Favorable Developments for Bona Fide Conservation Use Property will Complement Estate Planning

In estate planning, the manner in which property is titled is constantly a concern. For example, estate planners balance the title to property between a husband and wife in order to utilize each spouse's respective applicable exclusion amount. Title to property is often conveyed to family limited partnerships and family limited liability companies as part of a family's estate plan. Estate planners working with families in the farming community must also be cognizant that the manner in which agricultural real estate is titled may affect a family's bona fide conservation use assessment with regard to ad valorem taxes. Two recent developments extending the benefit of preferential ad valorem tax treatment under the conservation use assessment rules will complement many estate plans for families owning agricultural real estate.

For ad valorem tax purposes, tangible property is generally assessed at 40 percent of its fair market value.[1] However, real estate which is devoted to bona fide conservation use is assessed for ad valorem tax purposes at 40 percent of its current use value, which is significantly less than the fair market value of that real estate.[2] Thus, the ad valorem tax liability imposed on bona fide conservation use property is significantly less than that of land not qualifying as bona fide conservation use property. Generally, "bona fide conservation use property" is land devoted to the production of agricultural products and timber or land used for environmental purposes.[3] Each person is limited to 2,000 acres of land that may qualify for bona fide conservation use assessment. The 2000 acre limitation has been liberalized by a recent court decision and a new statute.

In *Effingham County Board of Tax Assessors v. Samwilka, Inc.* 278 Ga. App. 521, 629 S.E. 2d 501 (2006), the Georgia Court of Appeals held that in applying the 2,000 acre limitation, a person's benefit in property owned through a tenancy in common should be determined on a pro rata basis. The Effingham County Board of Tax Assessors argued that each tenant in common derived a benefit from the preferential tax status afforded to every acre owned jointly as tenants in common. Therefore, ownership of an undivided interest in an acre of bona fide conservation use property utilized a full acre of the 2,000 acre limitation. The *Effingham* court disagreed with this argument, stating:

> "We conclude that the legislature intended that in determining whether a beneficial owner has received 'any benefit of current use assessment as to more

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[1] O.C.G.A. §48-5-7(a).

[2] O.C.G.A. §48-5-7(c.2). The Commissioner for the Georgia Department of Revenue issues a table of values for the current use value of bona fide conservation use property. O.C.G.A. §48-5-269; Ga. Comp. R. & Regs. §560-11-6-.07. These tables are developed through a combination of sales data from bona fide sales comparables and from per acre property values determined by the capitalization of net income before property taxes. Under this methodology, the sales data is weighted 35% and the income capitalization value is weighted 65%. O.C.G.A. §48-5-269(b)(1).

[3] O.C.G.A. §48-5-7.4(a)(1) and (2).

than 2,000 acres,' that the acreage be calculated proportionately to the owner's beneficial interest in the underlying property."

Under the Effingham County Board of Tax Assessors' argument, if a husband and wife each owned a one-half undivided interest in a 4,000 acre tract of farmland, the couple collectively would be able to qualify only 2,000 acres for bona fide conservation use assessment. On the other hand, under the *Effingham* holding, the husband and wife would be able to qualify the entire 4,000 acres.

In 2007, the Georgia General Assembly passed House Bill 321, codified in O.C.G.A. §48-5-7.4(a)(1)(A.1), which further expanded the 2,000-acre limitation.[4] The amendment pertains to an interest in a family owned farm entity. A family owned farm entity includes "a family corporation, a family partnership, a family general partnership, a family limited partnership, a family limited corporation, or a family limited liability company, all of the interest of which is owned by one or more natural or naturalized citizens related to each other by blood or marriage within the fourth degree of civil reckoning ... ."[5] The amendment provides that a person who owns an interest in a family owned farm entity will be considered to own only the percent of the bona fide conservation use property held by that family owned farm entity that is equal to the percent interest owned by such person in the family owned farm entity. Further, a person owning an interest in a family owned farm entity may elect to allocate to the entity the lesser of (i) any unused portion of that person's 2,000 acre limitation, or (ii) the product of such person's percent interest in the family owned farm entity times the total number of acres owned by that family owned farm entity thereby allowing the family owned farm entity to receive bona fide conservation use assessment on more than 2,000 acres.

The amended statute expands significantly the acreage of a family's property that may be taxed at current use value. For example, suppose a husband and wife, along with their three children, form a family limited liability company. The family conveys 10,000 acres of farmland into the family limited liability company, and each family member holds a 20% limited liability company interest. If none of those family members have used any portion of their respective 2,000-acre limitations, the family limited liability company may receive bona fide conservation use assessment on the entire 10,000 acres of farmland, resulting in a substantial ad valorem tax savings to the family.

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[4] Ga. L. 2007, p. 608, § 1/HB 321, effective July 1, 2007.

[5] O.C.G.A. §48-5-7.4(a)(1)(C)(iv).