

CULTIVATING STABILITY: PROPERTY TAX REFORMS FOR FAMILY-OWNED FARMS AND THEIR IMPACT ON AGRICULTURE’S FUTURE

Joshua Mendez*

ABSTRACT

The demographics of the agriculture industry paint a bleak picture of its future because soon there will be high turnover in labor and ownership. With those statistics in mind, it is critical to look at the mechanisms that may hinder this transition into a new era of farming and ranching. Among these possible obstacles are state collected property taxes and agriculture exemption policies. Each state has its own method for levying and collecting property taxes and a different way to exempt agriculture land. These wide discrepancies in a vital area of tax law can lead to drastically different results depending on the implementation of the tax and any exemptions. As a result, some states have been more successful in crafting policies that best fit the farmer and the agriculture industry. This Comment addresses those differences and proposes practices and policies that states should enact in order to foster agricultural development in a time where the future of agriculture has never been so cloudy.

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* Joshua Mendez is a second-year law student at Texas Tech University School of Law. He would like to dedicate this to his grandfather, Jack Staben, a farmer, rancher, and the inspiration for this Comment. He writes for all of the farmers and ranchers that make up the agriculture industry in order to preserve their way of life. Joshua would like to thank his parents for their unwavering faith and belief in him that got him through many challenges. He would also like to thank Professor Gary Terrell, Professor Stephen Black, and Professor Amber Miller for their guidance and support. Finally, he would like to thank Maddie Royal and Sarah McClure for their hours of editing and guidance throughout the writing process.

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I. INTRODUCTION

“And on the eighth day, God looked down on his planned paradise and said ‘I need a caretaker.’ So God made a farmer.” - Paul Harvey¹

The agriculture industry is facing a daunting challenge.² Farmers and ranchers have been getting older, with the average age of the farmer approaching sixty years old.³ This means in the coming years a changing of the guard will be occurring, with a new generation of farmers and ranchers taking over the all-important task of feeding the world.⁴ As of 2017, young farmers (ages thirty-five and younger) only represented 9% of the 3.4 million producers in the industry.⁵ At the same time, family-owned farms accounted for nearly 97% of all farms in the United States.⁶ This amounts to nearly 1.8 million acres of valuable farm and ranchland, which is equivalent to half of

1. Paul Harvey, ‘*So God Made a Farmer*’ Speech to the FFA, AM. RHETORIC, <https://www.americanrhetoric.com/speeches/paulharveysogodmadeafarmer.htm> (Jan. 6, 2022) [<https://perma.cc/B84Q-374T>].

2. Jodi Halvorson, 2022 Census of Agriculture Impacts the Next Generation of Farmers, U.S. DEP’T OF AGRIC. (Feb. 22, 2023), <https://www.usda.gov/media/blog/2023/02/22/2022-census-agriculture-impacts-next-generations-farmers> [<https://perma.cc/7XLP-6A5K>].

3. *See id.*

4. *See id.*

5. *Id.*

6. *Id.*

the productive agriculture land in the country.⁷ This dichotomy only highlights the need for strategic use of property tax codes to provide stability in an industry where stability is the most precious commodity.⁸

Family-owned farms serve as the foundation for the production agriculture industry.⁹ However, these small businesses are routinely challenged by the disparity of policies and regulations states employ when collecting property taxes.¹⁰ In some states, families are left to fend for themselves when a property owner dies or when the family farm is passed down to a new generation.¹¹ This ambiguity in a substantial area of tax law only adds to the list of challenges a farmer must face, on top of the day-to-day demands of farming, as the entire agriculture industry stares down an uncertain future that will likely result in large amounts of turnover.¹²

Additionally, farmers play a critical role in the functioning of our society.¹³ Their job is simple in principle: Feed the world.¹⁴ State governments and legislatures need to do more to protect farmers and the integral part they play in making our communities a better place.¹⁵ This includes coming up with an equitable way to tax property that is used for production agriculture and exemptions to protect agriculturists come tax season.¹⁶ Additionally, uniformity in this area will provide stability for farmers as they look to plan their estates and how to pass property to the next generation.¹⁷

My grandfather, Jack Staben, farmed in the state of California for over forty years.¹⁸ Faced with the challenges of farming on a daily basis, he understood the hardship that a farmer undertakes in order to produce food, fuel, and fiber.¹⁹ Jack was the “all-American” man and the quintessential farmer.²⁰ He starred in a Budweiser commercial as a farmer, sold produce to President Ronald Reagan, and grew all of the pumpkins in the major motion

7. *Id.*

8. *See id.*

9. *See* Christine Whitt, *A Look at America's Family Farms*, U.S. DEP'S OF AGRIC. (Jan. 23, 2020), <https://www.usda.gov/media/blog/2020/01/23/look-americas-family-farms> [<https://perma.cc/N7GX-8QCK>].

10. *See* Evin Bachelor & Peggy Kirk Hill, *Differential Tax Assessment of Agricultural Lands*, NAT'L AGRIC. L. CTR., <https://nationalaglawcenter.org/state-compilations/differentialexassessment/> (last visited Mar. 4, 2024) [<https://perma.cc/2KRA-2X5P>].

11. *See id.*

12. *See id.*

13. *See* Whitt, *supra* note 9.

14. *Id.*

15. Author's original thought.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

picture *The Addams Family*.²¹ Jack and his wife, Jeanne, formed a duo, bonded on the strength found in our most noble duty: Feeding the world.²²

Jack died in 2006, leaving a cloud of uncertainty over the business he and Jeanne had built, including how property would be passed on to heirs and the property tax consequences of such transactions.²³ This Comment reflects that hardship and the burden of decision making in times like that.²⁴ However, it is not about Jack, Jeanne, or my family, but rather each and every family-owned and operated farm, in the hope that one day they will not have to make the same difficult decisions farmers are faced with now.²⁵

This Comment addresses the uncertain future facing the agriculture industry, specifically family-owned farms, and the fact that each of the fifty states has its own way of determining and collecting property taxes, including any exemptions for agricultural use, and offers a solution to state legislatures about the type of policies that should be enacted to protect the family farm.²⁶ Ultimately, policies that enable the farmer to maintain the ability to make the choices they see fit for their farm should be enacted in order to provide some stability in an industry where stability is valuable.²⁷

Part I introduces the property tax and exemption system and how those policies may affect the farmer.²⁸ Additionally, Part I introduces the solution that state legislatures should look to policies similar to Texas's implementation of a property tax and exemption system because it best fits the agriculture industry with few exceptions.²⁹

Part II takes an in depth look at the property tax collection methods and exemption policies of two sample states: California and Texas.³⁰ Specifically, Part II will look at California's property tax system and the implementation of Proposition 13 and Proposition 19.³¹ Additionally, Part II will discuss how Texas collects property taxes and where those funds go.³² Next, Part II will look at California's agriculture exemption policy, including the Williamson Act and how Williamson Act contracts work.³³ Finally, Part II will look at

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. See discussion *infra* Part IV.

27. See *id.*

28. See discussion *infra* Part I.

29. See *id.*

30. See discussion *infra* Part II (discussing the history and collection methods for property taxes in both California and Texas).

31. See *id.* (discussing how Proposition 13 and, later, Proposition 19 have altered the property tax collection methods in California when it comes to valuing properties).

32. See *id.* (discussing the history of property tax collection in Texas and how it has shaped the modern methods for collection by local governments today).

33. See *id.* (discussing the Williamson Act as the only agriculture exemption method that California employs for property tax relief to farmers).

Texas's exemption policy, which is better defined as a special valuation system for agriculture land based on actual usage.³⁴

Part III takes an analytical approach to the policies in Part II and applies them to the family farm.³⁵ Part III begins with a legislative proposal for an exemption policy that represents an ideal advancement for farmers and ranchers.³⁶ Next, Part III offers an examination of California's property tax system and the effects of Proposition 19 on the modern-day family farm.³⁷ Part III then addresses how Texas's property tax scheme provides long-term stability even though the initial sticker price of property taxes in Texas is high, demonstrating that farmers may be willing to pay a higher fee to see where their money is going.³⁸ Next, Part III looks at the challenges farmers face when seeking out exemptions through California's Williamson Act that ultimately may hinder their ability to take full advantage of their property.³⁹ Additionally, Part III will analyze the special valuation system and what makes it so successful for Texas's ranchers and farmers to be taxed on the actual usage of the land rather than a fair market value that may be inflated by population growth.⁴⁰ Finally, Part III will discuss the role of the estate planner in ensuring the long-term success and viability of the farm.⁴¹

Part IV concludes this Comment with an overall description of the policies that give farmers the best ability to maintain success for their family, heirs, or anyone else involved in the operation.⁴² Like my family, the ultimate success of the family-farm may hinge on the impact of property taxes and exemptions and can shape what a family does in the future.⁴³ By giving farmers more freedom in their choices, they have the ability to ensure the success of the operation in a way that they believe fits.⁴⁴

34. *See id.* (discussing Texas's exemption system for agriculture land which is more in line with special valuations rather than traditional exemptions).

35. *See* discussion *infra* Part III (discussing applications of Part II to real-world examples in order to formulate a conclusion).

36. *See id.* (discussing the legislative proposal presented in the section).

37. *See id.* (discussing how Proposition 13 was overhauled by Proposition 19 due to clever marketing by the State of California and how that has affected property tax collection in the state).

38. *See id.* (discussing how Texas's method of property taxes is more applicable to the agriculture way of life even though the initial sticker price may be higher).

39. *See id.* (discussing how entering a ten-year contract for farmers may actually hinder them more than the tax relief granted under the Williamson Act).

40. *See id.* (discussing Texas's successful exemption practices that give relief to farmers based on their actual usage of the land and why that is the most flexible method for exemptions).

41. *See id.* (discussing the wide arrange of tools and information that an estate planner must consider when providing advice to the family-owned farm).

42. *See* discussion *infra* Part IV.

43. *See id.*

44. *See id.*

II. BACKGROUND ON PROPERTY TAX CODES AND EXEMPTIONS

God said, 'I need somebody willing to get up before dawn, milk cows, work all day in the fields, milk cows again, eat supper, then go to town and stay past midnight at a meeting of the school board.' So God made a Farmer. 'I need somebody with arms strong enough to rustle a calf and yet gentle enough to deliver his own grandchild; somebody to call hogs, tame cantankerous machinery, come home hungry, have to await lunch until his wife's done feeding visiting ladies, then tell the ladies to be sure and come back real soon — and mean it.' So God made a farmer.⁴⁵

A. Property Taxation and the Effects of Propositions 13 and 19 in California

California has a long history of levying and collecting property taxes for a wide range of issues and for broad areas of spending.⁴⁶ Prior to 1912, the state collected up to 70% of its revenue from property taxes.⁴⁷ However, since 1933, the only property tax retained by the state has been a tax on privately owned railroad cars.⁴⁸ Today, local governments, cities, counties, and school districts are the entities that rely on property taxes as a primary source of revenue.⁴⁹ During the tax years of 2016 to 2017, property taxes raised more than \$62 billion for local governments, with 12% of that going to public school funding.⁵⁰

To understand the reasons behind the shift in policy in the late 1970s for California's property tax collection and system, it is important to look at it through a historical lens.⁵¹ On June 6, 1978, the voters of California voted in favor of Proposition 13, which was a property tax limitation measure.⁵² Prior to the passage of this initiative, property tax rates in California were skyrocketing in response to economic growth following World War II.⁵³ Additionally, California had a reported budget surplus of nearly \$5 billion.⁵⁴ Prior to the passage of Proposition 13, real property was appraised in intervals lasting no longer than five years.⁵⁵ Because of this, property values

45. See Harvey, *supra* note 1.

46. *California Property Tax: An Overview*, CAL. STATE BD. OF EQUALIZATION 1, 1 (Dec. 2018), <https://www.boe.ca.gov/proptaxes/pdf/pub29.pdf> [<https://perma.cc/3RYJ-X899>].

47. *Id.*

48. *Id.*

49. See *id.*

50. *Id.*

51. See *id.*

52. *Id.*

53. See *id.*

54. See *id.*

55. See *id.*

were reviewed regularly, which kept assessed values near fair market value for the sake of property tax collection.⁵⁶

The mechanics of Proposition 13 rolled back the assessed values of properties to their fair market values in 1975 and limited the growth in valuation to 1% annually for the purposes of property taxes.⁵⁷ Additionally, the proposition limited any potential future growth to property taxes to 2% annually in the instance that property changed ownership or was assessed for undergoing new construction.⁵⁸ This resulted in the state collecting nearly half the tax revenue as compared to prior years, seeing \$10.3 billion collected in 1977–1978 drop to \$5.04 billion collected in 1978–1979.⁵⁹ At its core, Proposition 13 turned California from a state that taxed based on the market value of property to an acquisition value-based system.⁶⁰

An acquisition value-based assessment system is an approach to property tax collection and property valuation that sets a property's assessed value at the market value at the time the property was acquired.⁶¹ Generally, this number is not adjusted until the property is sold at a later date.⁶² However, California permitted annual increases in the value given to account for inflation.⁶³

The initial results of Proposition 13 for local governments were catastrophic, leading the state government to bailout many municipalities to offset tax losses.⁶⁴ Stop-gap measures over the first two years following the passage of Proposition 13 cost the state around \$9 billion, including the majority of the surplus mentioned earlier.⁶⁵

There were immediate challenges to the constitutionality of Proposition 13.⁶⁶ The California Supreme Court upheld the taxing measure in 1978 with its decision in *Amador Valley Joint Union High School District v. State Board of Equalization*.⁶⁷ The ballot measure then faced an equal protection challenge in the United States Supreme Court in *Nordlinger v. Hahn*, in which the Court ruled that Proposition 13 did not violate the United States

56. Terri Sexton, *California*, LINCOLN INST. OF LAND POLICY 1, 2 (Feb. 2018), https://www.lincolninst.edu/sites/default/files/ca_feb_2018.pdf [<https://perma.cc/64HD-Z6DD>].

57. See *California Property Tax: An Overview*, *supra* note 46, at 1.

58. See *id.*

59. *Id.*

60. See *id.*

61. See Sexton, *supra* note 56, at 2.

62. See *id.*

63. See *id.*

64. See *California Property Tax: An Overview*, *supra* note 46, at 1.

65. *Id.*

66. See *id.*

67. *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 583 P.2d 1281, 1283 (Cal. 1978).

Constitution.⁶⁸ These two rulings ended any debate as to whether the judicial branch would overturn or modify Proposition 13.⁶⁹

The biggest modern criticism for Proposition 13 is the wide disparity in the assessed values of properties that are essentially the same or very similar.⁷⁰ Because California implemented a system that most closely resembles an acquisition value-based system, properties can have substantially different assessed values strictly based on the dates the properties were purchased or last transferred.⁷¹ These disparities occur whenever California sees significant appreciations in property value over time.⁷² This results in longtime property owners, who have seen their property taxes increase by no more than 2% annually, having substantially lower tax liabilities when compared to recent purchasers who are taxed at a number closer to market levels.⁷³

For example, Farmer Jack purchased a 100-acre tract of land in 1978 for \$100,000.⁷⁴ Following the passage of Proposition 13, Farmer Jack was taxed based on the value of the property at the time he purchased it as a base, with only a 1% or 2% increase in taxes annually based on inflation.⁷⁵ Property value increases in California could assess Farmer Jack's property at a fair market value of \$10 million, but he would only be taxed based on the original valuation adjusted for inflation.⁷⁶

Compare Farmer Jack with Farmer Jill, who purchased the neighboring 100-acre tract of land in 2023 for \$10 million.⁷⁷ Because California implements an acquisition value-based system, Jill would be taxed on the full \$10 million even though her neighbor, Jack, is paying a fraction of that for essentially the same piece of land.⁷⁸ In this scenario, Farmer Jack is rewarded for being a long-term property owner and nothing else.⁷⁹

There were two key elements of Proposition 13 from the standpoint of the family-owned farm.⁸⁰ First, Proposition 13 allowed for the transfer of real property between a parent and child without triggering a reassessment on the tax base of the property.⁸¹ All that it took to get this benefit was to file the

68. *Nordlinger v. Hahn*, 505 U.S. 1, 17 (1992).

69. *See California Property Tax: An Overview*, *supra* note 46, at 1.

70. *See id.*

71. *See id.*

72. *See id.*

73. *Id.*

74. Author's original hypothetical.

75. *See Sexton*, *supra* note 56, at 2.

76. *See id.*

77. Author's original hypothetical.

78. *See Sexton*, *supra* note 56, at 2.

79. *See id.*

80. Matt Carey, *California Propositions 13 and 19: What You Need to Know*, THE CURRENCY (Jan. 20, 2021), <https://www.empower.com/the-currency/life/california-proposition-13-proposition-19-what-to-know#:~:text=Proposition%2013%20allows%20a%20transfer,a%20parent%20to%20a%20child> [<https://perma.cc/QKA5-AZ4Y>].

81. *See id.*

appropriate forms with the county assessor when the deed was transferred from parent to child.⁸² Going back to the previous hypothetical, under Proposition 13, Farmer Jack would be able to pass on his farm to his daughter, which is valued at \$10 million, but she would only have to pay taxes based on the \$100,000 original purchase price as adjusted for inflation.⁸³

Second, for individuals over fifty-five, Proposition 13 allowed for a property owner to sell their primary residence and replace it with another primary residence. This transaction transfers the base year value of their old residence to the new residence, so long as the replacement is of equal or lesser current market value and located in the same county.⁸⁴ The important takeaway here is the market value portion.⁸⁵

To tie this to Farmer Jack, consider that he lived on the 100-acre tract that he purchased for \$100,000 and it is now worth \$10 million.⁸⁶ If desired, Farmer Jack could sell the ranch and move to a residential property or another piece of land that was valued at or below \$10 million but still pay property taxes based on the \$100,000 valuation of his original ranch.⁸⁷ Proposition 13 was billed a success by farmers and ranchers because it provided stability and a pathway for properties to be passed on to heirs without triggering a reassessment for property tax purposes.⁸⁸

Where Proposition 13 was so successful, Proposition 19 was a reversion from beneficial policies and hurt the farmer's ability to ensure the long-term success of the family farm.⁸⁹ With these differences in mind and in the wake of a series of brutal wildfires that devastated large portions of California, Proposition 19 was marketed to the voters of the state as The Home Protection for Seniors, Severely Disabled, Families and Victims of Wildfire or Natural Disasters Act.⁹⁰

However, what the title does not tell you is that Proposition 19 was an amendment to California's constitution that limited individuals who inherited family properties from keeping a low tax base unless the property is used only as a primary residence.⁹¹ This proposition eliminated the family exclusion for all real property, except for principal places of residence.⁹² This would include family-owned farms.⁹³

82. *See id.*

83. Author's original hypothetical.

84. *See Carey, supra* note 80.

85. *See id.*

86. Author's original hypothetical.

87. *Id.*

88. Author's original thought.

89. *Id.*

90. *About Proposition 19 (2020)*, CITY & CNTY. OF S.F.: OFF. OF THE ASSESSOR-RECORDER, <https://sfassessor.org/Prop19> (last visited Nov. 3, 2023) [<https://perma.cc/DM8Z-B2X4>].

91. *See id.*

92. *See id.*

93. *See id.*

Even with its clever marketing scheme and inconsistent title, the voters of California only passed Proposition 19 by the narrow margin of 51% to 49%.⁹⁴ This 1% in voter difference altered the inheritance landscape in California from the effective date of February 16, 2021, onward.⁹⁵ Under Proposition 19, most properties are now reassessed at current market value when passed to heirs.⁹⁶ This shift has essentially moved California away from an acquisition value-based property system back to a fair market value system as discussed earlier.⁹⁷ This shift was only the beginning when it came to the challenges that Proposition 19 forced upon the agriculture industry.⁹⁸

The change from the carveouts for family-owned property in Proposition 13 to Proposition 19 represents a drastic departure to a carve-up in just under fifty years.⁹⁹ Proposition 19 creates fiscal challenges for children inheriting property from parents.¹⁰⁰ Additionally, the lack of profitability for farms under certain conditions and the alignment of property taxes with fair market values of property may result in a no-win situation for farmers and their heirs.¹⁰¹ This is particularly costly to family farms that have been in the family for multiple generations with low tax burdens and high market valuations.¹⁰²

The intent is clear from the language of the proposition: local governments can expect larger amounts in property taxes based on this new reassessment process to pay for local programs, such as disaster relief and, specifically, fire-related programs.¹⁰³ However, these benefits come at the direct expense of family-owned farms and property owners that are tasked with feeding the state and the country.¹⁰⁴ In conclusion, for the same reasons that Proposition 13 was successful in ensuring the long-term success of family-owned farms, Proposition 19 puts a cloud over the future of farming and ranching in California, simply due to the fact that it will price many families out of the farming space.¹⁰⁵

94. Craig W. Anderson, *Prop. 19 Is Bad for Agriculture*, SAN JOAQUIN FARM BUREAU FED'N (May 13, 2021, 11:27 PM), <https://sjfb.org/2021/prop-19-is-bad-for-agriculture/> [<https://perma.cc/5EKP-XVTU>].

95. *Id.*

96. *See id.*

97. *See id.*

98. *See id.*

99. *See id.*

100. *See id.*

101. *See id.*

102. *See id.*

103. *See id.*

104. *See id.*

105. *See id.*

B. Property Tax Collection and Yearly Valuations in Texas

Property taxation in Texas has had a wild and inconsistent history, dating back to Texas's time as a Spanish Colony and as its own independent nation.¹⁰⁶ Prior to the Civil War, but after Texas was annexed into the United States, property tax collection was unorganized and, at times, corrupt, with local assessors accepting bribes for lower valuations.¹⁰⁷ At this time, the population of Texas was booming.¹⁰⁸ A growing population and the stress of corruption at the local level for property tax collection put too much pressure on local governments to afford essential programs for their citizens.¹⁰⁹

The Great Depression was particularly difficult on property owners in Texas and had major implications on property tax collections.¹¹⁰ As of 1933, nearly 25% of all property taxes in Texas were not paid and, therefore, were delinquent.¹¹¹ These delinquencies did not approach average numbers until nearly two decades later.¹¹² Even when delinquencies decreased, the legislature began to realize that assessors continued to undervalue properties.¹¹³ The state auditor in 1945 determined that only 7 out of 254 counties in Texas were in compliance with the state law requiring assessors to assess properties at 100% of their value for the process of taxation.¹¹⁴

This marked the beginning of the end for any state-wide property taxation in Texas.¹¹⁵ Over the next four decades and into the 1980s, the state legislature began peeling away the different elements of the state property tax.¹¹⁶ This resulted in Texas abolishing all forms of state-wide property taxation in 1982, leaving properties to be assessed and taxed by local governments.¹¹⁷

In 1979, the state legislature passed the Peveto Bill, which left property assessments up to the discretion of a system of county appraisal districts.¹¹⁸ This system and the basic fundamentals of this Bill are still in effect today.¹¹⁹ Modern property tax fundamentals were established in a series of policies passed and amended throughout the 1980s and 1990s, including exemptions

106. *The History of Texas Property Taxes*, HOME TAX SOLS., <https://www.hometaxsolutions.com/2019/01/history-of-texas-property-taxes/> (last visited Nov. 6, 2023) [<https://perma.cc/Y947-URRL>].

107. *See id.*

108. *See id.*

109. *See id.*

110. *See id.*

111. *Id.*

112. *See id.*

113. *See id.*

114. *Id.*

115. *See id.*

116. *See id.*

117. *See id.*

118. *See id.*

119. *See id.*

and measures designed to decrease tax burdens on individual property owners.¹²⁰

When looking at modern property tax collection policies in Texas, it is important to keep in mind the historical changes that the state has undergone that led to the collection of taxes by local government entities.¹²¹ Today, property taxes provide local governments with their largest source of income, which is used to pay for programs such as public schools, police, fire, and road infrastructure.¹²² While the state does not collect these funds, it provides local governments with the process to value, levy, and collect taxes, ensuring a uniform system across the state.¹²³ However, Texas does not set the rates that individual taxpayers pay and does not provide a remedy should disputes between taxpayers and taxing entities arise.¹²⁴

However, Texas ranks towards the top when it comes to the percentage of income spent by its residents on property taxes.¹²⁵ Residents pay an average of 2.18% of the estimated value of their homes on a yearly basis.¹²⁶ These high tax values are to offset the fact that Texas is 1 of 9 states that does not collect a state income tax.¹²⁷ This only exacerbates the need for counties to collect funds for programs in other ways and property taxes are the primary source of this.¹²⁸

There are three fundamental steps in the modern collection of property taxes in Texas.¹²⁹ First, appraised values for properties in each district are set by the district's appraiser by January 1 of each year.¹³⁰ Second, property owners may dispute the appraised value of their property through the Appraisal Review Board.¹³¹ Finally, actual tax rates are calculated by looking at the budget set by the taxing entity.¹³²

Property tax collections have seen a rise over the last decade.¹³³ From 2017 to 2021 collections grew around 20%.¹³⁴ This has prompted lawmakers

120. *See id.*

121. *Property Tax System Basics*, TEX. COMPTROLLER OF PUB. ACCTS., <https://comptroller.texas.gov/taxes/property-tax/basics.php> (last visited Nov. 6, 2023) [<https://perma.cc/B9TT-TG7D>].

122. *See id.*

123. *See id.*

124. *See id.*

125. *How Does Property Tax Collection Work in Texas?*, AM. FIN. & INVESTMENT CO., INC., <https://afic.co/blog/how-does-property-tax-collection-work-in-texas> (last visited Nov. 6, 2023) [<https://perma.cc/KBD6-YX4E>].

126. *Id.*

127. *Id.*

128. *See id.*

129. *See id.*

130. *See id.*

131. *See id.*

132. *See id.*

133. Joshua Fechter, *Here's What You Need to Know About the Fight over Property Tax Cuts in the Texas Legislature*, TEX. TRIB. (Jan. 31, 2023, 5:00 AM), <https://www.texastribune.org/2023/01/31/texas-property-tax-legislature/> [<https://perma.cc/B8JQ-9FPY>].

134. *Id.*

to shift their focus and look for solutions to curb these taxing issues while still providing essential government programs to communities.¹³⁵ As of January 2023, the State of Texas had nearly \$33 billion in surplus which prompted Governor Greg Abbott to promise to use half of that money to lower property taxes.¹³⁶ This has caused challenges from both sides of the political spectrum, with conservative legislators questioning the long-term success of such a spending program and liberal legislators suggesting the money could go to funding other programs like teacher salaries.¹³⁷

C. Agriculture Exemptions in California and The Williamson Act

Prior to 1965, California's population density and growth were increasing at a dramatic rate.¹³⁸ As people began migrating to California, pressure to convert traditionally agricultural land to commercial or residential development expanded.¹³⁹ This population and economic growth caused the price of agricultural land to increase, which resulted in an increase in property taxes because Proposition 13 had not been approved by the voters at this time.¹⁴⁰

Additionally, state regulations and labor standards expanded during this time period, which led to even smaller profits going into the pocket of the farmer.¹⁴¹ This resulted in farmers seeking to sell their land to developers for the highest dollar amount.¹⁴² A difficult dichotomy emerged where the number of mouths to feed continued to go up but the number of farmers went down.¹⁴³ As a result, California passed the Williamson Act in 1965.¹⁴⁴

The original legislative intent for the Williamson Act was to act as a counterbalance to the tax laws that often led to the conversion of agricultural land to commercial or residential property.¹⁴⁵ The Act gave local governments the ability to enter into Williamson Act contracts with farmers that restricted the use of their land to agricultural or open-space use in exchange for the property owner locking in a lower property tax rate which was intended to eliminate a reason for farmers selling out.¹⁴⁶ Generally, these

135. *See id.*

136. *Id.*

137. *See id.*

138. Michael P. Durkee et al., *A Modern Perspective on the Williamson Act: Conservation, Confusion, and Controversy*, 22 CAL. REAL. PROP. J. 4, 5 (2004).

139. *See id.*

140. *See id.*

141. *See id.*

142. *See id.*

143. *See id.*

144. *See id.*

145. *See id.*

146. *See id.*

agricultural preserves are around 100 acres, however, local governments can make smaller units based on the usage of the land.¹⁴⁷

This principle typically resulted in a county or other governmental unit determining what a compatible use of the land was based on the rules and regulations.¹⁴⁸ There were generally three factors to determine whether a use was compatible with this plan.¹⁴⁹ First, the use could not compromise the long-term, productive agricultural capability of the contracted land in the unit preserves.¹⁵⁰ Second, the use could not displace or impair reasonably foreseeable agricultural operations on adjacent parcels of land.¹⁵¹ Finally, the use could not result in the significant removal of adjacent contracted land from agricultural use.¹⁵²

Once a use was deemed to be compatible, the local government would generally make an offer to the owner of the property to enter into an annually renewable contract called a Williamson Act contract.¹⁵³ The contract was a ten-year minimum term intended to guarantee a commitment to agricultural usage in exchange for a better property tax rate.¹⁵⁴ The ten-year minimum was designed to limit the tax incentives to long-term producers, rather than commercial entities looking to make quick gains on the development of land.¹⁵⁵

Another important provision of Williamson Act contracts is when property is divided, the owner of any parcel of land may exercise the rights of the owner of the original contract.¹⁵⁶ This means that if a farmer decides to parcel off part of their land, the new owner has the same ability as the original owner to enter into a contract.¹⁵⁷ Ultimately, this boils down to one idea: Williamson Act contracts are binding upon all successors of interest.¹⁵⁸

Another important aspect of Williamson Act contracts is that they may provide for additional restrictions on the use of the land in addition to those required by the original Act.¹⁵⁹ This means that not every contract is the same and a certain amount of discretion is afforded to the local government entity to craft a contract in the best interest of the parties.¹⁶⁰ However, every contract must exclude uses that are inherently non-agricultural and non-compatible with the goals of the local government entity for the duration of the

147. *See id.*

148. *See id.* at 3.

149. *See id.*

150. *See id.*

151. *See id.*

152. *See id.*

153. *See id.*

154. *See id.*

155. *See id.*

156. *See id.*

157. *See id.*

158. *See id.*

159. *See id.*

160. *See id.*

contract.¹⁶¹ Once a contract has been entered into between a government entity and a farmer, the entity is required to offer similar terms to similarly situated landowners within the jurisdiction.¹⁶²

In return for entering into a Williamson Act contract and complying with the rules and regulations established therein, the farmer is guaranteed a stable, lower tax base founded on the value of the land for agricultural purposes, and that rate is unaffected by any potential development for the land.¹⁶³ On the other end of the transaction, local government entities receive an annual amount from the state to supplement the revenue lost due to the Act.¹⁶⁴ Generally, the state pays local governments an annual fee of \$5 per acre of agricultural land every year.¹⁶⁵

The Williamson Act outlines five ways to terminate a contract: nonrenewal, cancellation, public acquisition, city annexation, and easement exchange.¹⁶⁶ Nonrenewal is the most common method for terminating the contract, which results in a nine-year period where the tax base for the property is gradually increased to non-protected levels.¹⁶⁷ At the end of the nine-year period, the contract is considered terminated.¹⁶⁸

Public acquisition is the second most popular tool for terminating a Williamson Act contract, totaling nearly 25% of all terminations.¹⁶⁹ A contract is considered cancelled if the entire parcel of land subject to the Act is acquired by a governmental agency via eminent domain.¹⁷⁰ Cancellation is the only other termination process that has substantial usage today.¹⁷¹

Government entities may allow the immediate removal of property from Williamson Act protection via cancellation which requires the landowner to pay a fee that is equivalent to 12.5% of the property's fair market value at the time of the cancellation and is not subject to any exemptions.¹⁷² The fee was designed to deter landowners from removing their land from the contract early.¹⁷³

Recent trends in enrollment reflect the agriculture industry's general desire to shift away from long-term binding contracts on land usage.¹⁷⁴ Enrollment in 2004 saw nearly 16.7 million acres, while 2021 enrollment

161. *See id.*

162. *See id.*

163. *See id.*

164. *See id.*

165. *Id.*

166. *See id.* at 4.

167. *See id.*

168. *See id.*

169. *Id.*

170. *See id.*

171. *See id.*

172. *Id.*

173. *See id.*

174. *See id.*

numbers decreased to around 10 million acres in total.¹⁷⁵ Six counties in California do not recognize Williamson Act contracts, which results in no applicable agricultural related exemptions in those counties.¹⁷⁶ Specifically, Imperial County was the first county to exit the program and stop recognizing these contracts after accepting them in the past.¹⁷⁷

California has done little to identify or mitigate these trends and the damages they create.¹⁷⁸ The California Department of Conservation estimated that 2021 enrollment in the Williamson Act would be around 15 million acres, a 5-million-acre difference from land that was truly enrolled.¹⁷⁹ This is a stark over-anticipation by the governmental body that oversees the program and hints towards a clouded future.¹⁸⁰

The results are undisputable, more property is being taxed at rates closer to the fair market value and more acres are unprotected by the Williamson Act, leading more farmers to the sale of their property.¹⁸¹ Additionally, there are less funds going to counties in the form of payments for having land enrolled in the Williamson Act.¹⁸² It is critical to view these statistics in light of the fact that there are more people that need to be fed by farmers than at any point in our history and that local governmental agencies need funding to keep programs like public schools open on a daily basis.¹⁸³ As a result, both ends of the Williamson Act equation are negatively affected by its ineffective policies in a modern world.¹⁸⁴

D. Special Property Valuations Based on Actual Usage in Texas

Texas employs an agriculture exemption policy that is drastically different than that of California.¹⁸⁵ First, agriculture exemptions in Texas are not necessarily exemptions as commonly understood.¹⁸⁶ The State of Texas recognizes a special valuation system that calculates property taxes based on the actual usage of the land rather than the land's fair market value.¹⁸⁷ The main purpose behind these special valuations is to promote agriculture,

175. *Id.*

176. *Id.*

177. *Id.*

178. *See id.*

179. *Id.*

180. *See id.*

181. *See id.*

182. *See id.*

183. *See id.*

184. *See id.*

185. *Agricultural Exemptions in Texas: What You Need to Know*, AGTRUST FARM CREDIT, <https://lonestaraagcredit.com/agricultural-exemptions-in-texas-what-you-need-to-know/> (last visited Nov. 6, 2023) [<https://perma.cc/6KMX-UBD5>].

186. *See id.*

187. *See id.*

whether that is farming or ranching.¹⁸⁸ By providing tax relief to farmers and ranchers, the state and local governments have recognized the importance of a stable food supply and its significance to communities.¹⁸⁹

The most important aspect of these special land valuations is they recognize a variety of property uses that stretch across many fields in the agriculture industry.¹⁹⁰ Whether it's traditional farming, raising cattle, beekeeping, or even wildlife management, there are a plethora of uses that may fall under the special valuation umbrella.¹⁹¹ However, the minimum requirement is that the primary use of the land is for something that falls in the agriculture category.¹⁹² Additionally, most tax districts or counties require a minimum number of acres to be eligible.¹⁹³ In Texas, the average is anywhere between ten to fifteen acres to be eligible, which is a stark contrast from the 100 acres needed to be covered by the Williamson Act in California.¹⁹⁴

The key element of special valuations in Texas is flexibility.¹⁹⁵ By having a member of the community assess the land based on its actual usage, a larger number of properties and uses may be included.¹⁹⁶ This amount of discretion afforded to the assessor gives farmers and ranchers some peace of mind knowing that someone who knows the local customs, history, and current landscape of the community will be making the valuation.¹⁹⁷

Generally, most counties have what is known as an intensity standard.¹⁹⁸ This takes two factors into account: the size of the land and the amount of production.¹⁹⁹ The assessor can look to these standards to match land size and production to come up with the proper amount a rancher should be taxed.²⁰⁰ Once a farmer meets the minimum standard, that amount can fluctuate.²⁰¹

There is no standard dollar amount a farmer will save on their property tax bill by having specially valued agriculture land.²⁰² That amount is determined by the assessor in accordance with the local tax rate that is being implemented.²⁰³ However, these tax breaks can be sizable and are certainly

188. *See id.*

189. *See id.*

190. Kevin Hemann, *Ag Exemptions and Why They Are Important*, TEX. FARM CREDIT (July 14, 2023), <https://texasfarmcredit.com/resources/ag-exemptions> [<https://perma.cc/PFG8-FZ43>].

191. *See id.*

192. *See id.*

193. *See id.*

194. *Id.*

195. *See id.*

196. *See id.*

197. *See id.*

198. *See id.*

199. *See id.*

200. *See id.*

201. *See id.*

202. *See id.*

203. *See id.*

worth the farmer enrolling their land.²⁰⁴ For example, in Colorado County, fifteen acres of specially valued land will save the rancher on average \$2,000 per year.²⁰⁵

The vast differences in usage and production highlight the need for the farmer or rancher to work with their appraisal district to not only get a good idea of the tax relief they are entitled to but also to remain in compliance with the standards set forth by that district.²⁰⁶ Because the relief afforded to farmers and ranchers is based on actual usage and not the fair market value, yearly site visits must be done by the appraisal district and the assessor to ensure the property is still being taxed fairly.²⁰⁷ Additionally, for a property to be specially valued, it must have been or be primarily used for agriculture for at least five of the past seven years to be eligible.²⁰⁸

A property that was specially valued but ceases agriculture production triggers a rollback tax.²⁰⁹ A rollback tax recoups the benefits granted to the property owner by the exemption if they no longer choose to enroll their land in the exemption by changing its usage.²¹⁰ The rollback tax is triggered by a physical change in use and is the difference in what the farmer or rancher would have paid if the property was taxed based on the fair market value and the amount they did pay under the exemption with a 7% increase as interest.²¹¹ This penalty only further shows the need for farmers to work with their appraisal districts or to take advantage of state agencies such as Texas A&M AgriLife Extension Services—which has an office in each county in the state and is equipped to handle a wide variety of agriculture-related questions.²¹²

With an overview of how two states value properties and collect property taxes and considering the agriculture exemption policies for those two states, an emphasis can be placed upon the policies that are most effective from the standpoint of the farmer and rancher to ensure the long-term success of the family-owned farm and the agriculture industry as a whole.²¹³

204. *See id.*

205. *Id.*

206. *See id.*

207. *Id.*

208. *Id.*

209. Blake Bennett, *Texas Ag Exemption: What Is It and What You Should Know*, TEX. A&M SYS. AGRILIFE EXTENSION, <https://dallas-tx.tamu.edu/files/2018/07/Tx-Ag-Exemption-handout.pdf> (last visited Nov. 6, 2023) [<https://perma.cc/W4VQ-8R7V>].

210. *See id.*

211. *Id.*

212. *See id.*

213. Author's original thought.

III. STATE LEGISLATURES SHOULD CONSIDER PROPERTY TAX AND
AGRICULTURE EXEMPTION POLICIES SIMILAR TO TEXAS BECAUSE THEY
PROVIDE STABILITY AND CLARITY TO THE FAMILY-OWNED FARM

God said, ‘I need somebody willing to sit up all night with a newborn colt, and watch it die, then dry his eyes and say, ‘Maybe next year.’ I need somebody who can shape an ax handle from a persimmon sprout, shoe a horse with a hunk of car tire, who can make harness out of haywire, feed sacks and shoe scraps; who, planting time and harvest season, will finish his forty-hour week by Tuesday noon, and then pain’n from tractor back, put in another seventy-two hours.’ So God made a Farmer.²¹⁴

A. Proposed Amendment to the Texas Property Code

Crafting effective agriculture exemption policies at the state level for property tax codes is a large step in the right direction for the preservation of family-owned farms.²¹⁵ As discussed previously, each state has its own way of raising and levying property taxes, and exemptions are no exception to this rule.²¹⁶ The proposed legislation listed below is purposely adaptable in many areas so that each state can implement policies that work best for its citizens.²¹⁷ However, the framework of this proposal is what serves as the foundation for a sound exemption policy that is rooted in fairness, freedom, and free choice for the farmer.²¹⁸ Additionally, the location of the code that would govern agriculture exemptions can be found in a variety of places within a state’s statutes and may include property codes, tax codes, and even agricultural codes.²¹⁹ Therefore, a large amount of discretion has been left to each individual state legislature to determine the best location for the prescribed additions.²²⁰

Proposed Legislative Addition:

- A. Land that has been designated for agricultural use shall:
 - a. Be appraised at its value based on its capacity related to agricultural production as defined:
 - i. This valuation will be determined by capitalizing the expected net income for the land under the supervision and maintenance of a prudent and responsible operator over the course of the five years leading to the present year.

214. Harvey, *supra* note 1.

215. Author’s original thought.

216. See discussion *supra* Part II.

217. Author’s original thought.

218. *Id.*

219. *Id.*

220. *Id.*

- ii. However, if this special valuation exceeds the determined market value of the property, the land shall be appraised by other approved appraisal methods.

B. Eligibility

- a. A property owner is eligible to have land they own designated for agricultural use if, on January 1:
 - i. the land has been utilized primarily for the production of agricultural products or other agricultural uses, as defined, for the three years preceding the current year;
 - ii. the land and its primary uses are intended for profit seeking, an occupation, or some business venture during the current taxable year;
 - iii. agriculture is the primary source of income derived from the use of the land; and
 - iv. the land in question satisfies a minimum acre requirement, as defined, by the jurisdiction in accordance with this chapter.
- b. Nonagricultural use does not prevent a property owner from seeking an agricultural designation, so long as the non-agricultural use is secondary and does not conflict with the primary agricultural use of the land.
- c. Profit seeking from nonagricultural uses does not prevent a property owner from seeking an agricultural designation, so long as the property owner derives a greater portion of their gross income from agricultural profit seeking endeavors.

C. Alternative Long-Term Contract Agriculture Exemptions

- a. Any county may choose to enter into a contract to limit the use of land deemed agricultural as defined by this chapter, for the purpose of preserving its use as agricultural and is subject to the conditions set forth in this section, including payments, fees, cancellations and conditions. Contracts may provide more restrictive terms than or in addition to those required by this chapter. These contracts are only an alternative to the prescribed methods used above as a longer-term method.
- b. If a county enters into a contract with a landowner, it must offer similar contractual terms to every landowner with similar land uses in that jurisdiction.
 - i. However, these contracts do not need to be identical and are instead based on the actual usage of the land over the period specified.
- c. Every contract entered shall:
 - i. provide for the exclusive use of the land or primary use of the land as agricultural and all other uses must

- be secondary and compatible with the agricultural use for the duration of the contract;
- ii. be binding upon all successors of interest of the owner; and
- iii. be for an initial term of either three, five, or ten years and shall provide that, unless amended or specified, on the anniversary date of the contract one year shall be added automatically to the initial term.
 - 1. A specified reduction in property tax benefits will be increased based on a longer term for the contract.

d. Nonrenewal

- i. A landowner may serve notice of nonrenewal at any time but the contract shall remain in effect for the balance of the period remaining as of the date listed on the last renewal.
- ii. Both parties may enter into or rescind a contract under a mutual agreement.
- iii. For automatic termination a landowner may:
 - 1. be subject to term modification and additional assessed value for the purposes of property taxation;
 - 2. pay a fee equal to 5% of the property's fair market value;
 - 3. enroll the land into a similar conservation program; or
 - 4. petition the state board of taxation.

D. Definitions

- a. "Agricultural use" means a usage of land that is primarily used to produce plant or animal products. This definition is intentionally left broad to encompass a wide array of uses as to not limit the landowner in any way.
- b. "Minimum acres requirement" means a minimum number of acres that is established by either the jurisdiction or legislature to be eligible to enroll the subject land in the specified exemption policy. Legislatures may choose to enact a blanket acreage minimum or adjust the minimum based on the usage of the land.
 - i. The first type of minimum would be a minimum that applied to any usage.
 - 1. Land enrolled in this program must be forty acres or more.

- ii. The second type of minimum would look at specific usages and then apply an acreage amount based on that use.
 - 1. Land enrolled in this program with a primary usage in growing corn, cotton, wheat, or barley must be fifty acres or more.²²¹

B. State Legislatures Should Refrain from Enacting Property Tax Policies Similar to California

California voters have overwhelmed the polls by supporting measures that have limited the amount of property taxes the state can collect.²²² The state no longer relies on property taxes as a primary source of income but rather focuses more on personal income taxes, sales and use taxes, corporate taxes, and excise taxes.²²³ However, local governments, counties, cities, and school districts do rely on property taxes as a primary source of revenue for social and educational programs.²²⁴ No California resident will dispute that these funds do not go to a worthy cause.²²⁵ It is the means and goal of collection of these funds that has farmers weary.²²⁶

From the position of a family-owned farming operation, the current property tax system in California provides little to no long-term clarity or stability.²²⁷ When property is passed on to an heir, the property is reassessed under Proposition 13 and Proposition 19, which can leave the heir in a troubling position.²²⁸ When a change in ownership occurs, real property is reassessed at its fair market value on the date of transfer.²²⁹ This establishes a new base year value for the property and any improvements made upon the land.²³⁰ However, Proposition 13 left carveouts for family-owned farms and left them exempt from this reassessment.²³¹

221. Author's original proposal.

222. See *California Property Tax: An Overview*, *supra* note 46, at 1 (discussing the history of property tax collection methods in California and the modern mechanisms used by the state to raise funds).

223. See *id.*

224. See *id.*

225. See *id.*

226. Greg Henderson, *California's Prop 15 Will 'Punish Farmers and Ranchers'*, BOVINE VETERINARIAN (Oct. 21, 2020), <https://www.bovinevetonline.com/opinion/californias-prop-15-will-punish-farmers-and-ranchers> [<https://perma.cc/UY5G-YBA4>].

227. Author's original thought.

228. *Understanding Proposition 13*, OFF. OF THE ASSESSOR, CNTY. OF SANTA CLARA, <https://www.sccassessor.org/faq/understanding-proposition-13> (last visited Nov. 24, 2023) [<https://perma.cc/W6WT-JLX5>].

229. *Id.*

230. *Id.*

231. *Id.*

For many families, properties have been owned for generations and passed down over the years.²³² That means the original purchase price, which California bases its property tax on, is generally low.²³³ This results in the reassessed value being drastically different depending on how long it has been since the property has last been reassessed.²³⁴

Disparities in assessed value have been prevalent since Proposition 13 was enacted in 1978.²³⁵ Under Proposition 13, all real property has an already established base year value, and it imposed a restricted rate of increase on assessments of no more than 2% annually.²³⁶ Under the proposition, similar properties can have substantially different values simply based on the date they were purchased.²³⁷

These differences appear when significant appreciation in properties has occurred.²³⁸ If the property has stayed in the same hands for a long period of time, the 2% tax increase for inflation may not accurately reflect the actual market value of the property.²³⁹ Additionally, these property owners typically have a much lower property tax burden simply based on longevity.²⁴⁰ California has seen a 20 million person increase in population just in the last fifty years.²⁴¹ Generally, an increase in property values is a good thing for the farmer; however, that is not the case if their property taxes are directly dependent on that amount.²⁴²

Population density is another aspect of the formula when determining property tax values.²⁴³ Generally, properties in areas with high population densities have increased property values or will have increased values at reassessment.²⁴⁴ This notion incentivizes states with higher population densities to increase property taxes because local municipalities need an additional source of revenue for social programs and public schooling.²⁴⁵

The passage of Proposition 19 by the California voters in 2020 has severely limited the conditions under which property owners can transfer property to children or grandchildren without triggering a reassessment for

232. *See id.*

233. *Id.*

234. *See id.*

235. *See California Property Tax: An Overview*, *supra* note 46, at 1 (discussing the mechanisms of Proposition 13 that led the State of California and its residents to see a wide disparity of tax assessments once the act was passed by the voters in 1978).

236. *See Understanding Proposition 13*, *supra* note 228.

237. *See California Property Tax: An Overview*, *supra* note 46, at 1.

238. *See id.*

239. *Id.*

240. *See id.*

241. *Id.*

242. Author's original thought.

243. Nicholas K. Ashcroft, *Western States Agricultural Property Tax Comparison*, N.M. STATE UNIV. (June 2022), <https://pubs.nmsu.edu/specialty/lpc/LPC5/index.html> [<https://perma.cc/N59S-A97B>].

244. *See id.*

245. *See id.*

property tax purposes.²⁴⁶ This Proposition took a hardline stance that completely ignored the challenges of farming, such as year-to-year profits or losses, to align property taxes and actual market values for properties.²⁴⁷ Before the Proposition took effect in 2021, farmers could pass land on to their children without triggering this reassessment because the state recognized the importance of agriculture.²⁴⁸ The Proposition eliminated certain family based exclusions to reassessment which can be extremely problematic to farms that have been in family hands for generations.²⁴⁹ This can result in difficult decisions being made by the heirs of farmers and ranchers that may result in properties being sold and businesses closed which cannot be the goal of state legislatures.²⁵⁰

Farmers and ranchers are not surprised that Proposition 19 has effectively been a death sentence to any family-owned operation.²⁵¹ From the beginning, this legislative proposal was marketed in a way to get voters to sympathize with the victims of wildfires in the state without realizing that the farmer would be footing the cost.²⁵² While the language of the bill may be murky and unclear to the voter, the legislative intent is clear: for large landowners to pay for state-run programs.²⁵³

Many producers view Proposition 19 as an attempt to redistribute wealth and to achieve equity at the cost of the farmer.²⁵⁴ In its simplest interpretation, the Proposition is simply disruptive to the agriculture industry and represents an impending challenge that is just around the corner for the farmer and their heirs.²⁵⁵

These challenges put the heir in a tough situation.²⁵⁶ On one hand, there may be the desire to keep the property in the family.²⁵⁷ On the other, the reality of a drastic increase in property value may force the family to sell the farm simply because the property tax increase supersedes the actual production the farm is capable of.²⁵⁸ Property tax codes, including measures such as Proposition 19, in general should distort markets and professions as little as possible.²⁵⁹ However, the State of California has taken a different

246. *See id.*

247. *See id.*

248. *See* Anderson, *supra* note 94 (discussing the carveouts left by Proposition 13 that allowed farmers to pass on their property to heirs without triggering a reassessment that would ultimately affect the amount paid in property taxes on a yearly basis).

249. *See id.*

250. *See id.*

251. *See id.*

252. *See id.*

253. *See id.*

254. *See id.*

255. *See id.*

256. Author's original thought.

257. *Id.*

258. *Id.*

259. Chapter 1. *Impact of Taxation in Agriculture: Literature Review*, ORG. FOR ECON. COOP. & DEV., <https://www.oecd-ilibrary.org/sites/0001121d-en/index.html?itemId=/content/component/0001121>

approach, essentially pushing the family-farm toward sale.²⁶⁰ Where some states have streamlined the process for passing on a farm to an heir, California has put families in an impossible position.²⁶¹

From the standpoint of the family farm, California's property tax scheme provides no stability long term.²⁶² While the current code keeps taxes low on a year-to-year basis, the reappraisal process through Proposition 19 handcuffs heirs.²⁶³ Realistically, no family prepares to lose a loved one.²⁶⁴ Additionally, when addressing the scope of this argument, the demographics of the farming industry need to be addressed.²⁶⁵ Farmers and ranchers have been getting older, with the average age of the farmer increasing to close to sixty years old.²⁶⁶ As these older producers retire or property is passed on to an heir, the need for stability in property tax codes is only exacerbated because this adds stress to a key pressure point that already exists in the industry.²⁶⁷

On a daily basis, farmers are tasked with navigating the hardships of feeding the country.²⁶⁸ State legislatures should identify California's property tax scheme as one that provides no long-term assurance to families that have taken on one of the world's most important professions.²⁶⁹ Admittedly, California's tax codes do keep property taxes lower before the reappraisal process.²⁷⁰ However, the burden on the heir is so significant upon transfer that they may be faced with the impossible decision to sell the farm that their loved one passed on to them.²⁷¹

C. The Property Tax System Implemented by Texas Provides Valuable Long-Term Stability to the Farmer and Rancher and Other State Legislatures Should Look to Adopt Similar Policies

Property taxes in Texas are essential to the success of communities because there is no state income tax.²⁷² As a result, counties in Texas need to

d-en (last visited Nov. 24, 2023) [<https://perma.cc/3YYQ-W5Q9>].

260. *See id.*

261. *See id.*

262. Author's original thought.

263. *Id.*

264. *See* Halvorson, *supra* note 2 (discussing the challenges that families can face when properties are reassessed at the point they are passed on to heirs, specifically focusing on when a loved one dies unexpectedly leaving the heir to face a multitude of challenges).

265. *See id.*

266. *See id.*

267. *See id.*

268. *See id.*

269. Author's original thought.

270. *See* Chapter 1. *Impact of Taxation in Agriculture: Literature Review*, *supra* note 259.

271. *Id.*

272. *See* *How Does Property Tax Collection Work in Texas?*, *supra* note 125 (discussing that Texas does not have a state income tax and, therefore, relies on property taxes as a primary mode to raise funds that ultimately go to local programs that ensure the success of local communities).

find funding for public services, schools, roads, and emergency services.²⁷³ Texas has recognized this need for local governments and left the decision up to them as far as how properties are taxed.²⁷⁴ Therefore, there are no statewide property taxes in Texas.²⁷⁵ This approach is far superior to a blanket property tax provision because the specific counties and appraisal districts can make the proper determination for their residents.²⁷⁶ Each county in Texas is different and therefore has different needs that must be addressed.²⁷⁷

Although there is not one blanket state property tax in Texas, the mechanics of taxation are the same across the state.²⁷⁸ Because local governments use property taxes to supplement the lack of funds from income tax, Texas has one of the highest property tax rates in the country when compared to other states.²⁷⁹ While on its face this may seem like the property owner is just paying more in taxes each year, this system provides generational stability that would benefit the farmer.²⁸⁰

The key distinction for property taxes in Texas is they are based on assessed value rather than appraised value.²⁸¹ Although both terms are similar, their application is vastly different.²⁸² Appraisal value focuses on the fair market value of the property based on comparable sales and the current real estate market.²⁸³ Assessments, on the other hand, are adjusted values made by the appraiser used to determine a particular property's tax bill and are typically lower than appraisal amounts.²⁸⁴ Any exemptions for which the property owner may qualify for are taken out of the assessed value for property tax purposes.²⁸⁵

Having the fair market value of the property on hand reassessed yearly is a great asset to the aging farmer.²⁸⁶ The yearly reassessment process provides no surprises when the property is passed on to an heir.²⁸⁷ Therefore, the heir is not left to make the hard decision whether to pay an increase in

273. *See id.*

274. *See id.*

275. *See id.*

276. *See id.*

277. *See id.*

278. *See id.*

279. *Id.*

280. *See id.*

281. *How Do Property Taxes Work in Texas? Texas Property Tax Guide*, TEX. REAL EST. SOURCE (Nov. 15, 2022, 4:53 PM), <https://www.texasrealestatesource.com/blog/texas-property-taxes/> [<https://perma.cc/72CV-GLLG>].

282. *See id.*

283. *See id.*

284. *See id.*

285. *See id.*

286. Ted Kolman, *What You Need to Know About Property Tax in Texas*, MOSS ADAMS (Oct. 13, 2022), <https://www.mossadams.com/articles/2022/10/texas-property-tax> [<https://perma.cc/LMW6-LDW9>].

287. *See id.*

taxes or to sell the farm.²⁸⁸ Additionally, from an equity standpoint, the Texas system ensures that everyone pays their fair share of property taxes, but no one has to pay more than that.²⁸⁹ Properties are also assessed by a member of the community in which they reside.²⁹⁰ That means that the assessor can take into account external factors when determining property values rather than an indifferent policy coming from the state capital.²⁹¹

Additionally, farmers may be more willing to pay an increased rate in property taxes because the funds collected by the tax measures are injected back into the local community rather than going to the state for use.²⁹² This means the funds are used for projects that are more tangible to the tax payer including farm roads, water infrastructure, and other utilities.²⁹³ Many farmers also have families that would take advantage of the public school system that is largely funded by local property taxes.²⁹⁴ In any given year, school districts rely on property tax revenue to make up more than half of the funds necessary to keep public schools open.²⁹⁵ In 2020, this figure amounted to \$38.4 billion compared to the \$23 billion that was provided by the state.²⁹⁶ These facts only further the notion that farmers may be more willing to contribute to programs they can directly see the benefits of.²⁹⁷

Texas has also put a limit on the amount property taxes can increase on a year-to-year basis.²⁹⁸ The legislature has capped tax increases at 10% in years that property values increase drastically.²⁹⁹ This idea protects the property owner from large swings in property value which result in an unplanned tax liability.³⁰⁰ These protections are critical in years in which the real estate market is strong because a large annual appreciation would result in a large property tax bill.³⁰¹

When looking at the bigger picture of property taxes in Texas, it is important to weigh short-term costs with long-term benefits.³⁰² From the

288. *See id.*

289. *See id.*

290. *See id.*

291. *See id.*

292. *See How Do Property Taxes Work in Texas? Texas Property Tax Guide*, *supra* note 281 (discussing the importance of property tax funds for local governments and the programs they supply, such as fire safety, police, and public schooling).

293. *See id.*

294. *See id.*

295. Joshua Fechter, *As Texas Home Values Skyrocket, State Officials Wrestle with How to Slow Property Tax Increases*, TEX. TRIB. (Apr. 22, 2022, 5:00 AM), <https://www.texastribune.org/2022/04/22/texas-property-taxes-explained/> [https://perma.cc/YBH7-WRK8].

296. *Id.*

297. Author's original thought.

298. *See How Do Property Taxes Work in Texas? Texas Property Tax Guide*, *supra* note 281 (discussing the mechanisms the State of Texas has implemented in order to limit the amount of property taxes that residents are required to pay as property values in the state continue to rise).

299. *Id.*

300. *See id.*

301. *See id.*

302. Author's original thought.

standpoint of the farmer, having long-term stability is critical to ensure that their family is not left with a tax burden so large that it forces an heir to sell the property out of necessity.³⁰³ Proponents of this argument may point to the yearly amount paid in property taxes by Texas residents.³⁰⁴ This argument does not take into consideration the many safety measures the legislature has taken to prevent undue rises in property taxes as well as the very pointed usage of those funds at the community level.³⁰⁵

Additionally, the argument fails to address the many exemptions and special valuations that Texas offers property owners that get to the core of the usage of the property.³⁰⁶ As mentioned previously, it is important to take into consideration the demographics of farmers and their wants and desires.³⁰⁷ When a farmer can see where their funds are going and can take advantage of the resources being provided, they will be more apt to pay into those funds via property taxes.³⁰⁸

D. California's Agriculture Exemptions Serve as Handcuffs for Farmers and Ranchers That Limit Choices

Every state has some version of agriculture exemptions for property taxes, however, that is where the similarities end.³⁰⁹ States have taken a number of approaches to agriculture exemptions including: the size of the property, the dollar amount of sales of agriculture-related products, or a combination of both acreage and sales.³¹⁰ Most states also have some sort of penalty for conversion of agriculturally exempt land into a different use.³¹¹ Often, this is reflected in a stepped-up basis to return to traditional tax amounts.³¹² Therefore, it becomes necessary for family farmers and estate planners to understand the implications of using, and in some cases not using, exemptions based on agriculture.³¹³

Special assessment programs implemented by the state are designed with the intention to help encourage the long-term viability of farming and agriculture.³¹⁴ Successful programs take into account the current use of the

303. *Id.*

304. *Id.*

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.*

309. Amelia Josephson, *Understanding Agricultural Tax Exemptions*, SMART ASSET, <https://smartasset.com/taxes/understanding-agricultural-tax-exemptions> (Aug. 29, 2023) [<https://perma.cc/VZX5-9L7N>].

310. *Id.*

311. *Id.*

312. *See id.*

313. *See id.*

314. *Property Tax Savings*, CTR. FOR AGRIC. & FOOD SYS., <https://farmlandaccess.org/property-tax/> (last visited Nov. 24, 2023) [<https://perma.cc/N9ME-PGFS>].

property and assess its value based on its suitability for agriculture rather than the traditional valuation process for property in that state.³¹⁵ These programs are typically the most successful in achieving the goal of reducing the financial burden on farmers because they reflect the actual usage of the land by the farmer and the year-to-year challenges they may face in yielding crops and profits.³¹⁶ Additionally, these programs protect farmers from having to result to selling their land for commercial development unless they want to.³¹⁷

States should be encouraged to implement programs like these for the simple reason that farms often use fewer government resources than commercial or residential properties.³¹⁸ Many outside critics of these special valuations often point to the difference in the size of the property and compare it to the lower value in tax dollars the farmer pays.³¹⁹ However, this argument fails to address the inequality that would occur if the opposite policy was enacted.³²⁰ If the family farmer had to pay property taxes based on state tax codes without special agriculture valuations, the taxes alone would exceed any profit the farmer had on a year-to-year basis on average and would surely miss the mark if the farmer was faced with a variable like drought, fire, blight, or flood.³²¹ State legislatures in many cases have realized that in both situations there is an adverse effect on the parties involved.³²²

For farmers and ranchers in California, there is one question that needs to be asked: Is the land protected by the Williamson Act or not?³²³ The Williamson Act is California's attempt at providing agriculture exemptions or special valuations for farmers.³²⁴ While California's intentions may have been good when the Act was passed and added to the state constitution, it fails today in a modern California.³²⁵ To understand why the Act is not successful in achieving its purpose today, a historical analysis is necessary.³²⁶ Prior to the Act's passage in 1965, California required that all property tax assessments be made according to the fair market value of the property.³²⁷ At that point in time, county assessors, who were and still are charged with valuing properties, had to identify the best use of the land for valuations rather than the current usage.³²⁸

315. *See id.*

316. *See id.*

317. *See id.*

318. *See id.*

319. *See id.*

320. *See id.*

321. *See id.*

322. *See id.*

323. Author's original thought.

324. *Williamson Act Program Overview*, CAL. DEP'T OF CONSERVATION, https://www.conservation.ca.gov/dlrp/wa/Pages/wa_overview.aspx (last visited Nov. 24, 2023) [<https://perma.cc/K4ZR-TX7S>].

325. *See* Durkee et al., *supra* note 138, at 8.

326. *See id.*

327. *Id.* at 4.

328. *See id.*

The California Legislature made the realization of what this would eventually do.³²⁹ As populations in California continued to rise following World War II, the distance between urban areas and rural farming areas became smaller and smaller.³³⁰ As the city got closer to the farm, the farm's best usage valuation began to rise to levels that the farmer could not reasonably be expected to pay.³³¹ If allowed to continue, the irreversible and rapid loss of farm land would have occurred simply due to property taxes.³³²

The Williamson Act was initially successful in stopping the irreversible loss of farmland to urban growth via property tax.³³³ The Act sees farmers enter into ten-year contracts with local governments in which they pledge that the land will be used for agricultural purposes rather than commercial use.³³⁴ In many cases, these contracts are easy decisions for farmers and ranchers to make when they have no desire to sell their property or develop it commercially, but these contracts can be more accurately described as handcuffs for producers.³³⁵ Williamson Act contracts are renewed annually, meaning if ranchers want to get out of a contract in order to develop their property, they must file the requisite paperwork.³³⁶ When the paperwork has been approved, a nine-year period begins in which the land is gradually taxed based on best use, rather than the actual usage.³³⁷

The state legislature made an attempt to remedy this by amending the Act with what it thought would streamline the process to cancel a Williamson Act contract.³³⁸ But again, this provision misses the mark as it sees cancellation fees reach 12.5% of the fair market value of the property.³³⁹ This has disincentivized farmers from removing their land from the Act because removal can cause exorbitant cancellation fees.³⁴⁰ Cancellations under this provision see a chain of property exchanges in which the sales price may be disproportionately higher than the true market value, going beyond just agriculture and affecting all property usages.³⁴¹ When the Williamson Act, Proposition 19, and rising property values in California combine, it creates the perfect storm for a farmer that leaves them and their heirs with little to no

329. *See id.*

330. *See id.*

331. *See id.*

332. *See id.*

333. *See id.* at 5.

334. *See id.* at 6.

335. *See id.*

336. *See id.*

337. *Id.*

338. *See id.* at 7.

339. *Id.*

340. *See id.*

341. *See id.*

choices.³⁴² The following hypothetical illustrates the issue that farmers can face.³⁴³

Assume that Farmer Jack has put his 100 acres into Williamson Act protection for the property tax benefits.³⁴⁴ These 100 acres have been in the family since his great-grandfather paid \$10,000 for them.³⁴⁵ Today, the ranch has a fair market value of \$10 million.³⁴⁶ Suppose that Farmer Jack dies and passes the land on to his daughter, Farmer Jill.³⁴⁷ Under Proposition 19, the farm will be reassessed for tax purposes, meaning that Farmer Jill will no longer pay property taxes based on the original \$10,000 basis in the property (with adjustments for inflation) but will now pay taxes based on the \$10 million fair market value.³⁴⁸

The tax consequences do not stop there if the property is still protected under the Williamson Act.³⁴⁹ Facing the new property valuation, Farmer Jill may decide she would like to sell the property because the tax burden is simply too high for the output of the ranch to be feasible.³⁵⁰ She essentially has two choices: (1) she can try to sell the property while it is protected under the Williamson Act; or (2) she can remove the property from the Williamson Act and sell it after waiting nine years.³⁵¹ In this scenario, the Williamson Act has limited who Farmer Jill sells the property to and has greatly diminished the return she could expect from the sale.³⁵²

Farmer Jill is faced with the difficult task of deciding what to do with her new property.³⁵³ Being tied to the Williamson Act has essentially made the property only marketable to one group: farmers.³⁵⁴ No commercial enterprise is going to buy the rural land with the promise that it will not be available for development for at least nine years.³⁵⁵ Additionally, for Farmer Jill to entice commercial development she will have to remove the land from the Act, either by paying 12.5% of the fair market value of the property, which equates to \$1.25 million, or by waiting the nine years to remove the land in which she will see her property taxes gradually increase to the fair market standard.³⁵⁶ In essence, Farmer Jill has no good choices.³⁵⁷

342. Author's original thought.

343. *Id.*

344. Author's original hypothetical.

345. *Id.*

346. *Id.*

347. See discussion *supra* Section II.A.

348. See discussion *supra* Section II.C.

349. Author's original hypothetical.

350. See discussion *supra* Section II.C.

351. See *id.*

352. Author's original hypothetical.

353. See *Williamson Act Program Overview*, *supra* note 324.

354. See discussion *supra* Section II.C.

355. See *id.*

356. See *id.*

357. Author's original hypothetical.

This harsh reality is only matched by the notion that the property taxes on the land are far too high for Farmer Jill to pay.³⁵⁸ She may have to take a discounted price to sell the property to another farmer who understands Jill's situation.³⁵⁹ Farmer Jill's problem is not an isolated incident as there are many farmers who face these same decisions.³⁶⁰ This issue is coupled with the fact that farming demographics tend to show that a generational turnover will happen in the industry very soon.³⁶¹ States need to reevaluate their property tax codes and look at them in the totality of the circumstances to see if they will be fostering the agriculture industry or harming it.³⁶²

Another legislative reason behind the passage of the Williamson Act was to have local governments, farmers, and commercial retailers work together in order to achieve a general development plan for the local municipality.³⁶³ The Act was designed in a way that would give farmers a voice at the table in how the community was going to develop as time went on.³⁶⁴ However, this has not been the reality of the Act's implementation.³⁶⁵ Communities have often used Williamson Act protected property to shield the community from growth in certain directions or to direct growth in a given path or area that is inconsistent with the desires of the community.³⁶⁶

Returning to the hypothetical above, Farmer Jack worked with the local government when he put his land into the Williamson Act.³⁶⁷ The community plan was designed in a way to protect agriculture, while realizing that development of the area was inevitable.³⁶⁸ Over the years, the local government has disregarded this relationship, and now, what was an opportunity has become handcuffs for Farmer Jack's family.³⁶⁹

State legislatures should realize the concern this creates for farmers and ranchers that have one eye on the future.³⁷⁰ The first step a farmer may consider when looking to develop his property is to subdivide it into smaller parcels.³⁷¹ But if the property is protected for tax purposes in a manner similar to the Williamson Act, subdivision is a contracted provision that prevents

358. See discussion *supra* Section II.C.

359. See Halvorson, *supra* note 2.

360. Author's original hypothetical.

361. See Halvorson, *supra* note 2.

362. See *id.*

363. See Durkee et al., *supra* note 138, at 5 (discussing the Williamson Act in its entirety and the effects that it has had and will continue to have on property tax collections for family-owned farms in the state).

364. See *id.*

365. See *id.*

366. See *id.*

367. Author's original hypothetical.

368. *Id.*

369. *Id.*

370. Author's original thought.

371. See Durkee et al., *supra* note 138, at 5 (discussing the Williamson Act in its entirety and the effects that it has had and will continue to have on property tax collections for family-owned farms in the state).

compliance with the Act or the local municipality may have a minimum-acre standard to maintain.³⁷²

States should only consider protections and exemption policies that complement, rather than replace, community development and planning.³⁷³ This idea preserves a stable present for the farmer while giving them the ability to look to the future to see how it affects the viability of the family farm.³⁷⁴ Farmers deserve the ability to make the choices they think will best benefit their families, businesses, and land instead of just being given what appear to be choices but are really the shackles of structure.³⁷⁵

E. Agriculture Exemptions in Texas are Tailored to the Actual Usage of the Land and Provide Freedom to the Family-Owned Farm Rather Than Handcuffs

The success of the property tax system in Texas is found in its exemption policies.³⁷⁶ Texas has integrated property tax exemptions in the form of special valuations that are detracted from the assessed value of the property on a yearly basis.³⁷⁷ This means that landowners can have their property taxes based on the productive value and usage of the land as opposed to the fair market value.³⁷⁸ This can be a life-saving device for landowners and can keep farmers and ranchers in business.³⁷⁹

Eligibility requirements for these special valuations range from county to county, meaning the assessor has wide discretion when determining whether or not the usage is agricultural in nature.³⁸⁰ This notion rejects a “one-size-fits-all” narrative that many states, including California, have adopted.³⁸¹ Flexibility is so important in the agriculture industry because the industry and the work itself provide little to no stability, and farmers and ranchers are highly dependent on external factors such as droughts, floods, freezes, and other natural disasters.³⁸²

372. *See id.*

373. *See id.*

374. Author’s original thought.

375. *Id.*

376. *See* Hemann, *supra* note 190 (discussing the special valuation system that Texas currently uses to lower the tax burden on family-owned farms and all agriculture land).

377. *See id.*

378. *See Agricultural Exemptions in Texas: What You Need to Know*, *supra* note 185 (discussing the benefits of taxing properties based on their productive value rather than fair market value and what the result of that is for farmers).

379. *See id.*

380. *See id.*

381. *Reduce Property Taxes with a Special Ag Valuation*, AGTRUST FARM CREDIT, https://agtrust.aca.com/app/uploads/2023/04/AgTrust_AgValuation_2023_proof1.pdf (last visited Nov. 24, 2023) [<https://perma.cc/68V4-FUVD>].

382. *See* Bennett, *supra* note 209 (discussing the discretion that appraisal districts and counties have in order to come up with the special valuation for agriculture-based land and the degree of flexibility that this affords to farmers and ranchers on a year-to-year basis).

Having a member of the community assess the land also has a distinct benefit.³⁸³ Members of the community have a better understanding of the customs and traditions of the agriculture industry in that area.³⁸⁴

Texas has implemented a few protective features for these special valuations for agricultural land, including the requirement that for a special valuation to be given, the land must have been used for agricultural purposes for at least five out of the last seven years.³⁸⁵ Additionally, the principal use of the land must be agricultural in nature.³⁸⁶ Even interpreted in their strictest meaning, these requirements are flexible in nature and are still determined by the assessor (a member of the community).³⁸⁷ These protections are not restrictive but are designed to be guideposts for the assessor to properly value the land for tax purposes.³⁸⁸

Each appraisal district has some version of a “degree of intensity” requirement to determine agricultural use.³⁸⁹ Some appraisal districts require a minimum acreage while others look at the intensity of agricultural production.³⁹⁰ Focusing on the second of these options, the intensity of agricultural production highlights a major success of these special valuations.³⁹¹ The assessor can take into account local trends, industry-wide trends, and standard practices for farmers and ranchers in those specific fields.³⁹² The assessor will have the ability to consider a wide range of factors to determine whether the usage is agricultural.³⁹³ An example of this would be an assessor determining whether a farmer’s cotton crop that yields 200 acres a year is agricultural at the same time an assessor determines that a cow-calf operation with twenty cows is as well.³⁹⁴

Compare these requirements with the Williamson Act in California, in which producers enter into a ten-year contract with the local government.³⁹⁵ When comparing the two policies, the flexibility offered by Texas far exceeds the handcuffing stability that California sought to implement.³⁹⁶ State legislatures should note the differences between these policies and why

383. Author’s original thought.

384. *Id.*

385. See Bennett, *supra* note 209 (discussing the discretion that appraisal districts and counties have in order to come up with the special valuation for agriculture-based land and the degree of flexibility that this affords to farmers and ranchers on a year-to-year basis).

386. See *id.*

387. *Id.*

388. See *id.*

389. See *id.*

390. See *id.*

391. Author’s original thought.

392. See Bennett, *supra* note 209 (discussing the discretion that appraisal districts and counties have in order to come up with the special valuation for agriculture-based land and the degree of flexibility that this affords to farmers and ranchers on a year-to-year basis).

393. *Id.*

394. Author’s original hypothetical.

395. See Durkee et al., *supra* note 138, at 6.

396. *Id.*

shackling farmers into a contract actually does more damage than good, regardless of the tax relief.³⁹⁷ It does not stop here, however, because the agriculture industry is volatile in nature which makes flexibility a luxury.³⁹⁸

As with any comparison, it is necessary to look at the totality of circumstances and not just a specific portion of the property taxing process.³⁹⁹ Consider Farmer Jack's cousin, Farmer Billy, who sold his almond farm in California and moved to Texas to raise cattle and grow hay.⁴⁰⁰ Farmer Billy buys a piece of property in a rural community that has been used for raising cattle for the last decade.⁴⁰¹ That January, the property is assessed and the fair market value is \$1 million.⁴⁰² In California, Billy would have to decide whether he wanted to enter into a Williamson Act contract or pay taxes based on that current valuation.⁴⁰³

However, because Billy is in Texas, he works with his district assessor and state-funded programs to determine the total number of cows he needs to keep on his property in order to receive the special agricultural valuation for property tax purposes.⁴⁰⁴ Billy maintains these requirements and proves the land has been agricultural for the last decade in compliance with the district's requirements.⁴⁰⁵ This effort is rewarded when Billy gets his property tax bill and it directly reflects his usage of the land rather than the fair market value.⁴⁰⁶

This provides Billy with two advantages.⁴⁰⁷ Now he knows the fair market value of his property if he decides to sell it, and Billy has full autonomy with what to do on his property without the threat of having to be in a contract with the local government.⁴⁰⁸ Billy thinks this balance between stability and flexibility is priceless in the agriculture industry because he had seen years in California where drought, a bad crop, or disaster were routinely ignored by the state when taxes were determined and collected.⁴⁰⁹

Now suppose that Farmer Billy dies and his son, Farmer Jason, inherits the cattle operation and property in rural Texas.⁴¹⁰ In California, it is likely that Jason would have been blindsided by a dramatic increase in property value, resulting in an unexpected burden to pay taxes on that property or sell

397. *Id.*

398. *Id.*

399. *Id.*

400. Author's original hypothetical.

401. *Id.*

402. *Id.*

403. *Id.*

404. *Id.*

405. *Id.*

406. *Id.*

407. *Id.*

408. *Id.*

409. *Id.*

410. *Id.*

it at a discounted value, like Farmer Jill did in the earlier hypothetical.⁴¹¹ However, because the property Jason inherited is in Texas, he has more options.⁴¹² He can continue his father's cow-calf operation and pay the exact same property taxes without surprise, or he can look to sell the property and not be handcuffed by a contract with the local government that limits who he can sell the property to.⁴¹³ If Jason decides to sell the property, he can contact other ranchers and farmers or he can look to develop the land and sell it to a commercial enterprise if that is the most economically beneficial option.⁴¹⁴

The dangers of limiting the property rights of landowners are highlighted by the two previous hypotheticals with Farmer Jack and Farmer Billy.⁴¹⁵ One of the key tenets of property ownership is the ability to take full advantage of the bundle of rights that come with ownership within reasonable limits.⁴¹⁶ One of the rights in the bundle is the right of control, which essentially grants the owner the ability to do what he wants with his property when he wants to do it.⁴¹⁷ Another right in the bundle is the right of enjoyment, granting the property owner the right to enjoy his property within limits.⁴¹⁸ Finally, the right of disposition is a key property right that grants the owner the ability to dispose of the property in any legal manner, including the sale or transfer of the property.⁴¹⁹

When looking at some of the tax schemes and exemption policies listed previously in this Comment, it is evident that some of these rights have been infringed on.⁴²⁰ It is important for state legislatures to take this into consideration when formulating property tax schemes and considering their effects on family-owned farms.⁴²¹ From the standpoint of the farmer, any time the government infringes on these substantive property rights, the value of his or her property decreases.⁴²² This can be analyzed in two directions: (1) the actual value that the farmer can recover from the sale of their property is lower than the fair market value; or (2) the practical value of the property is lower based on the actual usage of the property because certain rights have been taken away.⁴²³

411. *Id.*

412. *Id.*

413. *Id.*

414. *Id.*

415. Molly Grace, *A Guide to Understanding Bundle of Rights in Real Estate*, ROCKET MORTG. (Feb. 26, 2023), <https://www.rocketmortgage.com/learn/bundle-of-rights> [<https://perma.cc/W424-6HP6>].

416. *See id.*

417. *See id.*

418. *See id.*

419. *See id.*

420. *See discussion supra* Section III.B.

421. Author's original thought.

422. Gerald R. Barber, *Bundle of Rights Approach to Value*, LAND CONSERVATION ASSISTANCE NETWORK, <https://www.texaslandcan.org/article/Bundle-Of-Rights-Approach-To-Value/117> (last visited Nov. 24, 2023) [<https://perma.cc/2S3G-9EV6>].

423. *See id.*

The dangers of these possibilities are present for every farmer, and state legislatures should take the responsibility of limiting a farmer's exposure to them.⁴²⁴ The challenge is in implementing policies that provide a safe harbor to farmers while also providing equity to the citizens of that state in furtherance of its tax scheme.⁴²⁵ State legislatures have a lot of leniency and broad authority in their ability to raise and collect taxes, especially when they contribute to a compelling government interest.⁴²⁶

Texas could look to improve its property tax scheme by offering something similar to California's Williamson Act but with the express intention that it can only be an alternative to the current exemption process.⁴²⁷ This longer-term commitment can be one of the choices on the table for the farmer to choose between.⁴²⁸ This can be an attractive proposal if the farmer is in an area that has no prospects for development and the farmer has no intention of selling the land.⁴²⁹ Texas could offer a better tax rate in exchange for this commitment to keep the land agricultural.⁴³⁰

If Texas were to implement something similar to the Williamson Act, it would need to have an easier way for farmers to exit the plan.⁴³¹ Paying 12.5% of the property's value to end the contract is not a realistic option with properties in Texas being appraised annually.⁴³² For this proposal to work, it would need to have express language that provided the farmer with a way to remove his land from the contract and to enter it back into the traditional exemption process.⁴³³ It is important to reiterate that this would only be another option the farmer could make and it would represent an alternative to the current method that is in place for special tax evaluations that have been successful.⁴³⁴

In sum, other state legislatures need to recognize the most important piece of this proposal; Texas has done a good job providing options for the farmer to choose between.⁴³⁵ Choice and freedom are key tenets of the agriculture industry.⁴³⁶

Farmers make choices every day.⁴³⁷ Whether it be what crops they wish to grow, what they plan on doing with the farm long-term, or how much water

424. *See id.*

425. Author's original thought.

426. *ArtI.S8.C1.1.1 Overview of Taxing Clause*, CONST. ANNOTATED, <https://constitution.congress.gov/browse/essay/artI-S8-C1-1-1> (last visited Nov. 24, 2023) [<https://perma.cc/Z7US-FEYL>].

427. *Id.*

428. *Id.*

429. *Id.*

430. *Id.*

431. *Id.*

432. *Id.*

433. *Id.*

434. *Id.*

435. *Id.*

436. *Id.*

437. *Id.*

to give to the crop, farmers rely on this liberty to make the choices they think will best contribute to the success of the farm.⁴³⁸ Policies that provide farmers with more choices are never a bad thing, especially if they provide an alternative route that may better fit the needs of that farmer.⁴³⁹

In conclusion, the property tax schemes and exemptions implemented by the State of Texas do a good job of offering the protections mentioned above.⁴⁴⁰ These policies strike a balance between equity and fairness for the farmer without adding an additional hindrance to the farmer's duty to feed the world.⁴⁴¹ State legislatures should look to Texas as an example of tax schemes that are effective in both the end result and the methods used to achieve that end result.⁴⁴² Additionally, Texas has been successful in balancing current principles with the future needs of the agriculture industry.⁴⁴³ This success is rooted in Texas's tradition of guaranteeing the property rights of owners.⁴⁴⁴ This basic understanding has provided, and will continue to provide, stability for the family-owned farm.⁴⁴⁵

F. Estate Planners Play a Key Role in the Success of the Family Farm and Must Understand the Tax Ramifications of Certain Decisions

The estate planner plays an important function in the future of the agriculture industry and its long-term success.⁴⁴⁶ A misconception amongst farmers is that the best way to keep farmland is to farm it.⁴⁴⁷ However, one of the best ways to protect the future of a farming operation is successful estate planning.⁴⁴⁸ Farming is an inherently risky venture that is subject to a volatile market and work environment.⁴⁴⁹ Estate planning in this space can help ensure not only that the land is successfully passed on to the next generation but that the business will survive as well.⁴⁵⁰

The challenge for an estate planner working with farmers is threefold.⁴⁵¹ First, the estate planner needs to recognize the demographics of the farming industry and how the farmer thinks.⁴⁵² Second, they must effectively

438. *Id.*

439. *Id.*

440. Author's original thought.

441. *Id.*

442. *Id.*

443. *Id.*

444. *Id.*

445. *Id.*

446. *Key Concepts & Steps in Agricultural Estate Planning*, UNIV. OF NEV., RENO EXTENSION: COLL. OF AGRIC., BIOTECHNOLOGY, & NAT. RES., <https://extension.unr.edu/publication.aspx> (last visited Nov. 24, 2023) [<https://perma.cc/Z74G-DQKP>].

447. *See id.*

448. *See id.*

449. *See id.*

450. *See id.*

451. Author's original thought.

452. *Id.*

communicate the reasons that the farmer should construct a stable estate plan.⁴⁵³ Lastly, the estate planner must understand the property tax implications of the state in which the farm resides and how those policies will affect the farmer and their future generations.⁴⁵⁴

Starting with the demographics of the farmer, the agriculture industry has an aging problem.⁴⁵⁵ There are more older (sixty-five years and older) workers in farming than any other industry.⁴⁵⁶ Not only is this dangerous on a practical level, but it means the industry will be seeing large amounts of turnover in the near future.⁴⁵⁷ This is not an issue that estate planners can deal with in the future; it is an issue for today.⁴⁵⁸

Additionally, young people are choosing city life at a growing rate.⁴⁵⁹ As the Baby Boom Generation begins to age out of the workplace, there are fewer and fewer workers to take their place.⁴⁶⁰ This should be alarming to state legislatures and estate planners who work with farmers.⁴⁶¹ Realizing the need to feed the world is never-ending, estate planners must put farmers in the best position to provide long-term success for their families.⁴⁶²

The agriculture industry is dependent on many high-value investments of the farmer.⁴⁶³ But the cost does not end there.⁴⁶⁴ Recent years have seen integral parts of the farmer's daily production practices increase in price based on various external factors.⁴⁶⁵ These factors must be taken into consideration by the estate planner when looking at the current shape of the agriculture industry and how that affects farming demographics.⁴⁶⁶ At no point in our history has an individual been so disincentivized to be a farmer, yet the burden to feed the world remains the same.⁴⁶⁷

Another hindrance to young people getting involved in farming relates to the capital required to start the business.⁴⁶⁸ Many young farmers do not have access to lines of credit that would permit them to spend the capital

453. *Id.*

454. *Id.*

455. *Aging on the Farm*, UPPER MIDWEST AGRIC. SAFETY & HEALTH CTR., <https://umash.umn.edu/emerging-issue-aging-on-the-farm/> (last visited Nov. 24, 2023) [<https://perma.cc/B33T-F4QY>].

456. *Id.*

457. *See id.*

458. *See id.*

459. Katie Knapp, *Farmers Are Aging out Quickly*, JOHN DEERE (Jan. 1, 2022), <https://www.deere.com/en/publications/the-furrow/2022/january-2022/farmers-are-aging-out-quickly/> [<https://perma.cc/3VK7-QL4Q>].

460. *Id.*

461. *See id.*

462. *See id.*

463. KANSAS REFLECTOR, *As Aging Farmers Retire, Lawmakers Explore How to Boost Beginning Producers*, SUCCESSFUL FARMING (July 18, 2022), <https://www.agriculture.com/news/business/as-aging-farmers-retire-lawmakers-explore-how-to-boost-beginning-producers> [<https://perma.cc/NV9V-Z9SD>].

464. *See id.*

465. *See id.*

466. *See id.*

467. *See id.*

468. *See id.*

needed to enter into the farming space.⁴⁶⁹ This cost of entry is a barrier to new people becoming farmers as the generation turns over, which exacerbates the issue.⁴⁷⁰ Additionally, obtaining loans can often be burdensome, time consuming, and confusing to the farmer.⁴⁷¹ This is not an argument about the challenges of obtaining loans but rather how those challenges affect the demographics within the industry.⁴⁷²

Next, the estate planner must effectively communicate the reasons that a farmer should establish an estate plan.⁴⁷³ This task is not as easy as it may seem.⁴⁷⁴ Often, farmers have an over-simplified idea of what estate planning is and may not want to spend the necessary money to craft a stable estate plan.⁴⁷⁵ This may result in the farmer believing they have made their intentions known to heirs or that they desire to divide property interests equally amongst heirs.⁴⁷⁶ However, if a decedent does not have a will in place at the time of death, the state can allocate their assets based on state law with little to no regard for these desires.⁴⁷⁷

But estate planning does not end with crafting a will for the farmer.⁴⁷⁸ Although the will is a critical piece, the estate plan has a broader scope that may include financial stability, business organization, and the distribution of assets.⁴⁷⁹ From a policy standpoint, the estate plan also allows the farmer to spell out the most equitable way to divide their assets to heirs.⁴⁸⁰ This can come into play when the farmer has multiple children or potential heirs.⁴⁸¹

The estate planner should focus on the result, not the process, when discussing these interests with the farmer.⁴⁸² Regardless of the technique the estate planner uses, the decisions the farmer makes at this stage will be among the most important they have made up to this point in their life.⁴⁸³ Additionally, the cost of creating an estate plan may seem like a hefty investment, but failing to have a substantial plan in place can cost your heirs and family members a lot more than the initial sticker price.⁴⁸⁴ The ramifications for not having a proper estate plan can affect generations and

469. *Id.*

470. *See id.*

471. *See id.*

472. *See id.*

473. *See Key Concepts & Steps in Agricultural Estate Planning*, *supra* note 446 (discussing the importance of having an estate plan and the strategies that estate planners can employ when introducing them to a farmer or rancher).

474. *See id.*

475. *See id.*

476. *See id.*

477. *See id.*

478. *See id.*

479. *See id.*

480. *See id.*

481. *See id.*

482. *See id.*

483. *See id.*

484. *See id.*

ultimately may result in the farm having to leave family hands.⁴⁸⁵ This would be counterintuitive to many of the things the farmer has done up to this point in their life.⁴⁸⁶

The conversation begins with the estate planner asking about the long-term goals for the farm or the operation.⁴⁸⁷ The estate planner should advise the farmer on how to maximize the value of the farm and other assets depending on the goals provided.⁴⁸⁸ Alternatively, there is an emotional aspect the estate planner must prepare for.⁴⁸⁹ It may be difficult for the farmer to cede control or even discuss the proposition of relinquishing the reins.⁴⁹⁰ The estate planner should rely on the idea that being prepared will relieve a lot of this burden and will mitigate the unease the farmer may have.⁴⁹¹ The more thorough the estate plan, the less likely it is for the outcome to be different from what the farmer intended.⁴⁹²

It is critical for the estate planner to convey these ideas and interests to the farmer so they completely understand the ramifications of having or not having an estate plan.⁴⁹³ This idea is only magnified by the idea that many of the assets belonging to the farmer are high in value, requiring a detailed look at how they are passed on to heirs.⁴⁹⁴ Additionally, the laws governing these ideas are often detailed and difficult to understand.⁴⁹⁵ It would be unreasonable to require the farmer to understand these policies and how they affect not only themselves but the industry as a whole.⁴⁹⁶

The final portion of the estate planner's role is to understand the property tax codes, exemptions, and ramifications of those policies in regard to how they all interact and affect the farmer.⁴⁹⁷ This requires the estate planner to keep a detailed account of the way taxes are levied and collected in the state and how the farmer can achieve exemptions.⁴⁹⁸ This can be difficult because there is no standard or uniform policy across the states and the policies can range widely, as discussed in previous sections.⁴⁹⁹

485. *See id.*

486. *See id.*

487. *See Transferring the Family Farm: Estate Planning for Farmers*, THRIVENT (July 25, 2023), <https://www.thrivent.com/insights/estate-planning/transferring-the-family-farm-estate-planning-for-farmers> [https://perma.cc/2VKZ-LBN9].

488. *See id.*

489. *See id.*

490. *See id.*

491. *See id.*

492. *See id.*

493. *See Key Concepts & Steps in Agricultural Estate Planning*, *supra* note 446 (discussing the importance of having an estate plan and the strategies that estate planners can employ when introducing them to a farmer or rancher).

494. *See id.*

495. *See id.*

496. *See id.*

497. Author's original thought.

498. *Id.*

499. *Id.*

Additionally, the laws in this area change frequently.⁵⁰⁰ For example, Proposition 19 (as discussed previously) had a drastic change in how family-owned farms are inherited and the tax ramifications of such transaction.⁵⁰¹ If the estate planner did not adjust procedure based on this proposition being passed, the tax ramifications would be substantial on the family.⁵⁰²

It is not only important for the estate planner to know the law and mechanisms behind the law but also the policy reasons for why some of these actions may be detrimental to the farmer and how to alleviate those burdens.⁵⁰³ For instance, an estate planner in California must have an understanding of the implications the Williamson Act has on property and the long-term effects the decision to put the property in the Act has on the estate itself.⁵⁰⁴

It is not the responsibility of the estate planner to advise the farmer on these decisions but rather on how the farmer's decisions will affect inheritance and, ultimately, the long-term success of the farm.⁵⁰⁵ This is rooted in the estate planner knowing who their client is and what their priorities are.⁵⁰⁶ Depending on the farmer's goals, the goal of the estate planner and the actions they take may be drastically different.⁵⁰⁷

Estate planning for farmers may also take some creativity on the part of the estate planner.⁵⁰⁸ Generally, most family-owned farms are sole proprietorships in which the farmer is the one and only owner.⁵⁰⁹ Estate planners can discuss the possibilities of other types of business ownership including partnership, limited partnership, corporations, and limited liability corporations.⁵¹⁰ It is the duty of the estate planner to assess these options and their viability before presenting them to the farmer.⁵¹¹

Additionally, there is not a one-size-fits-all estate plan for the farmer or for anyone in a similar line of work.⁵¹² The farming operation is a complex network of many moving parts that can include land, equipment, employees,

500. *Id.*

501. *See About Proposition 19 (2020)*, *supra* note 90.

502. *See id.*

503. *Id.*

504. *Id.*

505. *Id.*

506. *Id.*

507. *Id.*

508. *See Key Concepts & Steps in Agricultural Estate Planning*, *supra* note 446 (discussing the importance of having an estate plan and the strategies that estate planners can employ when introducing them to a farmer or rancher).

509. *See id.*

510. *See id.*

511. *See id.*

512. *Our Estate Planning Team Helps Farmers and Ranchers Protect Their Life's Work & Legacy*, ROSS & SHOALMIRE ELDER L. ATT'YS, P.L.L.C., <https://www.rossandshoalmire.com/blog/texas-estate-planning-for-farmers-and-ranchers.cfm> (last visited Nov. 24, 2023) [<https://perma.cc/92KT-VYBV>].

and livestock.⁵¹³ Therefore, it is critical for the estate planner to tailor the plan to the farmer they are working with to include specific protections for those different assets.⁵¹⁴

The estate planner may need to consult with outside agencies when completing the estate plan.⁵¹⁵ These agencies include banks and lenders, insurance agencies, and contractors.⁵¹⁶ It is important to get a sense of the greater picture and see how these groups all contribute to the success of the farm.⁵¹⁷

The implications of estate planning and the farmer go well beyond state-collected property taxes and encompass a wide range of policies and taxes at the local, state, and federal levels.⁵¹⁸ But at the root of it all is the fact that preparation today prevents tomorrow's challenges.⁵¹⁹ The more effort and energy the farmer and estate planner put into the estate plan, the more successful the operation will be in the future and the closer the wishes of the farmer will be followed.⁵²⁰

IV. CONCLUSION: SO, GOD MADE A FARMER

God said, 'I need somebody strong enough to clear trees and heave bails, yet gentle enough to tame lambs and wean pigs and tend the pink-combed pullets, who will stop his mower for an hour to splint the broken leg of a meadow lark.

It had to be somebody who'd plow deep and straight and not cut corners. Somebody to seed, weed, feed, breed and rake and disc and plow and plant and tie the fleece and strain the milk and replenish the self-feeder and finish a hard week's work with a five-mile drive to church. Somebody who would bale a family together with the soft strong bonds of sharing, who would laugh and then sigh, and then reply, with smiling eyes, when his son says that he wants to spend his life 'doing what dad does.' So, God made a Farmer.⁵²¹

The agriculture industry is facing an uncertain future.⁵²² As more farmers get closer to retirement, the challenge of feeding the world only becomes larger.⁵²³ This notion, coupled with the fact that each of the fifty

513. *See id.*

514. *See id.*

515. *See id.*

516. *See id.*

517. *See id.*

518. *5 Farm Transition and Estate Planning Strategies*, NATIONWIDE, <https://www.nationwide.com/lc/resources/farm-and-agribusiness/articles/farm-estate-planning> (last visited Nov. 24, 2023) [<https://perma.cc/8QS6-JW97>].

519. *See id.*

520. Author's original thought.

521. Harvey, *supra* note 1.

522. Author's original thought.

523. *Id.*

states implements different methods for property tax collection, valuation, and agriculture exemptions only emphasizes the need for protecting and nurturing the agriculture industry.⁵²⁴ With that idea in mind, state legislatures should look to policies that give farmers more choices when deciding how land should be passed on to an heir in order to give their families or those closest to them the freedom to exercise their property rights while continuing to provide safe and healthy food products to the world.⁵²⁵

My family and countless other families have felt the harsh reality of a cold and calculated property taxation system on family-owned farms and ranches.⁵²⁶ Unfortunately, this reality is not an isolated incident and will become more and more prevalent as today's farmer gets older.⁵²⁷ Now more than ever is it important to protect and nurture the key proponents of farming that make it a worthwhile endeavor for those that choose to take on its burden.⁵²⁸ State legislatures should not add to this burden and should implement policies that complement these key tenets.⁵²⁹ By working together today, we can prevent a greater challenge tomorrow.⁵³⁰

524. *Id.*

525. *Id.*

526. *Id.*

527. *Id.*

528. *Id.*

529. *Id.*

530. *Id.*