JARRARD & DAVIS, LLP

Georgia's Conservation Use Program

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PROBLEM: FMV>CURRENT USE VALUE

- BAD FOR FARMERS
- BAD FOR CONSERVATION AND PRESERVATION

ENTER THE CONSERVATION USE VALUATON ASSESSMENT circa 1991

Good faith production" of
-Agricultural Products
-Timber,
-Environmentally sensitive property

MAJOR PROVISIONS:

- Property assessed at 40% of "current use value"
- Limited to 2,000 acres per owner

MAJOR PROVISIONS (Cont'd):

- Numerous restrictions on owners and eligible uses of the property.
- 10-year Covenant period
- Severe penalty for breaching a covenant.

FMV	CUVA	EXEMPT AMOUNT	MILLEAGE RATE	TAX SAVINGS	PENALTY	TOTAL w/ PENALTY
$195,000	$92,000	$41,200	.02150	$885.80	X 2	$1,771.60
$195,000	$94,760	$40,600	.02120	$850.04	X 2	$1,700.08
$260,000	$97,600	$64,960	.02280	$1481.09	X 2	$2,962.18
TOTAL PENALTY						**$6433.86**

OUCH!

O.C.G.A. § 48-5-7.4 has been amended 27 times

-Expand or Restrict Eligibility

-Types of uses allowed

-Exceptions to breach and penalty provisions

Notable Expansions in Eligibility

- "Family owned farm corporation" changed to "family owned farm entity" in 1996
- Permits a variety of family business forms

Notable Expansions in Eligibility, cont'd.

- 501(c)(3) organizations became eligible in 1999

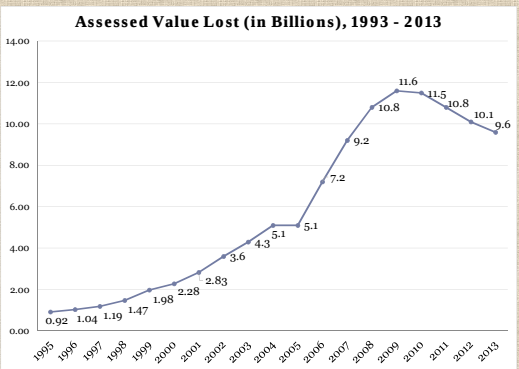
Numerous exceptions to breach and penalty provisions added:

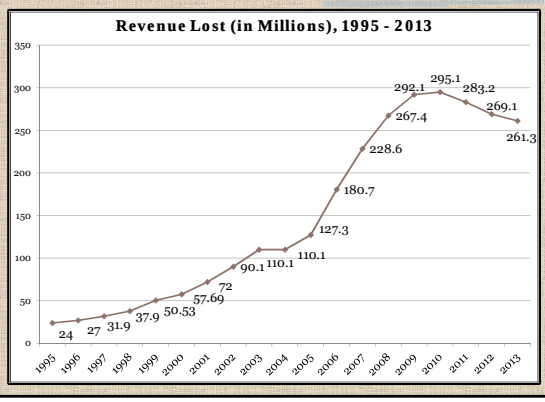
- Some of the more recently added exceptions include corn mazes (so long as remainder of corn crop is harvested) (added in 2005)

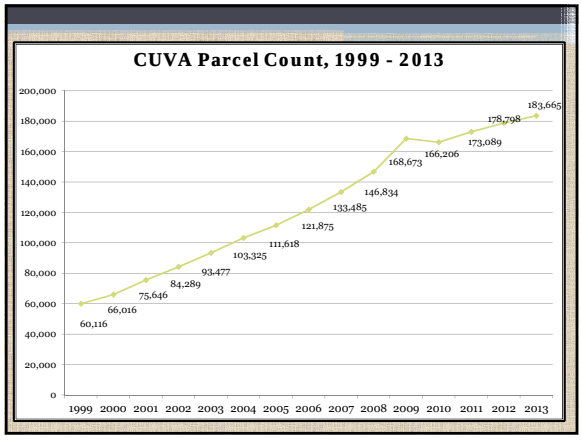
- Agritourism (added in 2007)…

- And farm weddings (added in 2013)…

These expansions have significantly impacted the conservation use program's popularity over time…



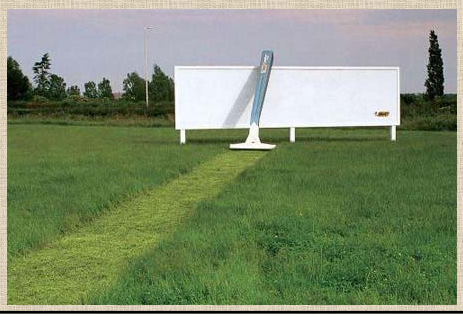




Old McDonald had a CUVA
(E-I-E-I-O)

Some Business Issues…

Will a billboard breach Old McDonald's covenant?



What about a transient sign?
May Old McDonald park his truck on his CUVA property if the truck bears the logo of his side business?

We know corn mazes are okay…

Field of (Shattered) Dreams?

Issue #6: What if Old McDonald wants to use his property…

…as the site of a free Woodstock Festival?

SPECIAL THANKS!

Ellen Mills
Mary Kirkpatrick
Steve Swindell
Trey Stephens
Donald Elrod
Allan Sargent
Marcus Jordan

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Case Study:

The Four Masons, LLC v. Cherokee County Board of Tax Assessors

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Question Presented

- Does Incidental/Unmanaged Timber Growth on a Parcel of Less than 10 Acres and Containing a Residential Rental Unit Qualify for CUVA?

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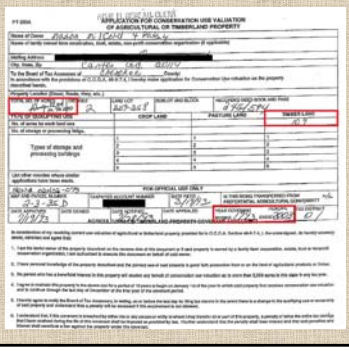
1993 CUVA Application



- Subject property was 12.84 acres with 10.9 devoted to timber production.
- Application approved for 1993 through 2003.
- Covenant renewed for 2003 through 2013.

2013 CUVA Application

- Note the decrease in acreage to 9.6 acres.
- Application now states that qualifying use includes "garden".

GIS Parcel Map

IRS Schedule F

- Principle Activity: "Cattle and Row Crops".
- No cattle on property and only ¼ acre was used for row crops.
- Taxpayer claims $200 in income from selling produce.
- Taxpayer claims $2,667 in business losses.

No Timber Records Provided

- Taxpayer was told that he should consult a certified forester and commission a timber cruise or forestry management plan, but he elected not to.
- The taxpayer claimed that timber had been harvested some time prior to 2003, but he did not produce a wood load ticket, a PT-283T, or federal tax records declaring income from the sale of timber at trial.

Rental Property

- Taxpayer originally allowed his daughter to live on the property.
- For the past three years, the taxpayer had been renting the property to an unrelated tenant for $600 per month.

View from Roadside

Additional View

¼ Acre Garden Area

Photos Presented by Taxpayer

Additional Taxpayer Photo

Does the Property Qualify?

1. Is the Garden a Qualifying Use?
2. Would the Property Qualify if Left in its Natural State?
3. Is Incidental Timber Production a Qualifying Use?
4. Did the Taxpayer Provide Sufficient Relevant Records?
5. What effect does the Rental Property Have?

1. Is the Garden a Qualifying Use?

- No.
- A qualifying use must be greater than 50% of the subject property

> "*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....*"
>
> O.C.G.A. § 48-5-7.4(b)(1)

¼ Acre Garden Area

1. Is The Garden a Qualifying Use?

- Additionally, the gardening may not qualify as the "good faith production" of agriculture because it is operating at a loss.
- "Good Faith Production" is defined as:

  *"A **viable utilization of the property** for the primary purpose of any good faith production, including, but not limited to, subsistence farming or commercial production, from or on the land of agricultural products or timber"*

  Ga. Comp. R. & Regs. 560-11-6-.02(d)(1)

IRS Schedule F

- Principle Activity: "Cattle and Row Crops".
- No cattle on property and only ¼ acre was used for row crops.
- Taxpayer claims $200 in income from selling produce.
- Taxpayer claims $2,667 in business losses.

2. Would the Property Qualify if Left in its Natural State?

- No, because it is less than 10 acres.
- Taxpayers are entitled to current use assessment for

  *"[n]ot 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...."*

  O.C.G.A. § 48-5-7.4(a)(1)

2. Would the Property Qualify if Left in its Natural State?

Because the property is less than 10 acres, it will not be **deemed** to be producing agricultural products or timber in its natural state*.

> *"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"*

O.C.G.A. § 48-5-7.4(a)(1)(E)(iii)

Note:

* Properties larger than 10 acres will qualify in their natural state UNLESS timber is removed for financial gain.

> *"The primary purpose described in this paragraph includes land conservation and ecological forest management in which commercial production of wood and wood fiber products may be undertaken primarily for conservation and restoration purposes rather than financial gain."*

O.C.G.A. § 48-5-7.4(a)(1)(F)

3. Is Incidental/Unmanaged Timber Production a Qualifying Use?

- Probably not.

> *"it is clear that a taxpayer's entitlement to the CUVA exemption depends upon more than an expectation that the land will eventually produce timber in marketable quantities."*

- Cherokee County Bd. Of Tax Assessors v. Mason

3. Is Incidental/Unmanaged Timber Production a Qualifying Use?

General Rule:

Taxpayers are entitled to current use assessment for:

> *"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...."*
>
> O.C.G.A. § 48-5-7.4(a)(1)

- The key phrases are:
  - (1) Primary Purpose; and
  - (2) Good Faith Production

3. Is Incidental/Unmanaged Timber Production a Qualifying Use?

A. Primary Purpose

- The definition of "primary purpose" excludes "incidental production" of timber.
- "primary purpose" is defined as:

> *"[T]he principal use to which the property is devoted, as distinct from an incidental, occasional, intermediate or temporary use for some other purpose not detrimental to or in conflict with its primary purpose, i.e., the devotion to and utilization of the property for the full time necessary and customary to accommodate the predominant use, e.g. the growing season, the crop cycle or planting to harvest cycle...."*
>
> Ga. Comp. R. & Regs. 560-11-6-.02(g)

3. Is Incidental/Unmanaged Timber Production a Qualifying Use?

B. Good Faith Production

- The Department of Revenue defines "good faith production" to mean:

> *"**A viable utilization** of the property for the primary purpose of any good faith production, including, but not limited to, subsistence farming or commercial production, from or on the land of agricultural products or timber."*
>
> Ga. Comp. R. & Regs. 560-11-6-.02(d)(1)

3. Is Incidental/Unmanaged Timber Production a Qualifying Use?

B. Good Faith Production

- Additionally, Five Factors should be considered in determining if property is primarily used for good faith production of agricultural products or timber:
  - (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;
  - (v) the utilization or non-utilization of recognized care, cultivation, harvesting, and like practices applicable to the product involved and any implemented plans thereof;

O.C.G.A. § 48-5-7.4(a)(1)(D); Ga. Comp. R. & Regs. 560-11-6-.02(d)(3)

3. Is Incidental/Unmanaged Timber Production a Qualifying Use?

B. Good Faith Production

- Based on the *five factors* and the and *viability* component:
  - Incidental/unmanaged timber growth likely does not qualify as "good faith production" because the exemption requires commercially reasonable efforts designed to yield marketable quantities of agricultural products
  - Additionally, it is clear that the land must be capable of reliably producing marketable quantities of the products

4. Did the Taxpayer Provide Sufficient Relevant Records?

- It depends…

  *"The owner of a tract, lot, or parcel of land totaling less than ten acres shall be required by the tax assessor to submit **additional relevant records** regarding proof of bona fide conservation use for qualified property […] 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"*

O.C.G.A. § 48-5-7.4(b)(2)

IRS Schedule F

- Principle Activity: "Cattle and Row Crops".
- No cattle on property and only ¼ acre was used for row crops.
- Taxpayer claims $200 in income from selling produce.
- Taxpayer claims $2,667 in business losses.
- **Not Relevant to Timber Production.**

Statutory Construction

- "[A]nyone seeking [tax] exemption must carry the burden of proof to show entitlement, and the exemption statute is strictly construed against the person claiming the exemption."

  Lamad Ministries, Inc. v. Dougherty County Bd. of Tax Assessors, 268 Ga. App. 798, 801, 602 S.E.2d 845, 849 (2004).

- "O.C.G.A. § 48-5-7.4 creates an exception to the general rule in Georgia that tangible property value is assessed at 40 percent of fair market value, and, as such, the statute must be construed in the [b]oard's favor."

  Morrison v. Claborn, 294 Ga. App. 508, 512-13, 669 S.E.2d 492, 496 (2008).

- "[L]aws granting an exemption from taxation must be construed strictly in favor of the taxing authority, and all doubts must be resolved against the taxpayer. Consequently, no exemption will be allowed unless the exemption is clearly and distinctly intended by the legislature."

  Muscogee County Bd. of Tax Assessors v. Pace Indus., Inc., 307 Ga. App. 532, 534, 705 S.E.2d 678, 681 (2011).

- "Taxation is the rule, and exemption from taxation the exception [...] And exemptions are made, not to favor the individual owners of property, but in the advancement of the interests of the whole people."

  Hicks v. Florida State Bd. of Admin., 265 Ga. App. 545, 550, 594 S.E.2d 745, 749 (2004)

Taxpayer Photographs

5. What effect does the Rental Property Have?

- Pursuant to O.C.G.A. § 48-5-7.4(b)(1), property may qualify for current use assessment when "one-half or more of the area of a single tract of real property is used for a qualifying purpose [...] unless some other type of business is being operated on the unused portion."

Rental Property

Terrell County Bd. of Tax The Board v. Goolsby, 324 Ga. App. 535, 540, 751 S.E.2d 158, 162 (2013).

Facts:

- 448.5 acre parcel granted CUVA for various agricultural uses.
- The taxpayer began operating a small commercial grain business on the property and the county board of assessors determined that the business breached the covenant.
- The trial court held that the operation of a business on the property would never breach a conservation use covenant.

Rental Property

Terrell County Bd. of Tax The Board v. Goolsby

- The court of appeals reversed the trial court, holding that property does not qualify for current use assessment if a taxpayer is operating

  "some other type of business, a business separate and apart from the commercial production from or on the land of agricultural products, and the business is not incidental, occasional, intermediate or temporary but is detrimental to or in conflict with the property's primary purpose". Goolsby, at 540, 751 S.E.2d at 162

- Judge Boggs stated in his special concurrence that, depending on the facts, the taxpayer's operation of a grain store on the property may not constitute a breach if, for example, the grain business was a result of the varying feed requirements of their substantial herd of cattle. Id. at 541-42, 751 S.E.2d at 163-64 (Boggs, J., concurring).

Rental Property

- Taxpayer originally allowed his daughter to live on the property.
- For the past three years, the taxpayer had been renting the property to an unrelated tenant for $600 per month.

Court Decisions

- Trial court
  - "[T]here is no limitation that the growth of the trees has to be managed in any way."
- Court of Appeals
  - The quality of a taxpayer's productive efforts are relevant "in determining whether the primary purpose of a tract of land is being utilized for the good faith production of timber."

Court Decisions

- Trial court
  - Natural growth is sufficient for CUVA.
- Court of Appeals
  - "The General Assembly clearly would not have imposed this additional [records] requirement if it intended any parcel of property with incidental tree growth to automatically receive the tax benefits under CUVA."
  - "[I]t is clear that a taxpayer's entitlement to the CUVA exemption depends upon more than an expectation that the land will eventually produce timber in marketable quantities."

Court Decisions

- Trial court
  - Because the board approved two previous covenants and nothing has changed, the board cannot deny the application now.
- Court of Appeals
  - "past usage" is only one of the five factors. Boards must consider all five factors.

Court Decisions

- Trial court
  - Photographs of trees are sufficient proof of a bona fide conservation use.
  - The residential rental unit is not "some other type of business."
- Court of Appeals
  - "As a result of our holding in Division 1 of this opinion, we need not address the Board's remaining enumeration of errors."

Court of Appeals' Decision

Summary:

- The Court of Appeals emphasized that the "Good Faith Production" is defined as "[a] **viable** utilization of the property…."

Court of Appeals' Decision

- To evaluate the taxpayer's good faith and the viability of the activity, the board of assessors should consider all five factors and evaluate properties on a case by case basis.
  - (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 product; and
  - (v) The utilization or nonutilization of recognized care, cultivation, harvesting and like practices…."

Court of Appeals' Decision

- The key is determining whether, all things considered, the five factors indicate that the taxpayer is engaged in a **viable** utilization of the land.
- The board should not focus on any one factor, but consider each to determine whether the taxpayer is engaged in a good faith, viable utilization of the property.

Court of Appeals' Decision

Natural/Unmanaged Timber Growth:

- It is clear that the General Assembly "did not intend for any tract of property with incidental tree growth to automatically qualify under CUVA."
- "[A] taxpayer's entitlement to the CUVA exemption depends upon more than an expectation that the land will eventually produce timber in marketable quantities."

Superior Court on Remand

BTA's Position

- Incidental/unmanaged timber growth does not qualify as "good faith production" because the exemption requires commercially reasonable efforts designed to yield marketable quantities of agricultural products

Taxpayer's Position

- The land must be capable of reliably producing marketable quantities of timber

Superior Court on Remand

The trial court applied the five factors as follows:

(i) The nature of the terrain

The trial court was satisfied by evidence of prior sale (i.e. past use)

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

The trial court was satisfied by evidence of prior sale (i.e. past use)

(iii) The past usage of the land

The trial court was satisfied by evidence of prior sale

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

The trial court was satisfied by evidence of prior sale (i.e. past use)

(v) The utilization or nonutilization of recognized care, cultivation, harvesting and like practices....

Although Mason couldn't satisfy this factor, the trial court found the other four factors outweighed it.

Court of Appeals

- This case has been appealed again.
- The pending questions are:
  1. Assuming a sale occurred in the past, is incidental growth on the property sufficient?
  2. Is the residential rental unit "some other type of business"?
  3. Were the photographs of trees sufficient?

Questions?

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