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February 18, 2009

Robert Somers, Ph.D.
Manager, Agricultural Protection Unit
NYS Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235

Dear Dr. Somers:

This is in reply to your letter of February 20, 2008, concerning the imposition of certain charges upon "land used primarily for agricultural production within an agricultural district" (Agriculture and Markets Law [AML], §305[5]).

You state that the Town of Alexandria (Jefferson County) and the State Department of Agriculture and Markets disagree as to what constitutes "land used primarily for agricultural production" for the purposes of AML, §305[5].¹ You ask for our assistance in resolving this matter.

¹ You state that the town assessor is informing farmers that in order to receive the protection of AML, §305(5), they must provide proof "that they made \$10,000 in gross receipts." You enclose a letter of February 12, 2008, from Town Attorney Joseph W. Russell, which cites the definition of "land used in agricultural production" set forth in AML, §301[4], in support of the assessor's interpretation of §305(5). We also note that we stated in a prior opinion (6 Op.Counsel SBEA No. 120) that AML, §305[5], provides that "[l]and located within an agricultural district and eligible for an agricultural value assessment is exempt from certain benefit assessment and special ad valorem levies ..."

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Please excuse our considerable delay in responding to your letter. During this period we made an extensive attempt to discover the legislative history of AML, §305[5], because we were unable to find any germane court decisions interpreting §305[5]. Our efforts included ultimately unsuccessful attempts to obtain potentially relevant documentation of the former Agricultural Resources Commission from the State Archives and the Cornell University College of Agriculture and Life Sciences.²

AML, §305(5), in relevant part, provides that:

Within improvement districts or areas deemed benefited by municipal improvements including, but not limited to, improvements for sewer, water, lighting, non-farm drainage, solid waste disposal, including those solid waste management facilities established pursuant to [§226-b] of the county law, or other landfill operations, no benefit assessments, special ad valorem levies or other rates or fees charged for such improvements may be imposed on land used primarily for agricultural production within an agricultural district on any basis ... (emphasis added)

Section 4.08 of the ORPS Assessor's Manual states that AML, §305[5], should be construed to mean that "[l]and which is

You also enclose your letter of January 31, 2008, in which you state that AML, §305(5), "does not require [that] the land used in agricultural production ... qualify for an agricultural assessment or be subject to such an assessment."

² A Memo to the Governor from the State Department of Agriculture and Markets in the Bill Jacket for L.1972, c.712, states that chapter 712 was drafted after "conferences and meetings over the past year have disclosed several areas in the Agricultural Districts Law which need modification for the purpose of clarity and to make the law more workable." The Memorandum of Agriculture and Markets further states that "[m]any of these meetings have been held under the auspices of the Agricultural Resources Commission" and "[t]he New York State College of Agriculture and Life Sciences at Cornell has also participated" (ibid.).

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located within an agricultural district and is used primarily for agricultural production but which does not satisfy all of the requirements for an agricultural assessment may receive the benefit of this exemption" (emphasis added) (<http://www.orps.state.ny.us/assessor/manuals/vol4/part2/section4.08/sec305.htm>). This letter will review the basis of our statutory interpretation.

When originally enacted in 1971 (c.479), AML, §305[5], applied to "land used for agricultural production within an agricultural district." At that time, as is generally still the case, eligibility for an agricultural assessment depended on whether purported farm land was "land used in agricultural production" that fulfilled requirements for minimum acreage and gross sales value (AML, §§305, 306).³

In 1972 (c.712), AML, §305[5], was amended to apply to "land used for primarily agricultural production within an agricultural district" (emphasis added). The Governor's Bill Jacket for chapter 712 does not provide an explanation of why the term "primarily" was added to section 305[5]. Nevertheless, we assume that the Legislature's addition of the term "primarily" to §305[5] is significant because one of the recognized canons of statutory construction is that "[t]he Legislature, by enacting an amendment of a statute changing the language thereof, is deemed to have intended a material change in the law" (McKinney's Statutes, §193).

In 1975 (c.717), AML, §305[5], was again amended to provide that its provisions apply to "land used primarily for

³ In 1971 (c.479), AML, §305, required that land eligible for an agricultural assessment located within an agricultural district must be "not less than ten acres ... used in the preceding year for the production for sale of agricultural products of a gross sales value of [\$10,000] or more ..."; a similar provision was set forth in AML, §306, that applied to land situated outside an agricultural district. AML, §§305, 306, currently authorize agricultural assessments for land that generally must be "not less than seven acres ... used as a single operation in the preceding two years for the production for sale of crops, livestock or livestock products of an average gross sales value of [\$10,000] or more ..." (see, AML, §301[4]).

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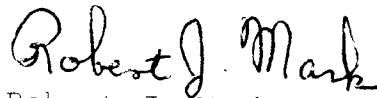
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agricultural production", a phrase that is still set forth in §305[5]. The State Board's Memo to the Governor concerning L.1975, c.717, states that the "intended purpose" of chapter 717 is "to provide a means for helping to preserve the State's viable farmland ..." (emphasis added) (Governor's Bill Jacket for L.1975, c.717). In 1975, when the State Board's Memo was written, then AML, §301[1], defined "viable agricultural land" without reference to minimum acreage or gross sales value.⁴

Accordingly, although the matter is not without some uncertainty, it is our opinion that AML, §305[5], does not require that "land used primarily for agricultural production" located within an agricultural district have a minimum acreage and gross sales value in order to receive exemption from certain special assessments and special ad valorem levies. We will continue to interpret §305[5] as stated in the Assessor's Manual.

Very truly yours,



Robert J. Mark
Senior Attorney

cc: John Rusnica, Esq.
NYS Dept. of Agriculture and Markets

⁴ Then AML, §301[1], which was added by L.1971, c.479, defined "viable agricultural land" as "[1]and highly suitable for agricultural production and which will continue to be economically feasible for such use if real estate taxes, farm use restrictions, and speculative activities are limited to levels approximately those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development" (emphasis added).