

RULES AND REGULATIONS OF THE DIRECTOR OF FINANCE
RELATING TO THE ASSESSMENT OF AGRICULTURAL LANDS
AND THE IMPOSITION OF THE DEFERRED TAX UNDER
SECTION 3.48.325, MAUI COUNTY CODE

Section 1	Purpose of rules
Section 2	Definitions
Section 3	Lands subject to the deferred tax
Section 4	Assessment of lands subject to the deferred tax
Section 5	Valuation consideration
Section 6	Imposition of the deferred tax
Section 7	Liens
Section 8	Appeals

Section 1. Purpose of rules.

These rules and regulations are intended to implement the provisions of Section 3.48.325, Maui County Code, relating to assessment of land classified and used for agriculture and to the imposition of the deferred (or "rollback") tax upon the conversion of such agricultural lands.

The purpose of this code (to be consistent with Act 175, SLH 1973) is to encourage the owners of lands, which are situated within the agricultural district, suitable for agriculture, to put that land to agricultural uses on a sustained basis, and to discourage (by tax recapture) the conversion of such lands or the reduction or subdivision of agricultural land parcels to less than reasonable economic size. Such lands classified and used for agriculture shall be assessed at their use in agriculture without regard to market value or neighboring land values.

Section 2. Definitions.

a. As used in these rules and regulations:

1. The term "agricultural use" shall mean lands actually put to agricultural use adhering to acceptable standards to produce crop, specific livestock including ranching use. Actually put to agricultural use shall be deemed to be when crops are actually in cultivation, and farm management efforts such as weed or pruning control, plowing, including housing, fencing and water facilities for livestock and pasturing of animals are clearly evident. It does not include nor apply to areas used primarily as yard space, setbacks, or open landscape associated with residential use planted with fruit and ornamental trees, flowers, and vegetables primarily for home use.
2. The term "agricultural use value" shall mean the value for assessment purposes determined

by the director for lands being put to any agricultural use.

3. The term "conversion" shall mean (i) the government approved subdivision of agricultural land into parcels of five (5) acres or less or (ii) a land use district reclassification from agricultural to an urban or rural district where such change is initiated by other than a governmental agency
4. The term "deferred" tax shall mean that recapture tax imposed by Section 6 upon the owner of agricultural lands assessed according to its agricultural use when the land is changed in its use designation to an urban or rural use district by any property owner or lessee or when such lands are subdivided into parcels of five (5) acres or less.
5. The term "director" shall mean the county director of finance or his designee.
6. The term "fair agricultural lease rent" shall mean the lease rental determined by the director as the reasonable lease rent paid in the open market for comparable agricultural land leased for agricultural use.
7. The term "fulfills all the requirements of the dedication" shall mean that the owner, or successor to the owner if such be the case, shall have complied with all of the terms, conditions or restrictions of the dedication for the minimum period of the dedication.
8. The term "homesite" shall mean that portion of the land which is used for residential purposes, including the land upon which the house is located, together with all accessory buildings and the land designated to be the yard space.
9. The term "land use district" shall mean the urban, rural, conservation and agricultural districts classified and established by the Land Use Commission of the State of Hawaii pursuant to Chapter 205 of the Hawaii Revised Statutes.
10. The term "rate of capitalization" shall mean the annual percentage rate applied to the fair agricultural lease rent, or annual net income imputed to land, for the purpose of determining the value of the land.
11. The term "tax year" shall mean the period commencing from July 1 of a calendar year and ending on June 30 of the following calendar year.
12. The term "unusable or unsuitable" land shall mean that portion of the land parcel, in the agricultural district classified and used for agriculture, that is wholly unsuitable or

unusable for any agricultural use of whatever nature such as gulches, mountains or palis, eroded bedrocks, rocky, hilly or barren lands that are incapable of being put to any agricultural use.

b. Use of Gender and Number. Words importing the singular number shall extend to and include the plural; words importing the plural shall extend to and include the singular; and words importing the masculine or the female gender shall extend to and include the female and the masculine as the case may be.

Section 3. Lands subject to the deferred tax.

a. Agricultural lands shall be subject to the deferred tax when:

1. The land parcel is located within the agricultural district as established by the Land Use Commission of the State of Hawaii; and
2. The land is actually put to an agriculture use; and
3. The land has been assessed by the director according to its value in the agricultural use; and
4. The land has not been dedicated under the provisions of Section 3.48.350, Maui County Code.

b. The real property taxes upon the portion of a land parcel within the agricultural district that is "unusable or unsuitable" for any agricultural use, whether dedicated or not, shall be treated as a deferred tax.

Section 4. Assessment of lands subject to the deferred tax.

a. Where lands are in the agricultural district and used for agricultural purposes, the director shall:

1. Classify the land in its agricultural use, and determine the assessed value of the land in its agricultural use.
2. Classify the land according to its highest and best use and determine the assessed value of the land according to such highest and best use.
3. Record the assessed value of the land (i) in its highest and best use and (ii) in its agricultural use on the appropriate records.
4. Tax the land according to its agricultural use assessment.

b. For portion of land parcels declared to be "unusable or unsuitable", the director shall:

1. Classify and determine the assessed value of the land according to its highest and best use.
2. Record the assessed value so determined on the appropriate records accessible to the public.
3. Make no current property tax assessments until conversion has occurred or the land is put to any use.

c. When lands within the agricultural district are not put to any agricultural use, including any portion of the land being used as a homesite, such lands shall be assessed at their highest and best use based upon comparable values of similar lands being put to similar uses as reflected in the market.

d. When the land is reclassified, the director shall:

1. Note the date of reclassification on appropriate records. The effective date of reclassification is the date of the decision and order by the Land Use Commission.
2. Send a "Notice of Deferred Tax Assessment" to the taxable owner. The deferred tax payment may be extended provided the conditions for the extension are met.
3. Where the agricultural use continues, the land shall continue to be assessed at its agricultural use for a period of three years or until development of the land to its urban or rural use is initiated, whichever should first occur.

Section 5. Valuation considerations.

a. The agricultural use value of lands classified and used for agriculture shall be based upon the special considerations as provided in Section 3.48.320, Maui County Code. Whenever such data are unavailable or are inadequate for the director to determine the agricultural use value, the director shall make his determination based upon the fair agricultural lease rent of comparable land, which may be in other agricultural uses, as income imputed to land and capitalized into value.

b. The income approach to value shall be used, as far as possible, to determine agricultural use values.

1. The director shall use a rate of return to the land that is representative of normal market conditions. In the absence of such rates, a rate of capitalization of six percent (6%) may be used.

Section 6. Imposition of the deferred tax.

a. The director shall impose the deferred taxes upon the owner of agricultural lands when a conversion occurs in the following situations:

1. Upon the subdivision of the land into parcels of five acres or less,

2. When the land is reclassified from agricultural to an urban or rural district, where the owner or lessee has petitioned for the land use district reclassification.

b. Deferred taxes shall be rolled back to the date the lands commenced to be taxed as agricultural lands, but in no event shall the roll back period exceed ten years.

c. Deferred taxes shall be due and payable:

1. Where a conversion results from the subdivision of land into five acres or less, each parcel resulting from the subdivision shall be separately and independently assessed a pro rata share of the deferred tax and shall be subject to the prorated deferred tax. The effective date of the subdivision is the date the subdivision map and document are registered at the Land Court or recorded at the Bureau of Conveyances. The deferred tax shall be due and payable within sixty (60) days following the (subdivision) conversion.

2. Where the conversion results from a land use district reclassification, the amount of deferred tax shall be computed at the end of the tax year or at the end of the third tax year following the reclassification provided the conditions for the extension are met. The deferred tax shall be due and payable within thirty (30) days following the mailing of the notice.

3. All deferred taxes shall be subject to a penalty of ten percent (10%) per annum.

4. Whenever the deferred taxes are imposed; the director shall determine the amount of such additional taxes and penalties and shall mail a notice of special deferred tax assessment to the owner.

d. Exceptions under specific conditions from the imposition of the deferred tax:

1. The deferred tax shall not be imposed when the conversion is initiated by any governmental agencies. The deferred tax shall not be imposed on an owner or lessee who did not petition for the reclassification, and the extended three years use value provisions may apply.

2. Where a conversion results from a land use district reclassification, the deferred tax shall be set aside provided the owner continues the agricultural use and dedicates the land within the prescribed period and fulfills all the requirements of land dedication. (Petition to dedicate must be filed on

or before the statutory deadline of the third tax year following the reclassification.)

- (a) If the petition to dedicate is approved and all the requirements for dedication are met, the deferred tax shall be set aside and the land shall be subject to the provisions of dedications as prescribed in Section 3.48.350, Maui County Code. The roll back period of the deferred tax assessment shall not exceed ten (10) tax years for lands that are subject to both the deferred tax and dedicated land assessments.
- (b) If the petition to dedicate is disapproved, the deferred tax shall be imposed at the end of the tax year as provided in Section 6 of these regulations.

e. Remission of taxes and penalties.

1. If the deferred taxes have been paid and the owner dedicates his land for an agricultural use within the prescribed period, the director shall remit to the owner all such deferred taxes paid together with the penalties assessed and paid thereon.
2. No remission or taxes shall be made when deferred taxes have been paid as a result of a conversion arising from the subdivision of the land into parcels of five acres or less.

Section 7. Liens.

All taxes and penalties due and owing as deferred taxes shall attach to the land as a paramount lien pursuant to Section 3.48.235, Maui County Code.

Section 8. Appeals.

The owner shall have thirty (30) days from the mailing of the notice of deferred tax assessment, and within the time prescribed following a subdivision to appeal the assessment of the deferred tax. Appeals shall be governed by the appropriate sections of Chapter 3.48, Maui County Code, and may be taken to the board of review or be taken directly to the tax appeal court without appealing to the board of review.

ADOPTED this 21st day of September, 1981, at Wailuku, Maui, Hawaii.

Kenny T. V. Tan
Director of Finance
County of Maui

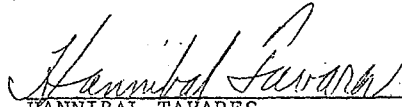
CERTIFICATION

I, Hannibal Tavares, as Mayor of the County of Maui, do hereby certify:

1. That the foregoing is a full, true, and correct copy of the rules and regulations relating to dedication of lands for ~~reaching~~ or agricultural use, which were adopted on the 24th day of September, 1981; and

2. That the notice of public hearing on the foregoing rules and regulations of the County of Maui, which notice included the substance of such rules and regulations, was published in The Maui News on the 11th day of August, 1981.

COUNTY OF MAUI



HANNIBAL TAVARES
Mayor, County of Maui

Approved this 26th day of
September, 1981.

Hannibal Szwarc
Mayor, County of Maui

APPROVED AS TO FORM
AND LEGALITY:

Robert R. Rothwell
Deputy Corporation Counsel
County of Maui

Received this 24th day of
September, 1981

James S. Whipple
Clerk, County of Maui

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CLERK OF COUNTY OF MAUI