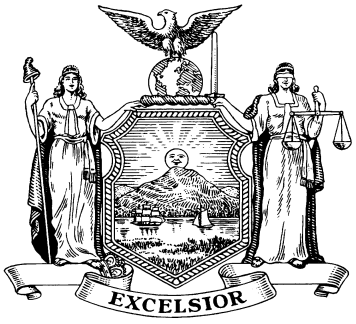
Conversion of New York Farmland Under Agricultural Assessment to Non-Farm Use



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Conversion of New York Farmland Under Agricultural Assessment to Non-Farm Use

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Copies of this publication may be obtained from the New York State Division of Equalization and Assessment, Office of Policy Analysis and Development, 16 Sheridan Avenue, Albany, New York 12210-2714 (Telephone: (518) 473-4532).

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EXECUTIVE SUMMARY

New York State's Agricultural Districts Law was enacted in 1971 in order to address the concerns of farmers and others about the continuing conversion of farm land to non-agricultural purposes. In many areas of the state, agricultural land had greater value for residential and commercial uses, and any value in excess of that justified by farm income carried with it the potential for burdensome real property taxes. To alleviate any economic hardship on owners of agricultural land from higher property taxes resulting from increased land values, the Agricultural Districts Law permitted qualified farmland to receive an "agricultural assessment" -- a partial exemption designed to free the lands in question from taxation on any value in excess of their agricultural value. Agricultural assessments are granted to eligible lands which are either within designated agricultural districts or under 8-year commitments to agricultural use, upon application by the landowner.

Whenever lands that have benefited from agricultural assessment are converted to non-agricultural uses within a statutory time period, sanctions are imposed on such conversions in order to discourage this activity and to compensate (at least partially) for tax shifts within the local municipality. The sanctions are in the form of conversion penalties and the legal provisions relating to these penalties have been changed several times since the law was enacted.

Until 1989, the first year for which local assessors were required to report conversions and their accompanying penalties to State Board of Equalization and Assessment (SBEA), it was difficult to determine the extent and location of land conversions and the penalty amounts imposed. This report draws on the recently available conversion data (for 1989 and 1990) to ascertain the extent, location, and characteristics of agricultural land conversions and to examine the adequacy and effectiveness of the current penalty provisions.

Two hundred thirty conversions comprising nearly 1,600 acres were reported in 1989. They occurred in 47 towns and in 17 counties, particularly in Monroe, Ontario, and Orange Counties. Orange County reported the largest number of conversions, but because many of them involved subdivision lots the acreage per individual conversion was relatively small. Penalty taxes per acre, however, were largest in the southeastern part of the state, including Orange County, where the tax savings from agricultural assessment were highest. Conversions of land formerly under 8-year commitment involved both extensive acreage and large penalties in many instances because pre-1988 statutory provisions required that the penalty be imposed on all land under commitment by the same owner, regardless of the acreage actually converted to a non-agricultural use.

The conversions reported in 1990 also originated from 17 counties, but with significant differences from 1989. The number of conversions reported for 1990 (413) was nearly 80 percent higher than that reported for 1989, but the conversions comprised only

about 1,000 acres in total or nearly 40 percent less than the acres converted in the prior year. They tended to involve farmlands that underwent residential subdivision and development, especially in Monroe, Orange, and Suffolk Counties. Suffolk County alone accounted for over 60 percent of the reported conversions, one-third of all converted acreage and over 80 percent of penalty dollars. The bulk of the Suffolk County activity took place on lands which were formerly under commitment, resulting in imposition of penalties on all committed parcels under the same ownership. Considerable conversion activity was also reported by several counties in the western part of the state, especially Genesee, Monroe and Ontario. In the course of contacts with local officials, considerable evidence was found which indicated that conversions in some areas were not being reported, due at least in part to the administrative problems involved in tracking conversions and levying the (often small) penalty taxes.

Field research and telephone inquiries with local officials also provided useful information on the specific characteristics of the conversions. Based on the subsequent use of converted land, conversions were categorized as: family; periodic/piecemeal; large acreage; hobby farm; subdivision; and miscellaneous. Subdivision conversions comprised the most prominent category for both reporting years, especially in 1990. However, unlike family and piecemeal conversions, which tended to occur on several farms, subdivision activity was concentrated on relatively few farms.

Lands undergoing conversion were primarily in field crops, with the most intensive cropping occurring in Suffolk County. Except for a few conversions involving the mining of sand and gravel, all converted land became residential. In some cases, the converted land was sold more than once among non-farm owners between the last year exempt and the year converted. Conversions of land that had been rented to farmers by their non-farm owners comprised 36 and 28 percent of all conversions in 1989 and 1990 respectively. Such rental activity was more prominent in metropolitan counties, especially in Monroe, Orange, and Suffolk.

In Orange County, 20 to 25 percent of the conversions reported for both years involved land that transferred more than once. Nearly two-thirds of all reported conversions in the same county involved formerly rented lands. The rented lands tended to be less-intensively farmed, being primarily devoted to hay or pasture. Present legal provisions allow these lands to qualify for agricultural assessment with minimal agricultural production if under rental to fanners who own other lands already in the program. Often the lessees pay no rent, but the tax savings to the landowner from agricultural assessment are as high as 95 percent. In such situations, assessors are faced with enforcement difficulties in that they must make extra efforts to determine whether serious farming is really taking place or the observed activity is only the appearance of farming and carried out only to secure tax benefits. Conversion activity on both rented and nonrented lands is expected to continue in Orange County and other counties in the Hudson Valley, given the region's close proximity and accessibility to large employment centers.

In both reporting years the penalty amounts imposed averaged less than two percent of the selling price of the parcels ultimately converted. Such small penalty amounts suggest that the current penalties provided in law do not serve as a deterrent to conversion and in many cases are only a partial repayment of benefits received in the past. New York's penalty provisions contrast with those of some other states and certain municipalities, which require real penalty payments over and above the mere repayment of benefits received. If New York's penalties are not increased, at the very least some minimum level should be established to defray the costs of administration and to encourage enforcement and reporting in cases where penalties would otherwise be very small.

Administering the current system of penalties has proven difficult for local assessors for several reasons. In many instances individual parcels within a large parent parcel are converted over extended periods of time, and require constant monitoring and duplication of effort by local tax officials. Because conversion cannot by law occur until an "outward or affirmative act" takes place that changes the use of the land (not including non-use), individual parcels created from the parent parcel will most likely be converted at different times, and sometimes a portion of the parent parcel may not be converted at all. Instances were found where formerly exempt lands were sold as lots and taken out of agriculture, yet no conversion penalties could be levied because actual construction did not occur before the statutory time limit for levying a penalty had expired (maximum of five years for district land and eight years for committed land).

Administrative efficiency would be improved considerably if conversion were tied to the sale of land benefiting from agricultural assessment rather than to actual physical modification of the land. Under this system, the assessor would calculate and levy penalties only once (for the entire acreage sold) instead of as many times as there were individual parcels created from the original parcel or parcels subject to conversion penalties. Some states handle conversion in this manner, thereby facilitating the assessor's job and enabling the parties to the transaction to be knowledgeable at the time of sale concerning any encumbrances on the land due to penalty payments. These states usually include a presumption of conversion when the sale occurs, but penalty taxes are waived if the buyer agrees to continue the land in agricultural use, and enrolled under agricultural assessment. In circumstances of conversions not involving transfers, some of these states require the owner to notify the assessor in a reasonable amount of time, but no such provision yet exists in New York.

The reporting forms used by SBEA should be expanded to include additional key information on farmland conversions which can usually be readily provided by local assessors. These data would include information on the land use after conversion, the type of ownership, the farm use prior to conversion, and any use changes of adjoining land. Since concern over loss of farmland has prompted both extensive public concern and a variety of tax and other policy changes intended to halt or reverse the trend, and since approximately $33 million in property taxes are now shifted annually from farm to nonfarm property as a result of the agricultural assessment program alone, it is incumbent on the state and local governments to monitor conversion activity effectively.

CONVERSION OF NEW YORK FARMLAND UNDER AGRICULTURAL ASSESSMENT TO NON-FARM USE

INTRODUCTION

New York State's Agricultural Districts Law (Article 25AA of the Agriculture and Markets Law) was enacted into law in 1971 to conserve and protect agricultural land for agricultural production, and also to conserve and protect agricultural lands as valued natural and ecological resources. Passage of this law resulted from the increasing concern about much agricultural land being lost for any agricultural purpose (Section 300, Para. 1). The demand for land used for urban purposes had rapidly accelerated after World War II, and it was feared that development pressures would create an economic and governmental climate unfavorable to agriculture in many areas. It was argued that developmental pressures had already resulted in assessing of agricultural lands at market value and that the resulting property tax bills were financially onerous to many farmers and would speed up the removal of land from farm use.

The Agricultural Districts Law permits qualified farmlands to receive agricultural (or in use) assessments, and exempts these lands from taxation on the value of land in excess of its agricultural assessment value. Agricultural assessments are calculated annually by multiplying the number of eligible acres in each soil productivity class by the corresponding agricultural assessment value for the class of land in question. The values, which are certified annually by the State Board of Equalization and Assessment (SBEA), are multiplied by the most recent state or special equalization rate to place them at the level of assessment used for other property in an assessing unit. Agricultural assessments are available for lands that qualify either within a designated agricultural district (Ag. & Mkts. Law Section 305) or under an eight-year individual commitment to agricultural production (Ag. & Mkts. Law Section 306).

The Agricultural Districts Law requires imposition of sanctions whenever land benefiting from an agricultural assessment is converted to a non-agricultural use within a statutory time period. These sanctions were enacted to discourage such conversions from taking place, and also to partially compensate the local taxing jurisdictions which have experienced reductions in their property tax bases during the period the converted lands benefited from exemption. Determining whether or not the sanctions have functioned effectively has been problematic, however. Although local assessors have imposed sanctions on lands that have been converted throughout the 20-year period since the Law's enactment, no data on the amount of land that was converted has been available until

recently. Consequently, no analysis has been conducted in the past regarding the location of conversion activity, the intensity of conversions, and how patterns are changing over time across New York State.

Conversion data for 1989 and thereafter have recently been made available through a mandatory reporting requirement and a systematic analysis of conversion activity occurring in 1989 and 1990 is now possible. This report will employ this new data source to analyze the level of conversion activity according to frequency, acreage, amount of penalty imposed, location, and how these factors have changed between the two reporting years. Beyond these general trends, this report will also describe and analyze various attributes of converted lands, and their interrelationships. Particular attention will be focused on property transactions and the tenure of the converted lands prior to expiration of their agricultural assessments. At the end of this report, the adequacy and effectiveness of the sanctions currently in place will be examined. The report will be limited to analyzing the conversion of farmland under agricultural assessment, which is but a portion of all farmland converted in New York State.

Background

Provisions intending to discourage the conversion of land receiving property tax benefits have been modified several times since the Law's inception in 1971. The payments made by landowners converting to non-farm uses have been variously referred to as "roll back taxes," "penalty taxes," and "sanctions". Table 1 shows the evolution of the penalty provisions since 1971. Under the original law, penalties for converting non-district land under eight-year individual commitment were more severe than those for district lands. Penalties on committed land conversions were determined on the basis of taxes determined in the year following the conversion on land subject to commitment under the same ownership, including land remaining under agricultural production. In contrast, district penalties specified a payback of the tax savings (or roll back taxes) only on the portion of land actually converted. The provisions were changed by the Legislature in 1987, the major change being the deletion of the "rollback" concept in favor of the penalty tax based on a multiple of the taxes saved in the most recent year for land within an agricultural district. Another significant 1987 change was the charging of interest for the first time. These revised penalty provisions were easier to calculate. Penalty taxes on committed land conversions were still based on all committed land under the same ownership, but were

changed to reflect prior tax savings rather than the post-conversion taxes imposed on the property.

Further modifications were made in 1988. This legislation made the penalties for conversion of committed land very similar to those on district lands in that both were now based on the tax imposed on acreage actually converted as opposed to the tax imposed on the entire parcel or parcels. The non-district penalty continued to be more severe, however: nine times the taxes saved in the most recent year versus five times for district land. A further change, which set the multiplier at five for committed land, was enacted in 1990. The only difference now between penalties on committed land and district land is that, in determining if the statutory time limit since the last benefit year has expired, the assessor uses the eight year commitment period for judging conversion penalty liability rather than the five years used in the case of district land.

Table 1. Penalty Provisions of the Agricultural Districts Law

Version of Agricultural Districts Law	Penalty for Land Located Within an Agricultural District	Penalty for Land Under an 8 Year Individual Commitment
Original Law	Roll back Tax equal to taxes saved for past five years, applicable only to that portion of land converted to nonagricultural use.	Penalty Tax equal to 2X the land taxes levied in the year following conversion against all of the parcels previously under commitment.
1987 Amended Version (Chapter 774)	Single Penalty Tax, 5X the taxes saved in the last year, plus 6% interest per year, compounded annually, not exceeding five years. This penalty applicable only to converted portion of land.	Same as for land inside an agricultural district, except applicable to all parcels that include land subject to any commitment.
1988 Amended Version (Chapter 736)	Same as 1987 Version. Conversion defined more explicitly.	Penalty Tax equal to 9X the taxes saved in the last year the land benefited from the program plus interest of 6% per year compounded annually for each year an agricultural assessment was granted for up to eight years. Applicable only to that portion of land converted to nonagricultural use. Conversion defined.
1990 Amended Version (Chapter 396)	Same as 1988 Version.	Same as agricultural district penalty.

In addition to the specific penalty provision changes, two important technical changes were made in the 1988 legislation. First, conversion was specifically denned as an "outward or affirmative act changing the use of agricultural land and shall not mean the non-use or idling of such land" (Section 301, Paragraph 8). Secondly, assessors are now

required to report annually any penalty taxes imposed as part of their annual report to SBEA. The first year for which such reporting was required was 1989, and data obtained from the reports filed for 1989 and 1990 are the basis for this study.

OVERALL CONVERSION PATTERNS — 1989 AND 1990

In examining the general patterns of conversion activity throughout the state, the following information was available from reporting forms sent to SBEA by local assessors as part of their annual reports:

1. The name of the person on whom the penalty taxes were levied
2. Tax Map I.D. of the parcel on which the penalty taxes were levied
3. Tax Map I.D. of the original parcel that benefited from exemption (data available only for 1990)
4. The acreage converted
5. The assessed value
6. The exempt amount
7. The amount of the penalty levied
8. Whether the land was in a district or subject to an eight-year commitment
9. The last year the land received an exemption
10. The number of years benefited (up to 5).

From the above information the following attributes about conversion activity relevant to this report were generated: the number of conversions, acreage converted, penalty taxes imposed, and location by county and municipality. These attributes are summarized in the present section. Detailed information on some conversions was also obtained through field work and telephone inquiries; these data are reviewed in subsequent sections.

Conversion Activity —1989

Conversions, for which penalty taxes were imposed on the 1989 assessment roll were reported by 47 towns, spread over 17 counties (Table 2, Figures 1 and 2). The number of agricultural conversions reported for 1989 was highest in Orange County (where over one third of the reported conversions occurred), the Finger Lakes area, western New York, with lesser areas of activity in the Mohawk Valley, Rockland County, the east side of the Hudson Valley, and eastern Long Island. The frequency of conversions differs significantly from the distribution of converted acreage, however, as indicated in Table 2. For example, Orange County reported twice as many conversions as Ontario County, but with less converted acreage in total. Based on similar tax map I.D. numbers among reported conversions, it appears that a comparatively high percentage of downstate conversions involved residential subdivisions, where conversions are imposed on multiple individual lots, each of which usually comprises less than two acres.

Table 2. 1989 Farmland Conversions Reported to SDEA*

County	Affected Towns	Total Conversion	Acres Converted	Total Penalty	Penalty Tax Per Acre	Average Converted Acres	Affected Farms
Cayuga	3	28**	67.3	$2,621	$39	2.4	8
Columbia	3	10	55.3	1,817	33	5.5	6
Dutchess	6	13	109.3	11,621	106	8.4	5
Erie	1	2	4.0	79	20	2.0	NA
Genesee	2	8	14.6	542	37	1.8	6
Jefferson	2	2	10.5	1,461	139	5.3	NA
Lewis	1	1	4.1	350	85	4.1	NA
Monroe	2	2	175.4	7,452	42	8.4	9
Montgomery	1	6	17.4	532	31	2.9	3
Niagara	1	1	1.0	140	140	1.0	NA
Ontario	9	33**	365.9	11,487	31	11.1	15
Orange	8	80**	350.5	48,899	140	4.4	26
Rockland	1	1	19.0	72,000	3,789	19.0	1
Suffolk	2	8**	124.0	107,300	865	15.5	4
Sullivan	2	9	227.7	16,535	73	25.3	1
Washington	1	5	39.2	718	18	7.8	3
Yates	2	3	4.9	170	35	1.6	NA
TOTAL	**47**	**231****	**1,585.1**	**$283,724**	**$179**	**6.9**	**87**

* As of 1/14/91.
** Corrected from original reporting – duplicate records removed.

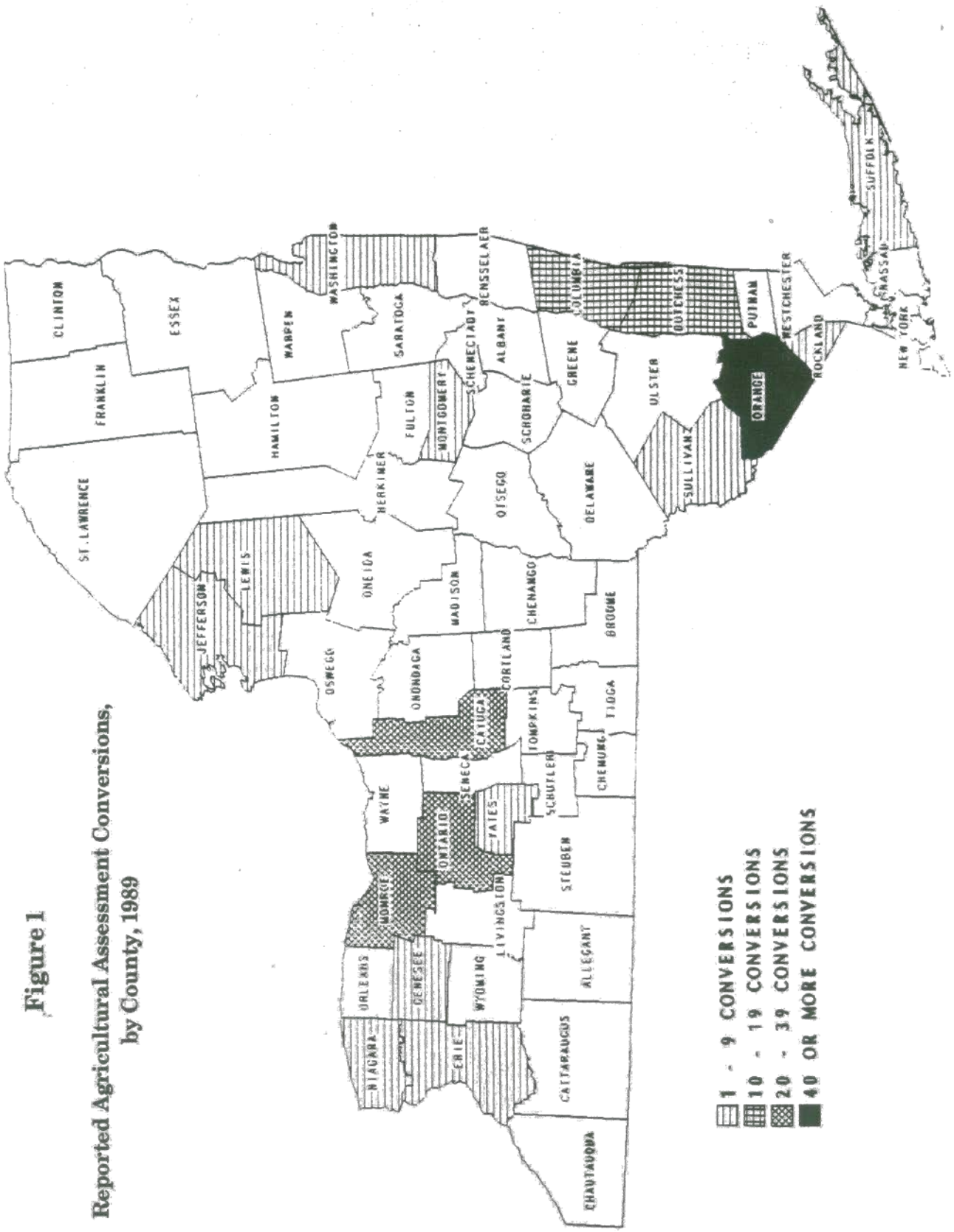

Figure 1

Reported Agricultural Assessment Conversions, by County, 1989

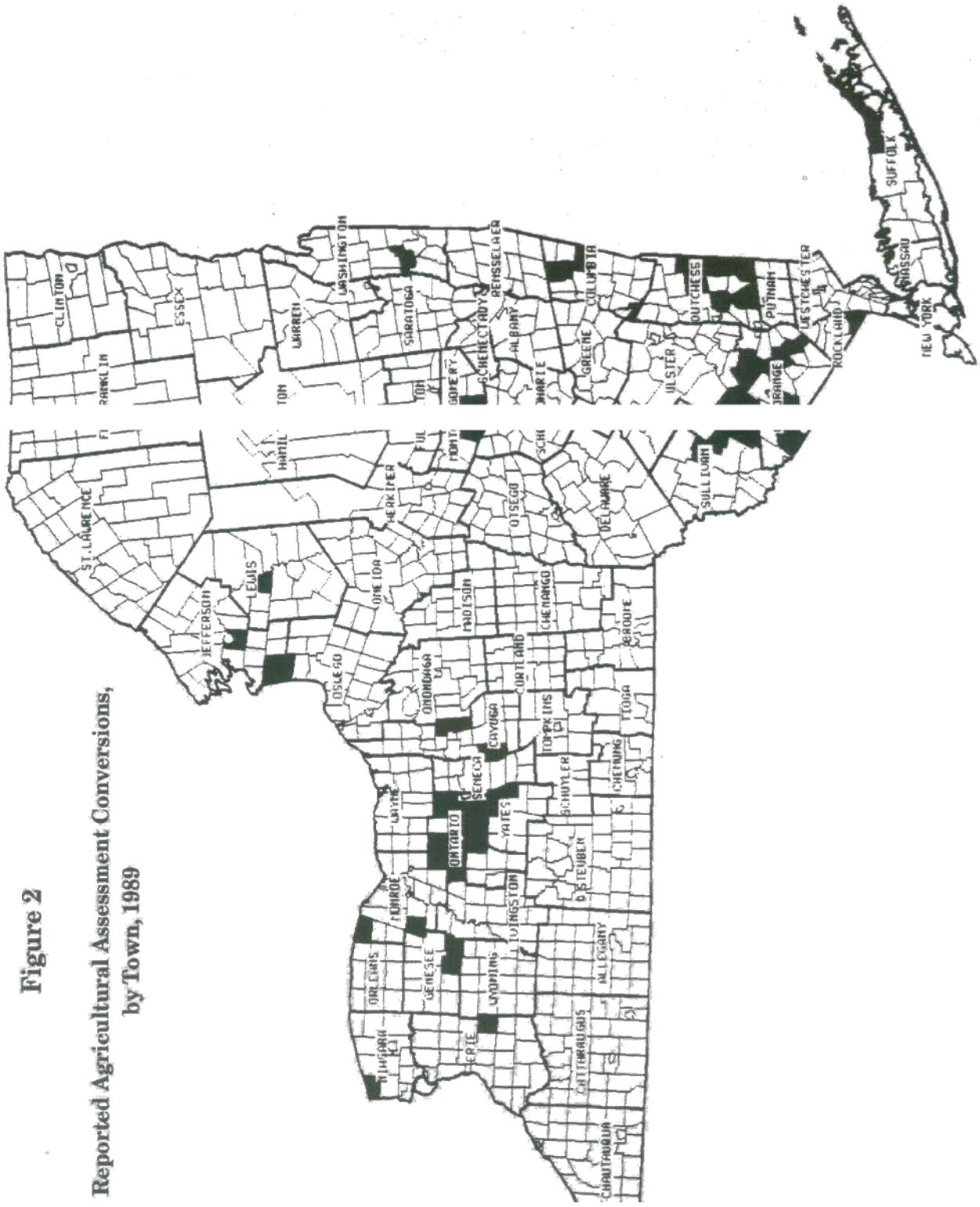

Figure 2

Reported Agricultural Assessment Conversions, by Town, 1989

Conversion activity was in some instances affected by variations in the sanctions that applied at conversion. Suffolk and Sullivan Counties each had fewer conversions than Monroe County, but because both downstate counties have experienced conversions of entire committed parcels which benefited from exemptions prior to 1988 (conversion of entire parcel or parcels required), the acreage determined to have been converted in each of these two counties is significantly larger. These downstate areas also have larger conversion penalties, and are attributable not only to large acreages converting but also to the per acre dollar difference between agricultural use value and market value of land in these areas. Ultimately, the amount of the penalty is a function of this value difference, which can be particularly large in counties within commuting distance of New York City. For example, per acre conversion penalties on lands which have benefited for just one year of exemption (1988) were $50 in upstate Ontario County, but were over $700 in downstate Orange County.

Table 3 indicates that the ten largest penalties levied in 1989 occurred in the Hudson Valley and on Long Island, accounting for over 75 percent of all conversion penalty dollars and nearly one-third of all acreage converted. Five of these conversions involved individual commitments (law section 306) and five were district farms (law section 305).

Table 3. Top Ten Agricultural Exemption Conversion Penalties Reported, 1989

Rank	Penalty Tax Amount	Acres	Penalty Tax Per Acre	Ag. & Mkts. Law Section	Town	County
1	$75,906	62.00	$1,224	306	Riverhead	Suffolk
2	72,000	19.00	3,789	305	Orangetown	Rockland
3	13,509	21.20	636	306	Riverhead	Suffolk
4*	13,408	27.10	495	306	Riverhead	Suffolk
5*	11,063	92.00	120	305	Crawford	Suffolk
6*	10,637	169.90	63	306	Mamakating	Sullivan
7*	8,775	76.30	115	305	Montgomery	Orange
8*	5,300	7.20	736	305	Blooming Grove	Orange
9*	4,912	13.70	359	306	Southold	Suffolk
10	4,424	35-30	125	305	Crawford	Orange
	$219,934	**523.70**	**$420**			

*Combined penalties from conversions of land from same original parcel.

Conversion Activity —1990

Analysis of conversions reported for 1990 relied on reports received by SBEA as of February 1991, and may thus exclude 1990 conversions reported later than usual. The data, however, are fairly complete as compared to 1989, since all counties reporting conversion activity in 1989 are also represented in 1990.

The number of conversions reported increased markedly in 1990, with the number reported to SBEA increasing by over 78 percent. At the same time, the amount of converted acreage fell by over 36 percent (Table 4). This paradox is attributable to significant clustering of conversions on formerly exempt lands that underwent residential subdivision, thus generating many small-sized conversions, especially in Monroe, Orange, and Suffolk Counties. Reported penalty dollars increased by nearly 88 percent from the previous year. The primary reason for this sharp increase can be seen in the sanctions that applied for both reporting years. As pointed out earlier, penalty taxes on lands under individual commitment prior to 1988 equaled twice the land taxes levied in the year following conversion, and applied to all parcels that included land previously under commitment. In 1989 forty-five percent of all reported penalty dollars stemmed from this type of conversion, but in 1990 that proportion rose to over 81 percent.

Table 4. 1990 Farmland Conversions Reported to SBEA*

County	Affected Towns	Total Conversions	Acres Converted	Total Penalty	Penalty Tax Per Acre	Average Converted Acres	Affected Farms
Cayuga	1	5	36.70	$1,108	30	7.34	5
Chautauqua	1	1	1.20	31	26	1.20	1
Clinton	1	1	1.40	38	27	1.40	1
Columbia	2	6	25.00	773	31	4.17	2
Dutchess	3	4	42.60	6,967	164	10.65	3
Erie	1	1	10.90	826	76	10.90	1
Genesee	6	16	20.60	1,416	69	1.29	13
Monroe	3	27	159.60	21,943	137	5.91	11
Ontario	11	37	108.50	5,090	47	2.93	35
Orange	5	49	193.70	43,019	222	3.95	30
Orlean	2	3	11.10	193	17	3.70	2
Steuben	1	3	2.00	71	36	0.67	3
Suffolk	2	253	326.80	432,954	1,325	1.29	10
Ulster	1	2	5.00	972	162	3.00	2
Washington	2	3	29.30	3,213	110	9.77	2
Wayne	1	1	1.80	56	31	1.80	1
Westchester	1	1	25.90	13,651	527	25.90	1
Total	**44**	**413**	**1,003.10**	**$532,321**	**531**	**2.43**	**123**

* As of 1/30/91.

Reported activity was also more concentrated in 1990 (Figure 3). It is true that conversions were reported by municipalities in the same number of counties (17) as in 1990. However, ten of these seventeen counties reported fewer than five conversions apiece, whereas only five of the reporting counties in 1989 experienced such moderate levels of activity. Moreover, conversions were reported from only 44 towns, three fewer than in 1989 (Figure 4). In 1989 six towns had each reported ten or more conversions, or 107 conversions in all (over 46 percent of all conversions reported that year). However, in 1990 the Suffolk County Town of Riverhead alone reported 250 conversions (over 60 percent of all reported conversions), 168 of which occurred within one large subdivision. This municipality also accounted for nearly one-third of all acreage converted, nearly four-fifths of all penalty dollars imposed, and over ten times the amount imposed on conversions in the second-ranking town (Blooming Grove, Orange County). Conversion activity remained strong during 1990 in Orange County, and also in western New York, especially in Monroe County. This was somewhat surprising in that real estate activity has slowed considerably, especially in downstate areas such as Orange County. However, because the slowdown did not begin until 1988-89, the conversions noted on the 1989 and 1990 assessment rolls may well reflect development already well underway or even completed at the time the slowdown began.

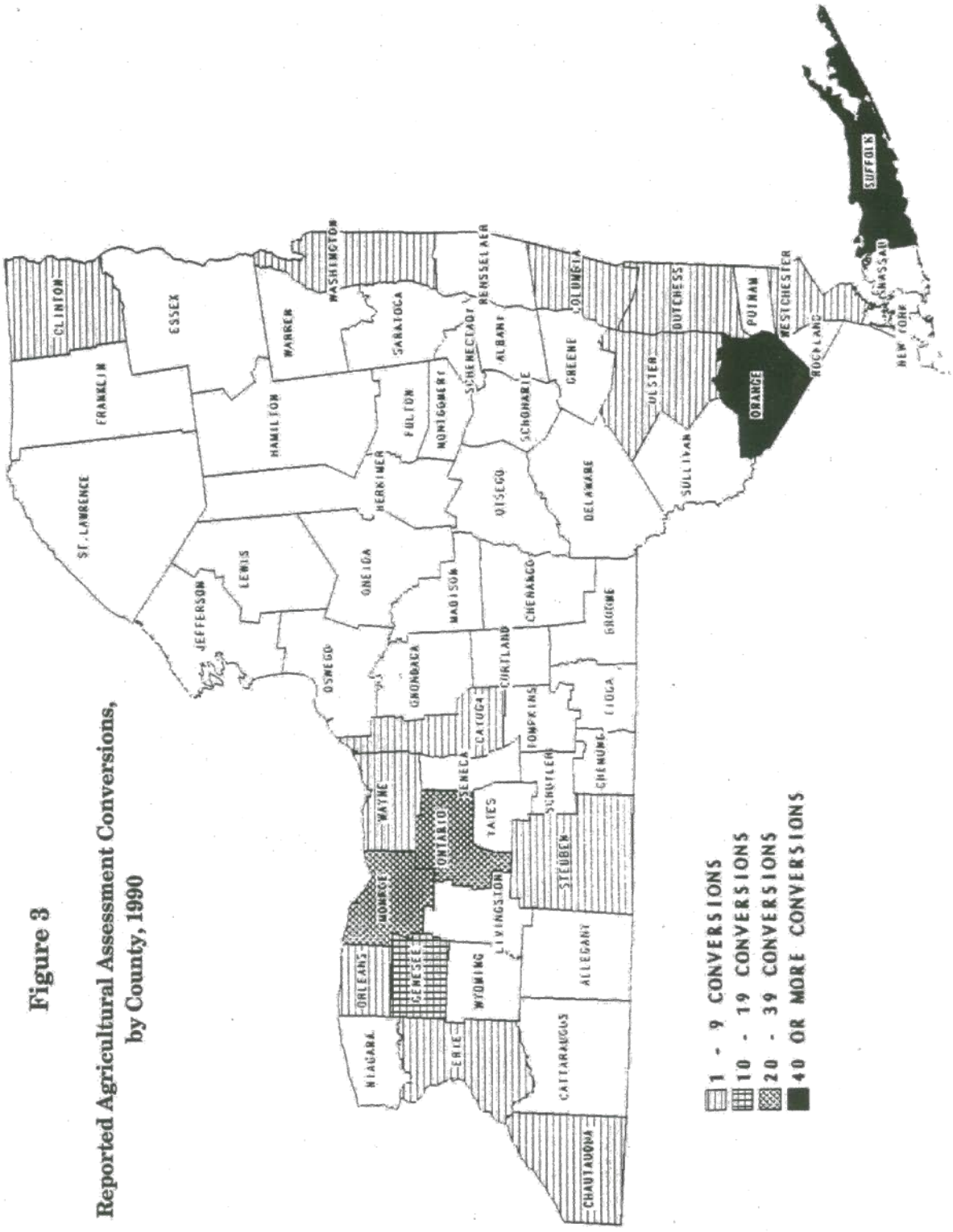

Figure 3

Reported Agricultural Assessment Conversions, by County, 1990

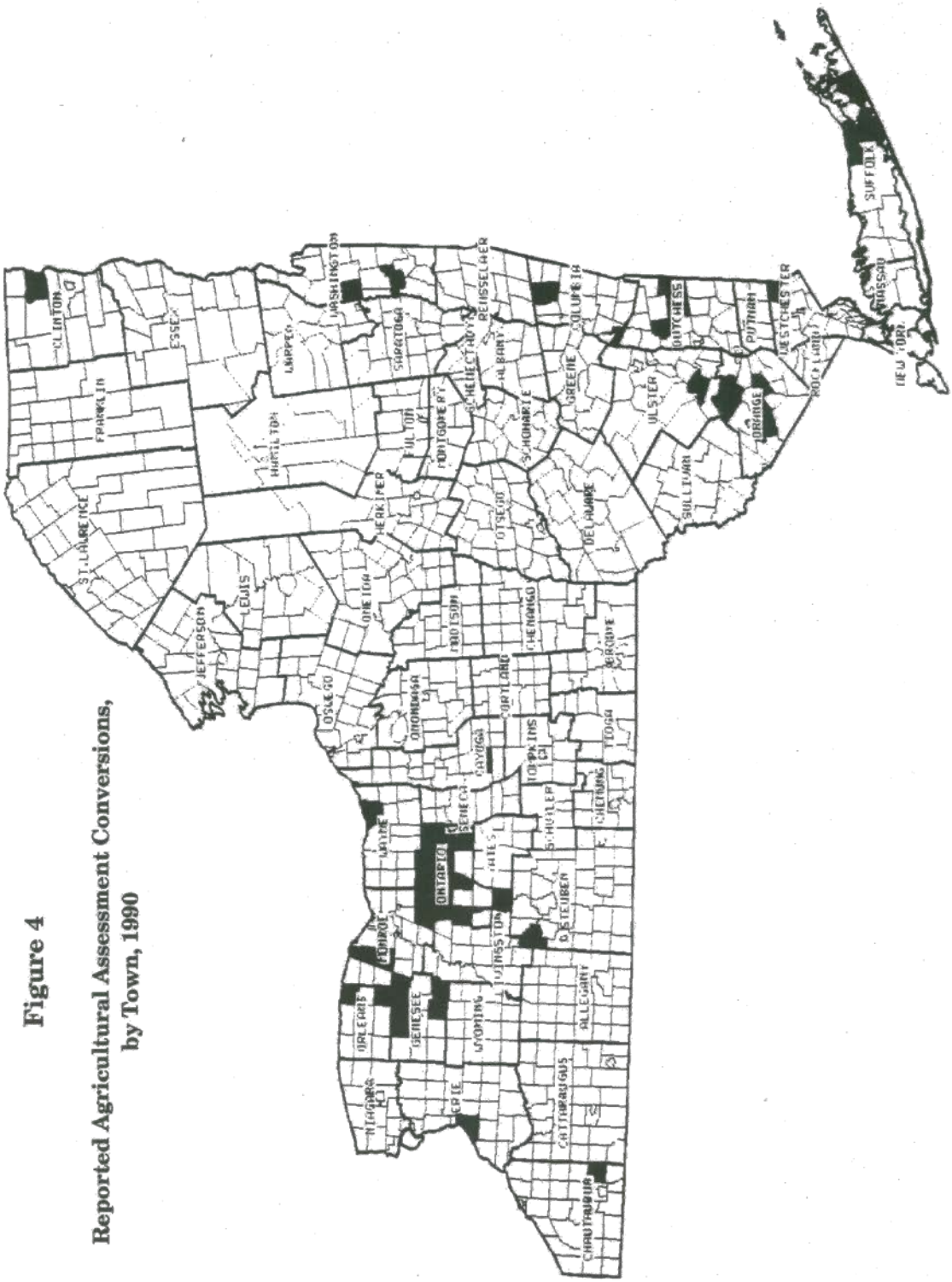

Figure 4

Reported Agricultural Assessment Conversions, by Town, 1990

The top ten penalties imposed in 1990, seven of which involved impositions on subdivided parcels, clearly indicate how heavily conversion activity is concentrated (Table 5). Two of the top ten conversions were reported from upstate, in Monroe County, but the largest penalties were in downstate areas, where conversions of committed parcels were clearly evident. In 1990 the ten largest conversion penalties accounted for over 90 percent of all penalty dollars imposed, whereas in 1989 the top ten accounted for only 77 percent of penalty dollars. Similarly, in 1990 the top ten represented 41 percent of the acreage converted but only 33 percent in 1989.

Table 5. Top Ten Agricultural Exemption Conversion Penalties Reported, 1990

Rank	Penalty Tax Amount	Acres	Penalty Tax Per Acre	Ag. & Mkts. Law Section	Town	County
1*	$259,229	185.60	$1,397	306	Riverhead	Suffolk
2*	81,817	63.90	1,518	306	Riverhead	Suffolk
3*	46,101	32.50	1,418	306	Riverhead	Suffolk
4	32,147	51.70	622	305	Blooming Grove	Orange
5	31,668	41.10	771	306	Riverhead	Suffolk
6	13,651	25.90	527	306	North Salem	Westchester
7	6,319	10.20	620	305	Ogden	Monroe
8	5,860	11.40	514	306	Riverhead	Suffolk
9	5,764	1.00	5,764	305	Southampton	Suffolk
10*	3,848	31-20	123	305	Mendon	Monroe
	$486,404	**412.30**	**$1,180**			

* Combined subdivision penalties from conversions taking place on same original parcel.

At the same time, certain areas of the state that were undergoing conversions in 1989 were dormant in 1990. Sullivan County, which reported extensive acreage converted from one committed farm in 1989, reported no conversion activity in the following year. Conversion activity was also absent during 1990 in Yates, Jefferson, Lewis, and Rockland Counties. Cayuga County, which reported 28 conversions in 1989, reported only five in 1990. Conversions in Dutchess County were also less widespread, but new activity appeared in both Ulster and Westchester Counties. Scattered conversions also appeared in the Southern Tier and the Champlain Valley.

At the town level there were significant changes in the specific towns reporting, if not in the number reporting. Twenty seven of the 47 towns that reported conversion activity in 1989, comprising 93 conversions, 722.30 acres, and $117,843 in penalties, were devoid of reported conversion activity in 1990. Conversely, 25 of the 43 towns reporting conversions in 1990 (as of February 1991) reported no such activity in 1989. These newly reporting municipalities comprised 74 conversions, 329.10 acres, and $55,607 in penalties. Furthermore, there were significant intracounty shifts in conversions between these two years. For example, within Orange County the Town of Montgomery reported 27 conversions in 1989 but only four in 1990, whereas Blooming Grove reported 20 conversions in 1990, double the number reported the previous year. Within Monroe County the Towns of Riga and Hamlin reported 27 conversions in 1989 but none in 1990, whereas Ogden and Mendon, absent in conversion reporting in 1989, reported 33 conversions in 1990.

So far the discussion has focused on where conversion activity has occurred between 1989 and 1990. Another important facet of conversion activity is the noticeable absence of reported conversions in certain areas of the state over both reporting years. Reported conversion activity has been relatively low in the Southern Tier, the St. Lawrence Valley, the Mohawk Valley, and also in the Susquehanna Region. These areas currently have relatively low enrollments in the agricultural assessment program. Although low enrollments might be explained by the small differential between agricultural and market values in these rather non-metropolitan environments, many assessing units in these areas have also lagged behind other parts of the state in revaluation of real property. Despite the currently slow real estate market for vacant residential land in New York as a whole, increased assessment capabilities and court decisions unfavorable to assessing units, are likely to spur revaluation efforts in these areas. Because agricultural, forest, and vacant lands have been traditionally underassessed in many municipalities which did not update their assessments, it is expected that there will be greater incentives to enroll eligible land following a revaluation. Along with such increased enrollment comes an increased potential for future reported conversion activity.

SPECIAL CHARACTERISTICS OF CONVERTED PARCELS

Background to Analysis

The general patterns discussed above provide an overall view of the volume and location of farmland conversions, but overlook other important facets of conversion activity. Conversions vary significantly in terms of their occurrence on common farm operations, prior and subsequent land use, the number of times the land transferred between the last year under exemption and date of penalty imposition, by land tenure (owner-operated vs. leased), and other such attributes. To analyze these important characteristics field investigations were conducted in most areas where conversion penalties were reported to have been imposed by assessors during 1989.

A total of 204 of the reported 231 conversions, or 88 percent, were researched to obtain more detailed information than that which was reported to SBEA by assessors. As indicated in Table 6, the research was comprehensive, with 12 of the 17 counties reporting conversions (and 28 of the 47 affected towns) visited. Counties and towns were selected based on the number of conversions reported, the acreage involved, and location (in order to achieve as complete geographic coverage as possible).

Of the 1,585 acres reported as having been converted, 1,532 were reviewed, leaving only 53 acres not covered. Overall, 87 farming operations were affected by the 1989 conversion activity studied. While the review effort was directed toward those 1989 conversion instances reported to SBEA, some assessors or county officials supplied information on other unreported conversions or ones which were ultimately reported for 1990.

The overall approach taken in the field work consisted of using a combination of information sources. County offices were visited to ascertain location, ownership history, and sales information. In some instances, assessors were contacted directly to obtain this information or additional details on the conversions. In most instances, the land in question was visited. However, time and resource limitations precluded landowner interviews in most instances or the auditing of assessors' penalty calculations.

Table 6. Field Review Coverage of 1989 Farmland Conversion Reported by SBEA*

County	Affected Towns	Total Conversion	Conversions Researched	Percent Researched	Affected Farms
Cayuga	3	28*	28	100	8
Columbia	3	10	10	100	6
Dutchess	6	13	10	77	5
Erie	1	2	0	0	NA
Genesee	2	8	8	100	6
Jefferson	2	2	0	0	NA
Lewis	1	1	0	0	NA
Monroe	3	21	21	100	9
Montgomery	1	6	6	100	3
Niagara	1	1	0	1	NA
Ontario	9	33**	27	82	15
Orange	8	80**	73	91	26
Rockland	1	1	1	100	1
Suffolk	2	8*	8	100	4
Sullivan	2	9	7	78	1
Washington	1	5	5	100	3
Yates	2	3	0	0	NA
Total	**47**	**231****	**204**	**89**	**87**

* As of 1/14/91.

**Corrected from original reporting – duplicate records removed.

Beyond the information that was reported to SBEA, additional information was sought from examining documents and by talking to knowledgeable officials on the following issues:

1. The location of the converted land, including tax map identification
2. The land use prior to and subsequent to the conversion
3. The ownership before and after conversion
4. The extent and nature of any previous conversion activity on the same parcel or farm
5. The sale price of the land converted
6. The general characteristics of the areas in which the conversions occurred.

Conversion Characteristics —1989

The 1989 conversions researched lent themselves well to a taxonomy of conversion types. This taxonomy is based on analysis of the entire range of conversions, and considers the use of the land after it has been converted. The boundaries between these conversion

types are not always clear, but the categories specified do characterize the range of conversions that have occurred. The six conversion types are: (1) family; (2) periodic/ piecemeal; (3) large acreage; (4) hobby farm; (5) subdivision; and (6) miscellaneous. Table 7 shows the incidence of these various types of conversions in 1989, and descriptions of each type follow.

Table 7. Incidence of Various Conversion Types, 1989

Conversion Type	Percent of Total			
	All Reported Conversions	All Converted Acreage	All Conversion Penalty Dollars	All Farms Affected
Family	12.7	7.4	8.5	20.7
Periodic/Piecemeal	22.2	8.7	5.3	31.0
Large Acreage	9.0	29.0	8.7	11.5
Hobby Farm	2.1	2.2	2.9	2.3
Subdivision	50.7	38.7	70.3	27.6
Miscellaneous	3.2	11.2	2.5	5.7

Note: Totals may not add to 100 because of rounding.

1. **Family** conversions are those conversions that occurred within a farming family. Such conversions may involve sales or retentions of land in the family after the farm has been sold off. Sometimes these conversions involve no sales of property, but rather the creation of another homestead on the farm property for a family member. Although this type accounts for one in every eight conversions, it accounts for less than ten percent of the converted acreage and penalty dollars (see Table 7). For example, the third and fourth largest penalties (Table 3) involved residual land retained by the family after the sale of other pieces under the old individual commitment provisions.

2. **Periodic/Piecemeal** conversions are those conversions occurring on small parcels of land, generally under five acres that have been sold from a larger parent farm parcel with no apparent systematic subdivision plan. Although they comprise over one-fifth of all reported conversions (with the greatest activity occurring in Genesee and Ontario Counties), periodic parcels comprise relatively little converted acreage or penalty conversion dollars. The ninth largest conversion penalty was levied on a piecemeal conversion from an individual commitment farm in Suffolk County.

3. **Large Acreage** conversions consist of parcels above five acres, or that which is well in excess of the acreage necessary to support one homesite. The largest sized parcels of this type may ultimately become subdivisions, but no documented subdivision plans were uncovered. Larger sized parcels often occur where local zoning ordinances stipulate large minimum acreages and/or in instances where no zoning exists but the owner wishes to sell lots without triggering the provisions of the public health law (comes into play when there are more than five lots of less than five acres each). Although less than ten percent of the conversions and conversion penalty dollars were classified this

way, the land-intensive nature of these conversions accounted for nearly thirty percent of all acreage converted. The sixth largest conversion penalty was associated with a large-acre conversion on committed land in Sullivan County.

4. **Hobby Farm** conversions consist of lands of five to twenty acres, occupied by a newly-built residence and including some evidence of recreational agricultural use. A small auxiliary building, along with fencing, often accompanies the house. Although such properties include some degree of agriculture, their primary use is residential and they can be thought of as "gentlemen farms" or country estates, where agricultural activity is more recreational than commercial. Property owners on this type of converted land realize little or no income from agriculture. These conversions comprise less than three percent of all converted parcels, acreage, and penalty dollars, although the fourth largest conversion penalty, occurring in Suffolk County, included a hobby farm.

5. **Subdivision** conversions are those conversions associated with properties covered by existing subdivision maps. In some instances these conversion penalties have been imposed on the whole subdivision and in others only on individual lots which have been actually converted. In most instances the penalties were paid by the purchasers of individual lots, who subsequently erected homes on them. In the remaining cases, where parcels sold with homes already built, or where such infrastructure as streets, sewers, and other utilities had been installed, the developer paid the penalty tax. Over one-half of all conversions involved subdivision activity, with over three-fifths of these occurring in Orange County alone. Over one half of all penalty dollars levied came from the top two conversions alone — subdivisions in Suffolk and Rockland Counties. Because the residential subdivision lots are frequently under two acres, this category of conversion accounts for less than 35 percent of all acreage converted.

6. **Miscellaneous** conversions are those conversions which didn't fit any of the other categories, and which, unlike other types of conversion, involved payment of the penalty by the person last benefiting from the exemption. The most common example of this relates to the mining of stone and gravel, which alone accounted for nearly ten percent of all converted acreage. Another miscellaneous conversion involved the construction of a communication tower and ancillary structures on land leased from a farm receiving an agricultural assessment.

Up to this point, the report has discussed the level of conversion activity by number of parcels and acres converted, and the amount of penalties levied. But if conversion activity is instead measured according to the number of farm operations affected, (which often comprise more than one parcel), some different patterns emerge. The 204 researched conversions affected 87 farm operations (Table 6), or 2.34 conversions per affected farm operation. Periodic conversions appear on more farms than any other type, as shown in Table 7. Although subdivision conversions are numerous, they tend to occur on relatively

few farms. Family conversions, although relatively few, are very scattered, occurring on over one-fifth of all farms represented in the data.

The land use change information gathered in the field review indicates that nearly 95 percent of all converted acreage on these farms was originally in field crops. Corn and soybeans, with some hay, were the predominant crops in central and western New York, but less so in downstate areas. Corn was secondary to hay in Orange, Dutchess and Sullivan Counties. A few of the conversions involved agricultural "support land", which was idle but nevertheless part of the farm operation receiving an agricultural assessment. Vegetable cropping was most prevalent on the lands converted in Rockland and Suffolk Counties, and in Columbia County orchard lands were most often involved. The remaining few conversions occurred on pastures and woodlands.

The length of ownership of the converted farmlands by the parties last holding the agricultural assessment was also analyzed, along with the number of times the parcel sold between the last year benefited and year of conversion. The average length of ownership for a converted parcel was 16.6 years. Thirty percent of the lands converted were owned and farmed for over 15 years, with 24 percent held for less than five years. Except for Orange County, over 95 percent of all converted lands transferred either once or not at all prior to penalty imposition. Because of the distinctive transfer patterns in Orange County, where conversion activity was the greatest, ownership changes and other such matters relating to conversion in this county are discussed separately in a subsequent section.

Of the field researched conversions, 36 percent are known to have been part of farmland rented to others, according to information provided by assessors. Based on the data available, it is apparent that rented land has a much higher incidence in terms of conversion than owner-operated land. Rental activity was highest on farmlands that eventually became subdivisions, especially in Orange County.

Conversion Characteristics —1990

No direct field work was conducted on the conversions reported in 1990. However, many telephone inquiries were made to assessors, yielding useful information on 371 reported conversions (nearly 90 percent of all reported conversions). Efforts were particularly concentrated in Orange, Suffolk, and Monroe Counties, where reported conversion activity was greatest. Assessors contacted were generally able to provide full

information on land use in the last year benefited, and the land use after conversion occurred. Assessors were also generally able to provide full information on whether the lands converted had been leased or owner-operated while under agricultural assessment.

Subdivision conversions were again the most important category in 1990, accounting for four out of every five, but were concentrated on less than 20 percent of all farms affected, nearly the same proportion as in 1989. The 298 reported subdivision conversions affected only 21 farm operations — indicating a considerably greater concentration of this type of conversion in 1990 compared with 1989. Over 80 percent of all reported conversions, and over 90 percent of all penalty dollars were attributable to subdivision conversions. Despite the small acreage typically converted on each homesite lot, subdivision activity was so strong that it accounted for nearly two thirds of all converted acreage. Whereas, less than 31 percent of the 1989 subdivision acreage involved pre-1988 individual commitments, the proportion rose to over 84 percent in 1990.

The types of conversions reported for 1990 show a somewhat different pattern than those reported for 1989 (Table 8). Family conversions comprised a small proportion of conversions, although they affected over one fifth of all farm operations. Piecemeal conversions affected nearly half of all farm operations in this study, an increased share over 1989, but comprised relatively insignificant acreage and even fewer penalty dollars. Large acreage conversions were relatively few in number, yet they comprised almost as much acreage as piecemeal conversions. Even so, large acreage conversions comprised only one eighth of all converted acreage, less than half their share in 1989. In 1989 certain large committed parcels undergoing conversion had been classified in the large-acre category because there was no approved subdivision plan, whereas in 1990, most large scale conversions of committed lands had subdivision plans. No evidence of any hobby farm conversions could be found in the 1990 data, although confirming the presence of this type of conversion relies more on direct field inspection than any other type.

There were no conversions reported in the "miscellaneous" category in 1990. It is expected, however, that some land will continue to be more valuable for extractive activities such as gravel mining, and that such conversions will reappear in future years. Overall, the 371 researched 1990 conversions affected 83 farm operations, whereas 87 were affected in 1989 by considerably fewer (204) conversions.

Table 8. Incidence of Various Conversion Types, 1990

Conversion Type	Percent of Total			
	All Reported Conversions	All Converted Acreage	All Conversion Penalty Dollars	All Farms Affected
Family	5.7	9.4	4.7	22.3
Periodic/Piecemeal	12.4	12.9	2.3	47.1
Large Acreage	1.6	12.8	2.1	6.5
Hobby Farm	0.0	0.0	0.0	0.0
Subdivision	80.3	65.0	90.9	24.1
Miscellaneous	0.0	0.0	0.0	0.0
Note: Totals may not add to 100 because of rounding.				

Pre-conversion land use patterns were quite similar for 1989 and 1990. Because a higher proportion of 1990 conversions occurred in Suffolk County, a greater percentage of agricultural land affected was devoted to crops of relatively high value, namely potatoes and cauliflower, with some orchard land. However, as in 1989, some conversions did involve land which had been in less intensive agricultural uses or was not in active crop production at all. Although information on length of ownership could not be developed for the 1990 cases, transfer information was obtained from local assessors. The data gathered indicated that, in contrast to 1989, over 80 percent of all conversions occurring outside Orange County involved land which transferred more than once between the last year it was under agricultural exemption and the time it was sold in house lots. This dramatic change was caused by the 1990 Suffolk County conversions, which primarily involved land in major subdivisions which had transferred twice since the last year exempt. As in 1989, the number and character of Orange County's conversions sufficiently were different to warrant separate discussion (see following section).

Only 28 percent of all the 1990 conversions researched were known to have involved formerly rented land. This reduced incidence as compared with the previous year is due primarily to the extensive conversion activity occurring on owner-operated farmland in Suffolk County. As in 1989, however, rental activity was strong in specific areas of the state, particularly in Orange County, where 65 percent of all reported conversions involved rented agricultural land. By contrast, less than 25 percent of the reported conversions in Genesee, Monroe, and Ontario Counties involved rented land.

ORANGE COUNTY CONVERSIONS

Conversion activity in Orange County merits discussion separate from other reporting counties. While its reported conversions share some characteristics with those occurring in other downstate metropolitan counties, the large share of the total conversion activity which Orange County comprises makes it distinct. Strong conversion activity was reported in the county in both years, and this activity is no doubt attributable to its location in the Mid-Hudson Valley which, according to the 1990 preliminary census figures, experienced the fastest population growth in New York State over the past decade. Moreover, Orange County exemplifies conversion characteristics which typify an area of rapidly changing land uses and speculative real estate activity, including multiple transfers on converted parcels and a propensity for conversions to occur on lands that were leased to farmers while benefiting from agricultural assessment.

In 1989, Orange County owners of land receiving agricultural assessments held their lands for less than 15 years overall prior to conversion. This contrasts with an average holding period of nearly 18 years elsewhere. Five conversions involved lands receiving agricultural assessment by corporations known to be engaged in construction or real estate, or whose primary business was not agriculture. Conversions in Orange County were also less scattered than in other areas of the state, in that they affected comparatively fewer farm operations. The 73 researched conversions occurring in 1989 involved 26 farms (2.8 conversions per affected farm vs. 2,3 statewide). In 1990, conversion activity was less concentrated, with 49 conversions affecting 30 farms (1.6 conversions per farm).

As mentioned earlier. Orange County tended to have a larger amount of turnover on land benefiting from exemption prior to conversion. In both conversion years studied, 20-25 percent of all reported conversions had transferred title more than once between the last year under agricultural exemption and the year of conversion. In contrast, less than six percent of parcels converting in counties outside the New York City metropolitan and Long Island areas transferred title more than once. Unlike the general pattern in most upstate counties, where land undergoing conversion is often transferred directly from farmer to residential owner, Orange County conversions often occur after the farmer sells to a developer or investment group, which in turn subdivides and sells for residential development. Such multiple transactions on each ultimate conversion indicate a more speculative environment for farmland than is prevalent in other upstate areas. The attractiveness of the agricultural assessment program to land developers and speculators in

places such as Orange County is not surprising in that tax reductions of over 95 percent may be achieved through enrollment compared to only 65 percent statewide.[1]

As mentioned earlier, Orange County conversions are more likely to originate from lands that were leased in the last year exempt. This is no doubt due in large part to the relatively high incidence of rental farmland in the county; when its two agricultural districts were recertified in 1988, it was noted that 40 percent of all lands under agriculture was rented at that time, whereas only 15 percent had been rented when the districts were formed. While less than one fourth of all reported conversions in the other counties originated from rented lands in 1989, the proportion in Orange County was 63 percent (Table 9). The length of ownership prior to the last year exempt was comparatively shorter (less than eleven years) for the Orange County rental land than for all other converted lands (17.80 years). Rented lands that were converted resulted primarily in subdivisions of the "bacon strip" variety, fronting already existing roads and requiring no separate infrastructure that would trigger a conversion prior to commencement of the actual residential construction. Consequently, many of these conversions occurred in the last possible year in which a penalty could be imposed. Between the first sale and ultimate physical conversion, these lands were generally idle and could not be deemed converted in the legal sense, even though lots were being advertised for sale to those who planned to build their own residences.

Orange County's conversions in 1990, as in the previous year, tended to originate from formerly rented farms (Table 9). Nearly two-thirds of all conversions in this county originated from rented lands, compared to only 22 percent of conversions elsewhere. The primary change from 1989 was in the comparatively small amount of turnover on rented lands, in that only 13 percent of conversions from rented lands sold more than once. The eighteen unit subdivision in Orange County, mentioned earlier as involving no sales before conversion, was a formerly rented farm.

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[1] The impact of local tax reduction resulting from agricultural assessment is analyzed in *Agricultural Assessment Program Impact: 1986 through 1989*, published by the State Board of Equalization and Assessment (May 1991).

Table 9. Tenure of Converted Lands in Year Lands Last Benefited from Exemption (Percent of Total)

	1989		1990	
	Owner-operated Farms	**Rented Farms**	**Owner-operated Farms**	**Rented Farms**
Orange County	37.0	63.0	34.7	65.3
Other Counties	77.8	22.1	77.6	22.4

According to Orange County officials knowledgeable about agricultural conversions, much of the rented land that has been converting in recent years is not intensively cropped and contributes relatively little to the county's gross agricultural output. The agricultural use of the rented lands in question has been primarily for hay and for pasture. A county official noted that in one instance, bales of hay were left on the land close to the roadside for an extended period of time, but actually went unused. Monitoring rental land in these circumstances may create problems for the local assessor, for it is difficult to distinguish genuine farming operations from activities carried out for the sole purpose of qualifying for the large tax benefits available. Also, at issue is the fact that such rental lands do not have to satisfy the gross value of production criterion ($10,000 annually) as long as they are under a rental arrangement to a farmer whose land qualifies. From the assessor's point of view, it may be difficult or impossible to deny the exemption to almost any land rented to a farmer, regardless of the extent of agricultural use.

Furthermore, according to Orange County officials, little or no rent is typically charged for operating these exempt lands. This is not that surprising, in that the benefits that accrue to the landowner through agricultural assessment are far greater than benefits for the operator, who most likely has a separate operation that already meets the minimum requirement for enrollment in this program ($10,000 in gross annual sales). Given the savings from the exemption program, it is not inconceivable that some rural landowners in areas like Orange County may actually pay local farmers to farm their lands in the near future in order to qualify for the program. Since the goal here would be tax benefits rather than economically viable farm operations, the type of production undertaken may be minimal, requiring constant vigilance by assessors.

Orange County is likely to remain active with farmland conversions through the 1990's, even though the normal cycles in real estate markets may cause uneven growth. Similar though less dramatic patterns will probably occur in the entire region as the Mid-Hudson Valley still has extensive areas of agricultural lands that are developable for residential and commercial purposes within commuting distance of large population centers. Appreciation in real estate values may not match the pace of the mid-eighties, but this comparatively uncrowded region, located on the outer edges of the Greater New York metropolitan area, will continue to attract growth.

ANALYSIS OF CONVERSION PENALTIES

Up to this point the analysis has centered on conversion patterns and characteristics, without any detailed discussion of the sanctions intended to prevent conversion. As noted in the introduction, sanctions have been changed several times since the Agricultural Districts Law has been enacted (Table 1). The number of changes, of itself, has resulted in administrative problems, since several different penalty tax arrangements exist, depending on the last year during which a parcel received tax benefits. This section of the report will address both the policy considerations of penalty adequacy and effectiveness, and the administrative concerns which arise in monitoring conversions and levying penalties.

Penalty Adequacy

As noted earlier, the number of conversions reported to SBEA probably falls well short of the total number actually occurring, since local assessors alerted field staff to additional conversion activity in adjacent towns, and sometimes in adjacent counties, that had not been reported. Further investigation indicated that many assessors failing to report such conversion activity did in fact levy penalties appropriately. Due to the fact that the reporting requirement is new, compliance may be expected to be less than perfect, with some assessors not reporting at all.

Occasionally, conversions were reported where no apparent physical conversion had actually taken place. This, in all likelihood, is due to the fact that the definition of conversion was not added to the statute until 1988. On many conversions, especially on individual subdivision lots and piecemeal development, penalties were very low in relation to selling prices, but were nevertheless very time consuming for assessors and local county tax offices to administer. The relatively small amounts which may be involved raise

questions concerning both the extent of the disincentive represented by the penalty tax and the cost-effectiveness of its administration.

One way to measure the degree of conversion disincentive provided by penalties is to examine the amount of the penalty imposed in relation to the sale price of land (limited to land that sold prior to conversion as opposed to that which was converted by the benefiting owner). Of 204 researched 1989 conversions, 94 involved arm's length sales of unimproved farmland. The penalties imposed on these conversions averaged less than one-half of one percent of the selling price. The largest penalties levied occurred in downstate areas, typified by high values per acre and also by a high incidence of committed lands which, if converted under pre-1988 law, would subject all of the owner's parcels under commitment to penalty taxes. However, even these penalty taxes were comparatively small in relation to the sales price of the land.

For example, the largest reported 1989 penalty, involving the sale of an entire property, amounted to $72,000 and was levied on committed lands in Rockland County. This represented only four percent of the selling price. The conversion was typical for the downstate counties in that it involved residential subdivision development — a predominant trend in the affected areas. The direction of residential development will indeed be influenced by supply and demand in real estate markets and by local zoning or planning laws, but it is difficult to argue that it can be affected to any significant extent by such evidently small penalties for converting formerly agricultural lands.

Review of the 1990 conversions reported also failed to provide evidence of any deterrent effects attributable to conversion penalties. Because so many conversions occurred in subdivisions, and because the penalties for many of these subdivision conversions were paid by the developer, only 36 arm's length sales could be validly compared to their respective penalty taxes. For these sales, the penalties imposed comprised on average only 1.3 percent of the selling price. Only two of the penalties imposed exceeded five percent (but were still less than ten percent) of the respective selling prices.

The largest 1990 penalty was levied on formerly committed lands in Suffolk County which were sold to a developer in 1985, two years after the last agricultural exemption benefit. The penalty tax could not be imposed until 1990, when actual construction on the subdivision began. According to the local assessor, average vacant land similar to the formerly committed land is currently worth $30,000 per acre, and the penalty amounted to about $1,500 per acre or about five percent of the sale price.

Thus, the data seem to indicate that there is little evidence that New York State's agricultural conversion penalties act as a real deterrent to non-agricultural development. If the conversion penalties fail to act as a deterrent, then one must ask what purpose they do in fact serve. It is true that the payment for conversion is in fact a "penalty" — as opposed to a simple repayment of taxes saved — if the land converted has benefited from agricultural assessment for less than five years prior to converting.[2] However, in cases where the parcel is enrolled for more than five years, there is usually a net gain to the landowner even if the land is converted and the penalty paid. It must also be recognized that interest is charged at a rate significantly below market rates (six percent) and that this in itself amounts to a benefit to the landowner. Thus, given the evidence presented regarding the amount of the typical payments, and recognizing that the payments made in most cases will only be a partial repayment of taxes saved, it may be more appropriate to view the current "penalties" as deferred, and often partial, tax repayments.

Further insight on the conversion penalty question may be gained by looking at practices elsewhere.[3] Many other states and even some local governments have conversion provisions similar to New York's, but do not generally refer to the payments as penalties; instead, they are usually called rollbacks or deferred taxes. A true penalty tax would be something over and above a tax repayment. For example, the Town of Perinton (Monroe County) has a program which grants percentage reductions in assessments for certain farmland according to the length of the land use agreement signed.[4] If the land use agreement is broken during the commitment period, the land is subject not only to a tax payment equal to the annual savings received under the tax abatement times the number of years so benefited, but also to a penalty which is inversely related to the length of time in the easement program. The separate penalty, over and above repayment of taxes saved,

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[2] This assumes that the last year's taxes, on which the penalty is based, are not significantly different than the average annual tax savings. Were the taxes saved in the last year significantly higher than the taxes saved in prior years, then there could be a penalty element involved for land which was in the program less than five years.

[3] The information about conversion practices in other states is drawn from *State Laws Relating to Preferential Assessment of Farmland,* by Kimberly A. Grille and David A. Seid, Natural Resource Economics Division, Economic Research Service, U.S. Department of Agriculture, Staff Report No. AGES870326, June 1987.

[4] *Open Space for Perinton: Conservation Easement,* Town of Perinton, Monroe County, New York, 1972. Such easements are permissible under Article 13, Section 247, of New York State's General Municipal Law. Suffolk County has its own program for acquiring farmland development rights.

provides a greater incentive for the landowner to keep the land in the program as long as possible.

True penalties are also levied on agricultural conversions in the nearby states of Vermont and New Hampshire. Both states currently impose a land use change tax, equal to ten percent of the full market value of the land, plus the current year's real estate tax at market value. Calculations based on data from typical 1989 and 1990 conversions involving subdivisions indicate that if a similar system of ad valorem payments were in effect in New York State, the penalty taxes paid would be from fifteen to twenty times higher than they are currently.

Penalty Administration

Under the present provisions of the Agricultural Districts Law, the assessor is ultimately responsible for determining whether a conversion has occurred and the amount of penalty taxes due. Since the law does not require the owner of the land undergoing conversion to notify the assessor, periodic investigation of all parcels under agricultural assessment is necessary to enforce the law. Moreover, many conversions occur on lands that, at the time the assessor notes the conversion, are owned by people who may have purchased only a small portion of land that once benefited from agricultural assessment. In many cases involving subdivision, small-acreage conversions of various portions of the original farm parcel are scattered over time, requiring additional monitoring on the assessor's part and duplication of effort. These aspects of the conversion process create significant administrative problems for assessors, who are often part-time officials, may serve in more than one municipality, and may not have any staff to help them. The current process almost insures that enforcement will be spotty at best.

In attempts to overcome the difficulties posed by the program, various administrative arrangements have evolved at the local level. Even part-time assessors with little or no staff support seemed to be able to administer the conversions when help was provided by the county real property tax office. County-level involvement helped to avoid the potential lags in enforcement which can result from changeover of assessment personnel.

Ontario County best exemplifies good conversion administration at the county level. Whenever a property transaction occurs involving land under agricultural assessment within five years of the date of sale, the tax office compiles information on the sold parcel's

tax map number, the acreage sold, and the name of the buyer, along with acreage and ownership information on the original parcel from which new parcels had been created. A sketch is made of the parent parcel and the portion that was sold. This information is then sent to the local assessor on a form developed by the county tax office. The local assessor is asked to indicate whether the sold land was still under agricultural use and, if not, to provide information about any outward changes to the land. Once this information is returned, the county tax office determines whether conversion has in fact occurred and, if appropriate , the penalty taxes are calculated. Sales of land not undergoing immediate conversion are tracked for five years or until conversion has occurred. The system has worked well in that it sets up "conversion watches" on lands that may become subject to conversion penalties. Both Dutchess and Genesee Counties also offer administrative support, although the specifics are different in each county.

Despite local efforts to cope with the difficulties noted, there are inherent and unavoidable administrative problems which cause undue burdens on local officials and which even the most competent staff cannot solve completely. As discussed earlier, many conversions (especially piecemeal and within-family conversions) involve small lot sizes and conversion penalties which are quite small. For example, over 30 percent of all reported 1989 conversions incurred penalties of under $100. Both county directors and assessors consistently point out the time and expense involved in enforcing these small penalties. Some county directors suggested that certain conversions are neither reported nor enforced because the assessors think that it is not worth the effort to collect the small sums involved. County directors also pointed out that their own staff has limited time to perform their duties, and that allocating resources to administer small penalties is not cost-effective.

Despite the definition added in late 1988, another persistent problem in administering conversion penalties is interpreting the meaning of conversion. According to Section 301 of the Agricultural Districts Law defines conversion as "an outward or affirmative act changing the use of agricultural land and shall not mean the non-use or idling of such land." This new definition is helpful but it does not clarify many of the decisions which must be made in enforcement of penalties and in reporting conversion activity. An assessor can be faced with a range of ambiguous situations. For example, the assessor must decide if a road was built for subsequent residential subdivisions or for improving access for continued agricultural operations. Electric and water lines may have been placed on the parcel for development or they may be related solely to agricultural requirements such as irrigation. Ponds excavated on the land may be for enhancing and

accelerating homesite lot sales or for watering livestock. When trees or entire orchards are being removed the land may be moving out of agriculture or simply into pasture or cropland.

As noted earlier, actual conversion may occur for several years after a property is sold. One obvious ramification of this lag is that conversion penalties may never in fact be levied. It is possible, for example, for a speculator to purchase farmland within an agricultural district and wait five years before actual construction or sale of improved lots. One county director put the issue succinctly:

> "Entire farms are being bought up, split up, and sold off to multiple non-resident owners with no intention of building for several years; thus no 'conversion' has occurred but another farm has just as effectively 'died'."

Not only has there been loss of farmland in this case, but the municipality has also lost the ability to collect the penalty tax. According to some of the local officials interviewed, this can create feelings of resentment from property owners who have their parcels assessed at market value and from those owners actively engaged in farming.

Even if penalties can be levied within the statutory time limit, and the considerable time and effort required for tracking the conversions is available, problems still persist. Instead of levying a conversion penalty on the entire parcel in the case of a residential subdivision, the assessor must wait for the "outward or affirmative act" which changes the use of the land on each lot. This can occur over a number of years, with some lots being built on after the statutory limit has expired. Moreover, land formerly under agricultural assessment may sell more than once, particularly if there is a lot of speculation in local real estate markets, as evidenced in Orange County. An already difficult process thus becomes more complicated, since the assessor must track many property transactions and individual lot conversions, requiring the calculation of many penalties over an extended period even though there was only one original parcel. And, in processing each one, the particular land categories it includes must be identified and separated from the remainder of the parcel in order to apportion the assessment and calculate the tax savings. In such instances, administrative efficiency would greatly increase if the law permitted the penalties for all lots to be calculated and levied at the same time.

The current penalty provisions can also cause inconvenience and uncertainty for the purchaser of farmland which may subsequently be used for nonfarm purposes. Since the penalty issue does not necessarily arise at closing when no actual improvement has been made to the land, it may not be clear to all parties to the transaction that a penalty

payment may become due subsequently. In some instances, where the potential penalty is formally recognized during the transaction, funds may need to be held in escrow until eventual conversion and subsequent imposition of the penalty on the new owner.

The current procedure for handling conversions may also cause complications for other property owners. At present, the lien that results from imposing the penalty tax on converted land applies to the entire original parcel containing the converted land, even if only a portion of the original parcel underwent conversion. If a current owner of converted land is delinquent in paying the penalty tax imposed, the unpaid amount will be levied on all acreage in the original parcel that benefited from agricultural assessment. This lien would even extend to portions of the original parcel which now may be owned by other persons, and even to those who have actually paid the penalties on their own acreage. For such owners, the penalty charges would be an unwelcome surprise.

Three other states have laws which allow for more simple administration of conversions and imposition of penalty taxes.[5] These statutes typically provide for recognition of a conversion having taken place at the point of sale unless it can be demonstrated conclusively that the subsequent land use is an eligible agricultural activity. Moreover, Maryland law requires that prospective buyers of land be notified in writing if lands are subject to penalty. In the case of conversions occurring after a sale (the majority), assessors in such states are relieved of the burden of determining if and when any physical change has occurred which would indicate a conversion. Moreover, point of sale conversions guarantee that the municipality granting the original agricultural assessment (and thus shifting a tax burden to other property owners) will be repaid some or all of the tax shifted to other property as a result of the program. Buyers and sellers are also advantaged in that they can negotiate the final selling price with any penalty tax payments in mind.

To handle situations of continued agricultural use, conversion payment in these states is waived when the buyer agrees to keep the sold land in agricultural use and enrolled under agricultural assessment. Obtaining such a waiver generally requires submission of a form which indicates the intended land use and other pertinent data.

There are also instances in which conversion can occur without a sale. Common examples might be where a farmer builds a marketing or processing facility or a house for a

[5] Connecticut, Maryland, and Massachusetts each impose penalties on sales of agriculturally exempt lands and lands exempt within a given period of the sales date. In Maryland, payment of the penalty is a prerequisite for recording and filing the transfer of title document.

relative. A conversion would also occur if an owner makes physical alterations to the land through such activities as gravel mining. However, current New York State law does not require the owner to notify the assessor of such activity in a reasonable period, so there is no way for the assessor to know of such cases without making continued inspections. This contrasts with laws in many other states, which require owners to notify the local assessor if they modify the land or change its use.

Future Data Needs

The information form used to report conversions to SBEA does provide some useful data, but the amount of information it contains is limited. The form currently requests information on the converted parcel's current owner; the current tax I.D. number; the year the land last received an agricultural assessment; the number of years within the past five years the land received such assessment; and the tax I.D. number of the "parent" parcel. Other important information on conversion activity, however, is missing, namely: the type of agricultural land use prior to conversion; the subsequent use after conversion; whether or not the land receiving the exemption was rented; the sale price and sale date; any other parcels converted from the same "parent" parcel; and the name of the landowner appearing on the assessment roll in the last year of tax benefits.

Future availability of this information is vital for monitoring loss of farmland, since an increasingly large share of agricultural acreage is enrolled in the agricultural assessment. If this information were placed on the reporting form, not only would there be greater knowledge available in reformulating policy regarding conversion sanctions, but all state and local activities involving land use planning, zoning, and farmland preservation would be facilitated. In most cases the missing information is readily available to the local assessor and can be reported with little difficulty. Unlike the changes made in the conversion sanctions in recent years, requesting this additional information on the conversion reporting forms would not require legislative action.

SUMMARY AND CONCLUSIONS

Review of farmland conversion data associated with the Agricultural Assessment program in 1989 and 1990, the first two years for which conversions were reported by local assessors, revealed that at least 1,000 acres were converted annually (nearly 1,600 in 1989). Reported conversion activity directly affected about 100 farm operations per year. However, since many conversions involved small acreages and occurred on a piecemeal basis, it is likely that much additional farmland was affected indirectly through the negative influence of increased residential land uses in farming areas.

Reported conversions were well-dispersed throughout the state, including both rural and rapidly urbanizing areas. Downstate counties, such as Orange and Suffolk, accounted for a large share of the acreage converted in both 1989 and 1990, but rural Ontario County (which has an excellent process for tracking conversions) also reported relatively high levels of activity. The pattern of reported activity, together with information supplied by local tax officials, suggests that significant numbers of conversions have gone unreported. This may be especially true in the most rural areas, where conversion penalty taxes are often too low to permit cost-effective administration.

In addition to the problem of small penalties in some areas, other barriers to efficient administration were also identified. These include the piecemeal approach which assessors are required to use in handling situations where farm parcels are split into several pieces and the need to monitor any potential construction or other activity involving physical change for which no official notification documents may exist. The process could be streamlined considerably and the assessor's job made easier if conversion was presumed to have occurred upon sale of land enrolled in the program. For those committing the land to continued farm use, penalties could be waived. This approach would free assessors from the burden of tracking many small-acreage conversions on subdivided parcels and calculating each penalty individually. Another major benefit resulting from this modification would be a clarification of the existence of conversion penalties at the time of sale to all parties involved at the time. This helps to protect new owners from surprise liens which may result from non-payment of penalties on acreage owned by others.

Prior ownership of converted land included both farmers and a variety of other individuals and corporations, some of whom were involved in real estate development. Non-farmer ownership, and above average incidence of rented land under low value crops such as hay and pasture, were evident in high growth areas such as Orange County. Such areas were also more likely to have converted lands for which ownership transferred more than

once since the last year of tax benefits. These findings indicate that some non-farmer owners of farmland in high growth areas are using the agricultural assessment program to reduce annual taxes (as much as 95 percent in areas like Orange County) by allowing local farmers to use the land until it is sold for development. Since the intended land use in the long term for these cases is undoubtedly non-agricultural, the current utilization of the land for farming is transitory at best. In fact, large tax reductions significantly reduce holding costs for those wishing to develop eventually, and may well serve to encourage such activity rather than to prevent it.

The relatively new system of reporting conversions to SBEA represents an important step in monitoring the effectiveness of the agricultural assessment program in maintaining land in active farm use. Conversion of enrolled land is a source of concern, as the program is intended to maintain land in farm use, but until 1989 state and local governments had no organized way of keeping track of such changes. The new data base could be improved significantly, however, for it does not contain important information on the type of use changes occurring, the types of agriculture practiced on the land, the type of ownership, and the history of prior use changes. Most or all of this information is known to assessors and it could be reported with little difficulty.

Except in a few subdivision cases involving penalties calculated under the pre-1988 law provisions for committed land, most conversion penalties are very small in relation to the sale price of the converted lands. Thus, they can be expected to result in little, if any disincentive for conversion, and in most cases, should be viewed as repayment (often only partial) of previous tax benefits. If they are only required to make partial tax repayments, speculators may well be encouraged to buy up farmland in urban areas, increasing the pressure on agriculture. If retention of land in farming is to be pursued as a public goal in high growth and rural areas alike, the penalty provisions should be made significantly more stringent, or, alternatively, other policies for influencing land use should be explored.