

**OPINION NO. 84-017****Syllabus:**

1. Land upon which timber is grown for a commercial purpose may be considered "land devoted exclusively to agricultural use" for purposes of R.C. 5713.30 if the tract of land is being used exclusively for the commercial production of timber or exclusively for the production of timber and one or more of the other agricultural purposes specified in R.C. 5713.30.
2. A tract of land is used exclusively for agricultural purposes if the entire tract is devoted solely to agricultural use and to no other purpose. A county auditor must, in the exercise of his expertise and discretion, consider all of the relevant circumstances in making the factual determination whether a tract is used exclusively for agricultural use.
3. If only a portion of a tract of land is being used for agricultural purposes, the entire tract is not entitled to agricultural valuation.
4. The subjective intent of a landowner as to the use of his property is not relevant to a determination by the county auditor as to whether a tract of land is land devoted exclusively to agricultural use.

**To: W. Allen Wolfe, Muskingum County Prosecuting Attorney, Zanesville, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, March 26, 1984**

I have before me your request for my opinion concerning current agricultural use values. Your specific questions may be restated as follows:

1. Is land upon which timber is growing land devoted exclusively to agricultural use, and thus entitled to agricultural valuation?
2. What are the proper criteria for determining whether a tract of land over thirty acres is land devoted exclusively to agricultural use and what are the proper criteria for determining

whether a tract of land under thirty acres is land devoted exclusively to agricultural use?

3. If only a portion of a tract of land is being used for agricultural purposes, is the entire tract of land entitled to agricultural valuation?

You also question whether the county auditor may properly take into account the intent of the property owner as to the use of the land in determining whether the land is entitled to agricultural valuation.

Before addressing your specific questions, I will briefly discuss the basis of agricultural valuation. Ohio Const. art. II, §36 states in part:

Laws may be passed to encourage forestry and agriculture, and to that end areas devoted exclusively to forestry may be exempted, in whole or in part, from taxation. Notwithstanding the provisions of section 2 of Article XII, laws may be passed to provide that land devoted exclusively to agricultural use be valued for real property tax purposes at the current value such land has for such agricultural use. Laws may also be passed to provide for the deferral or recoupment of any part of the difference in the dollar amount of real property tax levied in any year on land valued in accordance with its agricultural use and the dollar amount of real property tax which would have been levied upon such land had it been valued for such year in accordance with section 2 of Article XII.

The purpose of art. II, §36 "was to give relief to farmers whose land was slowly being engulfed by commercial land through the growth of towns and cities and who were being driven out of business by the soaring real property taxes attendant upon revaluation of their property under the 'highest and best use' rule." Board of Education v. Board of Revision, 57 Ohio St. 2d 62, 66, 386 N.E.2d 1113, 1116 n. 4 (1979). See Ohio Const. art. XII, §2 ("[n]o property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes. . ." (emphasis added)).

The provisions of R.C. 5713.30-38 were passed to effectuate in part art. II, §36. Pursuant to these provisions and the rules promulgated thereunder, once the county auditor has determined that land is used exclusively for agricultural purposes, the land is valued for tax purposes at the current value such land has for agricultural use, as if no other influence were present, rather than at its "highest and best use" value, which is the standard usually employed to value land for taxation purposes. See R.C. 5713.31; 7 Ohio Admin. Code Chapter 5705-5; 1977 Op. Att'y Gen. No. 77-020. This agricultural valuation generally results in tax savings to the property owner. See R.C. 5713.30(C) (defining "tax savings"); R.C. 5713.33; Op. No. 77-020.

I turn now to your first question as to whether land upon which timber is grown is land devoted exclusively to agricultural use. I draw your attention to R.C. 5713.30(A) which defines "land devoted exclusively to agricultural use" to mean:

(1) Tracts, lots, or parcels of land totaling not less than thirty acres which, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code, and through the last day of May of such year, were devoted exclusively to commercial animal or poultry husbandry, the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental trees, sod, or flowers or that were 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;

(2) Tracts, lots, or parcels of land totaling less than thirty acres that, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code and through the last day of May of such year, were devoted exclusively to

commercial animal or poultry husbandry, the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental trees, sod, or flowers where such activities produced an average yearly gross income of at least twenty-five hundred dollars during such three-year period or where there is evidence of an anticipated gross income of such amount from such activities during the tax year in which application is made, or that were 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.

(Emphasis added.) Timber is one of the enumerated agricultural production purposes under R.C. 5713.30, and thus, land upon which timber is grown for a commercial purpose may be considered "land devoted exclusively to agricultural use," if the land is being used exclusively for the commercial production of timber or exclusively for the production of timber and one or more of the other enumerated purposes.

I turn now to your second question as to how to determine agricultural use. You state in your letter of request that, "[w]e have been using over 30 acres as agricultural use if it has one cow on it and under 30 acres, we use the amount of \$2500.00 per year of farm income as our yard stick." You wish to know whether this formula is correct.

In Op. No. 77-020, my predecessor extensively discussed current agricultural use values. Two of the issues which were discussed are relevant to your question. My predecessor was asked the meaning of the word "exclusively" as used in R.C. 5713.30, modifying "agricultural use." It was first noted that "a single agricultural operation will generally encompass several specific uses," and "specific uses of particular portions of a tract or parcel of land devoted to agricultural production will vary with the type and location of the farming operation." *Id.* at 2-69. It was then stated that since agricultural valuation is an exception to the general rule of taxing real property at its highest and best use, the provisions of R.C. 5713.30-38 are to be strictly construed. Accordingly, my predecessor concluded that "exclusively" should be strictly construed and given its plain meaning of "appertaining to the subject alone; not including, admitting, or pertaining to any others," 'purely' and 'solely'." Op. No. 77-020 at 2-70 (quoting Black's Dictionary, Fourth Edition). *But cf. Bishop v. Kinney*, 2 Ohio St. 3d 52, 442 N.E.2d 764 (1982) (interpreting R.C. 5709.07, which exempts from taxation houses used exclusively for public worship, as exempting from taxation property used primarily for public worship).

In applying the above-quoted standard of exclusive use, Op. No. 77-020 went on to consider the following question: "Where a small part of over 30 acres of land is devoted to agricultural uses as defined in R.C. 5713.30(A)(1), and a larger portion is unused for any purposes, is the entire tract, lot, or parcel 'used and devoted exclusively to agricultural use'." *Id.* at 2-70. In response to this question, the opinion stated in part:

As discussed above in analyzing the construction to be given the word "exclusively" for the purposes of R.C. 5713.30 *et seq.*, a single tract of land devoted exclusively to agricultural use will generally encompass several specific uses of land. . . .

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<sup>1</sup> There is a situation wherein land upon which timber is growing may not be land devoted to agricultural use. R.C. 5713.30(A)(3) states that: "A tract, lot, or parcel of land taxed under sections 5713.22 to 5713.26 of the Revised Code is not land devoted exclusively to agricultural use." The provisions of R.C. 5713.22-26 deal with the taxation of forest land. The owner of such land must declare such lands are devoted to forestry or timber growing and the declaration must be approved and certified by the chief of the division of forestry, who must then file the declaration with the county auditor. R.C. 5713.23. The land is then taxed at fifty percent of the local tax rate upon its value. R.C. 5713.23. See generally 1965 Op. Att'y Gen. No. 65-226.

Under certain circumstances, it is possible that a large portion of a tract of over thirty acres of land may be unused—or unusable—for any purposes and that such non-use will be entirely consistent with the devotion of the entire tract of land exclusively to agricultural use. On the other hand, depending upon the soil type, erosion, topography and similar factors, there will also be situations where the lack of use of a portion of a tract of land is inconsistent with a conclusion that such tract is land devoted exclusively to agricultural use.

Your question, therefore, is one which requires a factual determination which must be made ultimately upon the basis of whether the tract, lot or parcel of land in question is devoted exclusively to agricultural use. Where non-use of a portion of a tract, lot or parcel of land is inconsistent with an assertion that such tract is devoted exclusively to agricultural use, none of such tract is so used for the purposes of R.C. 5713.30, et seq. . . .

The lack of use of a portion of a tract, lot or parcel of land does not, however, in itself, negate a conclusion that such tract, lot or parcel is devoted exclusively to agricultural use. In evaluating whether the non-use of a portion of such a tract is consistent with a conclusion that the tract is land devoted exclusively to agricultural purposes, a factual determination as to whether such non-use includes any use but agricultural is necessary.

Id. at 2-70 to 2-71.

With the foregoing in mind, I turn to your statement that, "[w]e have been using over 30 acres as agricultural use if it has one cow on it. . . ." I believe it is apparent that a determination whether a tract of land is devoted exclusively to agricultural use is factual in nature, and that many different factors must be considered in making this determination. See Board of Education v. Board of Revision; Op. No. 77-020. The fact that there is a cow on a tract may be one consideration in making a determination as to exclusive agricultural use. All of the surrounding circumstances must be examined, however, in reaching a final conclusion. It does not appear that the single fact that one cow is or is not present on a tract of land is determinative one way or the other as to whether the tract is being devoted exclusively to commercial animal husbandry. Each application must be decided on a case by case basis by the county auditor who must use his expertise and discretion in making the required determination. See R.C. 5713.31; Board of Education v. Board of Revision (footnote 4). See also R.C. 5713.01; R.C. 5713.03.

As to tracts of land under thirty acres, you state that, "we use the amount of \$2500.00 per year of farm income as our yard stick." Pursuant to R.C. 5713.30(A)(2), a tract of land totaling less than thirty acres must be devoted exclusively to one or more of the agricultural activities specified in that section, and such activities must have produced an average yearly gross income of at least twenty-five hundred dollars during the three calendar years prior to the year application for agricultural valuation is made (or the anticipated gross income for the year application is made is twenty-five hundred dollars) in order for the tract to qualify for agricultural valuation. Thus, while you are correct in using \$2500.00 per year of farm income as one factor in determining whether a tract may qualify for agricultural valuation, a determination must also be made as to whether the tract is used exclusively for one of the specifically enumerated agricultural purposes.

I turn now to your third question, whether an entire tract of land is entitled to agricultural valuation if only a portion of the tract is being used for agricultural purposes. I believe it is apparent from the above discussion that in order to qualify for agricultural valuation, a tract of land must be used exclusively for agricultural purposes, and for no other purpose. You present the situation in your letter "that someone has 3,000 acres but only runs cattle on 100 acres such as a coal company or oil company or maybe just leases 100 acres for farming, does that subject the entire

3,000 acres to the more favorable agricultural use by virtue of it being contiguous with the 100 acres." Because in the situation presented, it does not appear likely that the three thousand acres is being used exclusively for agricultural purposes, the entire three thousand acres is not subject to agricultural valuation. If the 100 acres constitutes a separate and distinct tract, lot, or parcel, then such tract, lot, or parcel may be considered for agricultural valuation if it is used exclusively for agricultural use. See 7 Ohio Admin. Code 5705-5-01(B)(25) (defining "tracts, lots, or parcels"). See also R.C. 319.28 (preparation of general tax list); R.C. 5713.09 (tax maps must "show all original lots and parcels of land, and all divisions, subdivisions, and allotments thereof, with the name of the owner of each original lot or parcel and of each division, subdivision, or lot, all new divisions, subdivisions, or allotments made in the county, [and] all transfers of property. . . ." and are for the use of the county board of revision and auditor). Cf. R.C. 5713.04 (if a parcel of property has a single owner and is used "so that part thereof, if a separate entity, would be exempt from taxation, and the balance thereof would not be exempt from taxation, the listing thereof shall be split, and the part thereof used exclusively for an exempt purpose shall be regarded as a separate entity and be listed as exempt, and the balance thereof used for a purpose not exempt shall. . . be listed at its taxable value and taxed accordingly").

You pose the question in your letter whether the owner's intent in the use of his property is relevant. In Board of Education v. Board of Revision, the court indicated in footnote 4 that the subjective intent of the landowner is not relevant to a determination as to exclusive agricultural use. Thus, the auditor must base his determination on the objective facts presented in a particular situation. Although the auditor may not take into account what he considers to be the subjective intent of the landowner, it appears that he may determine that having one cow on 3000 acres does not qualify as agricultural use. Again, the auditor must, in the exercise of his expertise and discretion, consider the totality of circumstances in a given instance, and determine whether a tract is being used exclusively for agricultural purposes. As noted in Op. No. 77-020, the fact that a portion of a tract is unused for any purpose may or may not indicate that the entire tract qualifies for agricultural valuation, depending on whether such nonuse is consistent with the devotion of the entire tract exclusively to agricultural use.

As a final matter, you have mentioned in your letter that the schools, which receive funds from the property tax, are concerned with the agricultural valuation of land. I draw your attention to R.C. 5715.19 which authorizes a board of education to file a complaint with regard to a determination of exclusive agricultural use. The complaints are heard by the county board of revision, R.C. 5715.19, and may be appealed to the Board of Tax Appeals, R.C. 5717.01, and then to the Court of Appeals or Supreme Court, R.C. 5717.04.

In conclusion, it is my opinion, and you are advised, that:

1. Land upon which timber is grown for a commercial purpose may be considered "land devoted exclusively to agricultural use" for purposes of R.C. 5713.30 if the tract of land is being used exclusively for the commercial production of timber or exclusively for the production of timber and one or more of the other agricultural purposes specified in R.C. 5713.30.
2. A tract of land is used exclusively for agricultural purposes if the entire tract of land is devoted solely to agricultural use and to no other purpose. A county auditor must, in the exercise of his expertise and discretion, consider all of the relevant circumstances in making the factual determination whether a tract is used exclusively for agricultural use.
3. If only a portion of a tract of land is being used for agricultural purposes, the entire tract is not entitled to agricultural valuation.
4. The subjective intent of a landowner as to the use of his property is not relevant to a determination by the county auditor as to whether a tract of land is land devoted exclusively to agricultural use.