

**OHIO'S CURRENT AGRICULTURAL USE PROGRAM:  
ELIGIBILITY, RECOUPMENT, AND CURRENT ISSUES**

**ALLEN PRINDLE**

OTTERBEIN UNIVERSITY

**ABSTRACT**

This paper examines several issues related to Ohio's Current Agricultural Use Value (CAUV) Program. Based on data from 2002–10, an average of \$6.6 million was collected in recoupment payments per year, because the land was no longer eligible for the benefits of lower real estate taxation. The year with the maximum recoupment payments was 2005. Data from Ohio Department of Taxation appear to be incomplete and to underestimate the actual payments. Other issues related to CAUV eligibility were introduced to update readers and policy makers.

## **I. INTRODUCTION**

Most states have taken steps to protect farmland by implementing various programs to slow the conversion of farmland to urban development or to increase the financial viability of the farming operation (American Farmland Trust, 2008). Ohio is one of 49 states that operates a differential assessment program to lower the real estate tax burden of owners of farmland. This allows the land owner to continue to operate the farm more profitably and reduce the rate of land convergence to urban uses. A differential assessment program is authorized by the state. Land owners who qualify will pay real estate taxes based on the land's agricultural "use value," rather than its "market value." Use value of farmland is expected to be lower because it does not include the potential value of the land for urban uses.

Ohio created its differential assessment program, the Current Agricultural Use Value (CAUV) Program, in 1974. A publication from Ohio State University summarizes the history, the eligibility criteria, and other operational features of the program (Jeffers and Libby, 1999).

As of 2011, 14 million of the 28 million acres of land in the state of Ohio were in "Land in Farms," as defined by the U.S. Department of Agriculture (USDA/NASS, 2012). The Ohio Department of Taxation reports that over 16 million acres were enrolled in CAUV (Ohio Department of Taxation, 2014). Perhaps this suggests a difference in definition, but it clearly suggests that most of the land eligible for CAUV is enrolled. One of the difficulties with the CAUV program is that it may subsidize a real estate developer who keeps the land eligible for the CAUV program while the land is pending new development (American Farmland Trust, 2006).

The agricultural land use value depends on soil types and other factors. In communities subject to urban development pressure, the difference between market (development) value and CAUV (agricultural use) value can be large. A map showing the CAUV value as a percent of market value for 2011 indicates a high of 71 percent in Pike County and a low of 10 percent in Stark and Warren Counties. The statewide average for 2011 was 31 percent, while the comparable percentage for 2010 was 22 percent, and the percentage for 2009 was 18 percent (ODT Tax Equalization, 2012).

This paper examines Ohio CAUV Program and examines various issues related to this program. It is the intent that this information will better inform public discussion and decision making related to the CAUV Program.

## **II. RECOUPMENT**

### **A. ELIGIBILITY AND RECOUPMENT**

Participation in CAUV is voluntary. Eligibility for benefits from the CAUV Program is determined by the Ohio Revised Code Section 5713.30 and is summarized on the website for the Ohio Department of Taxation. Land owners must indicate eligibility for CAUV annually at the County Auditor's Office. Owners of farmland are eligible for CAUV benefits if they enroll 10 or more acres devoted exclusively to commercial agricultural use. Also, they are eligible if they have less than 10 acres, but produce an average annual gross income of \$2,500 or more (Jeffers and Libby, 1999).

If the farmland is converted to nonfarm use, then it is no longer eligible for the benefits of the CAUV Program. In that case, a recoupment payment is assessed by the county auditor in the amount of property tax savings during the last three years. This recoupment payment is defined in the Ohio Revised Code Section 5713.34. The recoupment payment occurs when the use of the land is changed, and it is no longer eligible for CAUV because it is not "devoted exclusively to commercial agricultural use ..." The County Auditor calculates the amount of recoupment payment when the land is declared ineligible. The recoupment payments are distributed to the taxing authorities in the county, including schools, libraries, park districts, etc. Most states collect recoupment payments, but 15 states do not require such payments if the land becomes ineligible for the program (England, 2012).

## **B. RECOUPMENT BY YEAR**

The County Auditors annually report the amount of recoupment payments collected by taxing districts to the Ohio Department of Taxation (ODT). A taxing district includes a township or a municipality and the number of taxing districts in each county varies by county. The author obtained CAUV recoupment payment data from the Ohio Department of Taxation for the period 2002 to 2010 and created county summaries and statewide summaries. It is expected that the data shown are underestimates, due to non-reporting by some of the counties during a specific year. This report used only data received from the ODT. Recoupment data was not available for 2011 at the time of analysis.

The CAUV recoupment data were sent to the author by Ohio Department of Taxation and then assembled by county and by year. Table 1 shows the statewide totals for each year 2002–2010. For the period studied, the amount of recoupment increased until 2005, and then it trended downward. This reflects the changes in housing and other markets. The average per year for this period was \$6,619,973. It is expected that recoupment funds would increase during periods that the housing and urban retail sectors were expanding and land values were increasing. It is also expected that recoupment funds would decrease with rising farmland values. Both trends were occurring during the second part of this time period. The recoupment amount per acre would increase with higher corn or soybean prices and higher yields, or lower farm input costs. These trends were also occurring during this time period.

Many counties did not report any recoupment collections to the ODT during this time period. Data in Table 1 indicates that about 55–60 counties reported recoupment each year. It is expected that there would be recoupment in most counties in most years. The conclusion is that the ODT data is a low estimate of the actual statewide total, due to the lack of a complete data set.

## **C. RECOUPMENT BY COUNTY**

The CAUV recoupment data were also summarized by county. For the period 2002 to 2010, Table 2 shows the five counties with the highest total recoupment payments for the 9-year period. It also indicates the number of years each county ranked in the top 5 counties. It is expected that the counties that were experiencing the highest rates of growth in housing and other urban features would have the highest conversion of farmland to urban uses, and therefore, the highest amount of recoupment dollars collected. Rural counties that are not experiencing high urban pressures would be expected to have little CAUV recoupment payment funds. Also urban counties would be expected to have very little CAUV recoupment payment funds.

The author contacted the Franklin County Auditor's office to verify the accuracy of the above data. The Auditor's office indicated that CAUV recoupment funds were collected every year from 2002–10. The total was \$9,272,031 and would rank it as the highest county. The amount collected in 2005 was \$2,572,738.76, according the Auditor's office, and this is inconsistent with the data reported by ODT for that year. This confirmation of the incomplete nature of the data set is a concern to the research community. Clearly, the ODT data is an underestimate. The ODT data is useful in showing statewide trends, but should not be considered accurate. The data are "self-reported" to the ODT, and each County Auditor has the ability to respond as they wish, including to report no collection. The ODT data does not make a distinction between no response and zero collection.

## **D. COUNTIES WITH NO REPORTED RECOUPMENT**

The CAUV recoupment data were calculated and ranked. Twelve of the 88 counties reported no recoupment amounts for any of the years 2002 to 2010. These counties included: Athens, Auglaize, Clermont, Coshocton, Cuyahoga, Fairfield, Gallia, Greene, Morgan, Ottawa, Richland, and Seneca. There may be a number of reasons that the county did not have many conversions of farmland to ineligible uses. The author questions whether 12 counties would have no farmland conversions for any year during the period 2002–10 and the appropriate collection of CAUV recoupment funds during any year. Further

research may discover if the county did not collect the recoupment payment, or if there was no information reported to the ODT.

The author contacted a staff person in the Auditor's office in Fairfield County, one of the counties on the list of no recoupment, to ask about the accuracy of the data. The author received a report that indicated recoupment dollars were collected each year and a total of \$2,606,084 was indicated for the period 2002–10. This update supports the earlier prediction that the data used in this report is an underestimate.

Another county contacted by the author indicated that when asked by the ODT to report data related to CAUV recoupment, the software asked a “yes or no” question, and the county indicated “no.” The result was a “zero” in the data set and the statewide data are therefore underreported. Another suggestion was that the timing of the reporting to the state ODT did not allow accurate reporting for the year. The ODT is now aware of the lack of accurate reporting and may work with software vendors to encourage accurate reporting, according to phone conversations with ODT staff in 2012.

### **III. RELATED CAUV AND RECOUPMENT ISSUES**

Several CAUV and recoupment policy issues have been debated during the last few years. The purpose of this section is to summarize these issues and recognize that the public has an interest in learning about these issues.

#### **A. ELIGIBILITY OF WETLANDS**

The Attorney General of Ohio issued an opinion that land used for a wetland mitigation bank does not qualify for CAUV benefits because it is not “devoted exclusively to commercial agricultural use” (Ohio Attorney General, 2009). This opinion recognized that an earlier ruling in Marion County had made an opposite decision in 2004. In its decision, the Eleventh Appellate District Court of Appeals of Ohio ruled that land in wetland mitigation banks qualifies for CAUV. This ruling concluded that the land qualifies as “land devoted exclusively to agricultural use.” The court also agreed that the lands qualify because they are “... under a land retirement or conservation program under an agreement with an agency of the federal government” (Ohio Court of Appeals, 2012).

At the same time as the uncertainty of eligibility of wetland mitigation bank lands, the Ohio Department of Taxation issued a statement that listed Conservation Reserve Program (CRP) and the Conservation Reserve Enhancement Program (CREP) as programs that would qualify for CAUV. This is based on the statement that there is a likelihood that the property would be returned to agricultural use (ODT, 2012).

Clarification of eligibility for CAUV was brought to public attention in 2011 as a result of a Franklin County family who enrolled 33 acres into the Wetland Reserve Program (WRP) with the assurance that the property would continue to qualify for CAUV. Then the family was required to pay CAUV recoupment of more than \$56,000 (Hunt, 2011). Ultimately in November 2012, the landowners were exempted from the recoupment payment because the WRP is a federally funded conservation program and meets the eligibility criteria for CAUV (Hunt, 2012).

Eligibility for this program is a critical issue for landowners and the public. Having a well-defined interpretation of eligibility is a critical public issue. Clearly defined eligibility criteria are likely to result in County Auditors in each county enforcing CAUV recoupment in the same manner. The eligibility of WRP and other USDA-supported conservation programs was included in the 2012 Issue Briefing Book prepared by the Ohio Environmental Council. The support of many land trusts across the state may mean this issue will be addressed by state hearings and/or legislation (Ohio Environmental Council, 2012).

## **B. ELIGIBILITY OF NATURE PRESERVES AND PARKS**

Another eligibility issue related to CAUV concerns eligible farmland converted to nature preserves or parks. An issue paper from Ohio Environmental Council (OEC) discussed the need to revisit eligibility rules. This issue paper indicates that park districts are exempt from recoupment if eminent domain was not used. Qualified nonprofit conservation organizations must pay recoupment under the current laws, according to the issue paper. The OEC called for revisions of the Ohio Revised Code because the protection offered by these organizations is stronger than CAUV (Ohio Environmental Council, 2012).

## **C. ELIGIBILITY OF ENERGY FACILITIES**

The Ohio Department of Taxation has attempted to clarify the CAUV eligibility related to wind and other energy facilities. Legislation, introduced in 2011 and effective June 2012, was introduced to expand CAUV eligibility to include “algaculture, biodiesel production, biomass energy production, electric or heat energy production, and biologically derived methane gas production” to qualify for CAUV eligibility and CAUV benefits (Ohio HB 276, 2012). If a wind energy facility is constructed on a portion of land eligible for CAUV, the remaining part of the land still qualifies for CAUV. Recoupment would not be due if the remaining part of the land continues to be eligible for CAUV (ODT correspondence, 2012). Related to fracking sites, lands would be treated in a similar way with direct surface impact. If there are temporary impacts, and the land is likely to return to agricultural use, CAUV eligibility would not change (Hall, 2013).

## **D. EXTENSION OF RECOUPMENT PERIOD**

During the last few years, there has been a proposal to extend the current 3-year recoupment period to 5 or 6 years, and to use the additional funds for support of local farmland preservation programs. A rural county with little farmland conversion would have very little funds, and an urban county would also have little funds. In a county with active urban development and rapid conversion of farmland, more farmland would become ineligible for CAUV, and more funds would be collected.

The proposal would make no change related to the distribution of the funds from the current 3-year recoupment payment policy. However funds collected from the added years would be available for funding of local, county farmland preservation programs. This policy has been discussed for several years and was included in a 2004 report to the Ohio House Subcommittee (Nikolic, 2004). No plans to implement this policy have been taken to date.

## **CONCLUSION**

More than \$6 million are collected each year in Ohio in CAUV recoupment payments. The payments are collected when agricultural land becomes ineligible for the CAUV program and are distributed within the county to schools, libraries, etc. Recoupment data are reported to the Ohio Department of Taxation. This paper summarized CAUV recoupment payment data for the period 2002–10, by county. The amount of recoupment payments peaked in 2005 at almost \$10 million and has declined each year since. Medina County had the highest recoupment payments over the 9-year period with about \$5.8 million collected. The ODT data are incomplete, since most counties reported no recoupment in some years. Twelve counties reported zero recoupment during every year 2002–10. The author contacted some of these counties and learned that these ODT data are not correct. The data from ODT are clearly underestimated. This suggests a need for ODT to actively assemble full recoupment data from every county, every year. This is needed for further research and also for fully informed public policy dialog.

Several issues related to CAUV eligibility and CAUV recoupment were summarized in the paper. These issues include eligibility of wetlands and energy facilities. A proposal to extend the recoupment period was also addressed as a means to fund local farmland preservation programs. It is hoped this paper will better inform public dialog and policy evaluation related to the CAUV program and land use decisions.

The issues discussed in the paper point to the need for all County Auditors to enforce the CAUV laws uniformly and with full disclosure to landowners and the public.

**TABLE 1: OHIO RECOUPMENT AMOUNTS COLLECTED, 2002–2010**

<b>Year</b>	<b>Statewide Recoupment</b>	<b>No. of Counties Reporting</b>
2002	\$5,877,654	61
2003	\$7,062,905	58
2004	\$7,555,500	56
2005	\$9,989,892	61
2006	\$8,329,578	56
2007	\$6,111,172	53
2008	\$5,075,798	54
2009	\$5,263,640	58
2010	\$4,313,624	60
Source: ODT. Data assembled by author.		

**TABLE 2: OHIO RECOUPMENT PAYMENTS COLLECTED 2002–2010, TOP 5 COUNTIES**

<b>County</b>	<b>9-year total</b>	<b>No. years in top 5 rank</b>
Medina	\$5,796,163	6 years
Delaware	\$4,641,880	6 years
Warren	\$4,612,322	7 years
Licking	\$4,198,937	5 years
Franklin	\$2,803,183	1 year (2005)
Source: ODT, data assembled by author.		

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