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The Farm and Open Space Tax Law

A Brief Analysis

Maine State Planning Office
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Introduction

In an all-too-familiar scenario across the country, farmland is being consumed by expanding metropolitan areas. Municipal taxing practices have contributed to this phenomenon by taxing farmland in the path of urban growth at its "highest and best use", which is often the value the property would have as a housing development. The resulting high assessment naturally results in higher taxes, which in turn forces the farmer to sell out, and the land is subsequently converted to other uses, regardless of its productivity for agricultural purposes. This system of growth has traditionally caused serious land development problems, social dislocations, and the loss of some of the nation's best farmland.

In Maine, positive steps have been taken to minimize the adverse impact that tax practices exert on land development. In November, 1970, the voters of Maine amended Article 9, Section 8 of the Maine Constitution by providing, in part, that "...Nothing shall prevent the Legislature from providing for the assessment of the following types of real estate wherever situated in accordance with a valuation based on the current use thereof and in accordance with such conditions as the Legislature may enact: 1. Farms and agricultural lands, timberland and woodland;..." In 1971, the Legislature implemented the 1970 amendments of Article 9, Section 8 of the Maine Constitution by enacting the first version of the Farm and Open Space Tax Law.

This working paper, prepared for the State Food and Farmland Study Commission, examines some aspects of the Farm and Open Space Tax Law. Because of staff and time limitations, this paper deals only with the farmland portion of the law.

TABLE OF CONTENTS

	<u>Page</u>
Summary of Major Findings.....	1
Recommendations.....	3
The Law and How It Works.....	4
The Tax Impact of Farmland Classification.....	8
Issues Related to the Law.....	15
Appendices	
Appendix 1 Land Classified as Farmland.....	18
Appendix 2 Farm Taxation Experience of Other States...	22
Appendix 3 The Farm and Open Space Tax Law.....	31

Summary of Major Findings

Use of the Farmland Portion of the Farm and Open Space Tax Law.

1. The Farmland portion of the law appears to be used most frequently in those parts of the state where, 1) municipal revaluation has occurred; and 2) where farmland with road or shore frontage is assessed at its speculative or potential development value, (i.e., where just value, or "highest and best use" value, is for non-agricultural uses), rather than its current use value. Assessment at its speculative value is more apt to occur in communities undergoing rapid urbanization.
2. In many communities, there will be no tax benefit to be gained from having land classified as farmland, because current use is the highest and best use.
3. The law has not been used very much in most areas of the State. Only 51 municipalities have reported in 1977 that any land was classified as farmland.
4. The amount of land classified as farmland (87,000 acres in 1977) is only a small fraction of the amount of land classified under the tree growth tax law (11 million acres). However, according to the Bureau of Taxation, the use of the law is increasing, and will undoubtedly continue to increase, particularly in those municipalities which have recently been or will be revalued. The 1977 figure of 87,000 acres of classified farmland is up from the figure of 15,000 acres in 1976, and 12,000 acres in 1975. While these figures represent an increase in the use of the Law, they should be tempered with the realization that not all towns have reported acreage placed under the law. Moreover, reporting techniques have improved since passage of the law in 1971. In the early years of the program, there was very little indication of the number of acres placed under the law.
5. The recapture and penalty provisions of the law are perceived by some to be quite stringent, and, combined with the low level of tax benefit to be gained in many areas, may account for the low rate of participation in the program statewide. In many towns, the encumbrances placed on the land may outweigh the tax benefits to be gained.
6. In those municipalities where farmland with shore or road frontage is assessed for its speculative value, landowners most likely to opt for use of the law are those with substantial shore or road frontage.
7. A number of farmers have apparently been able to continue in operation solely because they were able to place their farms under the Law. While there is no available data on the number of farms in this category, personnel at the Bureau of Taxation are familiar with several examples where this is the case. Data on the number of farms in this category would be virtually impossible to obtain, due to the complex interplay of factors affecting the demise of a farm.
8. In some instances, substantial tax benefits will accrue to the farmer who places his land under classification.

Problems with the Law.

1. Current use value. There is a problem determining current use value on a particular farm, and there is very little in the way of printed material to give a local assessor firm guidance in this area.
2. Fallow farmland. Once a farm is placed under the Law, the owner must maintain certification by continuing to meet the income requirements of the Law. While this requirement is not high, a hardship can be created in instances of owner disability or extended illness which prevents the owner from working the farm. In such a case, the owner would not only suffer the economic hardships caused by the illness, but would also face the recapture penalty for failing to meet the income requirements for certification. It is conceivable that his fallow farmland could be considered for inclusion under the open space provisions of the law, but it is not clear whether fallow farmland really meets the criteria for inclusion under this category. The definition of open space is vague, and does not specifically include fallow farmland.
3. Public awareness. It seems probable that the law is not used as widely as it could be in part due to a lack of knowledge on the part of assessors and citizens. Those assessors who are not familiar with the law may be more apt to discourage the individual from applying for classification. No state agency is responsible for conducting an educational effort on the law. Some municipal assessors maybe unsympathetic to the law.
4. Social Equity. Some assessors have complained in certain instances that the law gives tax advantages to the privileged few at the expense of the least fortunate. In some instances, wealthy out-of-states have purchased large holdings at a high price (which tends to drive up fair market value of surrounding properties), and have subsequently placed their property under the law. Even though farming is not their chief source of income, enough income is realized from the property to qualify for farm classification. Their tax advantage appears to stand in sharp contrast to those long-term residents with a lower standard of living who cannot enjoy the advantages of the law because they do not own 10 acres. Yet, the long-term resident must assume a greater tax burden because of the break given to "out-of-staters".
5. Paperwork. Several assessors have complained about the amount of paper work required by the law. Paperwork may also be a problem for some landowners, because in several instances, it was reported that some landowners were not meeting the technical requirement of filing an annual income report for continued certification. It is very time-consuming for the assessor to have to chase down these reports, yet highly punitive to invoke the penalty provisions of the law.

Recommendations

1. The Farm and Open Space Tax Law has resulted in substantial tax benefits to some farmers, and should be retained for those instances where fair market value of farmland far exceeds its current use value.
2. The problem of establishing fair and equitable current use values for farmland has not been adequately addressed, and should be given more attention at the State level. Some municipal assessors have expressed a need for greater guidance on this subject.
3. The penalty for failing to file an annual income statement with the municipal assessor should be reduced, or eliminated altogether. As an alternative, the Statute could provide for a late filing fee or empower the assessor to require an annual income statement when there may be doubt about whether the requirement is being met. If a penalty is retained, the law should be amended to require the assessor to notify the landowner prior to invoking the penalty, and to provide a grace period in which the landowner can file such a statement.
4. The law should be changed to permit an individual a reasonable period of time within which to correct a deficient application for farmland classification.
5. The lack of written notification as to the reasons why a parcel was denied farmland classification is inconsistent with the public notification policy established in the "Right to Know" law. If an assessor denies farmland classification to an individual, he should be required to make the denial in writing, and to state the reasons for the denial.
6. Consideration should be given to increasing the acreage and income requirement for farmland classification, so that the benefits of classification accrue mainly to larger farms which are economically self-sufficient as farm units.
7. An educational program on the law should be established and adequately funded, so that the benefits of the law can be more widely utilized. The appropriate institution for such a program would appear to be the Bureau of Taxation or the University of Maine.

The Law and How It Works

In 1971, the Maine Legislature passed the Farm and Open Space Tax Law which provides for the valuation of land based on its current use as farmland, rather than its potential fair market value for uses more intensive than agriculture. The basic features of the law are described in the following paragraphs.

Legislative Intent

It's clear from reading the purpose of the law that the Legislature intended, among other things, to maintain a readily available source of food and farm products close to the metropolitan areas of the State, and to prevent the forced conversion of farmland to other uses that may occur because of economic pressures generated by property tax assessments. Controlling land use and preserving farmland are key features of the "purpose" section, which reads as follows:

"It is declared that it is in the public interest to encourage the preservation of farmland and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the State to conserve the State's natural resources and to provide for the welfare and happiness of the inhabitants of the State, that it is in the public interest to prevent the forced conversion of farmland and open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farmland and open space land, and that the necessity in the public interest of the enactment of this subchapter is a matter of legislative determination."

The Landowner's Perspective

Landowners who wish to have their land classified as farmland under the law are faced with the following:

1. Determine eligibility. While the municipal tax assessor must determine whether a particular parcel qualifies for classification, it would be prudent for the landowner to determine whether the land is eligible prior to filing an application. By law, the landowner must be prepared to prove that his land meets the statutory definition of farmland. The statutory requirements for classification include the following:
 - (a) Minimum Size - The tract must contain at least 10 contiguous acres.
 - (b) Use - The tract must be used for farming or agricultural activities, but may include woodland and wasteland within the farm unit.
 - (c) Income Requirement - The tract must produce a gross income per year of \$1,000 for 10 acres and \$100 per acre for each acre over 10, with the total income required not to exceed \$2,000; in one of the 2 or 3 of the 5 calendar years preceding the date of application for classification. Gross income includes the value of commodities produced

for consumption by the farm household. The owner who meets all the requirements except the income requirement may apply for a 2-year provisional classification, which is described in detail in the law. At this point, the individual may wish to check with the municipal tax assessor to see if the land is assessed at its current use value for agriculture, or whether it is assessed at fair market value for non-farm use. If it is already assessed at its current use value for agriculture, there will be no tax savings if the land is classified under the law.

2. File schedule entitled "Classification and Valuation of Land as Farmland", with the municipal tax assessor. This schedule, which is prepared by the Bureau of Taxation, must be filed prior to April 1st of the year in which the owner wishes the classification to take effect. The schedule, which is basically an application, must be accompanied by a map or sketch showing the different farmland classifications, as well as the non-farmland portions of the tract. There is a separate schedule for land which is to be classified as open space land. After submitting the schedule, the owner must permit the assessor, or the assessor's duly authorized representative, to enter and examine his lands. In addition, upon notice in writing by certified mail, the owner must, within 60 days of receipt of the notice, respond to any written questions which the assessor may deem necessary in order to obtain information about the land. Alternately, upon written notice by certified mail or by such other method which provides actual notice, the owner must appear before the assessor at such reasonable time and place as the assessor may designate and answer questions which the assessor may deem necessary in order to obtain information about the land. If the owner fails to respond to the written questions, or fails to appear before the assessor, he shall be deemed to have waived all right of appeal.
3. Await Notification. If the landowner has filed a schedule which meets the requirements of the law, the assessor must, by June 1st notify the landowner to that effect. If notification is not given, the application is deemed to be denied. If a landowner is denied, he can petition the assessor for a reconsideration of the decision. This petition must be made within 30 days of the notice of the assessor's decision, or within 30 days of June 1st if no notice is given. If the assessor fails to give written notice of a decision within 90 days, the petition for reconsideration is deemed to have been denied. If the petitioner is not satisfied with the decision of the assessor on reconsideration, he may, within 30 days of notice of such decision, appeal to the Land Classification Appeals Board, which can be contacted through the Bureau of Taxation. If any party is dissatisfied with the decision of the Land Classification Appeals Board, further appeal may be made to Superior Court.
4. Annual Report. If farmland classification is given the landowner must file annually, by April 1st with the assessor, a determination of the gross income realized the previous year from acreage classified as farmland.
5. Notify assessor of change of use of land. It is the owner's obligation to notify the assessor of any change of land use or land classification which would result in the land no longer meeting the requirements for inclusion in the program.
6. Penalty. If the landowner fails to notify the assessor of a change in land use or land classification, or if the owner fails to submit an annual report to the assessor, he will be subject to the taxes which should have been paid if he were not under the program, plus the recapture penalty described in the following paragraph, plus an additional penalty of 25% of the foregoing penalty amount. The assessor may waive the additional penalty for cause.

7. Recapture Penalty. Any change in land use which disqualifies land for classification under this law shall cause a penalty to be assessed by the assessors, in addition to the annual tax in the year of disqualification, except when the change is occasioned by a transfer resulting from the exercise or the threatened exercise of eminent domain. Such penalty shall be computed by multiplying the amount by which the fair market value of the land on the date of withdrawal exceeds the 100% valuation of the real estate as classified under the law, times the following percentages:

10% - land taxed under the law for 5 years or less

20% - land taxed under the law for more than 5 years, but less than 10

30% - land taxed under the law for more than 10 years.

The Assessor's Perspective

Under the law, municipal assessors have a number of responsibilities which include the following:

1. Determine market value of agricultural land. The municipal assessor must determine market value of good cropland, good pasture land and good orchard land. These valuations should reflect the current use value of farmland used for agricultural purposes. The valuations cannot reflect the potential for development. Road or shore frontage valuations should not be included except for homesite or other nonfarm uses. Forest land within the farm unit must be valued based on the valuations established by the State Tax Assessor under the Tree Growth Tax Law. The assessor shall adjust the valuations established for their jurisdiction by 1.2, 1.0, or .8 to reflect the value of very good, good and poor farmland for each parcel.
2. Evaluate schedules filed by landowners. For each schedule filed before April 1st for classification under the law, the assessor shall determine whether the land meets the criteria for classification as farmland. In determining whether such land is farmland, the assessor shall take into account, among other things, the acreage of the land, the portion of the land in actual use for farming or agricultural purposes, the productivity of the land, the gross income derived from the land, the nature and value of the equipment used in connection with the land, and the extent to which the tracts comprising the land are contiguous. If the assessor needs more information from the owner in order to make this determination, he may notify the owner in writing by certified mail, requesting answers to such questions as are necessary to obtain information about the land. Alternately, he may notify the owner in writing by certified mail or such other method which provides actual notice, that the owner must appear before the assessor at such reasonable time and place as the assessor may designate and answer questions which the assessor may deem necessary in order to obtain information about the land. The assessor may also enter and examine the land for which farmland classification is sought.
3. Notify landowner of classification. The assessor must determine whether the land is subject to classification and classify the land as to type and notify the owner by June 1st of that year. Lack of notification on that date constitutes a denial of the application. In the event that certification is denied, the assessor should be prepared to receive a petition for reconsideration from the owner, and to appear before the Land Classification Appeals Board and ultimately, Superior Court if the appeal is carried that far.

Classified farmland shall be subject to the same property tax rate applicable to other property in the jurisdiction. Areas other than farm land and open space land, other than forest land, must be valued on the basis of their fair market value. The valuations for forest land within a classified parcel shall be the 100% valuations per acre established for forest land according to the Tree Growth Tax Law.

The assessor may grant a 2-year provisional classification as farmland to a parcel of land where all the requirements except the gross income requirement are met. If, at the end of the 2-year period, the land does not qualify, the owner pays the following penalty: an amount equal to the taxes which would have been assessed had the property been assessed at its fair market value on April 1 for the 2 preceding tax years less the taxes paid during those 2 preceding years and interest at the legal rate on those amounts which would have been payable.

4. File List with Register of Deeds. On or before June 1st of each year, the assessor shall file a list of parcels classified under the law with the Register of Deeds in the appropriate county.
5. Recertification. The assessor shall determine annually whether any classified land continues to meet the requirements of the law, and shall recertify those classifications which continue to meet the requirements of the law. If any classified land no longer meets the requirements of the law, the assessor shall remove the classification or, if he deems it appropriate, allow the land to have a provisional classification as specified in the law. In the event that the assessor determines, upon his own initiative, to reclassify land previously classified under the law, he shall provide the owner, by certified mail, written notice of his intention to reclassify such land and the reasons for it.

The Tax Impact of Farmland Classification

The following examples are intended to illustrate the practical effect that farmland classification has in terms of tax benefits for the landowner. While the examples reflect actual cases, the calculation of potential tax benefits and the potential recapture penalty are based on the assumption that assessed values, tax rates, and fair market values will remain unchanged over an extended period time. None of these assumptions is very realistic, but it would seem to be necessary to make such assumptions if there is to be any comparison of potential tax benefits to the potential recapture penalty. In reality, the actual recapture penalty will probably be somewhat higher, as fair market value, which is the basis of computing the penalty, will tend to rise at a faster rate than assessed value. The examples do not necessarily represent a cross section of parcels classified as farmland, as data was obtained only from those municipalities that had recently undergone revaluation and that had a full-time assessor.

1. Belfast. Figures taken from the Bureau of Taxation indicate that Belfast has at least 8 parcels of land totalling 659 acres that have been classified as farmland. The following examples were taken for various parcels in Belfast for 1973, 1974, and 1975. The 1973 figure reflects the value of the land and the tax prior to farmland classification. Increases in taxes between 1974 and 1977 primarily reflect increases in the value of house lots. Each of the parcels shown is a portion of one of two large farms.

Parcel A: 9 acres, all placed under farmland classification.

	<u>1973</u>	<u>1974</u>	<u>1977</u>
Assessed Value	\$3,650.00	\$1,600.00	\$1,600.00
Taxes	\$ 90.52	\$ 36.48	\$ 36.80

Using the 1973 and 1974 figures, the owner would realize a potential 5-year tax savings of \$270.20. The potential penalty for removal of the entire parcel from farmland classification on the entire parcel at any time during the 5-year period will be 10% of the difference between the fair market value of the property and the 100% valuation of the property under farmland classification. Since the assessment ratio in Belfast is 100%, it is assumed that fair market value is equal to the assessed value prior to classification so the resulting penalty would be \$205.00. Using all of the above assumptions, the penalty for removal of farmland classification on the entire parcel compares with tax savings as follows:

	<u>Potential Tax Savings</u>	<u>Theoretical Recapture penalty</u>
0 - 5 years (10%)	\$270.20 max	\$205.00 min.
5 - 10 years (20%)	\$540.40 max	\$410.00 min.
over 10 years (30%)	\$594.44 min.	\$615.00 max.

At the above rates, the tax benefits would exceed the penalties depending upon the year of withdrawal. Tax benefits would exceed penalties all of the time after 12 years.

Parcel B: 5 acres, 4 of which have been classified as farmland, and one of which continues to be assessed as a houselot.

	<u>1973</u>	<u>1974</u>	<u>1977</u>
Assessed Value	\$2,400.00	\$2,400.00	\$3,600.00
Taxes	\$ 59.52	\$ 59.52	\$ 82.80

The 4-acre portion is assessed as pastureland, and was previously assessed as rear acreage. Since both are assessed at a rate of \$100/acre, there is no tax savings.

Parcel C: 16 acres, 13 of which are classified as farmland, and 3 of which are assessed as wasteland at \$25.00/acre.

	<u>1973</u>	<u>1974</u>	<u>1977</u>
Assessed Value	\$6,200.00	\$2,700.00	\$2,700.00
Taxes	\$ 153.76	\$ 61.56	\$ 62.10

	<u>Potential Tax Benefit</u>	<u>Theoretical Penalty</u>
0 - 5 years	\$461.00 max.	\$350.00 min.
5 - 10 years	\$920.00 max.	\$700.00 min.
over 10 years	\$1,014.20 min.	\$1,050.02 max.

The tax benefits on this parcel were large because it contains a significant amount of road frontage. The table reflects the fact that tax benefits would exceed penalties for about half of the years under 12 years, and all years over 12.

Parcel D: 74 acres, consisting of a house lot, 15 acres of wasteland, and 58 acres classified as farmland.

	<u>1973</u>	<u>1974</u>	<u>1977</u>
Assessed Value	\$17,200.00	\$10,200.00	\$13,400.00
Taxes	\$ 426.56	\$ 232.56	\$ 394.45

	<u>Potential Tax Benefit</u>	<u>Theoretical Penalty</u>
0 - 5 years	\$ 970.00 max.	\$ 700.00 min.
5 - 10 years	\$1,940.00 max.	\$1,400.00 min.
over 10 years	\$2,134.00 min.	\$2,100.00 max.

Parcel E: 250 acres, consisting of 151 acres classified as farmland, 16 as wasteland, and 83 acres which have been placed under the tree growth tax law.

	<u>1973</u>	<u>1974</u>	<u>1977</u>
Assessed Value	\$26,800.00	\$25,600.00	\$26,100.00
Taxes	\$ 664.64	\$ 583.68	\$ 600.30

The change in assessed value on this parcel was not dramatic because the reduction in assessed value of acres with frontage was offset by a doubling of value on usable acres in the rear (rear land is assessed at \$100/acre, while good tillable land is assessed at \$200/acre). Thus, most of the tax decrease reflects the effects of the Tree Growth Tax Law.

2. Fairfield: According to data obtained from the Bureau of Taxation, there are 35 parcels of land, totalling 1759 acres, which have been classified as farmland. The following example is typical of the tax benefits to be gained from having land classified under the law. The 1976 figure indicates the value of the land prior to classification, while the 1977 figure indicates the value following classification.

Parcel A: 31 acres classified as farmland.

	<u>1976</u>	<u>1977</u>	<u>Difference</u>
Assessed Value	\$11,000.00	\$8,100.00	\$2,900.00
Taxes	\$ 209.55	\$ 154.30	\$ 55.25

	<u>Potential Tax Benefit</u>	<u>Theoretical Penalty</u>
0 - 5 years	\$276.25 max.	\$290.00 min.
5 - 10 years	\$552.50 max.	\$580.00 min.
Over 10 years	\$607.75 min.	\$870.00 max.

Since good tillable land and rear acreage are assessed at the same rate of \$150/acre, the tax benefits gained are a reflection of a lower assessment for each front acre.

3. Fort Fairfield. According to information obtained from the Bureau of Taxation, almost half the classified farmland in the State, consisting of approximately 411 parcels, exists in the Town of Fort Fairfield. The basic cause of this situation was a 1976 revaluation, which formed the basis for the 1977 assessments. An excess frontage value of \$800 per running acre (200 feet deep) was placed on most agricultural land lying along most of the Town's rural roads, resulting in a substantial assessment increase for farmers. (Good tillable land is assessed at \$300/acre). Over 200 individuals subsequently requested farmland classification. The tax impact can be illustrated by an actual example. Parcel A consists of 105 acres. There are 20 acres running along a road which are assessed at the excess frontage rate of \$800/acre. At 17 mills and an assessment ratio of 100%, the difference in assessed value and taxes is:

	<u>Pre-farmland Classification</u>	<u>Farmland Classification</u>	<u>Difference</u>
Assessed Value	\$39,880.00	\$28,620.00	\$11,260.00
Taxes	\$ 667.00	\$ 486.54	\$ 191.42

Assuming that assessments and tax rates do not change, the owner will realize a 5-year tax savings of \$957.10. The penalty for removal of farmland classification on the entire parcel compares with tax savings as follows:

	<u>Potential Tax Savings</u>	<u>Theoretical Penalty</u>
0 - 5 years	\$ 957.10 max.	\$ 1,126.00 min.
5 - 10 years	\$ 1,914.20 max.	\$ 2,252.00 min.
Over 10 years	\$ 2,105.62 min.	\$ 3,378.00 max.

At the above rates, the land would have to remain in farmland classification for 18 years in order for tax savings to equal maximum penalty. Farmland classification appears to be highly advantageous to the farmer with road frontage in Fort Fairfield. However, Fort Fairfield is one of the few municipalities in Aroostook County in which individuals have had their land classified as farmland. In most of the county, land is assessed at its current use value for agricultural purposes.

4. Freeport. In Freeport, 11 parcels, representing 169 acres, have been classified as farmland. However, according to the local assessor, there is not tax benefit to be gained from joining the program and landowners are not encouraged to obtain this classification. The lack of tax benefit is due to the fact that assessment of raw acreage reflects current use. A "raw acre" has a value of \$300, based on a 1974 valuation, and it's defined as anything in excess of a reasonable amount of land needed to support the developed site. For instance, if the zoning ordinance calls for a lot size of $2\frac{1}{2}$ acres, and a parcel with a home contains 10 acres, $7\frac{1}{2}$ acres would be considered as raw acreage, and would be assessed at the \$300 rate, regardless of whether or not it contained road or shore frontage. A large farm with a substantial amount of shore frontage would not be taxed at its speculative value for a housing development, but at its current use value. Consequently, individuals who own large holdings that have been in the family for several generations are not forced to sell because of exorbitant taxes. Individuals who have had their land classified as farmland have tended to be conservation-minded people who are not necessarily looking for a tax break.
5. Winslow. Figures taken from the Bureau of Taxation indicate that Winslow has at least 43 parcels of land totalling 1190 acres that have been classified as farmland. The following examples reflect 1976 pre-classification values for certain parcels, as well as the 1977 classified valuation. Parcels B-E constitute a single farm, so the potential penalties and tax savings for the farm can be found by adding the parcels together.

Parcel A: 98 acres classified as farmland.

	<u>1976</u>	<u>1977</u>	<u>Difference</u>
Assessed Value	\$31,200.00	\$12,000.00	\$19,200.00
Taxes	\$ 461.76	\$ 177.60	\$ 284.16
	<u>Potential Tax Benefit</u>	<u>Theoretical Penalty</u>	
0 - 5 years	\$1,420.80 max.	\$1,920.00 min.	
5 - 10 years	\$2,841.60 max.	\$3,840.00 min.	
Over 10 years	\$3,125.76 min.	\$5,760.00 max.	

Parcel B: 169 acres classified as farmland.

	<u>1976</u>	<u>1977</u>	<u>Difference</u>
Assessed Value	\$52,050.00	\$17,590.00	\$34,460.00
Taxes	\$ 770.34	\$ 260.33	\$ 510.01
	<u>Potential Tax Benefit</u>	<u>Theoretical Penalty</u>	
0 - 5 years	\$2,550.05 max.	\$3,446.00 min.	
5 - 10 years	\$5,100.01 max.	\$6,892.00 max.	
Over 10 years	\$5,610.11 min.	\$10,338.00 max.	

Parcel C: 44 acres classified as farmland.

	<u>1976</u>	<u>1977</u>	<u>Difference</u>
Assessed Value	\$13,050.00	\$8,800.00	\$4,250.00
Taxes	\$ 193.14	\$ 130.24	\$ 62.90
	<u>Potential Tax Benefit</u>	<u>Theoretical Penalty</u>	
0 - 5 years	\$314.50 max.	\$425.00 min.	
5 - 10 years	\$629.00 min.	\$850.00 min.	
Over 10 years	\$691.90 min.	\$1,275.00 max.	

Parcel D: 39 acres classified as farmland.

	<u>1976</u>	<u>1977</u>	<u>Difference</u>
Assessed Value	\$24,550.00	\$8,620.00	\$15,930.00
Taxes	\$ 363.34	\$ 127.58	\$ 235.76
	<u>Potential Tax Benefit</u>	<u>Theoretical Penalty</u>	
0 - 5 years	\$1,178.80 max.	\$1,593.00 min.	
5 - 10 years	\$2,357.60 max.	\$3,185.00 min.	
Over 11 years	\$2,593.36 min.	\$4,779.00 max.	

Parcel E: 87 acres classified as farmland.

	<u>1976</u>	<u>1977</u>	<u>Difference</u>
Assessed Value	\$21,290.00	\$3,110.00	\$18,180.00
Taxes	\$ 315.09	\$ 46.03	\$ 269.06
	<u>Potential Tax Benefit</u>	<u>Theoretical Penalty</u>	
0 - 5 years	\$1,345.30 max.	\$1,818.00 min.	
5 - 10 years	\$2,690.60 max.	\$3,636.00 min.	
Over 10 years	\$2,959.66 min.	\$5,454.00 max.	

In all of the above examples, tax benefits would exceed penalties after 21 years. The total tax savings for the individual who owns parcels B-E amounts to \$1,077.73 per year.

These examples are probably not a sufficient sample from which to draw any firm conclusions about the effectiveness of the program statewide. However, the following statements would appear to be partially supportable:

1. The recapture penalty for withdrawal of farmland classification does not appear to be overly harsh. While the potential penalty exceeds the potential tax savings in many instances, the penalty is calculated on the removal of the entire parcel from farmland classification. If a large tract were removed from farmland classification for non-farm purposes, it seems likely that profits from the sale of the land would easily offset the recapture penalty. Moreover, it is possible to withdraw only a small portion of the parcel, thus reducing the severity of the penalty. This would enable a farmer with considerable holdings to sell some houselots and still realize tax benefits from classification on the remainder of his land.
2. The tax savings to be realized on a small parcel of land (10-15 acres) may be somewhat insignificant, and it's difficult to conceive of anyone being driven off their 10-15 acre farm because of onerous taxes. It is possible that a 10-15 acre farm in a growing suburban area may feel a substantial tax bite without the law. Nevertheless, it is difficult to argue

that allowing farmland classification on such a small parcel contributes to the retention of valuable farmland in Maine. Most farm units have to be considerably larger in order to be economically viable or totally self-sufficient as a farm.

3. The tax benefits, if any, to be gained from farmland classification would appear to depend upon a large number of factors. These factors probably include the taxing practices of the municipality, the amount of road or shore frontage involved, and the manner in which the land was assessed prior to classification. In some cases (see Belfast Parcel B) there may be no tax benefit to be gained.
4. Under farmland classification, tax savings for farmers with large holdings can be substantial (See Winslow, Parcels B-E, all of which are held by a single individual). In some municipalities, the law would seem to be highly beneficial from the standpoint of encouraging large farms to continue as farm units.
5. Regardless of changing assessments, tax rates, and fair market values, it would seem that the tax benefits to be gained from farmland classification will eventually exceed the potential recapture penalty for most parcels.

Issues Related to the Law

Just Value and Current Use Value

From the examples given in the last section, it should be evident that the tax benefit to be gained from classification as farmland, if any, will depend in part upon the tax assessor's determination of the meaning of just value. Just value is defined in Title 36, M.R.S.A., Section 701-A as follows:

In the assessment of property, assessors in determining just value are to define this term in a manner which recognizes only that value arising from presently possible land use alternatives to which the particular parcel of land being valued may be put. Assessors must consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. Restrictions shall include but are not limited to zoning restrictions limiting the use of land, subdivision restrictions and any recorded contractual provisions limiting the use of lands. The just value of land is deemed to arise from and is attributable to legally permissible use or uses only.

In many rural areas of the State, "fair market value" or just value of farmland may reflect the use of the land for farming purposes, rather than house lots or other types of uses. Assessments in most of Aroostook County, for example, reflect the value that land would have for another farmer, rather than a land developer. In these instances, the term just value will be synonymous with current use value. However, in those areas where just value reflects the value of the land for other than agricultural purposes, there will be a difference between just value and current use value, and consequently, a tax benefit to be gained from having farmland classified under the law. When just value reflects other than agricultural use, it's usually the acreage with shore or road frontage that reflects the higher value. In such instances, the amount of tax benefit to be gained from farmland classification will vary according to the amount of frontage in the parcel, and the difference in assessed value between a front acre and a "raw acre" for a particular site. There are no figures to indicate the number of municipalities in which just value of farmland reflects a use other than agriculture. However, if all agricultural land were assessed at current use value, there would be no need for the farmland portion of the law.

The law is not specific about how to arrive at a current use value for agricultural land. The Tree Growth Tax Law, on the other hand, is quite specific about how land under that law is to be assessed. Municipal assessors have little guidance in the form of written criteria on which to base a determination of current use value. The sale of agricultural land within a community is not necessarily a good indicator of current use value for farmland, as the parcel often represents more than agricultural value to the purchaser. It's sometimes very difficult for the assessor to determine if the land was bought strictly for farming purposes. More than one assessor has expressed the need for firmer guidelines, such as the woodland values associated with the Tree Growth Tax Law.

Revaluation

In many areas of the State, taxes on farmland have traditionally been quite low. However, municipal revaluation has sometimes resulted in a dramatic increase in farm taxes, particularly where farmland is assessed at other than a current use basis. In some municipalities, revaluation has been followed by an increase in the number of parcels placed in farmland classification. Personnel at the Bureau of Taxation have stated that future classification under the law will likely increase most in those municipalities that have recently undergone, or are undergoing, revaluation. It is expected that in the majority of these municipalities, just value on agricultural land will reflect the speculative value, rather than the current use value of the land.

Penalties

As of this writing, there are no known examples where the recapture penalty has been invoked for the farmland portion of the law. However, from examples given in the previous section, which are highly theoretical in nature, it should be apparent that the recapture penalty will not far outweigh tax benefits, although the lump sum payment that would be required might create a hardship for some individuals. Moreover, according to the 1974 study conducted by the USDA, Maine's recapture penalty exceeds the penalties exacted by most other states. On the other hand, Maine's recapture penalty would appear to discourage land speculators from using the law as a tax dodge. On the whole, there does not appear to be a convincing argument for reducing the penalty, although the penalty for failing to file an annual income statement seems unusually and unnecessarily harsh.

As it is now written, Maine's law provides no escape from the recapture penalty when extenuating circumstances make it impossible for an individual to meet the requirements for continued classification. Extended illness, disability, or death may preclude an individual from meeting the income requirements. A catastrophic illness may create its own hardship, above and beyond the price of the recapture penalty. It would seem advantageous to allow suspension of the penalty clause in such instances. Such a provision could allow farmland to lie fallow for an indefinite period of time.

The penalty for failing to file an annual income report to the municipal assessor is also quite stiff, and would appear to be more punitive than necessary. Several assessors have stated that a number of individuals had neglected to file an annual income report, thus making them technically liable to the penalty clause. The penalty clause in Section 1109, Subsection 5, reads as follows:

"If the owner or owners fail to report to the assessor as required by the foregoing paragraph, the assessor may collect such taxes as should have been paid, shall collect the penalty provided in Section 1112 (the recapture penalty) and shall assess an additional penalty of 25% of the foregoing penalty amount. The assessor may waive the additional penalty for cause."

(words in italics added)

While the assessor may waive the additional 25% penalty provision, the recapture penalty may amount to several thousand dollars. Most assessors would probably contact the individual before levying the penalty, but this can consume a great deal of time which many assessors do not have. Payment of a small, late reporting fee would appear to be more appropriate if an annual income

report is deemed to be necessary. Another alternative would simply be a provision in the law empowering the assessor to require an income statement when there is some question about whether the requirement is being met. As of this writing, there are no known instances where the penalty for late filing has been invoked.

There has been some question about who pays the recapture penalty; the farmer who sells, or the buyer who intends to change the use of the land. According to personnel at the Bureau of Taxation, the recapture penalty is invoked when the land no longer meets the requirements for continued classification. The mere sale of a parcel will not affect classification. Therefore, the buyer would have to pay the penalty, although knowledge of this fact would undoubtedly affect the sale price.

Appendices

Appendix 1

LAND CLASSIFIED AS FARM LAND
1975 - 1977

Based on data obtained from Bureau of
Property Taxation *

Municipality by County, Date of Valuation	1977		1976		1975	
	<u>Acres</u>	<u>Parcels</u>	<u>Acres</u>	<u>Parcels</u>	<u>Acres</u>	<u>Parcels</u>
<u>Androscoggin County</u>						
Sabattus - 75	1298	18	1298	18	-	-
<u>Total</u>	<u>1298</u>	<u>18</u>	<u>1298</u>	<u>18</u>	-	-
<u>Aroostook County</u>						
Fort Fairfield - 76	34,135	411	-	-	-	-
St. Francis -	-	-	-	-	640	21
Westmanland -	-	-	-	-	1934	28
<u>Total</u>	<u>34,135</u>	<u>411</u>	-	-	<u>2574</u>	<u>49</u>
<u>Cumberland County</u>						
Brunswick - 67	469	11	348	8	348	8
Cape Elizabeth - 69	163	5	163	5	163	5
Freeport - 75	169	11	-	-	169	11
Gorham - 68	314	14	-	-	-	-
New Gloucester - 67	122	6	-	-	-	-
Otisfield -	38	1	38	1	38	1
Sebago-76	15	2	-	-	-	-
Raymond -	-	-	-	-	1621	5
Westbrook - 76	481	8	481	8	481	8
Windham - 76	1702	35	1290	24	-	-
<u>Total</u>	<u>3471</u>	<u>93</u>	<u>2489</u>	<u>57</u>	<u>2651</u>	<u>27</u>
<u>Franklin County</u>						
Farmington - 71	1825	19	1794	18	1794	18
Wilton - 74	75	3	-	-	-	-
<u>Total</u>	<u>1898</u>	<u>22</u>	<u>1794</u>	<u>18</u>	<u>1794</u>	<u>18</u>

*This data does not necessarily reflect all land which has been classified as farmland. Not all municipalities have reported this information. Gaps exist for some municipalities for certain years.

	1977		1976		1975	
	<u>Acres</u>	<u>Parcels</u>	<u>Acres</u>	<u>Parcels</u>	<u>Acres</u>	<u>Parcels</u>
<u>Hancock County</u>						
Amherst -	-	-	127	6	-	-
Castine - 72	41	2	35	1	130	2
Deer Isle -	-	-	-	-	5	1
Gouldsboro -	137	2	-	-	-	-
Orland - 74	-	-	100	2	100	2
Penobscot - 68	150	1	150	1	150	1
Verona - 76	46	1	46	1	-	-
<u>Total</u>	<u>374</u>	<u>6</u>	<u>490</u>	<u>12</u>	<u>385</u>	<u>6</u>
<u>Kennebec County</u>						
Belgrade - 77	460	7	-	-	-	-
Benton - 77	28,311	69	-	-	-	-
Clinton - 77	6023	66	-	-	-	-
Gardiner - 67	274	7	274	7	274	7
Hallowell - 65	120	1	120	1	120	1
Monmouth - 73	75	2	-	-	-	-
Mount Vernon - 64	668	20	-	-	-	-
Readfield - 71	68	1	68	1	68	1
Windsor -	89	2	-	-	-	-
Winslow - 76	1190	43	1972	35	-	-
Winthrop - 70	325	10	325	10	-	-
<u>Total</u>	<u>37,603</u>	<u>228</u>	<u>2760</u>	<u>54</u>	<u>405</u>	<u>11</u>
<u>Knox County</u>						
Cushing - 75	83	2	83	2	83	2
<u>Total</u>	<u>83</u>	<u>2</u>	<u>83</u>	<u>2</u>	<u>83</u>	<u>2</u>
<u>Lincoln County</u>						
Bristol - 74	94	4	95	4	95	4
Waldoboro - 71	200	5	200	5	200	5
<u>Total</u>	<u>294</u>	<u>9</u>	<u>294</u>	<u>9</u>	<u>294</u>	<u>9</u>

	1977		1976		1975	
	<u>Acres</u>	<u>Parcels</u>	<u>Acres</u>	<u>Parcels</u>	<u>Acres</u>	<u>Parcels</u>
<u>Oxford County</u>						
Bethel - 76	355	13	-	-	-	-
Byron -	345	5	345	1	524	1
Denmark -	184	2	-	-	-	-
Oxford -	146	4	-	-	-	-
<u>Total</u>	<u>1030</u>	<u>24</u>	<u>345</u>	<u>1</u>	<u>524</u>	<u>1</u>
<u>Penobscot County</u>						
Bangor - 71	118	2	118	2	118	2
Herman - 76	552	3	552	3	552	3
Lee -	101	1	-	-	-	-
Woodville -	-	-	228	6	228	6
<u>Total</u>	<u>771</u>	<u>6</u>	<u>899</u>	<u>11</u>	<u>899</u>	<u>11</u>
<u>Piscataquis County</u>						
Dover-Foxcroft - 75	-	-	25	1	25	1
Parkman -	-	-	-	-	352	5
<u>Total</u>	<u>-</u>	<u>-</u>	<u>25</u>	<u>1</u>	<u>377</u>	<u>6</u>
<u>Sagadahoc County</u>						
Bowdoin - 76	236	-	-	-	-	-
Bowdoinham - 68	949	25	949	25	949	25
<u>Total</u>	<u>1185</u>	<u>36</u>	<u>949</u>	<u>25</u>	<u>949</u>	<u>25</u>
<u>Somerset County</u>						
Fairfield - 76	1759	35	2295	38	-	-
Moscow -	-	-	-	-	19	2
Norridgewock -	366	2	-	-	-	-
<u>Total</u>	<u>2125</u>	<u>37</u>	<u>2293</u>	<u>38</u>	<u>19</u>	<u>2</u>
<u>Waldo County</u>						
Belfast - 73	659	8	659	8	614	6
Burnham - 73	32	2	-	-	18	2
Waldo -	749	15	-	-	-	-
<u>Total</u>	<u>1440</u>	<u>25</u>	<u>659</u>	<u>8</u>	<u>632</u>	<u>8</u>

	1977		1976		1975	
	<u>Acres</u>	<u>Parcels</u>	<u>Acres</u>	<u>Parcels</u>	<u>Acres</u>	<u>Parcels</u>
<u>Washington County</u>						
Calais - 73	35	1	-	-	-	-
Charlotte - 77	25	1	25	1	-	-
<u>Total</u>	<u>60</u>	<u>2</u>	<u>25</u>	<u>1</u>	-	-
<u>York County</u>						
Biddeford - 74	352	12	278	7	212	5
Kennebunkport - 75	60	4	62	1	-	-
Wells - 75	726	12	726	12	-	-
York - 76	143	5	-	-	-	-
Totals	<u>1281</u>	<u>17</u>	<u>1066</u>	<u>25</u>	<u>212</u>	<u>5</u>
<u>Total for State:</u>	<u>87,048</u>	<u>957</u>	<u>15,649</u>	<u>280</u>	<u>12,082</u>	<u>194</u>

FARM TAXATION EXPERIENCE IN OTHER STATES

According to a 1974 report issued by the U.S.D.A.,¹ more than half of the States in the U.S. had legislation in effect to provide property tax relief to eligible farmland. These laws, which are summarized in the table that follows, fall into 3 basic categories as follows:

1. Preferential Assessment laws

Definition: Laws which provide that land is to be valued according to its current use. These laws do not provide a penalty if the land is later converted to another use.

Discussion: Preferential assessment is most likely to produce the greatest increase in other people's taxes, and it's probably the least effective for controlling land use. While it does reduce tax burdens for farmers, its benefits accrue equally to the land speculator and the bonafide farmer. Thus, preferential assessment laws are often used as a tax shelter by the land speculator.

2. Deferred tax laws

Definition: Laws which provide that land is to be taxed according to its current use value, but that a penalty tax shall be levied against the land or its owner when the use of the land is changed.

Discussion: Deferred taxes will not only help the farmer, but will also affect land use, particularly in those states with a strong recapture penalty. The increase in taxes to non-farmers will be partially offset as land moves out of the program and deferred taxes are collected.

3. Restrictive Agreements

Definition: Restrictive agreements are contracts between the land owner and the municipality, in which the use of the land is restricted in exchange for differential assessment.

Discussion: The effectiveness of restrictive agreements will probably be similar to the effectiveness of deferred taxation laws, in terms of providing tax relief to the farmer, and controlling land use. One advantage of these agreements is that government may have a slightly greater degree of control in the rate at which farm land is converted to other uses. In those instances where farmland should be so converted, the municipality can refuse to enter into a restrictive agreement. Administratively, restrictive agreements may be more time consuming for the municipality than a deferred taxation law.

According to the U.S.D.A. report just cited, there is no question that the various State laws have reduced the property tax burden for the farmer. However, in terms of influencing land use, the various programs have shown mixed results, as follows:

- 1) In California, the California State Board of Equalization reports that almost $\frac{1}{4}$ of the State's agricultural land has been placed in the program. Carman and Polson,² who studied the California experience, reported that the early experience of the program showed that land placed in the program was below average value, and was probably in little immediate danger of being converted to non-agricultural use. Owners of land near cities, where land was more likely to be converted to urban uses, apparently were not as interested in differential assessment.
- 2) In New Jersey, a study³ of 311 participants in the State's Farmland Assessment Act found that 40% thought the Act was "... a positive influence enabling them to continue to farm". The study also found that the Act was implemented more slowly in rural areas than in transitional zones, apparently because in many rural areas, the level of assessment was less than the proposed productive values.
- 3) In Maryland, a study⁴ concluded that the rate at which land was converted to non-farm use was slower in the last decade, under the Law, than in the previous decade.
- 4) In Washington, a study⁵ is that State's program concluded that most of the participants were not likely to have converted their land to other uses without the program.
- 5) In California, a study⁶ indicated that the program in that State had broken the cycle that begins with high assessments, and ends with the sale of farm land for other types of uses.

The U.S.D.A. report concludes that state differential taxation programs by themselves cannot be effective in preserving farms and guiding land use.

The following table contains a summary of various state laws pertaining to agricultural assessment. In most of those laws, participation in the program results in assessment based on current use, or productive value, of the farmland. The exact method of calculating assessment is not included because of the repetitiveness of the data.

It would appear from this table that Maine, Oregon, and Washington have the strongest penalty provisions for opting out of the program. Oregon's penalty provision is also based on zoning, and is apparently intended to make tax policy consistent with the purposes of zoning.

SUMMARY OF STATE LAWS FOR
DIFFERENTIAL TAXATION OF FARMLAND

KEY: P = Preferential Assessment
D = Deferred Tax
N.A. = Not Applicable

STATE	Type of Tax. - Date Enacted	Eligibility for Program	Penalty for Land Use Change
ALASKA	D 1967	Owner must be actively engaged in farming, derive at least $\frac{1}{4}$ of year's gross income from the farm	Liable for back taxes for preceeding 2 years. Amount to be fair market value less amount actually paid
ARKANSAS	P 1969	To be determined by County Board of Equalization.	N.A. Only requirement is to notify County Assessor
CALIFORNIA	Contract type (Williamson Act) 1965	Farmer contracts with city or county government not to change land use for 10 years in return for lower assessment.	Cannot change land use under terms of contract, or cancel for opportunity to change land use.
COLORADO	P 1967	Land must be used primarily for farming. Land must have been so used for previous 2 years, and classified as agricultural for previous 10.	None
CONNECTICUT	D 1963	To be determined by municipal assessment	Conveyance tax, to be 10% of sale price in first year of classification, 9% in second year, etc. No tax after 10 years.
DELAWARE	P 1968	5 acres, actively devoted to agriculture. Gross sales must average \$500/year for 2 preceding years.	N.A.

SUMMARY OF STATE LAWS FOR
DIFFERENTIAL TAXATION OF FARMLAND

KEY: P = Preferential Assessment
D = Deferred Tax
N.A. = Not Applicable

STATE	Type of Tax. - Date Enacted	Eligibility for Program	Penalty for Land Use Change
FLORIDA	P 1968	To be determined by municipal assessor, based on statutory criteria.	N.A.
HAWAII	P 1961	State Dept. of Agriculture determines if land is reasonably well suited for its intended use, using statutory criteria owner must agree not to develop for 10 or 20 year period.	Failure to observe agreement: difference between taxes paid and what they would have been, plus 10% per year penalty.
IDAHO	P 1971	Law simply says that actual use will have bearing on use assessment.	N.A.
ILLINOIS	D 1970	10 acres devoted primarily to agriculture. Land must have been in farm use 3 years prior to application for farm use assessment.	Difference between taxes paid and what they would have been for 3-year period plus 5%.
INDIANA	P 1961	Land devoted to agricultural land shall be assessed as such. No application necessary.	N.A.
IOWA	P 1967	10 acres, devoted to agricultural purposes, and located within municipal boundaries (tax is limited to $1\frac{1}{4}$ mills).	N.A.
KENTUCKY	D 1971	10 acres in use at least 5 successive years, and must have had an assessment greater than its agricultural value. Cannot be zoned for other than agricultural use, cannot be	Difference between taxes paid and what they would have been for 2-year period preceding change.

SUMMARY OF STATE LAWS FOR
DIFFERENTIAL TAXATION OF FARMLAND

EY: P = Preferential Assessment
D = Deferred Tax
N.A. = Not Applicable

STATE	Type of Tax. - Date Enacted	Eligibility for Program	Penalty for Land Use Change
MAINE	D 1971	10 acres, Gross income from farm \$1,000/year for 3 of preceding 5 years	Difference between taxes paid and what they would have been for full period, plus penalties. Penalties are a percentage of taxes owed. Percentage varies according to length of time land was in program: Less than 5 years: 10% 5 - 10 years: 20% More than 10 years: 30%
MARYLAND	P 1956 Now P & D	To be determined by State Dept. of Assessments and Taxation.	Twice the difference between taxes paid and what they would have been, unless owner waits for 3 years after resumption of fair market value tax.
MINNESOTA	D 1967	10 acres. Land must be devoted to agri- culture. Owner must derive 1/3 of family income from it or \$300/year plus \$10 per tillable acre. Must be homestead of owner, or in possession of owner 7 years prior to application.	Difference between taxes paid and what they would have been for 3-year period preceding change or sale of land.
MONTANA	D 1973	5 acres in size, with gross value of pro- duction \$1000/year, <u>or</u> it produces at least 15% of owner's income.	Difference between taxes paid and what they would have been for 3-year period preceding change or sale of land.

SUMMARY OF STATE LAWS FOR
DIFFERENTIAL TAXATION OF FARMLAND

KEY: P = Preferential Assessment
D = Deferred Tax
N.A. = Not Applicable

STATE	Type of Tax. - Date Enacted	Eligibility for Program	Penalty for Land Use Change
NEW HAMPSHIRE	D 1974	To be determined by local tax officials.	10% of full market value.
NEW JERSEY	D 1964	\$500 in gross sales from first 5 acres during previous 2 years, plus 50¢ per acre for all acreage above 5 acres for previous 2 years.	Difference between taxes paid and what they would have been for 3-year period preceding change.
NEW MEXICO	P 1967	Gross product sales must have averaged \$100 per year during 2 previous years. Land must be used for agricultural purposes.	N.A.
NEW YORK	Combination <u>D</u> and restrictive agreement - 1971	Land must be used for agricultural purposes. If not in an agricultural district, landowner must enter a restrictive agreement with local government. Owner may petition State for creation of agricultural district.	Difference between taxes paid and what they would have been for 5-year period.
NORTH CAROLINA	D 1973	10 acres, produced products with average gross income of \$1000 per year for preceding 3 years. Land must be owner's residence, or owned by one family for 7 preceding years. Land must be used for agricultural purposes.	Difference between taxes paid and what they would have been. In case of sale or loss of eligibility owner must pay deferred taxes for 5 years plus interest. Failure to notify tax supervisor of change in ownership or use results in additional penalty of 10%.
NORTH DAKOTA	P 1973	Agricultural lands in corporate limits are to be assessed at same rate as those outside corporate limits.	N.A.

SUMMARY OF STATE LAWS FOR
DIFFERENTIAL TAXATION OF FARMLAND

KEY: P = Preferential Assessment
D = Deferred Tax
N.A. = Not Applicable

STATE	Type of Tax. - Date Enacted	Eligibility for Program	Penalty for Land Use Change
OREGON	D 1963	Land must be used for agricultural purposes. Gross income must be \$500 per year for 3 of 5 preceding calendar years. If land not in farm zone, must have been used for 2 previous years. The Dept. of Revenue shall provide by regulation for more detailed definition of farm use. Land in a farm use Zone automatically qualifies for tax break.	For land in farm use zone, up to 10 times (amount varies by number of years in program) difference between taxes paid and what they would have been for unzoned land, difference between taxes paid and what they would have been, plus 6% up to a 10-year limit.
PENNSYLVANIA	Restrictive Covenant 1966	20 acres land must be used for agricultural purposes. County enters into covenant with landowner in exchange for lower assessment. Land must be shown on regional, county, or local plan as agricultural.	Difference between taxes paid and what they would have been plus compound interest at 5%.
RHODE ISLAND	D 1968	To be determined by municipal assessor, based upon statutory criteria.	Difference between taxes paid and what they would have been for preceding 3-years.
SOUTH DAKOTA	P 1967	Land which has been used primarily for agricultural purposes for at least the 5 preceding years.	N.A.

SUMMARY OF STATE LAWS FOR
DIFFERENTIAL TAXATION OF FARMLAND

KEY: P.= Preferential Assessment
D= Deferred Tax
N.A. = Not Applicable

STATE	Type of Tax. - Date Enacted	Eligibility for Program	Penalty for Land Use Change
TEXAS	D 1966	Land must have been exclusively, and continuously in agricultural use for the 3 preceding years.	Difference between taxes paid and what they would have been for 3 preceding years.
UTAH	D 1969	5 Acres. Land must have been actively devoted to agricultural use for at least 5 preceding years. Acreage requirement may be waived if owner obtains 80% of his income from the land. Income must be average of \$250 per year for last 5 years.	Difference between taxes paid and what they would have been for up to previous 5 years.
VERMONT	Restrictive Agreements 1969	Owner of <u>any</u> property may convey any rights to any receptive State agency or the municipality. Municipalities may also enter into contracts with farmers for up to 10 years.	N.A.
VIRGINIA	D 1971	To be determined by local assessor. Municipality must first have a comprehensive plan and a tax ordinance. Land must be 5 acres in size.	Difference between taxes paid and what they would have been plus 6% per annum.

SUMMARY OF STATE LAWS FOR
DIFFERENTIAL TAXATION OF FARMLAND

KEY: P = Preferential Assessment
D = Deferred Tax
N.A. = Not Applicable

STATE	Type of Tax. - Date Enacted	Eligibility for Program	Penalty for Land Use Change
WASHINGTON	Restrictive Agreement	20 acres devoted to agriculture, or 5-20 acres with gross income of at least \$100 per acre for at least 3 of the last 5 years, or any parcel less than 5 acres with a gross income of \$1000 per year for 3 of last 5 preceding years. Land must remain agricultural for 10 years.	If owner withdraws land after 8 years, difference between taxes paid and what they would have been for previous 7 years, plus interest. Any other change will be the above penalty plus 20%.
MICHIGAN	Circuit Breaker (This was a proposal in 1973)	40 or more acres devoted to agriculture 3 of last 5 years, or 5-40 acres with \$100 gross income for 3 of last 5 years. Contract is made with State department of Treasury. Owner will receive up to \$3000 credit against State income tax liability equal to amount by which real property taxes exceed 8% of household income.	N.A.

This table prepared from information contained in
Agricultural Economic Report No. 256, U.S.D.A.,
April, 1974.

FARM AND OPEN SPACE TAX LAW (as of October 24, 1977)

TITLE 36

§ 1101. Purpose

It is declared that it is in the public interest to encourage the preservation of farmland and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the State to conserve the State's natural resources and to provide for the welfare and happiness of the inhabitants of the State, that it is in the public interest to prevent the forced conversion of farmland and open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farmland and open space land, and that the necessity in the public interest of the enactment of this subchapter is a matter of legislative determination.

§ 110²7. Definitions

When used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Assessor. "Assessor" means the State Tax Assessor with respect to the unorganized territory and the respective municipal assessors with respect to the organized areas.
2. Comprehensive plan. "Comprehensive plan" means zoning or a plan of development, including any amendment thereto, prepared or adopted by the planning board.
3. Cropland. "Cropland" means acreage within a farm unit of land in tillage rotation, open land formerly cropped and land in bush fruits.
4. Farmland. "Farmland" means any tract or tracts of land, including woodland and wasteland of at least 10 contiguous acres on which farming or agricultural activities have produced a gross income per year in one of the 2 or 3 of the 5 calendar years preceding the date of application for classification of at least:
 - A. \$1,000 for 10 acres; and
 - B. \$100 per acre for each acre over 10, with the total income required not to exceed \$2,000.

Gross income as used in this section includes the value of commodities produced for consumption by the farm household. Any applicant for assessment under this subchapter bears the burden of proof as to his qualification.

5. Farm woodland. "Farm woodland" means the combined acreage within a farm unit of forested land.

6. Open space land. "Open space land" means any area of land, including state wildlife and management areas, sanctuaries and preserves designated as such in Title 12, the preservation or restriction of the use of which would:

- A. Conserve scenic resources;
- B. Enhance public recreation opportunities;
- C. Promote game management; or
- D. Preserve wildlife.

7. Orchard land. "Orchard land" means the combined acreage within a farm unit of land devoted to the cultivation of trees bearing edible fruit.

8. Pastureland. "Pastureland" means the combined acreage within a farm unit of land devoted to the production of forage plants used for annual production.

9. Planning board. "Planning board" means a planning board created for the purpose of planning in any municipality or the Maine Land Use Regulation Commission in the unorganized territory.

§ 1103. Owner's application

An owner of farmland or open space land may apply for taxation under this subchapter for the calendar year 1978, and for subsequent calendar years, at his election by filing with the assessor the schedule provided for in section 1109. The election to apply shall require the unanimous consent of all owners of an interest in that farmland or open space land.

§ 1104. Administration; regulations

The State Tax Assessor shall adopt and amend such rules and regulations as may be reasonable and appropriate to carry out his responsibilities as provided in this subchapter.

§ 1105. Valuation of farmland

The municipal assessor, chief assessor or State Tax Assessor for the unorganized territory shall establish the 100% valuation per acre for good cropland, good orchard land, good pastureland and open space. The 100% valuations per acre shall be based on the current use value of farmland used for agricultural purposes and open space land used for open space purposes. These valuations shall reflect neither the potential for development of farmland or open space for purposes other than for agriculture or open space nor the value attributable to road or shore frontage.

Subsequent to the determination of 100% valuation per acre, the municipal assessor, chief assessor or State Tax Assessor for the unorganized territory shall determine the valuation of each parcel of farmland classified under this subchapter, on a schedule provided by the State Tax Assessor, by adjusting the 100% valuation by the following ratios to reflect the value of very good, good and poor farmland:

	Very Good	Good	Poor
Cropland	1.2	1.0	.8
Orchardland	1.2	1.0	.8
Pastureland	1.2	1.0	.8

The 100% valuations per acre for farm and open space woodland within a parcel classified under this subchapter shall be the 100% valuation per acre for each forest type established for each county pursuant to chapter 105, subchapter 11-A. Areas other than woodland, pasture-land, orchard land, cropland or open space located within any parcel of farmland or open space classified under this subchapter shall be valued on the basis of just value.

§ 1106. Powers and duties, State Tax Assessor

The State Tax Assessor shall also establish recommended current use values by county for each classification of open space land established in section 1102, subsection 6. The municipal assessors shall not be required to use the values recommended, but must be prepared in any appeal to explain their systems of arriving at current use values and shall have the burden of proving the recommended values to be in error with regard to the parcel or parcels of land in question. For the purposes of this section "current use" shall mean the valuation per acre which land would command if it were required to remain henceforth in an open space qualifying use.

§ 1108. Assessment of tax.

1. Organized areas. The municipal assessors shall adjust the 100% valuations per acre for farmland for their jurisdiction by whatever ratio, or percentage of current just value, is then being applied to other property within the municipality to obtain the assessed values. Commencing April 1, 1978, land in the organized areas subject to taxation under this subchapter shall be taxed at the property tax rate applicable to other property in the municipality, which rate shall be applied to the assessed values so determined. The assessed values determined under this section shall first be reflected in the 1979 State Valuation of Municipalities.

2. Unorganized territory. The State Tax Assessor shall adjust the 100% valuations per acre for farmland for the unorganized territory by such ratio or percentage as is then being used to determine the state valuation applicable to other property in the unorganized territory to obtain the assessed values. Commencing April 1, 1978, land in the unorganized territory subject to taxation under this subchapter shall be taxed at the state property tax rate applicable to other property in the unorganized territory, which rate shall be applied to the assessed values so determined.

§ 1109. Schedule; Investigation

1. Schedule. The owner or owners of farmland subject to taxation under this subchapter shall submit a signed schedule in duplicate, on or before April 1st of the year in which the owner or owners wish to first subject such land to taxation under this subchapter, to the assessor upon a form to be prescribed by the State Tax Assessor identifying the land to be taxed hereunder, listing the number of acres of each farmland classification, showing the location of the land in each classification and representing that the land is farmland within the meaning of section 1102, subsection 4. In determining whether such land is farmland, there shall be taken into account, among other things, the acreage of such land, the portion thereof in actual use for farming or agricultural operations, the productivity of such land, the gross income derived therefrom, the nature and value of the equipment used in connection therewith and the extent to which the tracts comprising such land are contiguous. If the assessor finds that the land meets the requirements of Section 1102, subsection 4, the assessor shall classify it as farmland, apply the appropriate 100% valuations per acre for farmland and it shall be subject to taxation under this subchapter. The assessor shall file with the register of deeds in the appropriate county, on or before June 1st in each year, a list of all parcels of land classified under this subchapter. If a

parcel of land is classified after such date, the assessor shall file notice of said classification with the register of deeds in the appropriate county within 14 days of said classification. The list filed pursuant to this subsection shall be on a form provided by the State Tax Assessor, shall contain the name of each owner, the date of classification and a short description of each parcel of real estate, together with such other information as the State Tax Assessor may prescribe.

2. Provisional classification. The owner of a parcel of land, including woodland and wasteland of at least 10 contiguous acres on which farming or agricultural activities have not produced the gross income required in section 1102, subsection 4 per year for one of the 2 or 3 of the 5 preceding calendar years, may apply for a 2-year provisional classification as farmland by submitting a signed schedule in duplicate, on or before April 1st of the year for which provisional classification is requested, identifying the land to be taxed hereunder, listing the number of acres of each farmland classification, showing the location of the land in each classification and representing that the applicant intends to conduct farming or agricultural activities upon that parcel. Upon receipt of the schedule, the land shall be provisionally classified as farmland and subjected to taxation under this subchapter. If at the end of the 2-year period, the land does not qualify as farmland under section 1102, subsection 4, the owner shall pay a penalty which shall be an amount equal to the taxes which would have been assessed had the property been assessed at its fair market value on the first day of April for the 2 preceding tax years less the taxes paid on the property over the 2 preceding years and interest at the legal rate from the dates on which those amounts would have been payable.

3. Comprehensive plan. The owner or owners of land included in any area designated as open space land upon any comprehensive plan or in any zoning ordinance or upon any zoning map as finally adopted or any other owner of land who believes that his land falls within the definition of open space land contained in section 1102, subsection 6, shall submit a signed schedule in duplicate on or before April 1st of the year in which such land first becomes subject to taxation under this subchapter, to the assessor upon a form to be prescribed by the State Tax Assessor containing a description of the land, a general description of the use to which it is being put and such other information as the assessor may require to aid him in determining whether such land qualifies for such classification. If the land is included in an area designated as open space land on a comprehensive plan or in a zoning ordinance or upon a zoning map as finally adopted, such land shall be classified as open space land and shall be subject to taxation hereunder. If the land is not included in an area designated as open space land on a comprehensive plan or in a zoning ordinance or upon a zoning map as finally adopted, the assessor shall determine whether the land falls within the definition of open space land contained in section 1102, subsection 6, and if so, such land shall be classified as open space land and subject to taxation hereunder. In the event that any parcel of land, for which the owner or owners are seeking classification as open space, shall contain any residential structures in current use, the owner or owners in their schedule shall exclude from their application for classification as open space a parcel of land containing such buildings equivalent in size to the state minimum lot size as prescribed by Title 12, section 4807-A or by the zoning ordinances or zoning map pertaining to the area in which the land is located, whichever is larger.

4. The assessor shall notify the landowner of his determination as to the applicability of this subchapter by June 1st following receipt of a signed schedule meeting the requirements of this section. If such notification is not given, except for an application for provisional classification as farmland, the assessor shall be deemed to have denied taxation hereunder at that time unless the land was taxed under this subchapter in the preceding year, in which case the assessor

shall be deemed to have permitted taxation hereunder.

The assessor or the assessor's duly authorized representative may enter and examine the lands under this subchapter for tax purposes and may examine into any information submitted by the owner or owners.

Upon notice in writing by certified mail, return receipt requested, any owner or owners shall be required, within 60 days of the receipt of such notice, to respond to such written questions or interrogatories as the assessor may deem necessary to obtain material information about those lands. Should the assessor determine that he cannot reasonably obtain the required material information regarding those lands through such written questions or interrogatories, the assessor may require any owner or owners, upon notice in writing by certified mail, return receipt requested, or by such other method as provides actual notice, to appear before the assessor at such reasonable time and place as the assessor may designate and answer such questions or interrogatories as the assessor may deem necessary to obtain material information about those lands.

5. Owner obligation. If the owner or owners of any parcel of land subject to taxation under this subchapter fail to submit the schedules under the foregoing provisions of this section, or fail to respond, within 60 days of receipt, to written questions or interrogatories of the assessor, or fail within 60 days of receipt of notice as provided in this section, to appear before the assessor to respond to questions or interrogatories, or fail to provide information after notice duly received as provided under this section, such owner or owners shall be deemed to have waived all rights of appeal. It shall be the obligation of the owner or owners to report to the assessor any change of use or change of classification of land subject to taxation hereunder and to file annually by April 1st with the assessor a determination of the gross income realized the previous year from acreage classified as "farmland". If the owner or owners fail to report to the assessor as required by the foregoing paragraph, the assessor may collect such taxes as should have been paid, shall collect the penalty provided in section 1112 and shall assess an additional penalty of 25% of the foregoing penalty amount. The assessor may waive the additional penalty for cause.

6. Recertification. The assessor shall determine annually whether any classified land continues to meet the requirements of this subchapter. Each year the assessor shall recertify any classifications made under this subchapter. If any classified land no longer meets the requirements of this subchapter, the assessor shall either remove the classification or, if he deems it appropriate, allow the land to have a provisional classification as detailed in subsection 2.

§ 1110. Reclassification

Land subject to taxes under this subchapter may be reclassified as to land classification by the municipal assessor, chief assessor or State Tax Assessor upon application of the owner with a proper showing of the reasons justifying such reclassification or upon the initiative of the respective municipal assessor, chief assessor or State Tax Assessor where the facts justify same. In the event that the assessor determines, upon his own initiative, to reclassify land previously classified under this subchapter, he shall provide to the owner or owners of the land by certified mail, return receipt requested, notice of his intention to reclassify such land and the reasons therefor.

§ 1111. Scenic easements and development rights

Any municipality may, through donation or the expenditure of public funds, accept or acquire scenic easements or development rights for preserving property for the preservation of agricultural farmland or open space land. The term of such scenic easements or development rights must be for a period of at least 10 years.

§ 1112. Recapture penalty

Any change in use disqualifying land for classification under this subchapter shall cause a penalty to be assessed by the assessors of the municipality in which the land is located, or by the State Tax Assessor if the land is not within a municipality, in addition to the annual tax in the year of disqualification except when the change is occasioned by a transfer resulting from the exercise or the threatened exercise of the power of eminent domain.

Such penalty shall be an amount computed by multiplying the amount, if any, by which the fair market value of the real estate on the date of withdrawal exceeds the 100% valuation of the real estate pursuant to this subchapter on the preceding April 1st by the following rates: Ten percent for land which has been taxed under this subchapter for 5 years or less, 20% for land which has been taxed under this subchapter for more than 5 years but less than 10 years and 30% for land which has been taxed under this subchapter for 10 years or more.

No penalty shall be assessed at the time of a change of use from one classification of land subject to taxation under this subchapter to another classification of land subject to taxation under this subchapter nor shall any penalty be assessed upon the withdrawal of land from taxation under this subchapter if the owner applies for and is accepted for classification as timberland under subchapter 11-A, provided that in the event a penalty is later assessed under subchapter 11-A the period of the time that the land was taxed as farmland or open space land under this subchapter shall be included for purposes of establishing the amount of the penalty.

§ 1113. Enforcement provision

There shall be a tax lien to secure the payment of the penalties provided in sections 1112 and 1109, subsections 2 and 6. Such a lien may be enforced in the same manner as liens on real estate created by section 552.

§ 1114. Application

No person can apply for classification for more than an aggregate total of 15,000 acres under this subchapter. The classification of farmland or open space land hereunder shall continue until the municipal assessor, or State Tax Assessor in the unorganized territory, determines that the land no longer meets the requirements of such classification.

§ 1115. Sale of a portion of a parcel of land

Sale of a portion of a parcel of land subject to taxation under this subchapter shall not affect the taxation under this subchapter of the resulting parcels unless they do not meet the minimum acreage requirements of this subchapter. Each resulting parcel shall be taxed to the owners under this subchapter until such parcel is withdrawn from taxation under this subchapter, in which case the penalties provided for in section 1112 shall apply only to the owner of such parcel.

If a parcel resulting from such sale is less than the minimum acreage requirement of this subchapter, such parcel shall be considered as withdrawn from taxation under this subchapter as a result of such sale and subject to penalties as provided.

§ 1117. Appeal from State Tax Assessor or Commissioner of Agriculture

1. Petition for reconsideration. Any person aggrieved by any order of either the State Tax Assessor or the Commissioner of Agriculture under sections 1105 or 1106 may petition him for reconsideration of that order within 30 days of the issuance of that order. If a petition for reconsideration is filed within that period, the State Tax Assessor or the Commissioner of Agriculture shall reconsider the matter and, if the petitioner has so requested in his petition, shall grant that petitioner an oral hearing, shall provide for a transcript thereof and shall give the petitioner at least 15 days' notice of the time and place thereof. For cause shown, the State Tax Assessor or the Commissioner of Agriculture may extend the time for filing of such petition. The State Tax Assessor or the Commissioner of Agriculture may amend or reaffirm his orders or determinations as he sees fit and may order a refund in whole or in part of any taxes, costs, penalties or interest thereon which have been erroneously or unjustly paid since the changed rates or values. In the event of any change in rates or values, the rates or values as so changed shall remain in effect until the next review period. If the State Tax Assessor or the Commissioner of Agriculture fails to give written notice of his decision within 90 days of the filing of a petition for reconsideration, the petition shall be deemed to have been denied and the petitioner may appeal as provided, unless the petitioner shall in writing have consented to further delay.

2. Appeal to Superior Court. Any person aggrieved by the decision upon such petition may, within 30 days after notice thereof from the State Tax Assessor or the Commissioner of Agriculture, or after the petition shall be deemed to have been denied, appeal therefrom to the Superior Court in the county where the land or any part of the land is located. Notice of the appeal shall be ordered by the court and trial shall be held without jury in the manner and with the rights provided by law in other civil actions so heard. The proceedings shall not be de novo. The court shall receive into evidence true copies of the transcripts of the hearing, the transcript of the reconsideration hearing if further evidence was offered, the exhibits thereto and the decision of the assessor. The court's review shall be limited to questions of law and to whether the assessor acted regularly and within the scope of his authority and the assessor's decision shall be final so long as supported by substantial evidence. The court may enter a judgment affirming or nullifying such order in whole or in part, or remanding the cause to the State Tax Assessor or the Commissioner of Agriculture upon such terms as the court may direct; and the court may order the refund, in whole or in part, of any taxes, costs, penalties, or interest thereon which have been erroneously or unjustly paid since the changed rates or values. In the event of any change in rates or values on appeal, the rates or values as so changed shall remain in effect until the review period. An appeal may be taken to the law court as in other actions.

3. Other persons affected. The State Tax Assessor or the Commissioner of Agriculture or the court, as the case may be, upon receiving a petition for reconsideration or an appeal, shall give public notice of that proceeding by publication for 3 successive days in a newspaper of daily circulation in the county or counties affected and may give such further public notice as the State Tax Assessor or the Commissioner of Agriculture or the court determines reasonable. Any person who may be aggrieved as a result of such a hearing shall be entitled to appear at the hearing and enjoy the same rights to a hearing before the State Tax Assessor or the Commissioner of Agriculture or the court as the person filing the petition or the appeal.

4. Persons aggrieved. A person aggrieved hereunder shall be any person with a legal interest in land subject to the determination, any municipality in which land subject to the determination lies, and the Attorney General of the State of Maine upon the written petition of 10 residents of the State of Maine, if he shall see fit to intervene or appeal, in which event the Attorney General shall be authorized to employ independent counsel to represent such petitioners if he deems it appropriate to do so.

§ 1118. Appeal from assessor

1. Petition for reconsideration. Any person aggrieved by any determination by an assessor, other than orders pursuant to section 1105, may petition for a reconsideration of that determination within 30 days after being notified of that determination. If a petition for reconsideration is filed within that period, the assessor shall reconsider the matter and, if the petitioner has so requested in his petition, shall grant that petitioner an oral hearing and shall give the petitioner at least 15 days' notice of the time and place thereof. For cause shown, the assessor may extend the time for filing of such petition. The assessor may amend or reaffirm his determination as he sees fit and may order a refund, in whole or in part, of any taxes, costs, penalties or interest thereon which have been erroneously or unjustly paid. If the assessor fails to give written notice of his decision within 90 days of the filing of a petition for reconsideration, the petition shall be deemed to have been denied and the applicant may appeal as provided, unless the applicant shall in writing have consented to further delay.

2. Appeal to Land Classification Appeals Board. Any person aggrieved by the decision of an assessor, the State Tax Assessor or chief assessor, upon such petition may, within 30 days after notice thereof from such assessor or after the petition shall be deemed to have been denied, appeal therefrom to the Land Classification Appeals Board under chapter 101, subchapter III, Article 2.

3. Appeal to Superior Court. Any party may appeal from the decision of the Land Classification Appeals Board under subsection 2 to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B in the county where any part of the land is located. Decisions shall be certified forthwith by the clerk of courts to the assessor.