breach of a covenant:

- (1) **Mineral exploration** of the property subject to the covenant or the leasing of the property subject to the covenant for purposes of mineral exploration if the primary use of the property continues to be the good faith production from or on the land of agricultural products;
- (2) Allowing all or part of the property subject to the covenant to **lie fallow or idle for purposes of any land conservation** program, for purposes of any federal agricultural assistance program, or for other agricultural management purposes;
- (3) Allowing all or part of the property subject to the covenant to **lie fallow or idle due to economic or financial hardship** if the owner notifies the Board of Tax Assessors on or before the last day for filing a tax return in the county where the land lying fallow or idle is located and if such owner does not allow the land to lie fallow or idle for more than two years of any five-year period; or
- (4) (A) Any property which is subject to a covenant for bona fide conservation use being **transferred to a place of religious worship or burial or an institution of purely public charity** if such place or institution is qualified to receive the exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41. No person shall be entitled to transfer more than 25 acres of such person's property in the aggregate under this paragraph.
- (4)(B) Any property transferred under subparagraph (A) of this paragraph shall not be used by the transferee for any purpose other than for a purpose which would entitle such property to the applicable exemption from ad valorem taxation provided for under subsection (a) of Code Section 48-5-41 or subsequently transferred until the expiration of the term of the covenant period. Any such use or transfer shall constitute a breach of the covenant.

## CUV breach with reduced penalty

- **Death of any party to covenant.**
- **Bank foreclosure.**
- **Property condemned by eminent domain.**
- **Economic or financial hardship.**
- **Medical disability.**

O.C.G.A. 48-5-7.4. (n), (q)

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### CONSERVATION USE breach with REDUCED PENALTY

O.C.G.A. 48-5-7.4. (n) The penalty imposed by subsection (l) of this Code section shall not apply in any case where a covenant is breached solely as a result of:

- (1) **The acquisition of part or all of the property under the power of eminent domain;**
- (2) **The sale of part or all of the property to a public or private entity which would have had the authority to acquire the property under the power of eminent domain; or**
- (3) **The death of an owner who was a party to the covenant.**

O.C.G.A. 48-5-7.4. (q) In the following cases, the penalty specified by subsection (l) of this Code section shall not apply and the penalty imposed shall be the amount by which current use assessment has reduced taxes otherwise due for the year in which the covenant is breached, such penalty to bear interest at the rate specified in Code Section 48-2-40 from the date of the breach:

- (1) Any case in which a covenant is breached solely as a result of the **foreclosure of a deed to secure debt** or the property is conveyed to the lien holder without compensation and in lieu of foreclosure, if: (A) the deed to secure debt was executed as a part of a bona fide commercial loan transaction in which the grantor of the deed to secure debt received consideration equal in value to the principal amount of the debt secured by the deed to secure debt; (B) the loan was made by a person or financial institution who or which is regularly engaged in the business of making loans; and (C) the deed to secure debt was intended by the parties as security for the loan and was not intended for the purpose of carrying out a transfer which would otherwise be subject to the penalty specified by subsection (l) of this Code section; or
- (2) Any case in which a covenant is breached solely as a result of a **medically demonstrable illness or disability** which renders the owner of the real property physically unable to continue the property in the qualifying use, provided that the Board of Tax Assessors shall require satisfactory evidence which clearly demonstrates that the breach is the result of a medically demonstrable illness or disability.

## CUV Renewal Covenant reduced penalty

- **Penalty for breach of renewal covenant is reduced for years 6-10.**
- **House Bill 1321 - "early out" option three years into a renewal conservation or preferential use covenant where taxpayer is at least 65 years old.**

January 1, 2002

(Read O.C.G.A. 48-5-7.4. (x) & HB 1321 from notes below)

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SUSTAINABLE FORESTS FOR A BETTER WORLD

### CONSERVATION USE RENEWAL COVENANT REDUCED PENALTY

**O.C.G.A. 48-5-7.4. (x)** Notwithstanding any other provision of this Code section to the contrary, in any case where a **renewal covenant is breached** by the original covenantor or a transferee who is related to that original covenantor within the fourth degree by civil reckoning, the penalty otherwise imposed by subsection (l) of this Code section shall not apply if the breach occurs during the **sixth through tenth years of such renewal covenant**, and the only penalty imposed shall be the amount by which current use assessment has reduced taxes otherwise due for each year in which **such renewal covenant was in effect**, plus interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

#### **House Bill 1321 - Bona fide agricultural property; preferential assessment; certain owners**

**Amends: (O.C.G.A. 48-5-7.1, 48-5-7.4, 36-89-1, 36-89-2, 36-89-4, and 36-89-5)**

This bill provides an "early out" option three years into a renewal conservation or preferential use covenant where the taxpayer is at least 65. Normally the covenants are for a full 10 years.

This bill also allows the property owner to use the property for hunting purposes and still qualify for conservation use assessment. Previous law only allowed the hunting rights to be leased to others.

This bill redefines the applicable rollback as it relates to the homeowner tax relief grants and extends the grant to apply to taxes levied by municipalities and within special tax districts.

Effective Date: Upon its approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2002.

## CUV Renewal Covenant reduced penalty, cont.

- **House Bill 1293 - one-times the tax if:**
  - owner entered into covenant for first time after reaching age 67;
  - has either owned property for at least 15 years;  
or,
  - inherited property and kept it in a qualifying use under a covenant for 3 years; and,
  - has filed a written election to breach the covenant with the county Board of Tax Assessors.

**O.C.G.A. 48-5-7.4. (x) & HB 1293 See notes below.**

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SUSTAINABLE FORESTRY

### CONSERVATION USE RENEWAL COVENANT REDUCED PENALTY

**O.C.G.A. 48-5-7.4. (x)** Notwithstanding any other provision of this Code section to the contrary, in any case where a **renewal covenant is breached** by the original covenantor or a transferee who is related to that original covenantor within the fourth degree by civil reckoning, the penalty otherwise imposed by subsection (l) of this Code section shall not apply if the breach occurs during the **sixth through tenth years of such renewal covenant**, and the only penalty imposed shall be the amount by which current use assessment has reduced taxes otherwise due for each year in which **such renewal covenant was in effect**, plus interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

**HB 1293 (O.C.G.A. 48-5-7.4)** Amends Code Section 48-5-7.4 to provide that under the following circumstances, the penalty for breach of a conservation use covenant is only one-times the tax: if the owner entered into the covenant for the first time after reaching age 67; has either owned the property for at least 15 years or inherited the property and kept it in a qualifying use under a covenant for 3 years; and has filed a written election to breach the covenant with the county Board of Tax Assessors. The Governor signed this bill on May 1, 2006, and it became effective on July 1, 2006. **http://www.legis.state.ga.us/legis/2005\_06/pdf/hb1293.pdf**

## CUV Breach W/ Full Penalty

- **If CUV property changed to non-qualifying use, breach occurs & penalty applies.**
- **Penalty applies to entire covenant.**
- **After partial Forest Land Protection Act covenant conveyance, a breach no longer implicates the entire original tract (HB 95, May 2011).**
- **Penalty equals 2X tax savings to date.**
- **Interest on penalty charged after breach.**
- **Penalty constitutes property lien after breach.**
- **Pro-rata assessment of penalty.**

(O.C.G.A. 48-5-7.4. (k), (l), & (m))

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### PENALTIES FOR BREAKING COVENANT

As provided by law, the penalty for breaking the Current Use Valuation covenant is equal to **two times the amount** of tax savings realized while under the program, plus interest which begins on the date of breach. In other words, once the covenant is broken, the tax assessor will determine the total taxes that would have been paid under the FMV system and subtract the taxes actually paid under Current Use. The difference will be multiplied by 2, and interest will be added after the date of breach.

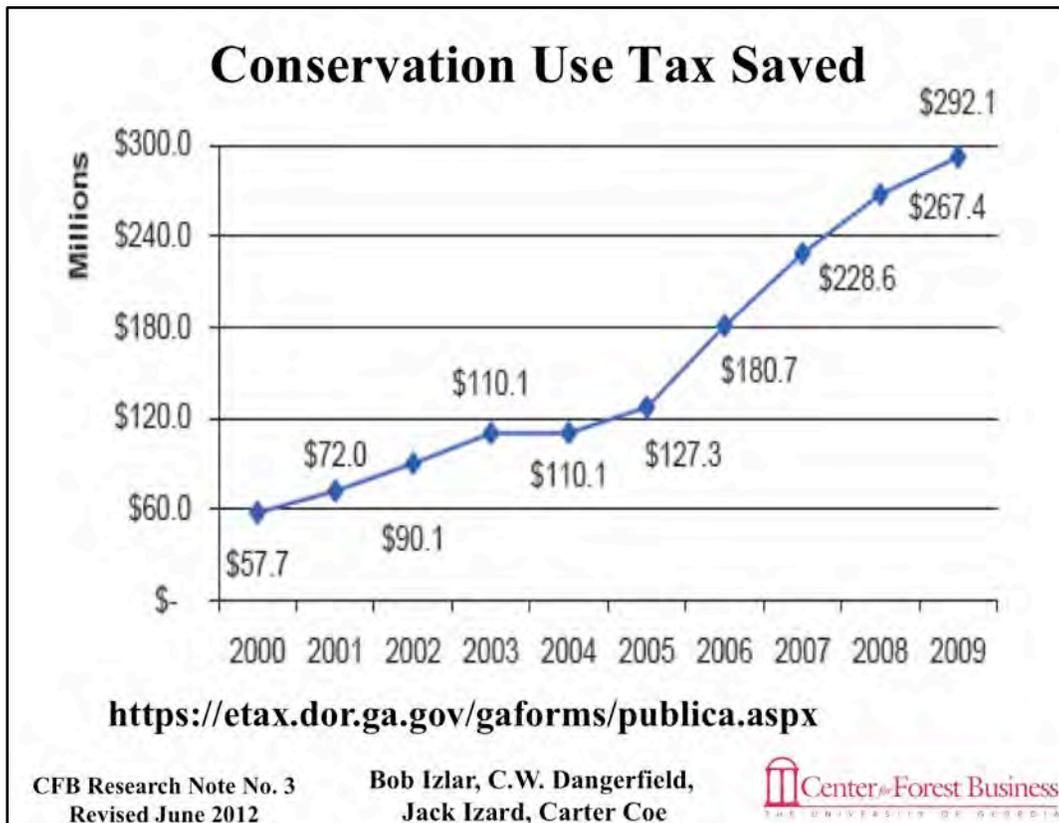
**Penalty Applies to Entire Tract** - Several factors should be noted. First, the penalty applies to the entire tract subject to the same covenant. Therefore, even if 1 acre out of 100 acres experiences a change in use, then the penalty applies to the entire 100 acres if enrolled under a single covenant. Other covenants are not affected.

**Penalty Paid According to Pro Rata Share of Benefit** - A second factor to note is that even if the property is sold or transferred, the original parties to the covenant may continue to be liable for a breach of covenant during the 10 year period. The Conservation Use rules and regulations require that all parties enjoying benefit of a covenant are responsible for their pro rata share of any penalty. The effect of this provision is to discourage land sales after entering the program. A possible solution for owners selling land is to make special provisions in the sales contract so that: (1) the property is dedicated to a specific use and must be maintained for the 10 year period; and, (2) any change in use resulting in a breach and penalties must be entirely paid by the new landowner. This is not an iron clad solution, but does provide a basis for legal action.

**O.C.G.A. 48-5-7.4. (k)** The commissioner shall by regulation provide uniform application and covenant forms to be used in making application for current use assessment under this Code section. Such application **shall include an oath or affirmation by the taxpayer** that he is in compliance with the provisions of paragraphs (3) and (4) of subsection (b) of this Code section.

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

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



### CONSERVATION USE (CURRENT USE) ASSESSMENT

Considering Conservation Use fiscal impact, the above graph illustrates the trend of an ever increasing amount of property taxes saved by holders of conservation use covenants.

Since the implementation of Conservation Use Valuation in 1992 through 1999, the most recent year for which partial data is available, the number of parcels in this program has risen from approximately 16,000 in 1992 to more than 65,000 in 2000, and to 168,673 in 2009. The total annual tax dollars saved has increased from \$8.9 million in 1992 to \$50.533 million in 2000, and to \$292.1 million in 2009. The \$292.1 million Conservation Use Valuation tax savings for 2009 equals 2.61 percent of the \$11.2 Billion in property taxes collected in the state for that year.

<https://etax.dor.ga.gov/gaforms/publica.aspx>

## **Procedures for Entering CUV**

- 1) Check landowner and land eligibility**
- 2) File an application**
- 3) Identify the tract and property use with supporting documentation if necessary**
- 4) Receive current use value**
- 5) Calculate and compare benefits**
- 6) Decide if you want to enroll in CUV or withdraw**
- 7) Appeal Board of Tax Assessor's decision?**
- 8) Review annual property tax bill**
- 9) Maintain the property's use.**

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### **PROCEDURES FOR ENTERING CUV PROGRAM**

1. Decide if you are eligible to participate in the program.
2. Determine if your land qualifies for CUV:
  - a) Agricultural or Forestry uses;
  - b) Environmentally Sensitive; or,
  - c) Residential Transitional.
3. File application with Board of Tax Assessors - the appropriate form (PT-283A, E, or R) is available at the tax assessor office and may be filed:
  - a) Prior to the property tax return filing deadline (April 1 or earlier);
  - b) During an appeal of property reassessment; or,
  - c) For property currently in Ag. Pref.

## **Additional Rules for CUVA, cont.**

- **Eligibility can be based on prescribed soil maps or other appropriate sources of information.**
- **Advance notice may be given when deeming a change in use as a breach of covenant.**

### **O.C.G.A 48-5-7.4 (y)**

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### **O.C.G.A 48-5-7.4 (y)**

Additional Rules for CUVA, cont.

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

# Conservation Use

- **Current Use Valuation (CUV).**
- **10-Year Covenant with County.**
- **Qualified landowners only.**
- **No property qualifies if separate restrictive covenants are in place, prohibiting the use of the property for CUV purposes.**
- **Agricultural and forestry uses (plus environmentally sensitive and residential transitional properties).**
- **Penalties for breach of covenant.**

**O.C.G.A. 48-5-2; O.C.G.A 48-5-7.4(3); O.C.G.A. 48-5-7.4 (5)**

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## CONSERVATION USE BACKGROUND

**O.C.G.A. 48-5-2** The state of Georgia introduced a current use taxation program for qualified properties in 1992, called **Conservation Use Valuation (CUV)**. On the one hand, it was initiated in response to concerns regarding urban sprawl, land use transition, and the resulting environmental impacts from these changes. On the other hand, it was also instituted to provide tax relief for a broad class of Georgia property owners. Under CUV, a landowner signs a **10-year covenant** with the county to receive current use, as opposed to fair market valuation of property for taxation purposes.

The details of Current Use Valuation of **Conservation Use Properties and Residential Transitional Properties** were spelled out by the 1991 General Assembly in H.B. 283 and in 1993 by H.B. 66. As defined, Conservation Use Properties include:

**Agricultural and Forestry Property; and, Environmentally Sensitive Property.**

**Residential Transitional Property** is also defined for Current Use Valuation, but is not classified as Conservation Use Property.

In reviewing details of the Conservation Use Program, please note that values determined under the program are bare land values only, except residential transitional property. The value of any residence located on the property will receive a separate fair market value, except residential transitional property. Also, farm and forest related structures will receive a separate FMV too, but will be subject to other increase/decrease limitations (discussed below). Orchard trees, vineyards, etc. are considered improvements to the bare land and separately valued.

48-5-7.4 (5) **No property shall qualify** as bona fide conservation use property if such property is at the time of application for current use assessment **subject to a restrictive covenant** which **prohibits the use** of the property **for any the specific purpose described** in subparagraph (a)(1)(E) of this Code section for which bona fide conservation use qualification is sought.

## Additional Rules for CUVA, cont.

- **Agritourism is permitted.**
- **Agritourism means charging admission for people to visit, view, or participate in farm or dairy operations for entertainment or educational purposes.**
- **Selling farm or dairy products to visitors is allowed.**

### O.C.G.A 48-5-7.4 (7)

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### O.C.G.A 48-5-7.4 (7)

Additional CUVA rules - Agritourism

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

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

## CUVA Breach, cont.

- **If all of the following hold true, a breach penalty will only be in the amount of the reduced taxes on the property as a result of the covenant:**
  - **Entered into covenant after reaching age 67**
  - **Inherited or owned property for at least 15 years**
  - **Property has been under covenant for at least 3 years.**

**O.C.G.A 48-5-7.4 (q)(4)**

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### **O.C.G.A 48-5-7.4 (q)(4)**

#### CUVA Breach

(4) Any case in which a covenant is breached solely as a result of an owner electing to discontinue the property in its qualifying use, provided such owner entered into the covenant for bona fide conservation use for the first time **after reaching the age of 67** and has either **owned the property for at least 15 years or inherited the property** and has kept the property in a qualifying use **under the covenant for at least three years**. Such election shall be in writing and shall not become effective until filed with the county Board of Tax Assessors.

## **CUVA Breach, cont.**

- **If a breach occurs:**
  - **Owner shall be notified**
  - **Owner has 30 days to cease and desist activity resulting in breach and remediate or correct condition(s)**
  - **Board of Tax Assessors will inspect property and notify owner if activities have or have not properly ceased and condition(s) have been remediated or corrected**
  - **Owner is entitled to appeal the decision of the Board of Tax Assessors.**

### **O.C.G.A 48-5-7.4**

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### **O.C.G.A 48-5-7.4**

#### **Breach of CUVA Covenant**

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

## Conservation Use Property Qualifying Requirements

- **Includes subsistence farming or commercial production of agricultural or timber products,**
  - For family properties, each persons' interest in CUV equals interest in farm entity
- **☒ 2,000 acres may be entered in CUV, Includes improvements at FMV,**
- **Land value included in CUVA covenant, residence value excluded.**  
**(O.C.G.A. 48-5-7.4. (a))**

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### AGRICULTURE AND FOREST PROPERTY

Qualifying elements of agricultural or forest property depend on the "good faith production" of the land, including **subsistence farming and commercial production of agricultural products or timber.**

**O.C.G.A. 48-5-7.4. (a)** For purposes of this article, the term "bona fide conservation use property" means property described in and meeting the requirements of paragraph (1) or (2) of this subsection, as follows:

- (1) **Not more than 2,000 acres** of tangible real property of a single owner, the primary purpose of which is any good faith production, including, but not limited to, subsistence farming or commercial production from or on the land of agricultural products or timber, subject to the following qualifications:
  - (A) Such property **includes the value of tangible property permanently affixed to the real property** which is directly connected to such owner's production of agricultural products or timber and which is devoted to the storage and processing of such agricultural products or timber from or on such real property;
    - (A.1) In the application of the limitation contained in the introductory language of this paragraph, the following rules shall apply to determine beneficial interests in bona fide conservation use property held in a family owned farm entity as described in division (1)(C)(iv) of this subsection:
      - (i) A person who owns an interest in a family owned farm entity as described in division (1)(C)(iv) of this subsection shall be considered to own only the  
percent of the bona fide conservation use property held by such family owned farm entity that is equal to the percent interest owned by such person in  
such family owned farm entity; and
      - (ii) A person who owns an interest in a family owned farm entity as described in division (1)(C)(iv) of this subsection may elect to allocate the lesser of  
any unused portion of such person's 2,000 acre limitation or the product of such person's percent interest in the family owned farm entity times the  
total number of acres owned by the family owned farm entity subject to such bona fide conservation use assessment, with the result that the family  
owned farm entity may receive bona fide conservation use assessment on more than 2,000 acres;
  - (A) Such property **excludes the entire value of any residence** located on the property.

**Example: Pulaski County Property Tax.**

**- Farm with 90 acres of forest land  
and 110 acres of agricultural land.**

- 1. Consider: FMV, Ag. Pref., CUV**
- 2. Check your County Property Record Card**
- 3. Examine your ad valorem tax notice.**

## FMV & Ag. Pref. Tax Comparisons for Expensive Farmland – How Much Can be Saved?

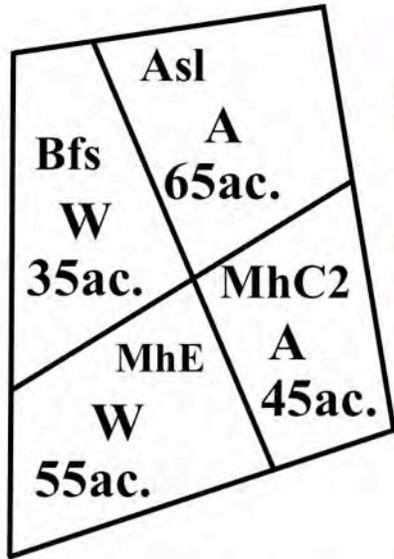
Pulaski Co. 200-Acre Farm, FMV = \$1,900 per Acre					
Type Tax	FMV	.75 = Ag. Pref. Assessed Value	.40 = Assessed Value	County Millage Rate	Property Tax
<b>FMV</b>	<b>\$380,000</b>	<b>N/A</b>	<b>\$152,000</b>	<b>.02432</b>	<b>\$3,696.64</b>
<b>Ag. Pref.</b>	<b>\$380,000</b>	<b>\$285,000</b>	<b>\$114,000</b>	<b>.02432</b>	<b>\$2,772.48</b>
<b>Ag. Pref. Tax Savings over FMV = 33% =</b>					<b>\$924.16</b>

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## Conservation Use Example.



Same example with  
Pulaski County farm  
200 acres at \$1,900/acre  
total FMV = \$380,000.

90 acres of forest land (W)  
110 acres of ag. land (A).

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### CUV EXAMPLE

A check of the status of Soil Surveys for Georgia map shows that Pulaski County has a modern published soil survey (1966 or newer) (see next slide). Next, locate the tract of land on the published soil survey map and the soil types (symbols) and acres for each type are noted. See the attached map tracing with this example above. The acres for each soil type can be estimated by using a dot-grid template. The published soil survey maps and dot-grid templates are available either at the Natural Resource and Conservation Service or County Tax Assessor office. The soil types (symbols) are cross-matched with the list of soil types and Dept. of Revenue productivity codes (1-9, with 1 being the most productive and 9 being the least productive) for agricultural land (A) and forest land (W). The list of soil types cross-matched with productivity codes is available in the County Tax Assessor's Office. See the following sample page of soil types and productivity codes (beginning on page 88). The Pulaski County Conservation Use Values used in this example are from the DOR 2000 table of values in District 4. See following map on page 59.

# Georgia Major Land Regions

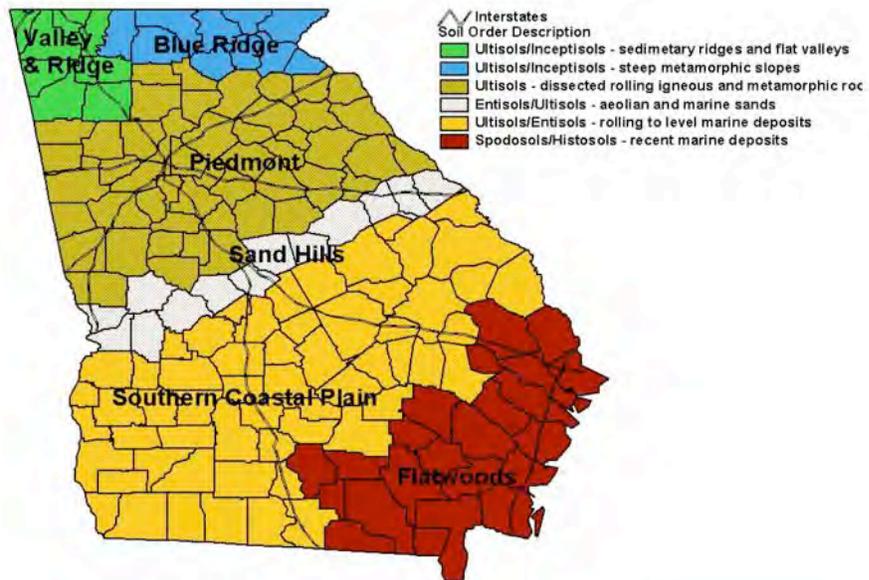
- **Atlantic Coastal Flatwoods** – poorly drained marine soil, can be favorable for vegetable, tobacco, corn, and soybean production
- **Southern Coastal Plain** – diverse soils with deep loamy and sandy layers, high acidity, respond well to management practices such as fertilization, the Georgia state soil, Tifton, comprises this region
- **Sand Hills** – narrow belt of deep sandy soils, infertile due to a low water-holding capacity, mostly scrub and pine forest, not much good for crops
- **Southern Piedmont** – very clayey soils with high acidity and low nitrogen, high erosion rate due to sloping topography, mostly woodland, some row cropping has been effective
- **Southern Appalachian (Valley and Ridge)** – Well drained, highly acidic soils, hilly steep ridges with broad valleys, good agriculture in valleys if fertilized correctly

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# Georgia Region and Soil Order Map



Source: Natural Resource Conservation Service

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**Example page of NRCS soil type and  
Georgia Dept. Revenue Conservation Use  
productivity class cross-reference.  
(A=Agricultural Land, W=Woodland)**

<u>Symbol</u>	<u>Name</u>	<u>A</u>	<u>W</u>	<u>Description</u>
<b>Brs</b>	<b>BLADEN</b>	<b>8</b>	<b>8</b>	<b>RAINS SOIL</b>
<b>BsE</b>	<b>BODINE</b>	<b>8</b>	<b>7</b>	<b>&amp; SWAMP</b>
<b>BsF</b>	<b>BODINE</b>	<b>9</b>	<b>8</b>	
<b>BuB2</b>	<b>BINNSVILLE</b>	<b>8</b>	<b>8</b>	
<b>BvF</b>	<b>BURTON</b>	<b>9</b>	<b>8</b>	

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## Soil Productivity Rating Pulaski County Example, cont.

<u>Soil Type</u>	<u>Rating</u>	<u>Acres</u>
• Asl	= A 4	65
• Bfs	= W 5	35
• MhC2	= A 5	45
• MhE	= W 6	<u>55</u>
<b>Total = 200</b>		

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## Conservation Use Pulaski County Example cont.

Soil	Acres	Code	CUV/ac.	Total	40%	Mill	\$Tax
Asl	65	A4	\$490	\$31,850	.4	.02432	<b>\$309.83</b>
Bfs	35	W5	\$342	\$11,970	.4	.02432	<b>\$116.44</b>
MhC2	45	A5	\$431	\$19,395	.4	.02432	<b>\$188.67</b>
MhE	55	W6	\$319	\$17,545	.4	.02432	<b>\$170.67</b>
<b>Totals</b>	<b>200</b>			<b>80,760</b>	<b>.4</b>	<b>.02432</b>	<b>\$785.61</b>

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## Pulaski County Example, cont. Property Tax Comparison

Method	Tax	Savings Over FMV	% Saved
FMV	\$3,696.64	0	0
Ag. Pref.	\$2,772.48	\$924.16	33%
CUV	\$785.61	\$2,911.03	79%

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## *Big Picture Overview of CUV*

- **Program has growing impact and use**
  - *168,673 covenants in 2009*
  - *\$292.1 million in taxpayer benefits in 2009*
  - *North Georgia emphasis.*
- **Legislative intent of environmental benefits and property tax relief.**
- **Fiscal impacts are of some concern but appear to be minor and/or isolated.**

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## **Conservation Use Summary and Conclusions**

- **Small acreage covenants are minor portion of total CUV covenants;**
- **Conservation Use property tax savings are small part of the total tax collected, 2.61 %;**
- **Rapid growth in total property taxes collected , average 8%/year, is pushing up taxpayer demand for tax relief;**
- **CUV law relatively open to applicants through language of including subsistence farming and commercial production of agricultural products or timber.**
- **Where to put the limited resources of tax assessor to collect the most taxes, fairly; i.e., residential, commercial, industrial, vehicle, utility, agriculture?**

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## Forest Land Protection Act (“FLPA” or “FLiPA”)

- **Special assessment and taxation of forestland conservation use property.**
- **Removes 2000 acre cap.**
- **Expands eligibility to corporate owners.**
- **Known as “Super CUVA.”**
- **15 year covenant.**

(O.C.G.A. 48-5-7.7)

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Following adoption of the conservation use valuation assessment method in 1990 and its subsequent enabling acts and DOR regulations for small landowners, it became increasingly clear that large landowners, both private and corporate, needed similar tax relief. Many publicly held, vertically integrated forest products companies left the state beginning with Weyerhaeuser’s 300,000+ acre sale of all timberlands in 2005. By January 1, 2008, there were no vertically integrated, publicly held forest products companies who owned forestland in Georgia. They **voted with their feet**. The remaining very large landowners faced similar onerous tax burdens. However, many were long-time family-held entities without the option of selling and going to tax favorable surrounding states like Alabama or Florida.

Members of the General Assembly, led by Ways and Means Chairman Representative Richard Royal, became greatly alarmed at the loss of companies and the jobs they brought. The Georgia Forestry Association led a very strong coalition of concerned conservation organizations to support Rep. Royal in his efforts to bring much needed ad valorem tax relief to Georgia’s large private forest owners. The University of Georgia Center for Forest Business provided a detailed economic analysis of the sought after tax relief and that became the Legislative Fiscal Note on a constitutional amendment and concurrent enabling legislation championed by Rep. Royal in 2008.

The proposed constitutional amendment sailed through the Georgia General Assembly with only one dissenting vote (a very rare accomplishment indeed). The voters of Georgia overwhelmingly approved the constitutional amendment authorizing the Forest Land Protection Act by the widest majority ever for a constitutional amendment—68% in favor. Following voter approval, the Forest Land Protection Act became law in 2009. It is also known as “Super CUVA,” because it expands eligibility for CUVA, removes the acreage cap of 2,000 acres, and institutes a 15-year covenant option.

# Applying for FLPA

- **File by last day for *ad valorem* returns.**
- **File in *each* county in which the property is located.**
- **Can apply in conjunction with or in lieu of appeal of any reassessment.**
- **Any change in ownership, reapply.**
- **Assessor files covenant w/clerk of court.**
- **If application is denied, can appeal.**
- **Get FMV notice yearly.**

**(O.C.G.A. 48-5-7.7(j)(1-2))**

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48-5-7.7 (j)(1) For each taxable year beginning on or after January 1, 2010, all applications for conservation use assessment under this Code section, including any forest land covenant required under this Code section, shall be filed on or before the last day for filing ad valorem tax returns in each county in which the property is located for the tax year for which such forest land conservation use assessment is sought, except that in the case of property which is the subject of a reassessment by the Board of Tax Assessors an application for forest land conservation use assessment may be filed in conjunction with or in lieu of an appeal of the reassessment. An application for continuation of such forest land conservation use assessment upon a change in ownership of all or a part of the qualified property shall be filed on or before the last date for filing tax returns in the year following the year in which the change in ownership occurred.

Applications for forest land conservation use assessment under this Code section shall be filed with the county Board of Tax Assessors in which the property is located who shall approve or deny the application. Such county Board of Tax Assessors shall file a copy of the approved covenant in the office of the clerk of the Superior Court in the county in which the eligible property is located. The clerk of the Superior Court shall file and index such covenant in the real property records maintained in the clerk's office. If the covenant is not so recorded in the real property records, a transferee of the property affected shall not be bound by the covenant or subject to any penalty for its breach. The fee of the clerk of the Superior Court for recording such covenants shall be paid by the qualified owner of the eligible property with the application for forest land conservation use assessment under this Code section and shall be paid to the clerk by the Board of Tax Assessors when the application is filed with the clerk. If the application is denied, the Board of Tax Assessors shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees advanced by the owner. Appeals from the denial of an application or covenant by the Board of Tax Assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

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

## **FLPA – Enrollment Requirements**

- **At least 200 acres of contiguous forestland irrespective of county boundary**
  - **Partial ownership transfer may permit less than 200 contiguous acres if certain criteria are met.**
- **Property must be owned by an individual or individuals or by any entity registered to do business in Georgia.**
- **Primary land use: forest products production**
  - **At least ½ of the property**
  - **Hunting/fishing leases are permitted.**
- **Value of any residence is not included.**

**(O.C.G.A. 48-5-7.7)**

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

(2) “Forest land conservation use property” means forest land each tract of which consists of more than 200 acres of tangible real property of an owner subject to the following qualifications:

(A) Such property must be owned by an individual or individuals or by any entity registered to do business in this state;

(B) Such property excludes the entire value of any residence located on the property;

(C) Such property has as its primary use the good faith subsistence or commercial production of trees, timber, or other wood and wood fiber products from or on the land.

Such property may, in addition, have one or more of the following secondary uses:

(i) The promotion, preservation, or management of wildlife habitat;

(ii) Carbon sequestration in accordance with the Georgia Carbon Sequestration Registry;

(iii) Mitigation and conservation banking that results in restoration or conservation of wetlands and other natural resources; or

(iv) The production and maintenance of ecosystem products and services such as, but not limited to, clean air and water. Forest land conservation use property' may include, but not be limited to, land that has been certified as environmentally sensitive property by the Department of Natural Resources or which is managed in accordance with a recognized sustainable forestry certification program such as the Sustainable Forestry Initiative, Forest Stewardship Council, American Tree Farm Program, or an equivalent sustainable forestry certification program approved by the State Forestry Commission.

## 2012 Ad Valorem FLPA

- **Contiguous = property that abuts, joins, or touches and has undivided common ownership**
- **At the time of initial application, applicant has one-time election to declare tract contiguous despite existing breaks such as county boundary, railroad track, public roadway, etc.**
- **Subsequently acquired qualified properties, up to 50 acres, can be entered into original covenant for remainder of covenant period.”**

### O.C.G.A. 48-5-7.4 (b)(6)(i)(2)

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O.C.G.A. 48-5-7.4 (b)(6)(i)(2) (A)As used in this paragraph, the term 'contiguous' means real property within a county that abuts, joins, or touches and has the same undivided common ownership. If an applicant's tract is divided by a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track, then the applicant has, at the time of the initial application, a one-time election to declare the tract as contiguous irrespective of a county boundary, public roadway, public easement, public right of way, natural boundary, land lot line, or railroad track. (B) If a qualified owner has entered into an original bona fide conservation use covenant and subsequently acquires additional qualified property contiguous to the property in the original covenant, the qualified owner may elect to enter the subsequently acquired qualified property into the original covenant for the remainder of the ten-year period of the original covenant; provided, however, that such subsequently acquired qualified property shall be less than 50 acres.

## **FLPA – Use Exceptions**

*Landowners may continue to use FLPA enrolled land for the following secondary purposes.*

- **Management of wildlife habitat.**
- **Carbon sequestration.**
- **Mitigation and conservation banking.**
- **Production of ecosystem products and services.**

**(O.C.G.A. 48-5-7.7 (C))**

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48-5-7.7(C)

Such property may, in addition, have one or more of the following secondary uses:

- (i) The promotion, preservation, or management of wildlife habitat;
- (ii) Carbon sequestration in accordance with the Georgia Carbon Sequestration Registry;
- (iii) Mitigation and conservation banking that results in restoration or conservation of wetlands and other natural resources; or
- (iv) The production and maintenance of ecosystem products and services such as, but not limited to, clean air and water. Forest land conservation use property' may include, but not be limited to, land that has been certified as environmentally sensitive property by the Department of Natural Resources or which is managed in accordance with a recognized sustainable forestry certification program such as the Sustainable Forestry Initiative, Forest Stewardship Council, American Tree Farm Program, or an equivalent sustainable forestry certification program approved by the State Forestry Commission.

## FLPA – Breach due to Partial Sale

- **Breach of contract on partially sold land does not constitute a breach on the full acreage originally enrolled.**
- **Penalty and interest does not apply to the transferring owner if breach occurs due to actions taken by acquiring owner.**
- **(O.C.G.A. 48-5-7.7)**

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48-5-7.7 (g) Except as otherwise provided in this Code section, no property shall maintain its eligibility for conservation use assessment under this Code section unless a valid covenant or covenants, if applicable, remain in effect and unless the property is continuously devoted to forest land conservation use during the entire period of the covenant or covenants, if applicable.

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

(i)(1) If ownership of all or a part of the forest land conservation use property constituting at least 200 acres is acquired during a covenant period by another owner qualified to enter into an original forest land conservation use covenant, then the original covenant may be continued only by both such acquiring owner and the transferor for the remainder of the term, in which event no breach of the covenant shall be deemed to have occurred if the total size of a tract from which the transfer was made is reduced below 200 acres. Following the expiration of the original covenant, no new covenant shall be entered with respect to the tract from which the transfer was made unless such tract exceeds 200 acres. If a qualified owner has entered into an original forest land conservation use covenant and subsequently acquires additional qualified property contiguous to the property in the original covenant, the qualified owner may elect to enter the subsequently acquired qualified property into the original covenant for the remainder of the 15 year period of the original covenant; provided, however, that such subsequently acquired qualified property shall be less than 200 acres.

(2) If, following such transfer, a breach of the covenant occurs by the acquiring owner, the penalty and interest shall apply to the entire transferred tract and shall be paid by the acquiring owner who breached the covenant. In such case, the covenant shall terminate on such entire transferred tract but shall continue on such entire remaining tract from which the transfer was made and on which the breach did not occur for the remainder of the original covenant.

(3) If, following such transfer, a breach of the covenant occurs by the transferring owner, the penalty and interest shall apply to the entire remaining tract from which the transfer was made and shall be paid by the transferring owner who breached the covenant. In such case, the covenant shall terminate on such entire remaining tract from which the transfer was made but shall continue on such entire transferred tract and on which the breach did not occur for the remainder of the original covenant.

## FLPA – Breach Penalties

- **Breach occurs in years 1-5: Beginning in year one, 3.0 times the difference between total tax paid and total amount of tax that would have been due if not FLPA enrolled.**
- **Years 6-10: Beginning in year one, 2.5 times the difference between total tax paid and total amount of tax that would have been due if not FLPA enrolled.**
- **Years 11-15: Beginning in year one, 1.5 times the difference between total tax paid and total amount of tax that would have been due if not FLPA enrolled.**
- **(O.C.G.A. 48-5-7.7 (A-C))**

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48-5-7.7

(A) If breached during years one through five, shall for each covenant year beginning with year one be three times the difference between the total amount of tax paid pursuant to conservation use assessment under this Code section and the total amount of taxes which would otherwise have been due under this chapter for each completed or partially completed year of the covenant period;

(B) If breached during years six through ten, shall for each covenant year beginning with year one be two and one-half times the difference between the total amount of tax paid pursuant to conservation use assessment under this Code section and the total amount of taxes which would otherwise have been due under this chapter for each year or partially completed year of the covenant period; and

(C) If breached during years 11 through 15, shall for each covenant year beginning with year one be twice the difference between the total amount of tax paid pursuant to conservation use assessment under this Code section and the total amount of taxes which would otherwise have been due under this chapter for each completed year or partially completed year of the covenant period.

(3) Any such penalty shall bear interest at the rate specified in Code Section 48-2-40 from the date the covenant is breached.

## CUVA vs FLPA

- **CUVA 10 year covenant, FLPA 15 years.**
- **CUVA allows for “early out,” FLPA does not.**
- **CUVA permits land use change, FLPA does not.**
- **Land valuation method is current use valuation formula for both CUVA and FLPA.**

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## **2011 *Ad Valorem* Tax Legislation**

### **HB 95 - Forest Land Protection Act changes**

- **Contiguous tract can cross county lines to reach 200 acre minimum.**
- **After partial conveyance, a breach no longer implicates the entire original tract.**

<http://www.legis.ga.gov/Legislation/20112012/116470.pdf>

<https://etax.dor.ga.gov/legislation/index.aspx>

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**2011 *Ad Valorem* Tax legislation. <https://etax.dor.ga.gov/legislation/index.aspx>**

### **HB 95 - Forest Land Protection Act changes:**

- If a single tract is required to have more than one covenant because the tract crosses county lines, the total acreage of the single tract can be combined to meet the 200 acre minimum requirement for the FLPA covenant in each of the counties. If an applicant's tract is divided by a county line, public roadway, public easements, public right-of-way, or railroad tracks then the applicant has, at the time of the initial application, a one-time election to declare the tract as contiguous irrespective of a county line, public roadway, public easement, public right-of-way, or railroad track, as the boundary.
- After partial conveyance of a tract under a FLPA covenant, if either the owner of the retained portion or the transferred portion breaches the covenant, only the owner of the portion in breach is liable for the penalty and interest; the portion not in breach continues under the original covenant. A breach no longer implicates the entire original tract.
- Effective May 11, 2011.
- House Bill 95 can be viewed at the following link: <http://www.legis.ga.gov/Legislation/20112012/116470.pdf>

## **2010 *Ad Valorem* Tax Legislation**

- HB 963 – revises affidavit information required for taxpayer greater than or equal to 62 years old claiming the homestead exemption.
- SB 346 – overhaul notice of assessment, appeal, and calculation for real property taxes (Sections 1-12)

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### **2010 *Ad Valorem* Tax legislation.**

<https://etax.dor.ga.gov/legislation/index.aspx>

**HB 963 (O.C.G.A. 48-5-15 and 48-5-52).** This bill revises information that is required on an affidavit for a taxpayer that is 62 years old, or older claiming the homestead exemption. Effective May 27, 2010. [http://www.legis.ga.gov/legis/2009\\_10/pdf/hb963.pdf](http://www.legis.ga.gov/legis/2009_10/pdf/hb963.pdf)

**SB 346 (O.C.G.A. 48-2-18, 48-5-2, 48-5-9.1, 48-5-18, 48-5-23, 48-5-32.1, 48-5-291, 48-5-303, 48-5-304, 48-5-306, 48-5-311, 48-5-380 and 45-5B-1).** This bill provides for an overhaul of the notice, assessment, appeal, and calculation for real property taxes. [http://www.legis.ga.gov/legis/2009\\_10/pdf/sb346.pdf](http://www.legis.ga.gov/legis/2009_10/pdf/sb346.pdf)

## **2010 *Ad Valorem* Tax Legislation, cont.**

### **Section 1. of SB 346 - Overhaul notice of assessment, appeal, and calculation for real property taxes**

- **Uniform assessment notice, statewide, annually, may be electronic**
- **45 days to appeal**
- **Mailed before July 2**
- **Undeliverable notices posted @ courthouse or BOA for 30 days.**
- **If requested, BOA provide all info. considered in establishing the new assessment**

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**2010 *Ad Valorem* Tax legislation, cont. <https://etax.dor.ga.gov/legislation/index.aspx>**

### **Section 1. of SB 346 - Overhaul notice of assessment, appeal, and calculation for real property taxes**

- Amends 48-5-306 and adds new procedures regarding the assessment change notices sent to taxpayers:
  - Use of an *uniform* assessment notice (created by Revenue Commissioner)
  - Send notices annually to all owners of real property regardless of it being higher, lower, or value same as prior year
  - Taxpayer can choose to receive notices electronically – if electronic transmission is made available by county.
- All taxpayers now have 45 days to file an appeal. This applies to all counties.
- Notices will be mailed no later than July 1 except in the case of corrections or mapping changes.
- Undeliverable notices posted on the front of the courthouse –or – posted on the BOA website – in either case for 30 days.
- BOA must provide, upon taxpayer's request:
  - Copies of all documents reviewed in making the assessment,
  - The address and parcel identification number of all real property utilized as qualified comparables,
  - All factors considered in establishing the new assessment.

## **2010 *Ad Valorem* Tax Legislation, cont.**

### **Section 2. of SB 346**

- **Regional Board of Equalization**
- **Clerk of Superior Court oversee BOE hearing officer**
- **County provide resources**
- **Appeal must specify hearing options.**
- **If BOE & appealing taxpayer agree, appeal ended.**
- **Hearing officer is required to verbally render decision.**
- **Notices regarding hearing times, dates, certifications, or officials actions shall be provided to the taxpayer attorney, if one is used.**

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**2010 *Ad Valorem* Tax legislation.** <https://etax.dor.ga.gov/legislation/index.aspx>

### **Section 2. of SB 346 - Overhaul notice of assessment, appeal, and calculation for real property taxes**

- Amends 48-5-311 by adding a new provision for the governing authorities of two or more counties to establish a regional Board of Equalization.
- Clerk of Superior Court has responsibility to oversee and supervise the Board of Equalization and hearing officers.
- County governing authority must provide the:
  - resources required for supervision and appointment of hearing officers, and
  - facilities, secretarial, and clerical help to clerk for handling appeals.
- When a property owner files an appeal, he must specify one of the following options:
  - County Board of Equalization and Superior Court
  - Arbitrator
    - Binding and decision cannot be appeal to Superior Court
  - Hearing officer and Superior Court
    - Property must be non-homesteaded and valued > \$1,000,000.
- If BOA and the taxpayer mutually agree on a value, the appeal can be terminated upon execution of a written agreement between the parties and is effective as of the date the agreement is signed.
  - The 3-year freeze provision in O.C.G.A. 48-5-299(c) applies unless waived by both parties
- Hearing officer is required to verbally render a decision at the conclusion of the hearing and is required to notify the taxpayer in writing.
- When an attorney is acting as the taxpayer's agent, all notices regarding hearing times, dates, certifications, or officials actions shall be provided to the attorney.

## **2010 *Ad Valorem* Tax Legislation, cont.**

### **Section 3, 4, 5. of SB 346**

- 3. Tax commissioner and tax receiver required to have books open for return of real or personal property taxes between Jan. 1 & April 1.**
- 4. Revenue Commissioner is to provide training and updated materials to local tax officials, some online, open to public.**
- 5. New definitions & language**

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**2010 *Ad Valorem* Tax legislation, cont. <https://etax.dor.ga.gov/legislation/index.aspx>  
SB 346 - Section 3, 4, 5 of SB 346 - Overhaul notice of assessment, appeal, and calculation for real property taxes.**

#### **Section 3**

- Each tax commissioner and tax receiver is required to have his books open for the return of real or personal property ad valorem taxes between January 1 and April 1 of each year.

#### **Section 4**

- Revenue Commissioner is to provide training and updated materials to local tax officials and staff at least every 5 years.
- Offer some training online, if feasible, to save taxpayer money, and
- Make training courses open to the public if space is available and upon payment of “reasonable” fees.

#### **Section 5**

- Adds new definition to O.C.G.A. 48-5-2 of an “Arms length, bona fide sale.”
- Adds new language to the definition of “fair market value.”
- Requires use of income valuation approach, if data is available, on income-producing properties.
- Transaction price (sales price) is the taxable value for the next tax year.
- Adds restriction on tax assessors including value of intangible assets in determining the value of real property.

## **2010 *Ad Valorem* Tax Legislation, cont.**

### **Section 7. of SB 346**

- **Eliminates option for non-binding arbitration.**
- **Adds definition of “certified appraisal”**
- **BOA has 45 days to review and either accept or reject**
- **Not act within the 45 day window, the certified appraisal becomes the final**
- **BOA only required to maintain “moratorium value.”**
- **County can not be penalized 1/4 mill recovery or the \$5/parcel penalty.**
- **Requires county or municipality to refund taxes which are determined to be**
  - **Erroneously or illegally assessed, or**
  - **Voluntarily or involuntarily overpaid.**

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**2010 *Ad Valorem* Tax legislation, cont. <https://etax.dor.ga.gov/legislation/index.aspx>**

**Section 7. of SB 346 - Overhaul notice of assessment, appeal, and calculation for real property taxes.**

- Eliminates option for non-binding arbitration.
- Adds definition of “certified appraisal” as an appraisal or appraisal report given, signed and certified as such by a real property appraiser as classified by the Georgia Real Estate Commission and the Georgia Real Estate Appraisers Board.
- Board of Assessors has 45 days after receipt of appraisal to review and either accept or reject the value on the appraisal.
- If the county does not act within the 45 day window, the certified appraisal becomes the final value.
- When appeal is certified to clerk of Superior Court, notice must be served to taxpayer, taxpayer’s attorney or employee with a copy of the certification, any papers specified by the taxpayer and the civil file number.
- County Board of Tax Assessors not required to maintain any value other than “moratorium value.”
- County cannot be penalized the 1/4 mill recovery or the \$5/parcel penalty until moratorium ends.
- Requires county or municipality to refund taxes which are determined to be
  - Erroneously or illegally assessed, or
  - Voluntarily or involuntarily overpaid.

## **2010 *Ad Valorem* Tax Legislation, cont.**

### **Sections 8, 9, 10. of SB 346**

- **Section 8 Public utility values are not given to the county by August 1**
- **Section 9 Allows taxes collected in installments:**
- **Section 10 “roll back rate”; Advertisements of property tax increases; Establish a millage rate**

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**2010 *Ad Valorem* Tax legislation, cont. <https://etax.dor.ga.gov/legislation/index.aspx>  
Sections 8, 9, 10. of SB 346 - Overhaul notice of assessment, appeal, and calculation for real property taxes.**

#### **Section 8**

- If the public utility values are not given to the county by August 1 the county may bill these companies at 85% of the taxpayer's bill for the previous year.
- Corrected bill mailed when the final assessment is determined.

#### **Section 9**

- Allows for taxes to be collected in installments:
  - Removes the word *two*, so county may elect for taxes to be paid in multiple installment payments.

#### **Section 10**

- Requires the county tax commissioner, or collecting officer for a municipality, to calculate and certify the “roll back rate” to the county or independent school system and to the Revenue Commissioner.
- Advertisements of property tax increases must be advertised in the newspaper and on the county website of both the recommending and levying authorities.
- The advertisement may include reasons for the tax increase.
- The commissioner shall not accept a digest for review or issue an order authorizing the collection of taxes if the recommending authority or levying authority has established a millage rate in excess of the correct rollback without complying fully with the procedures required by O.C.G.A. 48-5-32.1.

## **2010 *Ad Valorem* Tax Legislation, cont.**

**SB 346 - Overhaul notice of assessment, appeal, and calculation for real property taxes.**

- **Section 11 Removes appeal limitation to submit digest**
  - **Current law**
    - **3% value dispute in non-revaluation year**
    - **5% value dispute or # parcel in revaluation year**
  - **Digest submitted without regard to the % # appeals pending.**
- **Section 12 BOA correct errors discovered within 3 years, if benefits taxpayer.**

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**2010 *Ad Valorem* Tax legislation, cont. <https://etax.dor.ga.gov/legislation/index.aspx>  
Sections 11 & 12. of SB 346 - overhaul notice of assessment, appeal, and calculation for real property taxes.**

### **Section 11**

- Removes the appeal limitation to submit a digest

Current law:

3% value in dispute in a non-revaluation year

5% value in dispute or number of parcel in a revaluation year.

Digest can be submitted without regard to the percentage number of appeals pending.

### **Section 12**

- Board of Assessors is given the authority to correct factual errors in the tax digest discovered within 3 years, if such correction benefits a taxpayer.

SB 346 Effective January 1, 2011. [http://www.legis.ga.gov/legis/2009\\_10/pdf/sb346.pdf](http://www.legis.ga.gov/legis/2009_10/pdf/sb346.pdf)

## 2009 *Ad Valorem* Tax Legislation

### HB 143

- **General Assembly to appropriate the funding to the Department for Fiscal Year 2009 to provide the homeowner tax relief grants to the counties, municipalities, and county or independent school districts in the Supplemental Budget.**

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**2009 *Ad Valorem* Tax Legislation.** <https://etax.dor.ga.gov/legislation/index.aspx>

**HB 143 (O.C.G.A. 45-12-86) Section 1** of this bill requires the General Assembly to appropriate the funding to the Department for Fiscal Year 2009 to provide the homeowner tax relief grants to the counties, municipalities, and county or independent school districts in the Supplemental Budget. Language added to prevent the funds being removed from the budget if the amount appropriated is sufficient to pay the grants at the level stipulated in the General Appropriations Act. For FY2009 if the funds are appropriated in the supplemental appropriation bill the bill will specify the amount appropriated and the eligible assessed value of each qualified homestead in the state for the specified tax year. If the amount appropriated is not sufficient to fund the eligible assessed value stipulated in the supplemental appropriation bill, the amount appropriated may be funding from the next fiscal year budget. If the amount is sufficient, reduction or withdrawal of the amount is prohibited. For fiscal years beginning after July 1, 2009, the General Assembly is required to appropriate to the Department funds to pay the grants to the taxing jurisdictions. The supplemental appropriation bill will state the amount of the eligible assessed value for each qualified homestead and the applicable tax year. If the funds appropriated are insufficient to pay the total amount of the grant, funds may be appropriated in the next fiscal year budget. Appropriation for grants in future years allowed only when the amount of total revenue is estimated to exceed by 3% plus the percent change in the rate of economic inflation on individual taxpayers as determined under the Consumer Price Index for all urban consumers published by the bureau of Labor Statistics of the U.S. Department of Labor, of the last year the grant was funded. Taxing jurisdictions are only required to provide the credit to the taxpayers when the funds are appropriated in accordance with this amendment.

**Section 2** Adds paragraph (c) which provides Governor shall require the Department to reserve any appropriations made until a budget reduction can be recommended to the General Assembly.

Effective February 17, 2009. [http://www.legis.state.ga.us/legis/2009\\_10/pdf/hb143.pdf](http://www.legis.state.ga.us/legis/2009_10/pdf/hb143.pdf)

## **2009 *Ad Valorem* Tax Legislation, cont.**

- **HB 233 (48-5B-1) Prohibits increases in assessment from Jan. 1, 2009 through the second Monday in Jan. 2011.**
- **HB 304 (O.C.G.A. 48-5-48 and 48-5-264.1) Provides application of exemption for surviving spouse of a disabled veteran to a subsequent homestead within the county of the original homestead.**
- **Amends O.C.G.A. 48-5-264.1 Reasonable notice to the homeowner before enter onto property & notice to homeowners that they have right to file tax return.**
- **HB 482 (O.C.G.A. 48-5-41.2) Exempt all personal property constituting business inventory from state ad valorem taxation at a rate of ¼ mill.**

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**2009 *Ad Valorem* Tax Legislation, cont. <https://etax.dor.ga.gov/legislation/index.aspx>**

**HB 233 (48-5B-1)** This bill prohibits increases in assessment values on all classes of property subject to ad valorem taxation from January 1, 2009 through the second Monday in January of 2011. This bill does not prohibit corrections of any manifest, factual error or omission in the valuation of the property by tax officials pursuant to current Code.

Effective May 5, 2009.

**[http://www.legis.state.ga.us/legis/2009\\_10/pdf/hb233.pdf](http://www.legis.state.ga.us/legis/2009_10/pdf/hb233.pdf)**

**HB 304 (O.C.G.A. 48-5-48 and 48-5-264.1)** This bill amends O.C.G.A. 48-5-48 by adding (b.1) to provide for application of an exemption for the surviving spouse of a disabled veteran to a subsequent homestead within the county of the original homestead.

Amends O.C.G.A. 48-5-264.1 to require agents of a county Board of Tax Assessors to provide reasonable notice to the homeowner before they enter onto the property and requires the county tax commissioner to provide notice to homeowners that they have the right to file an ad valorem property tax return. Effective May 4, 2009.

**[http://www.legis.state.ga.us/legis/2009\\_10/pdf/hb304.pdf](http://www.legis.state.ga.us/legis/2009_10/pdf/hb304.pdf)**

**HB 482 (O.C.G.A. 48-5-41.2)** Exempts all personal property constituting business inventory from state ad valorem taxation at a rate of ¼ mill. Effective July 1, 2009.

**[http://www.legis.state.ga.us/legis/2009\\_10/pdf/hb482.pdf](http://www.legis.state.ga.us/legis/2009_10/pdf/hb482.pdf)**

## **2009 *Ad Valorem* Tax Legislation, cont.**

### **SB 55**

- **Foreclosures or Conservation Use affect FMV**
- **Notice to property owners when the value of property is increased or decreased.**

### **SB 240**

- **Allows taxpayer to choose binding arbitration to determine FMV**

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**2009 *Ad Valorem* Tax Legislation, cont.** <https://etax.dor.ga.gov/legislation/index.aspx>

**SB 55 (O.C.G.A. 48-5-2, 48-5-7.7, 48-5-274(c), and 48-5-306(a))** Amends O.C.G.A. 48-5-2(3)(B) adding tax commissioners **shall consider foreclosures and the sale of bank-owned properties acquired through foreclosure** to the list of factors affecting fair market value that are to be considered by the tax assessors. Assessors shall consider if conservation use easements have decreased the market value of property due to limitations and restrictions on use and development of the property. For 2009 only, amends 48-5-7.7 to extend the deadline for filing applications for forest land conservation covenants from the date that the return book closes in the county until June 1, 2009. This bill amends O.C.G.A. 48-5-274(c) to provide for the amendment in Section 1 of this bill to be considered by the Department of Audits in the Sales Ratio Study conducted for the purposes of establishing an equalized and adjusted property tax digest. It amends O.C.G.A. 48-5-306(a) to require that the Board of Tax Assessors send an assessment change notice to property owners when the value of property is increased or decreased. Effective April 14, 2009. [http://www.legis.state.ga.us/legis/2009\\_10/pdf/sb55.pdf](http://www.legis.state.ga.us/legis/2009_10/pdf/sb55.pdf)

**SB 240 (O.C.G.A. 48-5-311(f)(4), 48-5-7.7, 48-5-161, 48-5-306, and 48-5-511)** This bill adds 48-5-311(f)(4) regarding the current administration process for ad valorem appeals by allowing the taxpayer to choose binding arbitration to determine fair market value. For 2009 only, it amends 48-5-7.7 to extend the deadline for filing applications for forest land conservation covenants from the date that the return book closes in the county until June 1, 2009. This bill amends 48-5-161 to provide the county with the ability to recover costs incurred for the filing of state tax executions. It amends 48-5-306 to align with Georgia case law involving official property tax mailing notices. It amends 48-5-511 to require public utilities to provide the actual street address in returns of property for property tax purposes.

Effective April 29, 2009. [http://www.legis.state.ga.us/legis/2009\\_10/pdf/sb240.pdf](http://www.legis.state.ga.us/legis/2009_10/pdf/sb240.pdf)

## 2008 *Ad Valorem* Tax Legislation

### HB 1081

- Conservation Use covenants, cap interest due after appeal is settled.

### HR 1276

- Amend the State Constitution to create “forest land conservation use property” w/min. of 200 ac. & 15-yr. Ratified by General Election vote of over 68% favorable November 6, 2008.

[http://www.legis.ga.gov/legis/2007\\_08/pdf/hr1276.pdf](http://www.legis.ga.gov/legis/2007_08/pdf/hr1276.pdf)

### HB 1211

- Enabling legislation for HR 1276 preferential tax treatment to property owners who have met 2000 ac. limit for conservation use & have more qualifying ac. to enter “forest land conservation use property.”

[http://www.legis.ga.gov/legis/2007\\_08/pdf/hb1211.pdf](http://www.legis.ga.gov/legis/2007_08/pdf/hb1211.pdf)

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**2008 *Ad Valorem* Tax Legislation.** <https://efax.dor.ga.gov/legislation/index.aspx>

**HB 1081 (O.C.G.A. 48-5-7.4 and 48-5-311)** Sections 1 – 3 of the bill amend Code Section 48-5-7.4 to change minimum acreage provisions regarding property that qualifies for Conservation Use covenants. Sections 4 – 6 amend Code Section 48-5-311 to cap the amount of interest due on an unpaid portion of a tax bill after a property tax appeal is settled at the Board of Equalization or Superior Court level. Effective May 14, 2008. [http://www.legis.state.ga.us/legis/2007\\_08/pdf/hb1081.pdf](http://www.legis.state.ga.us/legis/2007_08/pdf/hb1081.pdf)

**HR 1276 and HB 1211 (O.C.G.A. 48-5-2, 48-5-7.7, 48-5-271, 48-5A-1, 48-5A-2, 48-5A-3, and 48-5A-4)** This legislation is intended to provide preferential tax treatment to property owners who do not currently qualify for Conservation Use and for those owners who have met the 2000 acres limitation for property in conservation use and have additional qualifying acreage.

**HR 1276** will amend the state Constitution to create a new class of property called “forest land conservation use property.” The Resolution provides for the special assessment and taxation of this class of property and for grants to local governments. Further, the Resolution provides that “forest land conservation use property” must be a minimum of 200 acres and be subject to a 15-year covenant, and provides for a penalty if the covenant is breached.

[http://www.legis.ga.gov/legis/2007\\_08/pdf/hb1211.pdf](http://www.legis.ga.gov/legis/2007_08/pdf/hb1211.pdf)

**HB 1211** is the enabling legislation which provides definitions, procedures, and valuation tables for this new class of property. It sets forth the procedures and guidelines for administration of local government assistance grants. This bill amends Code Section 48-5-2 by adding a new paragraph (5) to define “forest land conservation use value” and provides for this value to be determined in accordance with new Code Section 48-5-271. It further adds a new paragraph (6) to define “forest land fair market value” as the 2008 fair market value with limited annual changes. New Code Section 48-5-7.7, to be cited as the “Georgia Forest Land Protection Act of 2008”, creates definitions, qualifications, and additional rules, and provides for a penalty in the event of breach. Property will be separately classified and clearly identified on the tax digest and public notice is required to be posted in the tax assessors’ office and in the office of the tax commissioner.

New Code Section 48-5-271 provides for the method for establishing the “forest land conservation use” values to be developed as provided for in Code Section 48-4-269, which will be the same as the conservation use values for property as set forth in Code Section 48-5-7.4. A new chapter 5A, to be added to Title 48, will include the following new Code Sections: 48-5A-1, setting forth definitions; 48-5A-2, providing that the General Assembly will fund the Department of Revenue for the payment of assistance grants to local governments; 48-5A-3, providing for grants to counties, municipalities, and county or independent school districts to offset losses in revenue; and 48-5A-4, granting authority for the Revenue Commissioner to promulgate rules and regulations.

This bill will become effective January 1, 2009, but only if the HR 1276 resolution to amend the state Constitution is ratified by the citizens of Georgia at the November 2008 state-wide general election. [http://www.legis.ga.gov/legis/2007\\_08/pdf/hb1211.pdf](http://www.legis.ga.gov/legis/2007_08/pdf/hb1211.pdf)

## **2008 *Ad Valorem* Tax Legislation, cont.**

- **SB 159 New deadline for homestead exemptions, any time during the calendar year subsequent to the property becoming the primary residence.**

**[http://www.legis.state.ga.us/legis/2007\\_08/pdf/sb159.pdf](http://www.legis.state.ga.us/legis/2007_08/pdf/sb159.pdf)**

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**2008 *Ad Valorem* Tax Legislation, cont. <https://etax.dor.ga.gov/legislation/index.aspx>**

**SB 159 (O.C.G.A. 48-5-45)** Changes the application deadline for homestead exemptions from March 1 statewide to any time during the calendar year subsequent to the property becoming the primary residence of the applicant, up to and including the date for the closing of the books for the return of taxes for that year (which would be the same date as the deadline for filing ad valorem tax returns in the particular county). This bill is effective July 1, 2008. **[http://www.legis.state.ga.us/legis/2007\\_08/pdf/sb159.pdf](http://www.legis.state.ga.us/legis/2007_08/pdf/sb159.pdf)**

## ***2007 Ad Valorem Tax Legislation***

- **HB 78 “agro-tourism” qualifies for current use assessment**
- **HB 182 Equalized adjusted school digests excludes all exempt real and personal property**
- **HB 222 Prohibits a local county Tax Commissioner or employees acquiring an interest in real property sold for delinquent tax purposes.**

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**2007 Ad Valorem Tax Legislation.** <https://etax.dor.ga.gov/legislation/index.aspx>

**HB 78 (O.C.G.A. 48-5-7.4)** This bill amends the Code Section to provide that property used for “agro-tourism” purposes qualifies for current use assessment. Agro-tourism is defined as: “charging admission for persons to visit, view, or participate in the operation of a farm or dairy or production of farm or dairy products for entertainment or educational purposes or selling farm or dairy products to persons who visit such farm or dairy.” [http://www.legis.state.ga.us/legis/2007\\_08/pdf/hb78.pdf](http://www.legis.state.ga.us/legis/2007_08/pdf/hb78.pdf)

**HB 182 (O.C.G.A. 48-5-274)** This bill amends the Code Section to provide that the equalized adjusted school digests established by the State Auditor excludes all exempt real and personal property and excludes the difference in the value of all taxable property for the current year and the value certified as the tax allocation increment base for tax allocation districts created by counties and municipalities. [http://www.legis.state.ga.us/legis/2007\\_08/pdf/hb182.pdf](http://www.legis.state.ga.us/legis/2007_08/pdf/hb182.pdf)

**HB 222 (O.C.G.A. 48-4-23)** This bill adds a new Code Section which prohibits a local county Tax Commissioner or an employee working on behalf of the Tax Commissioner from directly or indirectly acquiring an interest in, buying, or profiting from real property sold for delinquent tax purposes, unless these persons had an interest in the property at the time the taxes became delinquent. Violations of this law subject the person to a misdemeanor charge and, upon conviction, imprisonment of up to one year, a fine of \$1,000, or both, and voids the sale. [http://www.legis.state.ga.us/legis/2007\\_08/pdf/hb222.pdf](http://www.legis.state.ga.us/legis/2007_08/pdf/hb222.pdf)

## ***2007 Ad Valorem Tax Legislation, cont.***

- **HB 321 Beneficial interest in conservation use covenant is limited to % of ownership.**
- **HB 380 When property has been transferred, no interest and penalty amounts to new owner before 60 days after new bill.**
- **HB 445 Tax exemption for charitable institutions is limited to only building owned by and used exclusively for purposes of charitable institution, and not more than 15 acres of land on which building located.**

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**HB 321 (O.C.G.A. 48-5-7.4)** Amends the Code Section to provide that, for conservation use assessment purposes, a person's beneficial interest in property which is held through a family owned farm entity and which is under a conservation use covenant is limited to only that person's percentage of ownership of the farm entity and is not a beneficial interest in the entire tract held through the farm entity. [http://www.legis.state.ga.us/legis/2007\\_08/pdf/hb321.pdf](http://www.legis.state.ga.us/legis/2007_08/pdf/hb321.pdf)

**HB 380 (O.C.G.A. 48-3-3)** This bill amends the Code Section to provide that whenever property has been transferred and the transferor provides a deed showing no current ownership or responsibility for the taxes at the time they were initially billed, the Tax Commissioner cannot charge the applicable interest and penalty amounts before 60 days after the date a new tax bill is forwarded to the new owner of record as shown in the tax records of the county Board of Tax Assessors. [http://www.legis.state.ga.us/legis/2007\\_08/pdf/hb380.pdf](http://www.legis.state.ga.us/legis/2007_08/pdf/hb380.pdf)

**HB 445 (O.C.G.A. 48-5-41)** This bill amends the Code Section to provide that a property tax exemption for charitable institutions is limited to only the building which is owned by and used exclusively for the purposes of the charitable institution, and not more than 15 acres of land on which the building is located. [http://www.legis.state.ga.us/legis/2007\\_08/pdf/hb445.pdf](http://www.legis.state.ga.us/legis/2007_08/pdf/hb445.pdf)

## ***2007 Ad Valorem Tax Legislation, cont.***

- **HB 486 Counties with 50,000 or more parcels of property may contract with a municipality for the tax commissioner to prepare the tax digest and collect property taxes without the approval of the tax commissioner.**
- **SB 103 Makes property tax language gender neutral & requires tax commissioner to comply with training requirements or face removal from office by Governor.**

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**2007 Ad Valorem Tax Legislation, cont.** <https://etax.dor.ga.gov/legislation/index.aspx>

**HB 486 (O.C.G.A. 48-5-359.1)** This bill amends the Code Section to provide that county governing authorities of counties with 50,000 or more parcels of property may contract with a municipality for the tax commissioner to prepare the tax digest and collect property taxes without the approval of the tax commissioner. Such contracts will specify an amount to be paid for the services. The tax commissioner may be compensated by the county for the additional duties and responsibilities. This bill affects approximately 20 counties. **[http://www.legis.state.ga.us/legis/2007\\_08/pdf/hb486.pdf](http://www.legis.state.ga.us/legis/2007_08/pdf/hb486.pdf)**

**SB 103 (O.C.G.A. 48-5-40 and 48-5-126.1)** This bill amends Code Sections relating to property tax to correct certain language to make it gender neutral. It also re-enacts the language that deals with the training of tax commissioners which was inadvertently omitted from the supplement. The re-enacted language includes the provision that failure on the part of the tax commissioner to comply with the training requirements may subject the tax commissioner to removal from office by the Governor. **[http://www.legis.state.ga.us/legis/2007\\_08/pdf/sb103.pdf](http://www.legis.state.ga.us/legis/2007_08/pdf/sb103.pdf)**

## 2006 *Ad Valorem* Tax Legislation

- **HB 81 Defines an “applicant” for homestead tax. Exempt homesteads of un-remarried spouses of peace officers or firefighters killed in the line of duty from all property taxes. Un-remarried surviving spouse to continue a base-year homestead exemption.**
- **HB 560 Prohibits BOA increasing values for property under a two-year freeze solely because of errors found in property records.**

<https://etax.dor.ga.gov/legislation/index.aspx>

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**2006 *Ad Valorem* Tax Legislation. <https://etax.dor.ga.gov/legislation/index.aspx>**

**HB 81 (O.C.G.A. 48-5-40, 48-5-48.4 and 48-5-54)** Amends various Code Sections of Chapter 5 of Title 48 as follows: Amends Code Section 48-5-40 to define an “applicant” for homestead tax purposes to match the definition in motor vehicle Code Section 40-5-1. Adds new Code Section 48-5-48.4, to fully exempt the homesteads of un-remarried spouses of peace officers or firefighters killed in the line of duty from all property taxes. Amends Code Section 48-5-54 to allow the un-remarried surviving spouse, upon application and qualification, to continue a base-year homestead exemption at the value established for the deceased spouse. The Governor signed this bill on May 8, 2006, and it became effective on July 1, 2006 for all taxable years on or after January 1, 2007, when the referendum on the November 2006 statewide general election ballot was ratified by the voters. [http://www.legis.state.ga.us/legis/2005\\_06/pdf/hb81.pdf](http://www.legis.state.ga.us/legis/2005_06/pdf/hb81.pdf)

**HB 560 (O.C.G.A. 48-5-299)** Amends Code Section 48-5-299(c) to prohibit a county Board of Tax Assessors from increasing values for property that are under a two-year freeze solely because of errors found in property records. The Governor signed this bill on April 27, 2006, and it became effective on July 1, 2006. [http://www.legis.state.ga.us/legis/2005\\_06/pdf/hb560.pdf](http://www.legis.state.ga.us/legis/2005_06/pdf/hb560.pdf)

## **2006 *Ad Valorem* Tax Legislation, cont.**

- **HB 848 Exempt property owned by charitable institutions used exclusively for charitable purposes, & exempt from tax the homestead and up to 10 acres for taxpayer age  $\geq 65$ .**
- **HB 1293 Penalty for breach of conservation use covenant is only one-times the tax: if:**
  - **Owner entered after age 67;**
  - **Has either owned the property for at least 15 years or inherited the property and kept it in a qualifying use under a covenant for 3 years; and,**
  - **Has filed a written election to breach the covenant with the BOA.**

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**2006 *Ad Valorem* Tax Legislation, cont.** <https://etax.dor.ga.gov/legislation/index.aspx>

**HB 848 (O.C.G.A. 48-5-41, 48-5-48.3, and 48-5-48.5)** Amends Code Section 48-5-41 to exempt property owned by charitable institutions which is used exclusively for charitable purposes, even if income is derived from the property, as long as the income is used exclusively for its operation. Amends Code Section 48-5-48.3 to exempt from tax the homestead and up to 10 acres of land for a taxpayer age 65 or older. The Governor signed this bill on April 25, 2006, and it became effective on January 1, 2007, when the referendum on the November 2006 statewide general election ballot was ratified by the voters. **[http://www.legis.state.ga.us/legis/2005\\_06/pdf/hb848.pdf](http://www.legis.state.ga.us/legis/2005_06/pdf/hb848.pdf)**

**HB 1293 (O.C.G.A. 48-5-7.4)** Amends Code Section 48-5-7.4 to provide that under the following circumstances, the penalty for breach of a conservation use covenant is only one-times the tax: if the owner entered into the covenant for the first time after reaching age 67; has either owned the property for at least 15 years or inherited the property and kept it in a qualifying use under a covenant for 3 years; and has filed a written election to breach the covenant with the county Board of Tax Assessors. The Governor signed this bill on May 1, 2006, and it became effective on July 1, 2006. **[http://www.legis.state.ga.us/legis/2005\\_06/pdf/hb1293.pdf](http://www.legis.state.ga.us/legis/2005_06/pdf/hb1293.pdf)**

## **2006 *Ad Valorem* Tax Legislation, cont.**

- **HB 1361 Relates to local governments who establish Tax Allocation Districts (TAD).**
- **HB 1502 DOR Commissioner promulgate regulations prescribing soil maps and proper types of documentation to determine eligibility of ownership and land use for conservation use covenants.**

**<https://etax.dor.ga.gov/legislation/index.aspx>**

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**2006 *Ad Valorem* Tax Legislation, cont. <https://etax.dor.ga.gov/legislation/index.aspx>**

**HB 1361** Amends several Code Sections in Chapter 44 of Title 36, as they relate to local governments who establish Tax Allocation Districts (TAD). When the tax allocation increment base rate is established, motor vehicle values are never included. And unless specified in the resolution, values for personal property, public utilities, and railroad companies are not included either. The Governor signed this bill on May 5, 2006, and it became effective on July 1, 2006, except for allocations made prior to July 1, 2006. **[http://www.legis.state.ga.us/legis/2005\\_06/pdf/hb1361.pdf](http://www.legis.state.ga.us/legis/2005_06/pdf/hb1361.pdf)**

**HB 1502 (O.C.G.A. 48-5-7.4, 48-5-290, 48-5-291 and 48-5-295)** Amends Code Section 48-5- 7.4 by granting the Commissioner the ability to promulgate regulations prescribing soil maps and proper types of documentation to determine eligibility of ownership and land use for conservation use covenants. Amends Code Sections 48-5-290, 48-5-291, and 48-5-295 to authorize the Commissioner to promulgate regulations establishing the certification procedures for county tax assessors, including training requirements, transmittal of certificates of appointment, and reappointment provisions. The Governor signed this bill on May 5, 2006, and it became effective on July 1, 2006. **[http://www.legis.state.ga.us/legis/2005\\_06/pdf/hb1502.pdf](http://www.legis.state.ga.us/legis/2005_06/pdf/hb1502.pdf)**

## 2006 *Ad Valorem* Tax Legislation, cont.

- **SB 525** 90 days for taxpayers who have transferred property and received tax notice to notify the tax commissioner of the transfer.
- **SB 585** Transfers of executions issued for ad valorem tax purposes.
- **SB 597** Authorizes taxpayers to recover litigation costs involving property.

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### 2006 *Ad Valorem* Tax Legislation, cont. <https://etax.dor.ga.gov/legislation/index.aspx>

**SB 525 (O.C.G.A. 48-3-3)** Amends Code Section 48-3-3 to establish a deadline of 90 days for taxpayers who have transferred property since the lien date and received notice of tax executions from the local tax commissioner, to notify the tax commissioner of the transfer, whereby the execution is vacated and re-filed under the new owner's name. The bill also provides that the real estate transfer tax form must contain the correct property identification number before being accepted by the clerk of Superior Court for recording. The Governor signed this bill on May 3, 2006, and it became effective on July 1, 2006. [http://www.legis.state.ga.us/legis/2005\\_06/pdf/sb525.pdf](http://www.legis.state.ga.us/legis/2005_06/pdf/sb525.pdf)

**SB 585 (O.C.G.A. 9-13-36, 48-3-19, 48-4-1, 48-4-5, 48-4-44 and 48-6-2)** Amends Code Section 9-13-36 by removing the provisions relating to tax executions and placing the administration of those types of executions under Chapters 3 and 4 of Title 48. Reinstates Code Section 48-3-19, previously repealed in 2002, to allow at the discretion of the tax commissioner transfers of executions issued for ad valorem tax purposes. This bill also establishes procedures for notification by a transferee, timelines for levying on the execution, and requires that any transferee that pays more than \$2 million dollars in any calendar year for executions must maintain an accessible office within 50 miles of the courthouse where the transferred execution is located and such office must be available to the public 8 hours per day, 5 days per week, except on state holidays. Amends Code Section 48-4-1 to include notice provisions for executions issued by a municipal officer for ad valorem taxes. Amends Code Section 48-4-5 by providing procedures for claiming excess funds from a tax sale by a local tax official. It also provides that any unclaimed excess funds held by a local officer for five years after the tax sale must be paid over to DOR in the same manner as other unclaimed property. These funds can only be claimed and released by DOR after a court order from an interpleader action is filed in the county where the tax sale occurred and was filed. Amends Code Section 48-4-44 by adding procedures for filing quitclaim deeds at the time of redemption of property sold at a tax sale. Amends Code Section 48-6-2 exempting real estate transfer tax for any deed filed for redeemed property sold at a tax sale. The Governor signed this bill on May 3, 2006, and it became effective on July 1, 2006. [http://www.legis.state.ga.us/legis/2005\\_06/pdf/sb585.pdf](http://www.legis.state.ga.us/legis/2005_06/pdf/sb585.pdf)

**SB 597 (O.C.G.A. 48-5-311)** Amends Code Section 48-5-311 by authorizing taxpayers to recover litigation costs involving property, other than commercial property, when the value determined by an appeal to Superior Court is 85% or less than the value set by the county Board of Tax Assessors. Previously, the 85% threshold applied to the value set by the county Board of Equalization. The Governor signed this bill on May 3, 2006, and it became effective on July 1, 2006. [http://www.legis.state.ga.us/legis/2005\\_06/pdf/sb597.pdf](http://www.legis.state.ga.us/legis/2005_06/pdf/sb597.pdf)

## **2003 *Ad Valorem* Tax Legislation**

- **H.B. 290 – Riverside or Streamside Land may qualify as conservation use.**
- **H.B. 413 – Storm Water Wetlands may qualify as conservation use.**
- **H.B. 527 – Farm Equipment in Inventory for Resale not subject to ad valorem tax.**

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**2003 *Ad Valorem* Tax Legislation.** <https://etax.dor.ga.gov/legislation/index.aspx>

**H.B. 290 – Riverside or Streamside Land - Effective Jan. 1, 2004.** Bill amends: O.C.G.A. 48-5-7.4. Bill extends the current use assessment for ad valorem taxation for bona fide conservation use property to undeveloped riverside or streamside lands within buffer zones established by law or local ordinance and within which land disturbing activity is prohibited.

[http://www.legis.state.ga.us/legis/2003\\_04/fulltext/hb290.htm](http://www.legis.state.ga.us/legis/2003_04/fulltext/hb290.htm)

**H.B. 413 – Storm Water Wetlands - Effective Jan. 1, 2004.** Bill amends O.C.G.A. 48-5-7.4. Bill extends preferential assessment of bona fide conservation use treatment to property which has been certified by the Department of Natural Resources as land constructed storm-water wetlands of the free-water surface. [http://www.legis.state.ga.us/legis/2003\\_04/fulltext/hb413.htm](http://www.legis.state.ga.us/legis/2003_04/fulltext/hb413.htm)

**H.B. 527 – Farm Equipment in Inventory for Resale - Effective Jan. 1, 2004.** Bill amends O.C.G.A. 48-5-504. Bill declares that self-propelled farm equipment held in inventory by a dealer for sale or resale to be a separate class of property not subject to ad valorem tax. [http://www.legis.state.ga.us/legis/2003\\_04/fulltext/hb527.htm](http://www.legis.state.ga.us/legis/2003_04/fulltext/hb527.htm)

## **2003 *Ad Valorem* Tax Legislation, cont.**

- **H.B 531 – Preferential assessment of environmental and contaminated property by freezing the value for 10 years.**
- **S.B. 97 – Real Estate Transfer Tax responsibility goes to the Clerk of Superior Court.**
- **S.B. 277 – Conservation Use Covenant Property can be renewed in 9<sup>th</sup> yr.**

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**2003 *Ad Valorem* Tax Legislation, cont.** <https://etax.dor.ga.gov/legislation/index.aspx>

**H.B 531 – Environmentally Contaminated Property - Effect May 14, 2003.** Bill amends O.C.G.A. 48-5-2 and 48-5-7.6. Bill provides for the preferential assessment of environmental and contaminated property by freezing the value for 10 years as an incentive for developers to cleanup and return the property to the tax rolls. This bill also allows an owner to recoup against taxes due certain eligible brownfield costs. [http://www.legis.state.ga.us/legis/2003\\_04/fulltext/hb531.htm](http://www.legis.state.ga.us/legis/2003_04/fulltext/hb531.htm)

**S.B. 97 – Real Estate Transfer Tax - Effective July 1, 2003.** Bill amends O.C.G.A. 48-6-2. Bill takes the responsibilities previously handled by the Revenue Commissioner regarding the collecting and distributing of the real estate transfer tax and gives it to the Clerk of Superior Court. Bill allows internal real estate transfers to be exempt from the real estate transfer tax. This bill further permits the real estate transfer tax to be made on a form or in electronic format prescribed by the Revenue Commissioner. The determinations as to whether the real estate transfer tax is due and/or payable still remains with the Department of Revenue. [http://www.legis.state.ga.us/legis/2003\\_04/fulltext/sb97.htm](http://www.legis.state.ga.us/legis/2003_04/fulltext/sb97.htm)

**S.B. 277 – Conservation Use Covenant Property - Effective July 1, 2003.** Bill amends O.C.G.A. 45-5-7.4. Bill allows conservation use covenant property to be renewed in the ninth year of the covenant for an additional 10 years to prevent any lapse in agreement. [http://www.legis.state.ga.us/legis/2003\\_04/fulltext/sb277.htm](http://www.legis.state.ga.us/legis/2003_04/fulltext/sb277.htm)

## Timberland Valuation

- **When determining the market value of timberland, the assessor must remove the standing timber value from the bare land value.**
- **The assessor will not rely exclusively on sales data from land that has recently had timber harvested.**
- **Rather, the sales of land with standing timber where the timber value has been determined and deducted from the selling price should be used.**

– (O.C.G.A. 560-11-10.09 (2) (v))

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### Leverett et al. v. Jasper County Board of Tax Assessors

A Georgia Constitutional amendment was passed by the people in the autumn of 1990 requiring the ad valorem taxation of standing timber only when it was harvested or sold for harvest. There has been considerable concern by forest landowners that their bare land values still inherently may include some standing timber value. Another way of simply looking at the issue is that the Constitution was amended to take standing timber off the digest.

In 1998, the Georgia Court of Appeals decided a landmark case firmly resolving this issue.\*Since the case was not appealed, the Appellate Court's ruling is the law in Georgia. In reversing the trial court's ruling in favor of the Board of Tax Assessors, the Appellate Court held, "...Thus, the Assessors, in not subtracting the value of growing timber from the fair market value of the land used in the sales ratio as comparables, refused to treat growing timber as tax-exempt and caused what is exempt from taxation until sold or harvested to be a part of the assessed value of the land." In other words, your forest land's valuation must have *no* timber value attributed to it. Timber value cannot be "...reflected in the price of the land."

But the Court went even further. It said "stump land" (land which has not been site prepared to plant in trees) has a lower value than cleared cultivatable land, pasture land or growing timberland. Stump land has a substantially different value than cleared land because there is a cost to get it to an improved state. The Court held, "...thus, improved land has a higher acreage fair market value which reflects the cost of clearing and replanting pines or of fencing.

This case was a significant finding for all timberland owners because it undisputedly said *all* value attributable to timber must be removed from the value of the land for assessment.

\*233 Ga. App. 470.

## **FMV Potential Issues for Timberland**

- **Low number of comparable sales.**
- **Correct removal of standing timber value from land value.**
- **Incorrect use of comparable sales based on size.**
- **Valuation of timberland for incorrect land use.**

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## FMV Timberland Valuation

- **The value of the standing timber on recently sold land should be accurately determined so it can be separated from the value of the land.**
- **If this information is not obtainable to the assessor then a number of methods can be used to determine the value.**
- **The results of the following methods must be consistent with other sales where accurate timber values are known.**
  - (O.C.G.A. 560-11-10.09 (2) (I))

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# Standing Timber Valuation Methods

- **1) Calculate value of merchantable timber.**
- **2) Calculate value of pre-merchantable planted pine timber:**
  - **This value is calculated by estimating the value of the timber at merchantability age and prorating the value to actual pre-merchantable age of the stand**
  - **If local timber price/ton and specific yield information is not available, the assessor may use the average yield of 52.2 tons/acre.**

**(O.C.G.A. 560-11-10.09 (2) (I) – see Code Section for prices**

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## Calculate value of merchantable timber

For all types of merchantable timber, the value of the standing timber may be determined by multiplying estimated volumes by product class, such as softwood and hardwood pulpwood, chip and saw logs, saw timber, poles, posts, and fuel wood, of timber on the property by prices for each product class as obtained from the table of weighted average prices paid for harvested timber applicable to the year during which the sale occurred and prepared by the Commissioner pursuant to paragraph (g) of Code section 48-5-7.5. For purposes here, merchantable timber shall include stands that have been in production for more than fifteen years. Estimated volumes by product class may be obtained by reliable information from the buyer or seller, or from specially trained data collectors who have estimated volumes from a visual on-site inspection or from an aerial survey.

## Calculate value of pre-merchantable planted pine timber

For pre-merchantable planted pine timber, the value of the standing timber may be determined by estimating the value of the timber at the age of merchantability and then prorating this value to the actual age of the pre-merchantable stand. The appraiser may arrive at this estimate using the following steps:

1. For each applicable timber product class, multiply the estimated tons of timber volume yield per acre for each product class at the age of merchantability times the locally prevailing timber price per ton of such product classes. Sum the individual results of the timber product class calculations into a single result.
2. In the absence of reliable locally prevailing timber price per ton information, the appraiser may use timber price per ton from the table of weighted average prices paid for harvested timber prepared by the Commissioner pursuant to paragraph (g) of Code section 48-5-7.5.
3. In the absence of specific yield information to the contrary, the appraiser may estimate timber volume yields at an average yield of 52.2 tons per acre or preferably by using the land productivity classifications established by Rule 560- 11-10-.09(3)(b)(2)(i) and the following DOR's tables of estimated yields of fully stocked planted timber stands at age fifteen, and then adjusting the yields according to the actual stocking density of the timber stand.
4. For tables, see [https://etax.dor.ga.gov/ptd/gcp/LGS\\_GCP\\_Course\\_IVB\\_Valuation\\_of\\_Rural\\_Land\\_Revised\\_February\\_2011.pdf](https://etax.dor.ga.gov/ptd/gcp/LGS_GCP_Course_IVB_Valuation_of_Rural_Land_Revised_February_2011.pdf) pages 27-29.
5. For prices see: (O.C.G.A. 560-11-10.09 (2) (I)) for prices, or contact DOR at (404) 417-2100.

*Ad Valorem*  
**Timber Tax at Harvest,  
or at Sale for Harvest**

- **Timber Value, Tax Collected.**
- **Lump Sum Sales.**
- **Unit Price Sales.**
- **Owner Harvests.**

**(O.C.G.A. 48-5-2 (3) (E), 48-5 -7.5)**

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## **TIMBER TAX**

### **O.C.G.A. 48-5-7.5.**

Prior to 1992 timber was taxed annually as part of the tax digest. At that time, approximately 82 counties placed some value on standing timber, but only 15 of these separated timber on the digest. The other counties either did not tax timber or could not identify the value separate from the land value. Along with Conservation Use Valuation the amendment to the Georgia Constitution which was approved by the electorate in 1990 also provided for a one time assessment on harvested timber versus the annual taxation of timber as part of the value of the real estate. Timber is taxed once at its current market value when harvested or sold for harvest.

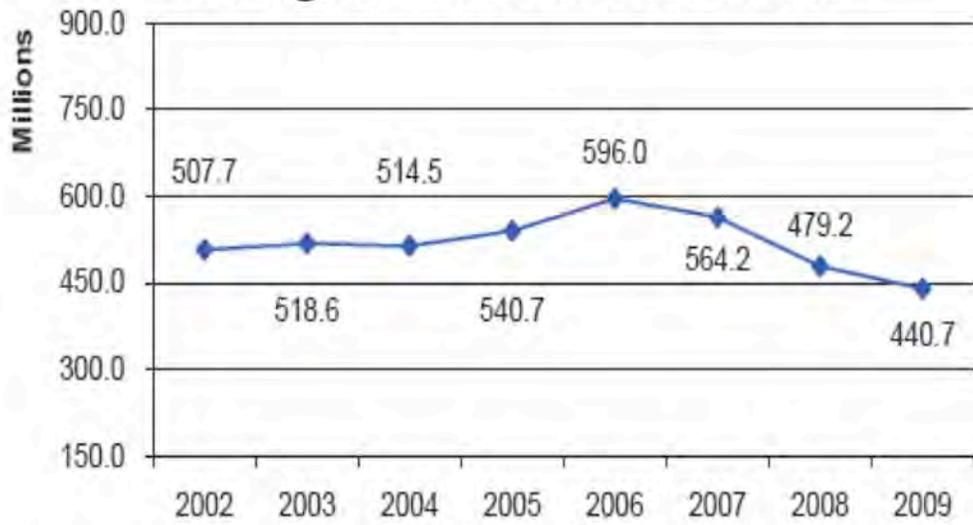
**First**, the county assesses timber at 100 percent of its fair market value (FMV) times the millage rate at the time of sale, or harvest if there is no sale. Normal assessment is 40 percent of the fair market value every year. The method of estimating fair market value is different also. Other property has the fair market value estimated by comparable sales. The FMV of timber is generally going to be the actual sale price, but it must be a bona fide sale. For example, it cannot be a sale which would not reflect what the timber would have sold for on the open market (e.g. father to daughter for a "special price").

**Second**, the timber sale must be separate and apart from the land. There is no tax on the timber where the owner simultaneously sells the land and timber as a unit without timber harvest. The county taxes only timber sold and intended for harvest.

**Third**, all timber sales and harvests, except a landowner cutting firewood from his own land for use within his personal home, are taxable. Timber cut and manufactured into a product by the owner is considered a harvest and taxed as such. County assessors tax timber under three general categories. These are: **Lump Sum Sales, Unit Sales and Owner Harvests.**

The Figure following shows the relationship between the fair market value of timber harvested in the industry and the actual revenues levied on harvested timber.

## Georgia Timber Harvest Values



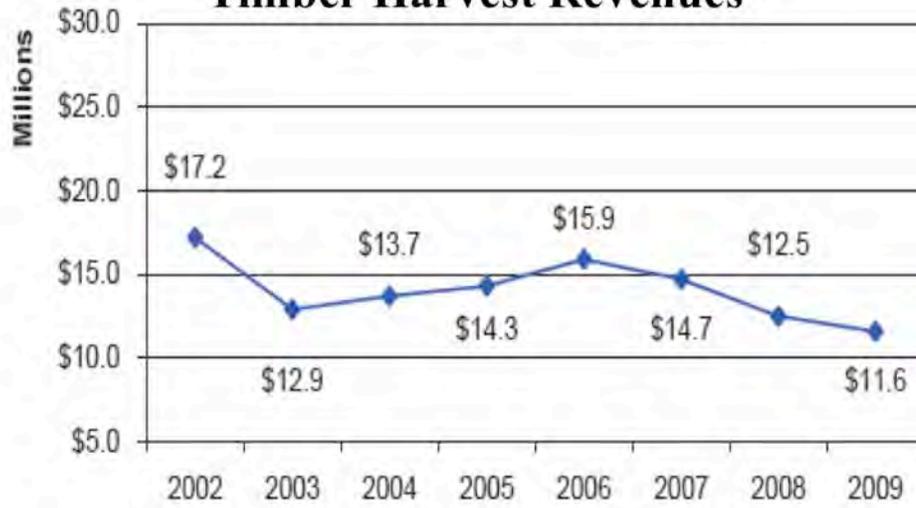
<https://etax.dor.ga.gov/gaforms/publica.aspx>

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## Georgia Total *Ad Valorem* Timber Harvest Revenues

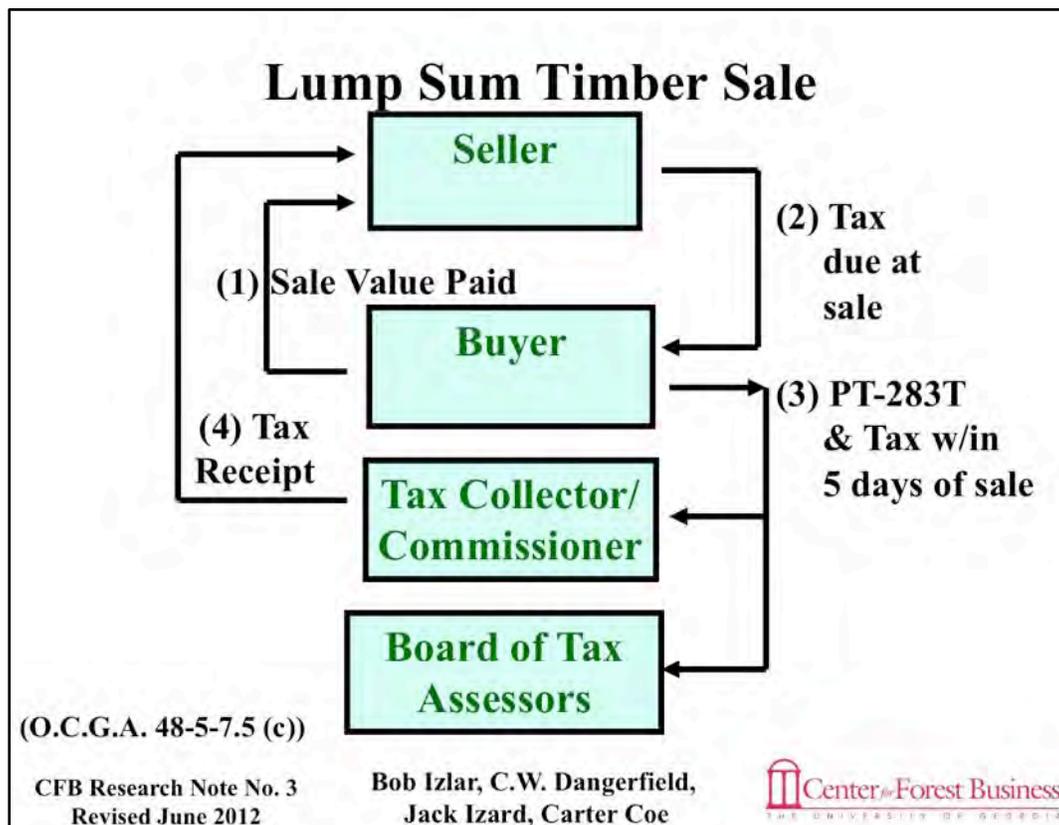


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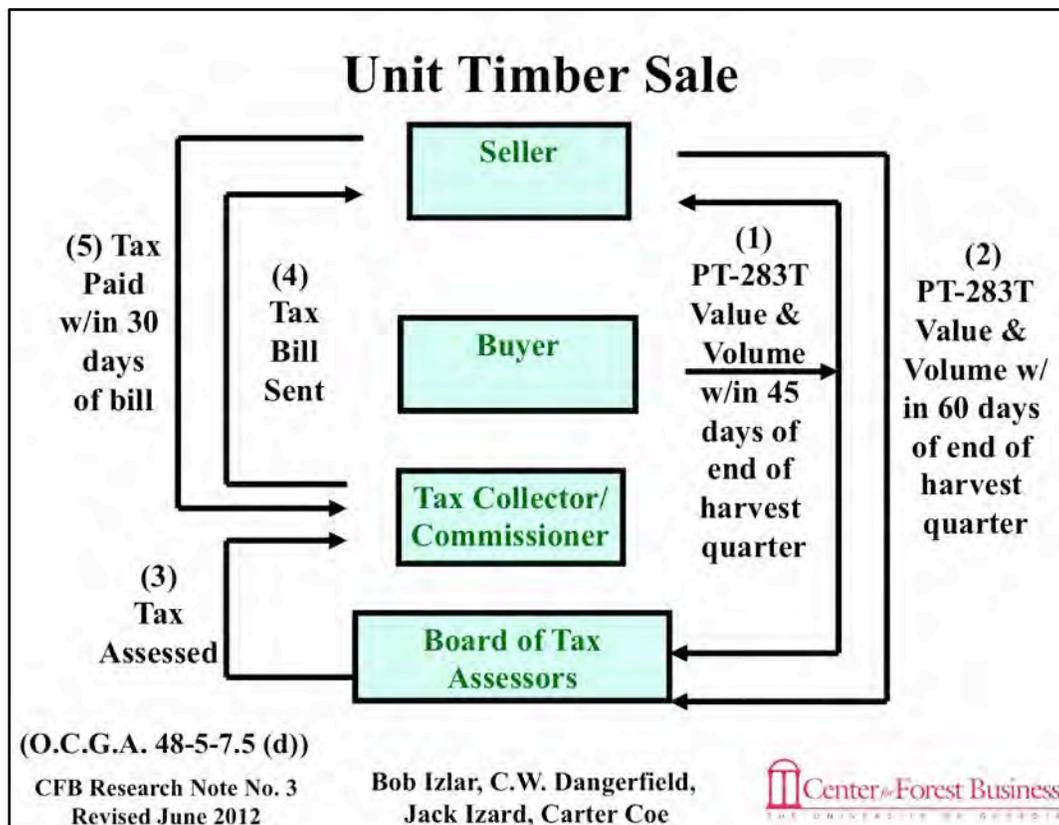
## LUMP SUM TIMBER SALES

A lump sum sale is the absolute sale of specific standing timber for a fixed total price. Buyer and seller agree to the lump sum price before cutting begins. Usually, lump sum sales are by contract. Since the ownership of timber changes with a lump sum sale, a timber buyer can record these sales with a deed. These sales are also called "boundary sales" when the owner sells all timber within a given area. They may also include sales of marked timber, timber of a specific size, or only of certain species.

1. Buyer pays seller for full value of timber sold.
2. Tax will be computed by multiplying 100% of the fair market value (the sale price) times the millage rate levied by the taxing authority on tangible property for the previous calendar year. The tax will be figured mutually by the purchaser and the seller at the time of the sale and a negotiable instrument (check) for the amount of the tax payable, made out to the local county tax collector, will be remitted by the seller to the purchaser.
3. The purchaser must then remit the tax and form PT-283T to the local county tax collector/ commissioner within 5 business days from the day of sale. The purchaser must also give a copy of PT-283T to the Board of Tax Assessors. The purchaser is personally liable for the tax if he does not remit the seller's payment or if he fails to collect the taxes due from the seller. The timber buyer *may* record a timber deed with the Clerk of Court when the tax is paid. Filing the timber deed establishes a record in the court house that ownership of the timber has been transferred from the Seller to the Buyer.
4. The local county tax collector will mail the seller a receipt showing payment of the tax.

\* The tax assessor and the tax commissioner may be the same in some counties.

If the timber falls inside a city, the city will also levy its ad valorem tax. The county usually collects any county and city ad valorem taxes. The county then pays the city. This prevents the seller and buyer from having to file and pay twice.



#### UNIT TIMBER SALES

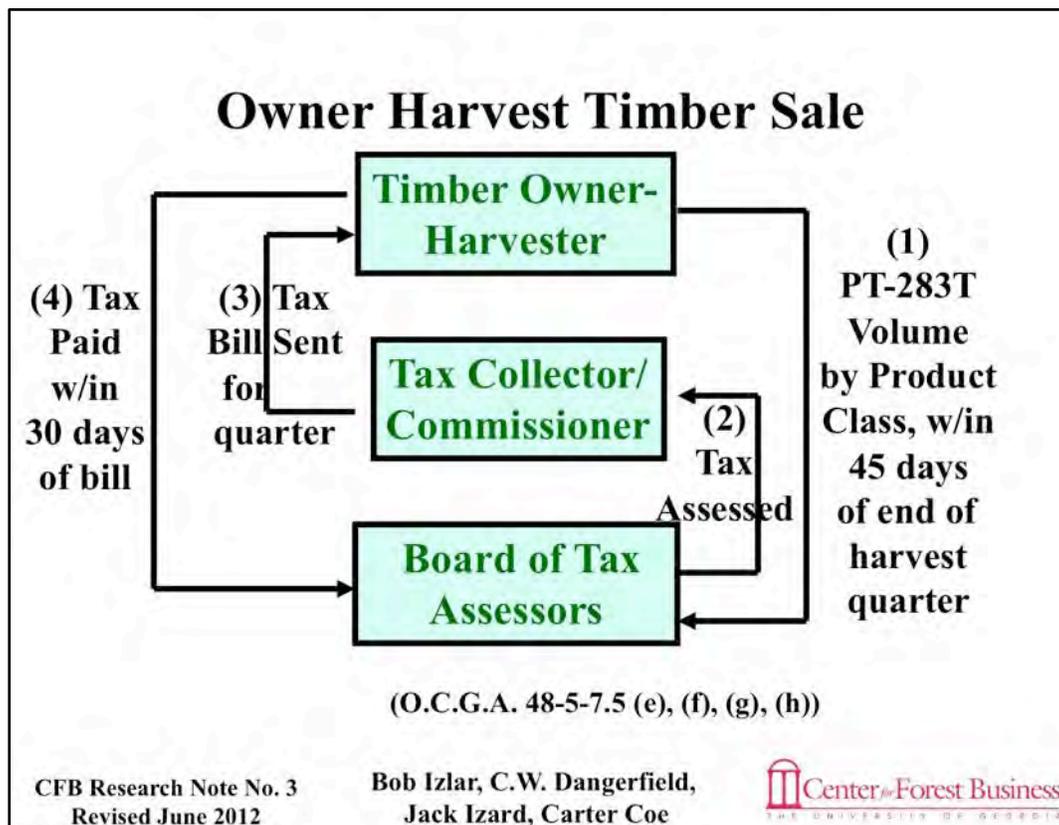
A unit sale, or pay-as-cut sale, occurs when the buyer and seller agree to a specified rate of payment for each unit of timber cut and measured. Cords, thousand board feet (MBF), tons, etc. are common units of measure, but the legal unit to sell by is by the ton or specifically measured volume. Unlike a lump sum sale, with unit sales the seller owns the timber until the buyer harvests it. The buyer makes payments, usually weekly or monthly for units harvested. With unit sales, the buyer makes payments over time. Because it is impractical to report and collect the tax every week, taxes on unit sales are paid and reported quarterly.

1. Within 45 days after the end of the calendar quarter of harvest the purchaser will make notification (via PT-283T with two copies to the seller and one copy to the local county Board of Tax Assessors) of the volume of timber cut in that quarter and the total dollar value paid for timber cut in that quarter by tract.
2. A copy of the same PT-283T report will be provided by the seller to the local county Board of Tax Assessors within 60 days of the end of the quarter to confirm the harvest.
3. The Tax Assessor will notify the Tax Commissioner of the assessed value of the timber sale\*.
4. The Tax Commissioner will then bill the seller for 100% of the fair market value (total dollar value paid in that quarter) times the millage rate levied by the taxing authority on tangible property for the previous calendar year.
5. The taxes shall be payable by the seller within 30 days of the receipt of the bill.

The form PT-283T and the information on it are confidential records. PT-283T contains not only the amount of money paid out during the quarter but also contains the volume, in tons, of wood harvested during the quarter by product class. The per ton price can thus be calculated by dividing the total price by the volume, in tons. This value is confidential between the seller and the purchaser and the form's confidentiality (the same protection as your income tax return has) protects this information.

See form PT-283T for conversion factors between tons and cords.

- \* The Tax Assessor and the Tax Commissioner may be the same in some counties.



### OWNER HARVEST OF TIMBER

Often, owners harvest their timber and receive no direct stumpage payment. Here the timber is not bought on the open market. The primary example is a timber company cutting on its own land to supply its own mill. To establish a fair market value for ad valorem tax purposes, those harvesting under this method would report the volume of timber cut in the quarter by product class. County tax assessors then use an annual table of values from the Georgia Department of Revenue Local Government Services Division to calculate the valuation for ad valorem tax purposes.

1. The owner who harvests timber from his own lands will report the volume, in pounds, if available, or measured volume of timber by product class harvested in a calendar quarter to the local county Board of Tax Assessors within 45 days of the end of that quarter.
2. The local county Board of Tax Assessors will multiply the volume of each product class times the price per product class unit (ex. \$/cord, \$/mbf, etc.) as supplied by the Department of Revenue. The total value of all product classes will be the fair market value which will be multiplied times the millage rate levied by the taxing authority on tangible property for the previous calendar year. This figure will be the tax for that quarter.
3. The Tax Commissioner will then bill the owner for the tax in that quarter.
4. The tax will be payable by the owner within 45 days of the end of that quarter.

**Other Sales or Harvests** - Where a timber transaction does not fit the above categories, the law calls for it to be taxed "in the manner most similar" to one of the three categories. For example, if individuals trade land for timber, they should establish FMV for the land and calculate the tax due on the timber as if it were a lump sum sale.

**Interest and Penalties** - **Interest** at one percent per month is due on all unpaid taxes. A **penalty** of one percent per month of the tax due is charged for the first 12 months if the timber reports are not filed as required by the act. After 12 months, the failure is presumed intentional and the penalty is changed to equal 50 percent of the tax due. This is not an additional penalty. Rather, after 12 months, the first penalty is dropped in favor of the higher, second penalty.

## **Income Tax Withholding by Timber Buyers from Non-resident Timber Sellers**

- **Georgia income tax on sale of real property by non-residents, since Jan. 1, 1994.**
- **Standing timber is real property.**
- **Severed from the stump, timber becomes personal property & if sold then without underlying land, no income tax is due.**
- **If severed timber is sold with the underlying land, income tax is due.**

**(see next page)**

**(O.C.G.A. 48-7-128)**

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### **INCOME TAX WITHHOLDING BY TIMBER BUYERS FROM NON-RESIDENT TIMBER SELLERS**

On January 1, 1994, a little known 1993 law went into effect (O.C.G.A. 48-7-128) which required timber purchasers, under certain conditions, to withhold Georgia income tax on the sale or transfer of real property and associated tangible property by nonresidents of Georgia.

A May 4, 1994, Georgia Department of Revenue (DOR) administrative ruling clarified the treatment of this new income tax withholding on the sale or transfer of timber by nonresidents of Georgia.

Under Georgia law, standing timber is real property. However, once the standing timber is severed from the stump, it becomes personal property.

According to the DOR ruling, the “related tangible personal property” (severed timber) is not subject to the withholding requirement unless there is an associated sale or transfer of the underlying real property (land).

## **Income Tax Withholding by Timber Buyers from Non-resident Timber Sellers, cont.**

### **Our interpretation for timber sale scenarios without sale of underlying land:**

- 1. “Lump Sum” – no withholding if title passes after timber severed (timber is personal property),**
- 2. “Lump Sum” – subject to withholding if title passes before timber severed (timber is real property,**
- 3. “Pay as Cut” or “Unit Sale” – no withholding as title passes after timber is severed (timber is personal property). (see next slide)**

(O.C.G.A. 48-7-128)

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### **INCOME TAX WITHHOLDING BY TIMBER BUYERS FROM NON-RESIDENT TIMBER SELLERS, cont.**

As long as there is no sale or transfer of the underlying real property, here is our interpretation of the following timber sale or transfer scenarios, according to the DOR ruling:

1. Lump sum purchases where title to standing timber does not pass until after it is severed from the stump do not require withholding,
2. If title to timber passes to the purchaser before it is severed from the stump, the timber is considered real property, and subject to withholding,
3. In the case of a “pay as cut” or “unit sale” agreement where title passage occurs after severance from the underlying real property, withholding is not required.

## **Income Tax Withholding by Timber Buyers from Non-resident Timber Sellers, cont.**

### **DOR Rules:**

- **3% withheld of timber sale price, or of gain on sale,**
- **If price < \$20,000 or Tax < \$600, no withholding,**
- **Penalty for failure to comply is \$500 or 10% of income tax, whichever is greater.** (see next slide)

(O.C.G.A. 48-7-128)

CFB Research Note No. 3  
Revised June 2012

Bob Izlar, C.W. Dangerfield,  
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### **INCOME TAX WITHHOLDING BY TIMBER BUYERS FROM NON-RESIDENT TIMBER SELLERS, cont.**

**DOR Rules:** Under the DOR's rules relating to withholding requirements, the amount withheld shall be three percent of either the sales price or gain recognized on the transfer. The buyer is responsible for withholding the income tax from the nonresident timber seller and remitting to the Commissioner of Revenue with the correct forms. When the purchase price is less than \$20,000 or the tax liability is less than \$600, no withholding is required.

O.C.G.A. 48-7-128

(a)(4) If the seller or transferor is a corporation or limited partnership, it is registered to do business in Georgia. (b)(1) Except as otherwise provided in this Code section, in the case of any sale or transfer of real property and related tangible personal property located in Georgia by a nonresident of Georgia, the buyer or transferee shall be required to withhold and remit to the commissioner on forms provided by the commissioner a withholding tax equal to 3 percent of the purchase price or consideration paid for the sale or transfer; provided, however, that if the amount required to be withheld pursuant to this subsection exceeds the net proceeds payable to the seller or transferor, the buyer or transferee shall withhold and pay over to the commissioner only the net proceeds otherwise payable to the seller or transferor. Any buyer or transferee who fails to withhold such amount shall be personally liable for the amount of such tax. (2) The liability imposed by this subsection shall be paid upon notice and demand by the commissioner or the commissioner's delegate and shall be assessed and collected in the same manner as all other withholding taxes imposed by this article. (c) If the seller or transferor determines that the amount required to be withheld pursuant to paragraph (1) of subsection (b) of this Code section will result in excess withholding on any gain required to be recognized from the sale, the seller or transferor may provide the buyer or transferee with an affidavit signed under oath swearing or affirming to the amount of the gain required to be recognized from the sale, and the buyer or transferee shall withhold 3 percent of the amount of the gain required to be recognized, if any, stated in the affidavit rather than as provided in paragraph (1) of subsection (b) of this Code section. If, however, the amount required to be withheld pursuant to this subsection exceeds the net proceeds payable to the seller or transferor, the buyer or transferee shall withhold and pay over to the commissioner only the net proceeds otherwise payable to the seller or transferor.

(a)(4)(e)(1) Unless otherwise provided, if the seller or transferor is a partnership or Subchapter "S" corporation or other unincorporated organization which certifies to the buyer or transferee that a composite return is being filed on behalf of the nonresident partners, shareholders, or members and that the partnership, Subchapter "S" corporation, or unincorporated organization remits the tax on the gain on behalf of the nonresident partners, shareholders, or members, the buyer or transferee shall not be required to withhold as provided in this Code section. Any nonresident partner, shareholder, or member who falsely certifies that a composite return is being filed on behalf of such partner, shareholder, or member shall be liable for a penalty in the amount of \$500.00 or 10 percent of the amount required to be withheld, whichever is greater.

## **Income Tax Withholding by Timber Buyers from Non-resident Timber Sellers, cont.**

### **DOR Forms:**

- **Form G-2RP: Buyer file & remit tax & provide seller copy to file w/ personal income tax return.**
- **Form ITAFF1: Affidavit of Seller's Residence.**
- **Form ITAFF2: Affidavit of Seller's Gain.**
- **Form ITAFF3: Seller's Certificate of Exemption.**

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## **INCOME TAX WITHHOLDING BY TIMBER BUYERS FROM NON-RESIDENT TIMBER SELLERS, cont.**

### **DOR Forms:**

The Department of Revenue has developed four forms to be filed and remitted unless otherwise exempted.

**Form G-2RP** The buyer is required to provide seller with a copy for the seller to file with the personal income tax return. The buyer is also required to file and remit the income tax collected from the nonresident timber seller.

**Form ITAFF1** (Affidavit of Seller's Residence) This is only required where a seller is a nonresident but meets the conditions under which the seller may be deemed a resident.

**Form ITAFF2** (Affidavit of Seller's Gain) This form allows a seller to provide a buyer with an affidavit swearing to the gain on the timber sale so that withholding may be based on the gain rather than the purchase price. Sellers need to be able to document their cost basis and sales cost to avoid overpaying taxes and tend to their federal income tax and estate tax matters.

**Form ITAFF3** (Seller's Certificate of Exemption) Although not required by law, the Commissioner has prepared a Certificate of Exemption for record keeping purposes.

All forms may be obtained through the Georgia Department of Revenue, 1800 Century Blvd, NE Atlanta GA 30345-3205.

## Property Tax Summary/Implications

- **Property taxes are important: \$11.2 billion/yr.**
- **Property taxes *are not* sales taxes.**
- **Many tax changes in recent years**
- **Get involved; become informed**
  - *Build partnerships w/County Government*
  - *Study Taxpayer Bill of Rights*
  - *Know appeal procedures*
- **Consider FMV, Ag. Pref., CUV, & FLPA**
  - *2009 Tax saved: Ag. Pref. = \$2.7 MM, CUV = \$292 MM*
- **Cut timber, pay *ad valorem* property tax**
- **Don't know? → *Get help fast!***

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This book is an attempt to present the ad valorem tax property tax incentives for Georgia landowners. It does not address conservation easements or conservation land tax incentive programs as they sometimes mix ad valorem tax relief with either state or federal income tax relief on a long term but not permanent basis.

For a great summary review of Southern state conservation use valuation property tax programs, please see Talberth and Yonavjak (cited below). They give an excellent overview and comparison of the different conservation use valuation systems currently in use in eight Southern states, including Georgia.

Talberth, John and Yonavjak, Logan. 2011. Current use valuation programs: Property tax incentives for preserving local benefits of forests. Southern Forests for the Future Incentives Series, Issue Brief 5, World Resources Institute, Washington, DC, 12p.

Also available at: <http://www.wri.org/publication/current-use-valuation-programs>