

COUNTY OF ERIE



ERIE, PA

GUIDELINES TO UNDERSTANDING ACT 319 (AS AMENDED BY ACT 156 OF 1998 and ACT 235 of 2004)

When a county embraces an *Act 319* program, it is required by state law to place two values on each parcel of land that is ten acres or more in size. These values are known as the Fair Market Value and the Agricultural-Use Value, better known as the *Clean and Green* Value. After these new values have been certified by the county, tax bills are calculated for each taxing district, using *either* the Fair Market Value or the Agricultural-Use Value, depending upon whether or not the property owner has enrolled their property in the *Act 319* program.

The decision to enroll should be based upon factual information about the *Act 319* law and its requirements for eligibility. Each property owner should make an effort to understand the various aspects of the *Act 319* program and make this decision in their best interest. The following information has been provided to answer questions and help property owners understand this program and its impact. These are the most frequently asked questions about Fair Market Value and *Act 319*.

1. WHAT IS ACT 319?

Act 319 - Pennsylvania Farmland and Forest Land Assessment Act (*Clean and Green*) is a state law passed in 1974, and amended in 1998 by Act 156 that allows land parcels which are 10 acres or more in size and which are devoted to agricultural and forest land use, to be assessed at value for *that use* rather than Fair Market Value. **The intent of the act is to encourage property owners to retain their land in agricultural or forestland use, and to provide some tax relief to land owners.

2. WHO BENEFITS FROM ACT 319?

Everyone benefits, either directly or indirectly, from this agricultural land preservation program. The property owners benefit directly by receiving some tax relief, as long as they agree not to convert their land to housing developments or other types of non-agricultural, commercial businesses. The general public benefits from the preservation of our farmlands, woodlands, and the future heritage of our land.

3. WHAT USE CATEGORY AM I IN?

There are 3 categories that a property can be placed in.

a.) Agricultural Use – Land which is used for the purpose of producing an *agricultural commodity or is devoted to and meets the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the Federal Government.

b.) Agricultural Reserve – Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for such use, without charge or fee, on a nondiscriminatory basis.

c.) Forest Reserve – Land, ten acres or more, stocked by forest trees of any size and capable of producing timber or other wood products.¹

*Agricultural Commodities are defined as:²

- a.) Agricultural, Apicultural, Aquaculture, Horticultural, Floricultural, Silva cultural, Viticulture, and Dairy Products
- b.) Pasture
- c.) Livestock and products thereof
- d.) Ranch-raised furbearing animals and the products there- of
- e.) Poultry and the products thereof
- f.) Products commonly raised or produced on farms which are:
 - i.) Intended for Human Consumption
 - ii.) Transported or intended to be transported in commerce
- g.) Processed or manufactured products of

¹ 72 PS §5490.2.

² Bert Goodman, Assessment Law and Procedure, 2005 Edition. Pg 595.

4. WHAT IS FAIR MARKET VALUE, AND HOW IS IT DETERMINED?

Fair Market Value is determined in the marketplace, where a willing seller sells to a willing buyer in an arms-length transaction. The process of determining market values involves the analysis of recent sales within the county. Only valid sales are used which reflect transactions on the open market where there is no pressure to either buy or sell, and where the property was on the market for a reasonable period of time. These validated sales are used to predict the probable selling price or current value of each property at a given point in time. Assessment law says that the real estate tax must be based on the value of the real estate. That is why it is called an Ad Valorem tax, meaning, "at value". This value is based on an appraisal, backed by sufficient evidence to support the conclusion of value.

5. WHAT IS THE AGRICULTURAL-USE VALUE, OR *CLEAN AND GREEN* VALUE, AND HOW IS IT DETERMINED?

The Agricultural-Use Value does not consider all uses or the highest and best use of the property. The Agricultural-Use Value considers only the worth of that property for agricultural purposes such as tillable land, woodland, and pastureland. The basis for determining the Agricultural-Use Value comes from both the Market Approach and the Income Approach to establishing value. *Act 319* law also states that the Agricultural-Use Value must reflect the potential of the individual parcel to produce, based upon the soil types and their productivity. Another way to explain Agricultural-Use Value is the amount of money that a prudent investor might invest in an acre of land and receive a reasonable rate of return from the land use itself. A productivity index for each land category is calculated, and is used to equalize the value, based on the potential of each parcel to produce.

6. WHICH RECREATIONAL ACTIVITIES ARE OPEN TO THE PUBLIC IF I AM IN THE AGRICULTURAL RESERVE CATEGORY?

Recreational Activity- Includes, but is not limited to:

- 1.) Hunting
- 2.) Fishing
- 3.) Swimming
- 4.) Boating and Boat Access
- 5.) Animal Riding
- 6.) Camping
- 7.) Picnicking
- 8.) Hiking
- 9.) Agritainment activities

- 10.) Operation of non-motorized vehicles
- 11.) Viewing or exploring a site for aesthetic or historical benefit for entertainment.
- 12.) Operation of motorized vehicles if the operation is:
 - a.) Over an existing lane and incidental to an activity described in paragraphs (1) through (10); or
 - b.) Necessary to remove an animal which has been hunted under paragraph (1).

7. WHAT IS ACT 235, AND HOW WILL IT AFFECT ME?

Act 235 of 2004 was approved on December 8, 2004 and effective in 2005. The category applies to those who are enrolled in the Agricultural Reserve and Forest Reserve.

If you are enrolled in one of these categories and have a house on the property, *one acre* will be assessed at Fair Market Value and the remaining acreage will receive the preferential assessed value.

8. IS THERE A TAX REDUCTION ON MY BUILDING(S) UNDER ACT 319?

No. The *Act 319* program benefits only the land portion of the assessment. The value of the residence, farm buildings, other out-buildings, and agricultural-commercial buildings, as well as the ineligible amount of land required to support the building(s) will not be affected by *Act 319*. The Fair Market Value of buildings is then added to the Agricultural-Use Value for land, to arrive at the total Agricultural-Use Value for the property.

Example: (these values are for demonstration purposes only)

Full Market Value of a Parcel with Buildings (No 319 Value)

Building Assessment: \$250,000
Land Assessment: \$383,000
Total Assessment: \$633,000

Act 319 Value of a Parcel with Buildings (Ag Use only!)

Building Assessment: \$250,000
Land Assessment: \$30,300
Total Assessment: \$280,300

***Act 319 Value of a Parcel with Buildings
(Ag Reserve and Forest Reserve only!)***

Building Assessment: \$250,000

Land Assessment: \$60,300

Total Assessment: \$310,300

9. WHY DOESN'T THE COUNTY VALUE FARMLAND AND RURAL LANDS AT A SELECTED LOWER RATE THAN THE ACTUAL FAIR MARKET VALUE?

This would be a violation of assessment law and would provide the basis for appeals and court actions. All classes (agricultural, residential, industrial, and commercial) must be valued under assessment law at Fair Market Value. There is no exception, except for that which is provided under law such as *Act 319* or *Act 515*.

10. DOES THIS AGRICULTURAL-USE VALUE AFFECT ALL OR PART OF MY TAXES?

The assessed value, whether Fair Market Value or Agricultural-Use Value, is the value that is used by all taxing districts, including county, schools, and municipalities. If a property is approved under *Act 319*, then the Agricultural-Use Value will be used to compute all real estate taxes.

11. ARE RURAL PROPERTY OWNERS BEING FORCED INTO THE ACT 319 PROGRAM?

The *Act 319* law provides an option or an opportunity for tax relief if the property owner simply agrees not to develop or commercialize their land. If the property owner chooses not to participate in *Act 319*, then taxes will be paid on the Fair Market Value, as required under assessment law. If an owner chooses to help preserve rural land, they will receive the tax benefits or tax relief, as long as they agree to preserve the land. The property owner may change the use of the property in their own best interest at any time, but will be subject to rollback taxes.

12. MAY I APPEAL THE CLEAN AND GREEN VALUE THE SAME WAY THAT I CAN APPEAL THE FAIR MARKET VALUE?

Yes. Property owners have the right to appeal to the Board of Assessment Appeals and the Court of Common Pleas under the same appeal rights described in assessment law. They may also appeal the decision to approve or disapprove their *Act 319* application.

13. IF I PARTICIPATE IN ACT 319, DO I LOSE MY RIGHTS TO USE THE LAND AS I WISH?

Absolutely not. *Act 319* has no provisions for supervision or interference with the individual rights of property owners to do whatever they wish with their land. It is simply an agreement or covenant that as long as the property owner does not change the use, then they may receive the benefits provided under *Act 319*. No state or county authority has any right, under the law, to interfere or direct your personal use of the land.

The only issue is that when you choose not to preserve the land under the terms of *Act 319*, you will lose the rights of the preferential assessment, and may be liable for a rollback tax (plus interest) on the property for the period of time in which you were in the program or the most recent seven years, whichever is less.

If you sell any of your land enrolled under *Act 319*, you **must** file a Notice of Conveyance at least **30 Days Prior** to any such conveyance.

14. MUST I FARM THE LAND, CUT BRUSH, MOW FIELDS, ETC. IN ORDER TO KEEP IT ELIGIBLE FOR ACT 319?

No. You may actively farm the land, lease it, or let it revert to its original state. The only issue that could affect a change in eligibility will be your decision to commercialize and develop your land.

15. HOW LONG WILL MY LAND BE IN THE ACT 319 PROGRAM?

When a property owner applies and is approved under *Act 319*, that property will remain in the program *continuously*. Should the property owner change the use to an ineligible use the county is required to change the assessment status from Act 319 to Full Market Value. If the use never changes, then there will *never* be a rollback tax charged.

16. WHAT IS THE ROLLBACK TAX, AND HOW WILL IT BE CHARGED?

The key to understanding when a rollback tax will be charged is when *the use actually changes*. The question as to who pays the tax is based on *who owns the land* at the time of the change in use or removal from the program. Also, remember that the maximum period a rollback may be charged is for the most recent seven (7) years. A six (6) percent simple interest charge will be imposed on the rollback tax amount. The purpose of the rollback tax is to provide an incentive to preserve the agricultural land and to prevent abuse of this land preservation program. In addition, a civil penalty of up to \$100.00 may be assessed for violations of the Act.

17. WHAT HAPPENS TO THE ACT 319 STATUS IF I DIE?

Nothing will change, upon the death of the owner, with regard to *Act 319*. The *Act 319* agreement stays with the estate and is attached as a covenant to the property. If the estate or future owners continue with the same use, as provided under *Act 319*, the property will continue to receive preferential assessment and will only be required to re-record a new Clean and Green Application. If the use changes, a rollback tax, plus interest, will be charged. Each individual estate is different therefore specific questions can be answered on an individual basis. The Assessment Office is not able to provide more specific information on other issues pertaining to estate planning aside from the areas covered in the brochure.

18. DOES THE ACT 319 PROGRAM PUT A LIEN ON MY LAND?

No. What actually happens is this: The property owner will apply to the Assessment Office on the appropriate application. If that application is approved by the Assessment Office, it must be recorded, as required by law, in the Recorder of Deeds Office. Recording an agreement between the property owner and the county does not put a lien on the property, but it does provide public notice that the parcel is under the terms of *Act 319*; therefore, informing a future buyer that if they wish to change the use to a non-conforming use, they could be incurring a rollback tax for which they would be liable. In the event that a rollback tax is charged, but is not paid by the property owner, it could become a lien on the property under delinquent tax laws. **Tax liens in Pennsylvania have a top priority.**

19. WHAT IS THE COST TO ENROLL IN THE ACT 319 PROGRAM?

Act 319 states that the agreement must be recorded; therefore, the property owner will be required to pay for the cost of recording. Erie County also charges a processing or administrative fee to cover the cost of handling applications and maintaining records for rollback taxes or for initiating the *Act 319* program. These charges are part of the application process. The fee for enrolling in Act 319 is \$50.00 per parcel, and an \$18.50 recording fee for each parcel. The entire tract of land (this may involve different parcel numbers) may all be enrolled contiguously. The applications **must** also be notarized by a Notary Public.

20. MUST I HAVE 10 ACRES OR MORE TO BE ELIGIBLE FOR ACT 319?

The law states that you must have 10 acres or more to be eligible under Agricultural-Use, Agricultural Reserve, or Forest Reserve; however, there is an exception. If the property owner has less than 10 acres, but can verify that the land is now devoted to agricultural use and has generated \$2,000 annual gross income from agricultural commodities for the past three (3) years, then the application may be considered. *Proof of \$2,000 annual gross income will be required by an IRS Schedule F or Tonnage Reports.*

21. I CURRENTLY OWN MULTIPLE PARCELS OF LAND IN WHICH THE TOTAL ACREAGE MEETS THE ACT 319 MINIMUM SIZE REQUIREMENTS. CAN I ENROLL IN THE PROGRAM?

Yes. If the multiple parcels are contiguous and the total acreage is ten or more you may enroll in **Act 319**.

22. WHAT ARE THE MAIN ELIGIBILITY REQUIREMENTS TO BE APPROVED FOR ACT 319?

If the size requirements are met, then the use requirements are determined. If this parcel meets the definition of agriculture use as defined in # 6, or if this parcel has forest land and is stocked with trees of any size, and is capable of producing wood products in excess of 25 cubic feet per acre, each year, then it meets this eligibility requirement. There is a category called Agricultural Reserve Land that requires the land to be non-commercial, open to the public for recreation, at no charge or fee,

with no discrimination against any person using the land; however, this category is seldom used or needed because every parcel can usually meet either the Agricultural-Use or Forest Land requirement. The only other factor in eligibility is whether or not the property owner or anyone else is currently conducting a non-agricultural, commercial business on this property (in excess of two acres). Some property owners may wish to deed larger commercial enterprises off as a separate parcel; therefore, not affecting the land placed under *Act 319*. The property owner may have a non-agricultural use on the parcel when enrolling the ground in Act 319. For example, the parcel is 100 acres and 25 acres is a mobile home park and the remainder is agricultural the 75 acres would still be eligible for Act 319. The assessed value of the trailer park would be at the Fair Market Value.

23. WHAT IS THE DEADLINE FOR ENROLLING IN ACT 319?

The annual deadline for enrolling in the *Act 319* program is *June 1st*, *NO EXCEPTIONS*. The application becomes effective for the following tax year beginning January 1st. There is an open enrollment period each tax year between March 1 and June 1.

24. DO THE PROVISIONS OF ACT 319 TAKE PRIORITY OVER LOCAL ZONING OR SUBDIVISION ORDINANCES?

No. The provisions of the *Act 319* law reflect what may be done under *Act 319* in order to retain the land in the program. Nothing in the law takes any priority over zoning or subdivision ordinances, and property owners may find fewer or greater limitations imposed within their own jurisdictions than by *Act 319*.

25. MAY I BUILD A HOUSE ON MY LAND WITHOUT IT AFFECTING ACT 319?

Yes. You may build a personal residence or any other building related to your farm enterprise, as long as it is not non-agricultural, commercial, or a housing development. If you are in the Agricultural Reserve or Forest Reserve category, Act 235 will apply.

26. MAY I SUB-DIVIDE OR SELL ANY PART OF MY LAND WITHOUT CAUSING A ROLLEBACK TAX?

Yes. You may sell portions of your land under some conditions without causing a rollback tax on the entire parcel(s). There are two types of subdivisions. The first is called, "SEPARATION", and is permitted if each new parcel created is 10 acres or more and thus meets the requirements to remain in *Act 319*. The remainder of the original property must also continue to meet these requirements. If the new buyer changes the use, the buyer will pay the rollback tax on the *entire* original tract.

For example: A property owner enrolls a 100-acre tract of land in *Act 319*, and subsequently sells off three 25-acre tracts of land. The use does not change, therefore, there is no rollback tax; however, one of the buyers decides to build an apartment building. They have changed the use, and now the rollback tax will be charged on the *entire* tract of land as it was originally enrolled. The owner of the apartment building will pay the rollback tax on the *entire* 100 acres of land. The original *Act 319* agreement is now void, and each of the remaining property owners may then individually re-apply to retain their own *Act 319* status, although they are under no obligation to do so.

Another type of subdivision or transfer is called a "SPLIT-OFF". A permissible split-off cannot exceed two acres gross per year, the use cannot change, except as noted below, and the total of all splits cannot exceed 10 percent of the total property enrolled or 10 acres, whichever is less. The two-acre split-off per year is also not cumulative. A maximum of only two acres can be split off during any single calendar year, even if the property has been enrolled for several previous years and experienced no split-off activity. These split-offs may remain in agricultural use or be used for residential use, as long as the person owning the property is building a house, which they will personally occupy. No speculative building projects would be permitted without causing a rollback tax to be charged. In the event that the required minimum lot size, under the municipal zoning ordinance, is more than two (2) acres, a split-off may exceed two (2) acres, up to a maximum lot size of three (3) acres. Proof of this zoning requirement **must** be presented with the filing of Act 319 Notification of Conveyance form, thirty (30) days **prior** to any conveyance of the split-off.

****Roll-back taxes will be due on the split-off portion of the property only.****

27. IS THERE ANY CONNECTION BETWEEN THE ACT 319 PROGRAM, THE AGRICULTURAL SECURITY AREA PROGRAM, AND THE FARMLAND REFERENDUM WHICH PROVIDES FOR COUNTIES TO PURCHASE THE DEVELOPMENT RIGHTS OF PROPERTY?

Some. These programs are all separate attempts to preserve agricultural and forest land in Pennsylvania. *Act 319* provides a preferential assessment, which allows tax relief to property owners who agree not to put in housing developments or commercialize their land. The Agricultural Security Area Program involves the cooperative effort on the part of property owners who decide to band together to form a security area for agricultural land. This security area will restrict governmental bodies from imposing nuisance ordinances against agricultural activities, will limit eminent domain, and may provide the basis for future agricultural preservation programs such as the Agricultural Land Preservation program, allowing for the purchase of development rights. For more information on Erie County's Agricultural Security Area Program, contact the Erie County Agricultural Land Preservation Department. If you choose to enroll in *Act 319* to receive the preferential tax treatment now, you would still be eligible to apply for enrollment in the Agricultural Security Program. *Act 319* will not negatively impact your parcels eligibility for the Agricultural Security Area Program.

**You may submit your application
by mail or in person.**

Open Enrollment is March 1st to June 1st each year.

Applications are available at:
ERIE COUNTY COURT HOUSE
ASSESSMENT OFFICE
140 W 6TH STREET, RM 104
ERIE PA 16501-1097
(814) 451-6225

www.eriecountygov.org

**AFTER ENROLLMENT INTO THE PROGRAM:
IT IS ABSOLUTELY CRUCIAL TO CONTACT
THE ASSESSMENT OFFICE BY NOTICE OF CONVEYANCE
PRIOR
TO ANY CHANGE IN USE,
SUBDIVISION OF LAND OR TRANSFER OF LAND!
THIS IS FOR YOUR OWN BENEFIT.**