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RECEIVED

To: All County Auditors

OCT 02 2017

From: Joseph W. Testa, Tax Commissioner

Handwritten signature of Joseph W. Testa in black ink.

Jill Thompson
Athens County Auditor

Date: September 28, 2017

RE: Revision and Issuance of Current Agricultural Use Value (CAUV) Forms Pursuant to Am. Sub. H.B. 49 of the 132nd General Assembly, effective September 29, 2017, and Implementation of Changes to the CAUV Program pursuant to Am. Sub. H.B. 49 of the 132nd General Assembly

As Tax Commissioner, I hereby revise forms DTE 109, *Initial Application for the Valuation of Land at Its Current Agricultural Use* and DTE 109A, *Current Agricultural Use Valuation Renewal Application*, following changes to R.C. 5713.31, R.C. 5713.34, and R.C. 5715.01 concerning valuation of conservation land.

Copies of the revised forms are on file in the Division of Tax Equalization, Ohio Department of Taxation, and are hereby incorporated by reference to this memorandum. Copies of these forms are also available on the Department of Taxation's website at www.tax.ohio.gov/forms.

Implementing Changes to the CAUV Program

Conservation Land

Amended Sub. H.B. 49 of the 132nd General Assembly, prescribes that the lowest CAUV value in the table of values must be applied to farmland used for certain conservation practices or enrolled in a federal land retirement or conservation program under an agreement with an agency of the federal government (R.C. 5713.31). The lowest value for 2017 is \$230. If the land is qualifying based on participation in a federal program, it must be enrolled in the program on the first day of January of the tax year for which the lower value is sought. If the farmland ceases to be used for conservation and is returned to farm use sooner than 36 months after the initial certification for taxation at the minimum value, the county auditor must recoup an amount equal to the extra tax savings based on the difference between the minimum value as conservation land and the use value as cropland or woodland (R.C. 5713.34). If the land ceases to be used for conservation and is converted to non-farm use the county auditor must recoup an amount equal to the extra tax savings plus normal recoupment.

Under continuing law, farmland devoted to and qualified for payments or other compensation under a federal land retirement or conservation program is eligible for CAUV. Additionally, land used for conservation practices necessary to abate soil erosion in the management of the farm is eligible if it comprises 25% or less of the landowner's total CAUV land. (The 25% designation applies to the total qualifying land on a farm and is not limited to 25% of each parcel.) As defined by R.C. 5713.30(E), eligible conservation practices are practices used to abate soil erosion as required in the management of the farming operation, including the installation, construction, development, planting, or use of grass

waterways, terraces, diversions, filter strips, field borders, windbreaks, riparian buffers, wetlands, ponds, and cover crops for that purpose. A conservation practice used for wildlife habitat does not meet the statutory requirement to abate soil erosion for management of the farm and will not result in that land being taxed at the minimum value.

Counties must be undergoing reappraisal or update to implement the valuation changes for conservation land. Those undergoing reappraisal or update in 2017 will be the initial counties to apply the minimum value to eligible conservation land. All other counties continue to value eligible conservation land at the cropland or woodland value for that soil type until undergoing reappraisal or update in 2018 and 2019.

Application Procedures

Counties undergoing reappraisal or update in 2017 may accept a late initial or renewal application from landowners with conservation land (R.C. 5713.38). A late initial or renewal application is considered a timely application for counties that have not completed and advertised the reappraisal or update values before the deadline to apply for CAUV (March 6, 2017) and the appraised value of the property has increased. The adjusted filing deadline is the first Monday in March of the following calendar year (March 5, 2018). Landowners who are currently enrolled in the CAUV program and who have already filed initial or renewal applications for tax year 2017 may amend those applications if the extension criteria apply to their property. This will allow the county auditor to determine whether the designated acreage meets the criteria for valuation at the minimum value and to apply the lower values for tax year 2017 accordingly.

Any refunds that result from the revised revaluations should be handled in the same manner as refunds resulting from board of revision decisions (R.C. 5715.22). In making this determination the auditor must be mindful that the land has to be used for conservation practices used to abate soil erosion as required in the management of the farm or enrolled in a federal land retirement or conservation program under an agreement with an agency of the federal government that is effective January 1, 2017, if it is to be listed at the minimum value in the table for 2017.

Owners of property in counties undergoing reappraisal or update for 2017 who do not file an amended initial or renewal application by March 5, 2018, may file a complaint with the board of revision requesting a change in classification of the land from cropland or woodland to conservation property (R.C. 5715.19(A)(1)) The filing deadline is on or before April 2, 2018. Again, the land must be used for conservation practices to abate soil erosion as required in the management of the farm or enrolled in a federal land retirement or conservation program under an agreement with an agency of the federal government that is effective January 1, 2017, if it is to be listed at the minimum value in the table for 2017.

Owners of property in counties scheduled for revaluation in 2018 and 2019 may not receive the minimum value for their eligible conservation property by filing a complaint with the board of revision for tax year 2017. Minimum values for conservation land will be available in those counties at the next revaluation.

Additionally, with the extension of the December 31 deadline to apply for the Owner Occupancy Credit and Homestead Exemption, the submission of "Late Filer" refunds will no longer be necessary. Accordingly, forms RA-LF-HE (Homestead Exemption), RA-LF-TR (Owner Occupancy Credit), RA-LF-MH (Manufactured Home Homestead Exemption), and RA-LFTR-MH (Manufactured Home Owner Occupancy Credit) will no longer be accepted. All reimbursements should be reported as adjustments on the applicable Real Property Rollback, Manufactured Home Rollback, or Manufactured Homestead Exemption certifications. If you have any questions regarding these certifications, please contact Leslie Berning at 614-466-7150 or Leslie.Berning@tax.state.oh.us.

Community Reinvestment Areas

H.B. 49 amends R.C. 3735.661, allowing in certain limited situations the term of a community reinvestment area that was established prior to 1994 to be extended without triggering the requirement that the CRA comply with various requirements and limitations that apply to CRAs created after 1994.

Enterprise Zones

While not making any substantive changes to the exemption itself, H.B. 49 removes the oft extended expiration date for the enterprise zone exemption. The enterprise zone exemption language was set to expire on October 15, 2017, but is given a permanent place in law under H.B. 49.

Current Agricultural Use Valuation

There are two significant changes in H.B. 49 regarding the calculation of current agricultural use values. Under the amended provisions of R.C. 5713.31, farmland devoted to conservation practices or enrolled in a federal land retirement or conservation program under a contract with the federal government is to be valued at the lowest value in the prescribed table of values, which is currently \$230 per acre. If the land qualifies based on participation in a program with an agency of the federal government it must be enrolled in that program as of the first day of January of the applicable year, as detailed on the initial or renewal application. If the farmland ceases to be used for those purposes sooner than 36 months after the initial certification, the county auditor must recoup an amount equal to the extra tax savings for the most recent three years that the land was valued at the minimum value. The lower values are phased in using a two-step process over each county's next two revaluations, beginning with the counties undergoing reappraisal or update in 2017. The final values for that year are the sum of the new formula values for 2017 and half the positive difference between the new formula values and the values issued for 2016 for each soil type, pursuant to R.C. 5715.01(A)(3).

H.B. 49 also makes significant changes to the formula under which CAUV values are calculated. Specifically, the equity yield rate used in the CAUV capitalization rate to equal the greater of the 25-year average of the total rate of return on farm equity published by the USDA or the loan interest rate for the year, whichever is greater. The amendment also requires a holding period of 25 years for calculating equity build-up or value appreciation in the formula.

More detailed information on the procedural aspects of this change will be communicated to county auditors via separate written communication.

Local Government Functions

Contents of Tax Levy Resolutions

As amended by H.B. 49, R.C. 5705.03 will now require property tax resolutions to include specific information regarding: (1) Whether the tax is a renewal or a replacement of an existing tax with an increase or decrease (currently, the resolution must state whether the tax is a new levy or the renewal or replacement of an existing levy); (2) The term of the tax; (3) The subdivision's territory in which the tax will be voted upon and levied; (4) The date of the election; (5) The first tax year to which the tax will apply; (6) Each county in which the subdivision has territory. The apparent aim of this amendment is to help to avoid a situation such as that addressed in *State ex rel. Delaware Joint Vocational School Dist. Bd. of Edn. v. Testa*, 149 Ohio St.3d 634, 2017-Ohio-796.

County Treasurer Fee Collections

R.C. 321.26 has been amended, revising the schedule for the fees exacted from taxes collected by county treasurers. As amended, it increases the fee amounts in several ways, including by establishing a minimum fee when collections are less than \$5 million per semiannual settlement, by reducing the number of fee brackets, and by causing the fees to be adjusted upward as statewide taxes charged on real property and public utility property increase.

Beginning January 1, 2018, treasurer's fees on all collections on any tax duplicate except the inheritance tax duplicate will be subject to the following fee structure:

1. On the first \$5,000,000 collected, a fee of 0.9495%, or $\$5,000,000 \times .009495 = \$47,475$.
2. On all amounts more than \$5,000,000, a fee of 0.1996%;

If the collection is less than \$5,000,000, the minimum fee will be \$47,475.

Beginning January 1, 2019, the \$5,000,000 base amount will increase by the same percentage statewide real property and public utility tax charges increase from the second preceding year to the preceding year, as calculated by the Tax Commissioner. If the base amount increases, the Tax Commissioner will notify all county auditors and treasurers of the new base amount. Note that when the base amount increases, the minimum fee will increase accordingly. Auditors should make sure their software systems are prepared to accept new base amounts on what will quite possibly be an annual basis.

Fund Transfers

In a change that was not sought by the Tax Commissioner, H.B. 49 significantly alters the local government fund transfer procedure in R.C. 5705.16, eliminating the court of common pleas from the process and placing the decision solely with the Tax Commissioner. Under the new provisions, a petition to transfer funds must be filed by the local government with the Tax Commissioner, who reviews the request to determine if it is legally permissible. If so, the Tax Commissioner must then determine (1) if the petition states sufficient facts, (2) if there is a "good reason" or necessity for the transfer, and (3) if no injury will result from the transfer of funds. Prior to H.B. 49 these three factors were the sole province of the court. To expedite and streamline the process, the Tax Commissioner will issue a formal fund transfer application form in a separate communication.

County Auditor Duties

Generally, conservation programs that are CAUV eligible are administered by the United States Department of Agriculture (USDA), Farm Service Agency (FSA), or Natural Resources Conservation Service (NRCS). Under these agencies, USDA has a written agreement or contract with the landowner for program development. The landowner must attach a copy of the agreement or contract to the Initial Application (DTE 109), including the start and end dates of the agreement, the acreage amount of each parcel in conservation, and a map detailing the boundaries of the land in the program.

If there are contract changes over the duration of the agreement, a revised contract and map must be attached to the CAUV Renewal DTE 109(A). If the renewal application includes a new contract, the landowner must attach copies of the contract, acreage by parcel, and a map. The landowner should also attach a map showing boundaries and acreage by parcel for conservation practices used to abate soil erosion (up to 25% of the total acreage of the farm) and provide a description of how that use controls soil erosion. The county auditors must maintain copies of the applications and contracts for the duration of the contract or agreement period to document compliance with CAUV program requirements. However, it is not the county auditors' responsibility to ensure the producer is meeting the terms of his contract with USDA.

The county auditor must inspect all parcels by the first Monday in August to determine if the property qualifies for that year. This field check includes both renewal and initial applications to verify CAUV eligibility (R.C. 5713.31). If the farmland ceases to be used for conservation for fewer than three tax years and is returned to commercial farming, the county auditor must recoup an amount equal to the extra tax savings for the most recent one or two preceding years that the land was valued at the minimum value. If the farmland ceases to be used for conservation and is no longer eligible for CAUV, the county auditor must recoup an amount equal to the extra tax savings for the most recent one or two preceding years plus recoupment for three years. Therefore, the county auditor must now track two categories of recoupment for conservation land:

1. Regular recoupment based upon the tax savings for the three prior years with the savings equal to the difference between the tax levied based upon its fair market value, and the tax levied on the land based upon its use value as actually taxed for those years. This could be use value as cropland, woodland, or conservation property.
2. Conservation recoupment based upon the extra tax savings for up to the two prior years the land was valued at the minimum value with the savings equal to the difference between the tax levied on the CAUV cropland or woodland value, and the tax levied on the minimum value. The conservation recoupment is only charged if the landowner fails to keep the land in conservation for 36 months (three tax years) after the initial certification of the land as eligible for the application of the minimum value.

Note that the three-year commitment to maintaining the eligible conservation practice is a finite, one-time requirement for each owner of property. That is, after an owner has satisfied the three-year commitment, he may cease the conservation practice in year four or thereafter without penalty. A new owner of property seeking taxation as conservation property must satisfy his own three-year commitment period even if the land was previously qualified as conservation property under a prior owner.

If the land is removed from conservation eligibility during the 36-month period and the land remains eligible for CAUV, the county auditor must recoup an amount equal to the extra tax savings for those years as follows:

| | PY 1 | PY2 |
|-----------------------------|---------|---------|
| FMV | \$6,000 | \$6,000 |
| CAUV | \$2,700 | \$2,700 |
| Conservation Value | \$ 230 | \$ 230 |
| Value Subject to Recoupment | \$2,470 | \$2,470 |

If the land is removed from the CAUV program during the 36-month commitment period, the county auditor will still recoup the full amount of taxes saved during the preceding three years as follows:

| | PY 1 | PY 2 | PY3 |
|-----------------------------|---------|---------|---------|
| FMV | \$6,000 | \$6,000 | \$6,000 |
| CAUV | \$2,700 | \$2,700 | \$2,700 |
| Conservation Value | \$ 0 | \$ 230 | \$ 230 |
| Value Subject to Recoupment | \$3,300 | \$5,770 | \$5,770 |

Due diligence on the part of the county auditor will be required to track the conservation program status for these parcels to ensure that the tax exemption is warranted and that recoupment is assessed when necessary.

Reporting – Abstract of Real Property (DTE 93)

Value changes due to “enrollment in or removal” from the CAUV program are reported on line 8. Changes in CAUV value itself, such as when new tables are issued or when the use value is changed due to a change in classification as conservation land are reported on line 12. For instance, if a current CAUV parcel is valued at the lower conservation value, the change to value is reflected on line 12 in the appropriate column of the abstract.

If you have questions regarding the revised procedures, please contact Shelley Wilson by email at Shelley.Wilson@tax.state.oh.us or Gloria Gardner at Gloria.Gardner@tax.state.oh.us, or by phone at (614) 466-5744.

SW/GG/cmz

DTE 15, DTE 15A and DTE 15B Certifications

Due to the repeal of R.C. 3317.026 and R.C. 3317.027, the DTE 15 (Taxable Value Reduction), the DTE 15A (School District Refund Certifications) and the DTE 15B (Public Utility Appeals) are eliminated.

Conclusion

The changes described above are effective September 29, 2017 unless otherwise specified. If you have any questions regarding these instructions, please contact me or Matt Hollis at (614) 466-5744 or by email at shelley.wilson@tax.state.oh.us or matthew.hollis@tax.state.oh.us.

SW/MH/GG/cmz

Qualifying for CAUV Land Retirement and Conservation Programs

Land Retirement and Conservation

- Tracts, lots, or parcels of land... may be devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government.

R.C. 5713.30(A)(1) & (A) (2)

Qualifying Use - Conservation

- Tracts, lots, or parcels of land or portions thereof used for conservation practices comprising 25% or less of the total land qualifying for CAUV. R.C. 5713.30(A)(4)
 - Includes eligible federal land retirement & conservation programs. R.C. 5713.30 (A)(1) & (2)
 - Includes qualifying conservation practices.

- Qualifying conservation practices are those used to abate soil erosion as required in the management of the farming operation.
R.C. 5713.30(E)

Qualifying Use - Conservation

Eligible conservation practices include but are not limited to...

- | | |
|-------------------|--|
| ● Grass waterways | ● Windbreaks |
| ● Terraces | ● Riparian buffers |
| ● Diversions | ● Wetlands |
| ● Filter strips | ● Ponds |
| ● Field borders | ● Cover crops for erosion control purposes |

R.C. 5713.30(E)

Land Retirement and Conservation

- Eligible programs:
 - Conservation Reserve Program (CRP)
 - Conservation Reserve Enhancement Program (CREP)
 - Determined on a case-by-case basis.
- Ineligible programs include:
 - Federal price support and commodity loans
 - Direct and Counter Cyclical Program (DCP)
 - Wetlands & wildlife conservation programs
 - Wetlands Reserve Program
 - Wetland Mitigation Bank
 - Pheasants Forever
 - Wildlife Habitat Incentive Program (WHIP)

Land Retirement and Conservation

- Ohio Supreme Court affirmed the BTA decision that the property owners were ineligible for CAUV.
- Owners claimed property was in a federal program but failed to appear before the BOR and the BTA to testify about compensation or program details.
- Requires documentation showing contract or receiving compensation for CAUV.
Hardy v. Delaware Cty. Bd. of Rev., 106 Ohio St. 3d 359, 835 N.E.2d 348 (October 14, 2005)

Part 3 CRP Practices

66 National Practices

A National Practices and Titles

The following provides the national practices.

| Practice | Title |
|----------|---|
| CP1 | Establishment of Permanent Introduced Grasses and Legumes |
| CP2 | Establishment of Permanent Native Grasses |
| CP3 | Tree Planting |
| CP3A | Hardwood Tree Planting |
| CP4B | Permanent Wildlife Habitat (Corridors), Noneasement |
| CP4D | Permanent Wildlife Habitat Noneasement |
| CP5A | Field Windbreak Establishment, Noneasement |
| CP8A | Grass Waterways, Noneasement |
| CP9 | Shallow Water Areas for Wildlife |
| CP10 | Vegetative Cover - Grass - Already Established <u>1/</u> |
| CP11 | Vegetative Cover - Trees - Already Established <u>1/</u> |
| CP12 | Wildlife Food Plot |
| CP15A | Establishment of Permanent Vegetative Cover (Contour Grass Strips), Noneasement |
| CP15B | Establishment of Permanent Vegetative Cover (Contour Grass Strips), on Terraces |
| CP16A | Shelterbelt Establishment, Noneasement |
| CP17A | Living Snow Fences, Noneasement |
| CP18B | Establishment of Permanent Vegetation to Reduce Salinity, Noneasement |
| CP18C | Establishment of Permanent Salt Tolerant Vegetative Cover, Noneasement |
| CP21 | Filter Strips |
| *-CP21B | Denitrifying Bioreactor on Filter Strips |
| CP21S | Saturated Filter Strips--* |
| CP22 | Riparian Buffer |
| *-CP22B | Denitrifying Bioreactor on Riparian Buffers |
| CP22S | Saturated Riparian Buffers--* |
| CP23 | Wetland Restoration |
| CP23A | Wetland Restoration, Non-Floodplain |
| CP24 | Cross Wind Trap Strips |
| CP25 | Rare and Declining Habitat |

1/ Only eligible for enrollment before March 14, 2011.

66 National Practices (Continued)

A National Practices and Titles (Continued)

| Practice | Title |
|----------|--|
| CP27 | Farmable Wetlands |
| CP28 | Farmable Wetland Buffer |
| CP29 | Marginal Pastureland Wildlife Habitat Buffer |
| CP30 | Marginal Pastureland Wetland Buffer |
| CP31 | Bottomland Timber Establishment on Wetlands |
| CP33 | Habitat Buffers for Upland Birds |
| *** | *** |
| CP36 | Longleaf Pine – Establishment |
| CP37 | Duck Nesting Habitat |
| CP38A | SAFE - Buffers |
| CP38B | SAFE - Wetlands |
| CP38C | SAFE - Trees |
| CP38D | SAFE - Longleaf Pine |
| CP38E | SAFE - Grass |
| CP39 | FWP Constructed Wetland |
| CP40 | FWP Aquaculture Wetland Restoration |
| CP41 | FWP Flooded Prairie Wetland |
| CP42 | Pollinator Habitat |
| *-CP87 | Permanent Introduced Grasses and Legumes |
| CP88 | Permanent Native Grasses and Legumes--* |

Notes: See Exhibit 11.

For SAFE practices, the title is determined by each State.