

Original text in Portuguese Translated by Marielle Dubbeling and Richard Huber
IPES-UMPLAC/UN-HABITAT

Proposals for the use of progressive and regressive taxing policies to encourage the productive use of private spaces Governador Valadares, Brazil. 2004

The current document reports on the development of proposed legal instruments (fiscal and economic incentives) for the use of progressive and regressive taxing policies to encourage the productive use of private spaces. In the second part of the document, a format for contract is suggested to facilitate granting of land for a fixed period for the specific activity of urban agriculture.

Proposed legal mechanisms have been passed through the Municipal Council in 2004.

PART 1: SUGGESTED FISCAL INCENTIVES LIKE THE REDUCTION OF PROPERTY TAX TO PROMOTE URBAN AGRICULTURE

These suggestions are to be passed on to the Municipal Executive, for adoption by the legislature, for the purpose of granting concessions for fiscal incentives like the IPTU (Property Tax).

IPTU

Proposed Objectives - Urban Agriculture (UA) lots can be considered occupied for the purposes of tax reduction, with the resulting average maximum tax rate being reduced from 3.0% to 6.0%;
- Ensure that UA lots are not subject to the progressive IPTU; - Provision of penalties in the case that such lots are not used for UA, as defined conventionally, paid to the public coffers in the amount of the reduced taxes.

Suggested Notes:

Amendment of the Master Plan

Complementary Law No. _____

Art. ____ - For effects of the IPTU, the particular plots inscribed in the Urban Agriculture program will not be subject to progressive taxation, as long as this use is in effect.

Amendment to the Municipal Tax Code

The Complementary Law No. 34, or 14 December 2001, put into effect the following amendment:

Art. 51 – The tax will be calculated through the application of the following rates on the market value of the property:

Paragraph 7. On undeveloped lots designated for Urban Agriculture, a rate of 0.60% (six-tenths of one percent) will be applied, given that the requirements established in municipal law are fulfilled.

Amendment to the regulatory legislation governing urban agriculture

Art. _____ - For effects of the IPTU property tax, the undeveloped lands destined for urban agriculture will be considered developed non-residential land, with a tax rate of 0.6%, when the following conditions are fulfilled:

I – They are registered with the Municipal Secretary of Environment, Agriculture and Food Supply – SEMA

II – 1/3 of the produced crop will be donated to a philanthropic or educational organization, registered with SEMA

III – the urban agriculture activity will be implemented for at least 2 (two) consecutive years.

Paragraph 1. The requirement of clause II will only be required after six months following registration with the responsible municipal bodies (SEMA – Municipal Secretary of Environment, Agriculture and Food Supply, SEPLAN – Municipal Secretary of Planning and SMF – Municipal Housing Secretary).

Paragraph 2. The provisions contained in this article have the principle of seniority

Art. _____ - the owner of the undeveloped property who wishes to benefit outlined in the previous article, and who does not him/herself carry out urban agriculture activities, may cede their land to third parties for this purpose.

Singular Paragraph. To comply with this article, the owner should sign a proper contract together with the responsible municipal bodies (SEMA – Municipal Secretary of Environment, Agriculture and Food Supply, SEPLAN – Municipal Secretary of Planning and SMF – Municipal Housing Secretary).

Art. _____ For IPTU taxation purposes, the specific plots inscribed in the Urban Agriculture program will not be subject to progressive taxation, as long as this determination holds.

“Art. _____ - The singular paragraph or Article 8, of law No. 3.168 of 5 April 1989, is hereby amended as follows:

Paragraph 1. The following properties are exempt from sanitation, water and sewer tariffs:

I – properties of philanthropic entities, recognized as having public/municipal benefits and who provide free assistance to their beneficiaries;

II – public properties of municipal and state educational systems, as well as municipal properties located in districts and towns which have implemented or are in the process of implementing the SAAE system

“Paragraph 2. Exemptions from payment of sanitation, water and sewer tariffs are in force for the period established in the regulation (considering the importance and profile of the activity), for properties registered with the SEMA – Municipal Secretary of Environment, Agriculture and Food Supply, the Urban Agriculture Program and the Association for Urban Agriculture and Community Gardens – AUHCOMUT.”

Art. ____ In cases where the user does not practice UA, as defined conventionally, the user must return to the public treasury an amount equivalent to the reduction in tariffs and taxes.

PART 2: CONTRACT FOR THE GRANTING OF LAND FOR A FIXED PERIOD FOR THE SPECIFIC ACTIVITY OF URBAN AGRICULTURE

IDENTIFICATION OF THE CONTRACTUAL PARTIES

GRANTOR: (name), (nationality), (profession), (civil status), Identification card no. xxx, C.P.F. no. xxx, residing at Rua xxx, number xxx, neighborhood xxx, City xxx, zip code xxx, in the State of xxx.

GRANTEE: (name), (nationality), (profession), (civil status), Identification card no. xxx, C.P.F. no. xxx, residing at Rua xxx, number xxx, neighborhood xxx, City xxx, zip code xxx, in the State of xxx.

The parties identified above have legally accorded the present Contract for a Fixed Period Land Grant, which will be regulated by the following clauses and subject to the conditions described herein.

ON THE SUBJECT OF THE CONTRACT

Clause 1. The SUBJECT of the present contract is the property of GRANTOR, located at Rua (street) xxxx, in xxxx neighborhood, in the municipality of Governador Valadares, in the State of Minas Gerais, under Land Registry Number (xxx) in the registry of xxxx, Office of Land Registry, free from liens or debts.

ON THE USE OF THE PROPERTY

Clause 2. The property granted upon the date of signature of the present contract, by GRANTOR to the GRANTEE should be used for the specific purpose of Urban Agriculture, and should be used appropriately, conserving it and assuring that its use and enjoyment are peaceful and harmonious, principally with respect to neighboring residents.

Clause 3. For effects of this contract Urban Agriculture is considered as defined in Law 5265/2003 which creates the Municipal Program for Urban Agriculture.

Clause 4. Should the land be used in any other fashion than that agreed upon, the GRANTOR has the right to demand losses and damages, as well as to rescind the present contract in its entirety.

Clause 5. It is prohibited for GRANTEE to undertake any kind of modification of the property, except those necessary for the exercise of Urban Agriculture activities, as it is prohibited to sub-lease the terrain or pass its title to any other party.

ON THE RISKS

Clause 6: In case of risks to the plot referred to in the present decree and its accessories, or to the belongings of GRANTEE, it is this party who is responsible for its own possessions, and this party is also responsible for possible damages incurred by the GRANTEE, which will determine cause, exercise force majeure or undertake other appropriate action.

ON THE DURATION

Clause 7. The present contract has a duration of (xx) years, effective from the date of signing, for the specific purpose of Urban Agriculture. At the expiration of the contract the land should be returned in the same conditions in which it was received, recognizing that the GRANTOR does not have the right to charge GRANTEE for the expenses derived from the use and enjoyment of the leased land.

Clause 8. Special Dispensations

I – The present contract is regulated by articles 579 to 585, of the Civil Code, which are supplementary to the same.

II – The parties commit their heirs or successors to completely respect the terms of this contract.

III– In case of any conflict deriving from this decree, the parties agree to submit the case to the Chamber of Commerce of Governador Valadares for arbitration.

The parties to the present instrument are hereby in agreement and contracted, upon their signature below together with (2) two witnesses.

Governador Valadares, ____ of ____ of 200_

_____ (Name and Signature of Grantor)

_____ (Name and signature of Grantee)

_____ (Name, RG, CPF and signature of Witness 1)

_____ (Name, RG, CPF and signature of Witness 2)