

Oahu Property Tax Issues – By Alan Gottlieb- AUGUST 2004

By now, most everyone has heard the rumblings and political positioning concerning property taxes, mostly on Oahu but also shaping up on the Big Island. Two years ago, the Oahu City Council passed a new Property Tax Ordinance, commonly known as Bill 10. This bill, which was promised to be revenue neutral, has some major flaws that were likely unanticipated at the time. For Agricultural Property Taxes, Bill 10 took a Property Tax System that was linked to the commodity value of the property, and taxing it as such, to a market value assessment system, whereby the property was valued based on comparable sales of property. Many in agriculture realize that agricultural property is not often sold, or often when it is sold, it is valued not so much on its agricultural production value but on its present or future development value. This is clearly demonstrated when small pieces (an acre or less) are sold for \$250,000-\$500,000 in an agricultural subdivision, where someone plans to build a “gentlemen’s estate farm”. Similar land in actual agricultural production certainly cannot support that type of valuation for property tax purposes.

The key flaws in Bill 10, especially as they relate to pasture are as follows:

Valuation- Under the new law, property is now valued on its market value rather than its agricultural commodity value. Pasture, more than any other agricultural commodity, has a widely variable value, always considerably lower than any other ag commodity. For example:

Good Pasture:	\$226.80 to \$13.86	Gross Revenues	per acre annually
Average Pasture:	\$ 90.72 to \$ 3.48	“ “ “ “ “ “	“ “ “ “
Poor Pasture:	\$ 27.72 to \$ 1.17	“ “ “ “ “ “	“ “ “ “

Size matters - Smaller Tax Map Keys (TMK’s) are now market valued much higher than larger tracts (20 acres or more). For example: A one acre TMK’s may be assessed as high as \$235,000, while a 20 acre piece is assessed at \$30,000 per acre. As such, a rancher may ranch thousands of acres but may have many small TMK’s. On Oahu, the Tax Department has acknowledged this flaw and has agreed for now to compromise and value small pieces in aggregate as if they were big pieces, if the rancher in fact farms over 20 acres.

Ag Dedication – Significant discounts are available to farmers and ranchers who dedicate their land; On Oahu 1 year = 90% discount, 5 years = 95% discount and 10 years = 99% discount. The major problem is that many ranchers lease their land, and the ultimate control allowing dedication rests with the landowner, who is responsible for any roll-back taxes should the farmer or rancher fail and vacate. On Oahu, many landowners refused to allow their tenants more than a one year dedication. While a one year dedication allows for a 90% discount, which may sound like a lot of money, check the math: Land Assessed at \$30,000+ per acre x 10% (90% discount) = \$3,000 per acre. At

a Tax rate of roughly \$10 per \$1,000 of assessed value, that comes to \$30 tax per acre. In some cases that may work fine, but look at the Gross revenue chart above. Its hard to pay \$30 per acre in tax on land that may have a gross revenue of less than that.

Wasteland – This is probably the biggest flaw in Oahu’s new property tax law. Wasteland (unusable gulches, riparian areas, etc) used to be taxed at a value of \$1 per acre. Now, based on market value, it is taxed at \$1,500 per acre. Certainly, \$1,500 is much less than the prime land value of \$30,000 per acre, BUT the waste land was not being considered for the Ag dedication discount. The Oahu Assessors told us that we can’t on one hand say we want to dedicate the land to agriculture, and on the other say it can’t be used for agriculture. So that meant that even someone who was willing to dedicate all their lands for 10 years and qualified for the 99% discount, would pay around \$3 tax per acre for prime ag land ($\$30,000 \text{ valuation} \times 1\% \text{ (99\% discount)} \times \$10/1,000 \text{ tax rate}$) but would be paying \$15 tax per acre, 5 times more, for wasteland they could not use ($\$1,500 \times \text{no discount} \times \$10/1,000 \text{ tax rate}$). The Oahu Assessors and managers clearly saw the illogic in this and made some provisions in their re-evaluations.

Ultimately, several of the Oahu Ranchers who went back to work with the Tax Assessors after the Oahu Cattlemen’s Association had set up the meetings with the tax department, found some huge tax relief. One rancher who had received his tax bill on about 3,200 acres for \$155,000, reworked it and is looking at a tax bill of about \$5,100, a couple of hundred bucks more than last year.

Appeals – Many farmers and ranchers had filed appeals in January 2004 when it became apparent that there would be a huge property tax mess on Oahu. However, unlike prior years, even by July, we did not get any notice of appeal hearings. Several politicians and Newspaper Editorial writers said that the farmers should appeal their bill if a huge bill was received, but without an appeal hearing they felt they had no options. Some said we should pay our property tax bill when it came due and keep fighting to get it corrected. Obviously, the rancher who got the \$150,000 erroneous bill could not pay the bill until the matter got corrected, and **if we didn’t pay our bill by the due date, under the law we lost any further standing to appeal the bill.**

On Oahu some ranchers were very fortunate to have met with the Managers and Assessors in the Real Property Tax department and their willingness to recognize the flaws in the law, and compromise the 2004 tax assessments. While many complain that Bill 35, which was introduced in an effort to correct the tax mess, was flawed, it more than anything served to bring this matter to the forefront and that in itself helped to resolve this problem for many. As such, we wish to thank those on the Council who recognized the property tax mess and created Bill 35 and pushed to address the flaws of Bill 10. We’d also like to thank the Mayor and the Administration, though they vetoed Bill 35 as they felt it was illegal, who worked to compromise with the ranchers to resolve this mess.

Going forward, a key philosophical question will be how to assess and tax our ag lands: Will we tax it on a “market value” because it is simpler, or are we going to encourage land to be kept in legitimate agricultural use by assessing and taxing it at its value for the commodity it produces. There is no relationship between the two methods.

Previously, State Law (§246-10 HRS) said that land “classified and used for agriculture” is to be valued based on its value as it relates to its agricultural use. However, several years ago, the State transferred the authority to impose real property taxes to the Counties reserving to the State the right to make exemptions until 1999. Now, the counties have the exclusive right to regulate real property taxes.

While an ag commodity taxation system may be cumbersome when there are too many rates, this system can be simplified and adjusted periodically, with a third party expert resource like the State Department of Agriculture, or the College of Tropical Agriculture and Human Resources.

If agriculture in Hawaii is to survive, the ag productivity valuation approach must be the one and the only basis for assessing all real property that is in legitimate agricultural use.

We agree that Gentlemen Agricultural Estates is not a bona-fide Ag use and some method of defining those and taxing them appropriately must be found.

A current Big Island system leading to major problems has tried to solve the problem of Gentlemen Ag Estates by levying high property taxes on buildings on Ag land, but have also caught in its web bona-fide ag structure such as barns, work sheds, water tanks and employee dwellings, which are often provided to employees free or at a reduced rent as an important part of the operation, such as security.

Now we must work with the City Council and Administration to correct the law so we are not faced with a similar mess next year.