



FOREST LAND TAXATION IN MASSACHUSETTS

August 1998

The purpose of this bulletin is to inform woodland owners of the different property tax programs available under Massachusetts law. Careful study of the text and contact with their Department of Environmental Management (DEM) Service Forester or consulting forester should enable woodland owners to make well-informed decisions about what program may be most advantageous.



THE PROPERTY TAX STRUCTURE IN MASSACHUSETTS

State tax laws in Massachusetts require that land be taxed at its full and fair market value. Most often this value is derived from residential development. Property taxation presents a problem for landowners who are practicing long-term forest management because the market value of the land—and the associated annual taxes—is usually greater than short-term income received from growing trees.

To encourage landowners to keep their land as open space, the Commonwealth passed Chapter 61, 61A and 61B of the Massachusetts General Laws. Each law provides a means to assess forest land at a portion of its fair market value, and to apply the local commercial property tax rate to the lower assessment.

CHAPTER 61: THE FOREST LAND TAX LAW

Chapter 61 is designed to give favorable tax treatment to a landowner willing to keep woodland undeveloped and managed for forest products. Land which is certified under Chapter 61 is assessed at 5% of the fair market value or at \$10 per acre, whichever is greater. The Law assesses an 8% products (or stumpage) tax on any wood cut for personal or commercial purposes during the preceding calendar year. The stumpage tax is a way of deferring the property tax to periods when wood products are cut and income realized.

ELIGIBILITY REQUIREMENTS

To qualify for Chapter 61, a landowner must have 10 or more contiguous acres of forest land and a long term commitment to improving the "quality and quantity" of the timber crop on that land. A 10-year forest management plan is also required. This plan is compiled after a property inspection, at which time infor-

mation is collected about the size and species of trees present, boundaries, deeds and other pertinent information. This data is used to schedule management activities for the next 10-year period, such as thinning, harvesting, boundary marking, access road construction, and other work which will improve the quality, quantity and availability of wood products.

HOW TO CLASSIFY FOREST LAND UNDER CHAPTER 61

The landowner must make an application to DEM to be certified under Chapter 61. The application package consists of a forest management plan, a certificate, and a certified check or money order for filing fees. The filing fee is a one-time charge for the 10-year period, and is based on \$1.00 per acre up to 100 acres, and \$.75 per each additional acre. The minimum fee is \$25.00; the maximum is \$200.00. A surcharge is added to these fees that varies yearly. The application package must be filed with the appropriate DEM Regional Office, on or before June 30th of the year preceding the year for which classification is sought.

The DEM Service Forester is responsible for a property inspection to see if the forest management plan is accurate and



appropriate to the site. In addition, the Service Forester will look for clearly marked boundary lines and determine whether any timber cutting took place within two years prior to the date of classification. If any cutting occurred, the volume and value of such cutting must be determined. The 8% products tax must be paid to the town as a condition of certification. This tax is due when the approved forest management plan is delivered to the town assessor's office.

The approved forest management plan and certificate is returned to the landowner, who then must submit them to the Board of Assessors on or before August 30th so that classification can begin the following January. The assessors will place a lien on the property for all taxes deferred under Chapter 61; a recording fee for this lien is paid to the assessors.

SELLING LAND OR CONVERTING TO A DIFFERENT USE

If the landowner intends to sell the land for a use other than forest production, the town has 120 days to act on its first refusal option to meet a bona fide purchase and sales agreement. If the landowner intends to change use of the land, but not sell to a new owner, the town has the option to purchase the land at full and fair market value determined by an impartial appraisal. However, the change of use for the construction of a residence for an immediate family member is not subject to a purchase option from the town. Also, if a new owner continues in Chapter 61, the sale of land is not subject to an option from the town. The new owner must file an amended forest management plan with DEM and the local assessors within 90 days. The landowner should check with DEM to determine if filing fees apply.

ADDITION TO, OR WITHDRAWAL FROM CERTIFICATION

Each year landowners may voluntarily add land contiguous to, or subtract land covered by a forest management plan and certificate. Addition or withdrawal of land may be incorporated

by filing an amended forest management plan and certificate approved by the DEM Service Forester and submitted to the town assessors. A withdrawal penalty payment is imposed when acres are removed from classification.

WITHDRAWAL PENALTIES

Withdrawal penalty payments are imposed when land is removed from classification, whether or not the use of the land will be changed. The penalty payment is the difference between the amount that would have been paid under regular classification (Chapter 59) and the actual taxes paid (Chapter 61), plus interest. If the land is withdrawn during the first certification period, then back taxes are paid for the actual number of years the land was classified under Chapter 61. If the land is withdrawn during the second or subsequent certification periods, then back taxes are paid for either the prior five year period or the number of years completed in that certification cycle, whichever is longer. Credit for products tax paid to the town is deducted from the penalty payment only if withdrawal occurs at the end of a 10-year certification cycle.

Calculation of the interest payment due on deferred taxes is a complicated process. The interest rate is based on the prime rate, which is established quarterly by the U.S. government, and is compounded daily. Landowners should check with their assessors to determine the withdrawal penalty.

RECERTIFICATION

Once classified under Chapter 61, woodland must be recertified every 10 years. If the land is not recertified it is no longer classified and withdrawal penalties are imposed (see *Withdrawal Penalties*). To recertify, landowners should follow the procedures detailed in the section titled *How to Have Forest Land Classified Under Chapter 61*.

CHAPTER 61A: THE FARM LAND TAX LAW

The purpose of Chapter 61A is to promote the conservation of agricultural and horticultural lands and to assess property taxes based solely on its use (see *The Assessment Process* below). Chapter 61A is most commonly applied to agricultural land, for which there is no management plan requirement. However, if a woodland owner wishes to classify productive forest land under Chapter 61A, the DEM Service Forester must certify that the land is being managed under an approved forest management plan, comparable to those prepared for Chapter 61 certification.

ELIGIBILITY REQUIREMENTS

To qualify for Chapter 61A, a landowner must own five or more contiguous acres which is "actively devoted" to agricul-

tural or horticultural purposes. This land must produce annual gross sales of not less than \$500.00. For each additional acre over five, the minimum product value must be \$5.00, except in the case of woodlands and wetlands, for which the added value is \$.50 per acre.

There must be farming activity for two years before the property becomes eligible for consideration. Agricultural activities, as defined in the Law, are those concerned with the raising and selling of animals or products derived from them. Horticultural uses are those related to growing crops for animal or human consumption and for other use.

As with Chapter 61, a 10-year forest management plan is required, though only for the productive forest land being en-

rolled. See *Eligibility Requirements* under Chapter 61. A copy of the plan must be submitted to the assessors at the time of initial classification. Thereafter, approved plans need not be submitted annually, but only when the original plan is amended or expires.

HOW TO CLASSIFY FARM LAND UNDER CHAPTER 61A

The landowner must submit a written application to the Board of Assessors to classify land as agricultural or horticultural. Applications are handled directly through the assessors office and are available there. The Board of Assessors must make a decision within three months of the filing date and send a copy of their decision by certified mail within 10 days of making it. If the application is approved, the assessors record a lien on the property for all taxes deferred under Chapter 61A. If the Board fails to take any action within three months of the filing date, the application is considered approved.

A new application must be filed on or before September 30th of the year before the classification is sought. If the town has been re-evaluated that year, then the application deadline can be extended by 30 days from the mailing date of the first tax bill based on the new valuation.

ASSESSMENT PROCESS

Taxes on land classified under Chapter 61A are based solely upon the land's agricultural or horticultural use. To assess land at its current use value (rather than market value), the Board of Assessors use a range of values set by the Farmland Valuation Advisory Committee, as well as their own appraisal knowledge, judgement and experience. These figures are established on an annual basis. The tax rate applied to the farm land assessment is the commercial property tax rate.

SELLING LAND OR CONVERTING TO A DIFFERENT USE

If a classified parcel changes from eligible farmland use to a residential, industrial, or commercial use, with or without a sale, the owner must notify the town by certified mail. The town then has 120 days to exercise a first right of refusal option. If the owner is selling the land, the town must match a bona fide purchase and sales agreement; if the owner is changing the land use, the town must buy the land at its appraised fair market value.

The town does not have the option to purchase the land if agricultural and horticultural use is discontinued, or if a residence for an immediate family member is constructed. However, in this latter case, change of use penalties may apply to affected areas.

CHANGE OF USE PENALTIES

One of two penalty taxes are levied when the land use changes: conveyance or roll-back taxes. When the land is sold and converted to an ineligible use, the higher of the two taxes would apply, but not both. If the land stays in the same ownership and changes use, the roll-back tax applies.

The conveyance tax is applied to a land sale from an eligible to an ineligible use, and is to be paid by the seller. This tax is a percentage of the sale price or the fair market value, as determined by the assessors. The conveyance tax rate is 10% if the land is sold or converted within the first year of ownership, 9% if sold or converted within the second year, and so on with the rate declining each year by a percentage point until it is 1% in the 10th year of ownership. The timing of this provision is important as it begins with either the date of acquisition by the current (eligible) owner or the date the owner began using the property. An owner with 10 or more years of continuous farming can sell land at any time without paying this tax. A new owner of a farm or a person starting farming is subject to the 10-year schedule. No conveyance tax is necessary when a sale is accompanied by an affidavit that the new owner will continue the eligible use.

The alternative penalty tax is called the roll-back tax. It is the difference between the tax that was actually paid under the Law and what would have been paid if not classified under Chapter 61A, with no interest applied. The roll-back tax applies when the

UNDERSTANDING & COMPARING THE TAX PROGRAMS

A quick review of the tax programs reveals that annual tax savings for forest land is greatest under Chapter 61; however, significant expenses are required before classification is approved and the imposed stumpage tax may negate the annual tax relief benefit in certain instances. For lands that can meet the yearly minimum income earned requirements for Chapter 61A, applying under this tax classification may provide added benefits, such as lower penalties for removal from classification and no stumpage tax. Chapter 61B requires no active management, which may appeal to some landowners, but nor does it allow for tapping the forest products income potential through good management.

Once a landowner determines eligibility to one or more programs, a comparison of tax treatment under each can be made with the following data: fair market value assessment of the eligible acres and the town's commercial tax rate. A public or private forester can estimate the cost of a management plan and project the value of wood products harvested in the next ten year period so that stumpage tax can be calculated. Filing fees must also be added to the calculation.

While the steps to understanding and then classifying land under Chapters 61, 61A or 61B may sound intimidating, a landowner can get help from DEM Service Foresters, consulting foresters and local assessors, all of whom are available for consultation and assistance through the process. The box on page 6 lists the regional offices where DEM Service Foresters may be contacted. These public foresters can supply a list of private consulting foresters doing business in their district.

owner ceases the practice of an eligible use. If the change in use occurs when the land is classified, the tax is imposed for the current fiscal year and the 4 prior years. If the land is not classified at that time, the tax is imposed for the 5 prior years.

Change of use taxes may not apply in certain circumstances. For instance, a couple has owned and farmed their land for the

past 15 years and had the land classified under Chapter 61A for the last 13 years. The couple can declassify their property and pay property taxes for the land (Chapter 59) at its highest and best use. After five years the couple can change use of their land and pay the town neither roll-back nor conveyance taxes.

CHAPTER 61B: THE RECREATIONAL LAND TAX LAW

The purpose of Chapter 61B is to reduce the assessed value of land based on its use for open space or recreation. Assessed values under this law shall not exceed 25% of the fair market value. Woodlands that are not actively managed for forest products are eligible for classification under Chapter 61B. Because there is no active management a forest management plan is not required.

ELIGIBILITY REQUIREMENTS

A woodland owner with 5 or more contiguous acres, not actively managed for forest products, can qualify for Chapter 61B under one of two different scenarios. First, the land must be retained in a substantially natural, wild or open condition so as to preserve wildlife or other natural resources. Land qualifying under the above requirements need not be open to the general public, nor made available to members of a non-profit organization. The annual cutting of 10 cords of wood for personal use, the cutting of firebreaks or roads to allow access to the land, or the clearing of dead or diseased trees is permissible for land classified under Chapter 61B.

Second, land can also qualify based on its recreational use, provided such use does not materially interfere with the environmental benefits derived from the land. The term "recreational use" is limited to: hiking, camping, nature study and observation, boating, golfing, horseback riding, hunting, fishing, skiing, swimming, picnicking, private non-commercial flying (including hang gliding), archery and target shooting. Land qualifying as recreational land must be made avail-

able either to the public or to members of a non-profit organization.

HOW TO CLASSIFY OPEN OR RECREATIONAL LAND UNDER CHAPTER 61B

The landowner must file a written application with the Board of Assessors on or before September 30th of the year preceding each tax year for which classification is sought. This application

form is available from the assessors office. The board has 3 months to respond and must inform the landowner by certified mail within 10 days of its decision. A positive decision must be recorded with the registry of deeds, at which time a lien is established, similar to Chapter 61A. If the assessors do not respond within three months, the application is considered disallowed.

A new application must be filed on or before September 30th of the year before the classification is sought. If the town has been re-evaluated that year, then the application deadline can be extended by 30 days from the mailing date of the first tax bill based on the new valuation.

SELLING LAND OR CONVERTING TO A DIFFERENT USE

This issue is handled the same as for Chapter 61A. See that section on page 3.

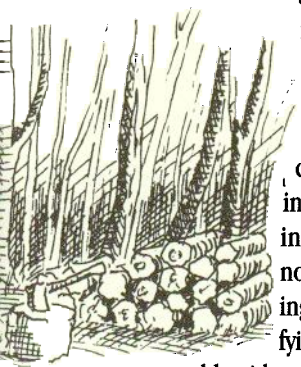
CHANGE OF USE PENALTIES (61B)

Refer to the same heading for Chapter 61A on page 3, as this topic is handled similarly, but with the following exceptions:

- 1) The conveyance tax rate is 10% if the land is sold or converted within the first 5 years of classification, and 5% if within the 6th through 10th years.
- 2) When the roll-back tax is levied, interest does apply.
- 3) Under the roll-back tax, if the change in use occurs when the land is classified, the tax is imposed for the current fiscal year and the 9 prior years. If the land is not classified at that time, the tax is imposed for the 10 prior years.

APPEAL OF CLASSIFICATION FOR CHAPTERS 61, 61A & 61B

Assessors, landowners and the State Forester can appeal the classification, reclassification or declassification of land under Chapter 61, 61A or 61B. Landowners can check with their DEM Service Forester or local assessors office to find out how to make an appeal.

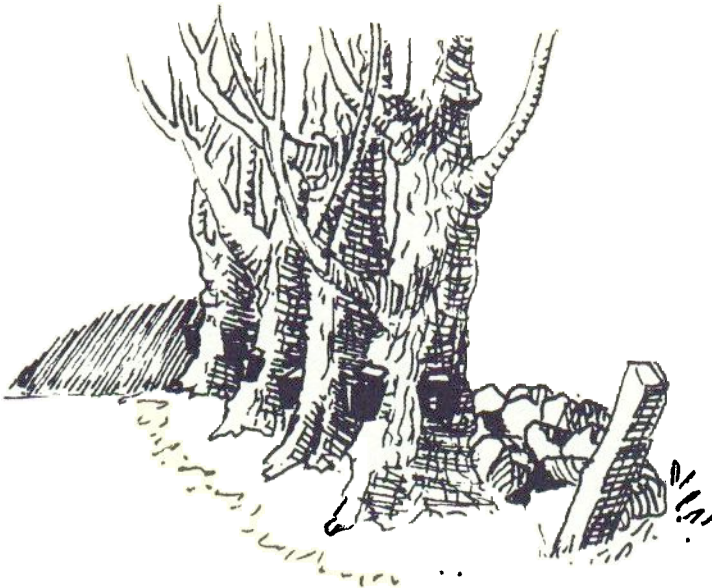


A QUICK GUIDE TO FOREST LAND TAX PROGRAMS

	CHAPTER 61	CHAPTER 61A	CHAPTER 61B
PURPOSE	Tax incentive for long-term management of woodland for wood production.	Tax incentive for active agricultural or horticultural uses.	Tax incentive for land in natural, wild, open or landscaped use; or an approved recreational use.
ELIGIBILITY	Minimum of 10 contiguous acres. A continuous commitment to improving the "quality and quantity" of timber crops on woodlands. Forest management plan approved by State Forester.	Minimum of 5 acres "actively devoted" to agricultural and/or horticultural uses at least 2 years prior to classification. Minimum annual gross sales of \$500. Additional contiguous land may also qualify.	Minimum of 5 acres in open space or recreational uses.
TAX ASSESSMENT	Assessed at 5% fair market value, at commercial rate, plus 8% stumpage value of products harvested in prior year.	Assessed at agricultural/ horticultural "use" value, at commercial rate. Values assigned by Board of Assessors and may change annually.	Assessed at maximum value of 25% fair market value, at commercial rate.
HOW TO ENROLL	Application package filed with State Forester by June 30. Approved application package submitted to Board of Assessors by August 31. Application good for 10 years.	Annual application filed with Board of Assessors by October 1.	Annual application filed with Board of Assessors by October 1.
ENROLLMENT PERIOD	Enrolled until withdrawn from classification and withdrawal penalty paid. Forest management plan updated every 10 years.	Enrolled until sold for or converted to another use, and either conveyance tax or roll-back tax paid. Annual filing with Board of Assessors. Forest management plan updated every 10 years on acres classified as "productive woodlands".	Enrolled until sold for or converted to another use, and either conveyance tax or roll-back tax paid. Annual filing with Board of Assessors.
WITHDRAWAL OR CHANGE OF USE PENALTY	Penalty payment depends on number of years in the program, and is difference between taxes paid under Chapter 61 and what would have been paid if not classified, plus interest. Annual forest products tax credit may or may not be applied to withdrawal penalty.	Conveyance or roll-back tax imposed, but not both. Conveyance tax rate applied when land sold for a non-qualifying use, decreasing from 10% to 1% over first 10 years of ownership. Roll-back tax is difference between taxes paid under Chapter 61A and what would have been paid if not classified, with no interest. Roll-back tax imposed for 5 prior years.	Conveyance or roll-back tax imposed, but not both. Conveyance tax rate applied when land sold for a non-qualifying use, and is 10% for first five years of ownership and 5% for second 5 years. Roll-back tax is difference between taxes paid under Chapter 61B and what would have been paid if not classified, plus interest. Roll-back tax imposed for 10 prior years.
TOWN'S RIGHT OF FIRST REFUSAL	Town has first right of refusal when land sold or converted to residential, commercial or industrial use. Option lasts for 120 days unless waived. Exception allowed for residential use by family member.		

ISSUES TO CONSIDER BEFORE ENROLLING

- Under Chapter 61 and 61A, active forest management is required “to improve the quantity and quality of forest products”, as set forth in the Law. The intensity and frequency of management activity will vary throughout the growing period of the forest crop, and is dependent on site conditions and landowner goals and objectives. Thus it is difficult to generalize about how much work will be required for each 10-year management period. A professional forester can help landowners to understand what management activities may be required and to make a realistic decision about whether they are willing to commit to the management that enrollment requires.
- All tax programs carry with them legal obligations and significant penalties for declassification and/or change of land use under certain circumstances. It is in the landowner’s best interest to thoroughly weigh program options and understand responsibilities before classifying land. For help, contact DEM Service Foresters at the offices listed below.
- If a landowner prefers to allow trees to grow and die on their own, classification under Chapter 61B, rather than Chapter 61 or 61A, may be the best option.
- If there is any possibility that a landowner may want to sell a house lot in the future, build a garage or make modifications for personal use, that area probably should not be classified.
- These tax programs provide an important tool for communities to retain productive open space before it is developed, by giving towns a right of first refusal on declassified lands.



DEM REGIONAL OFFICES

Region 1: Barnstable, Bristol, Dukes, Nantucket, Plymouth
P.O. Box 66
South Carver, MA 02366
(508) 866-2580

Region 2: Essex, Middlesex, Norfolk
P.O. Box 829
Carlisle, MA 01741
(978) 369-3350

Region 3: Worcester
P.O. Box 155
Clinton, MA 01510
(978) 368-0126

Region 4: Franklin, Hampden, Hampshire
P.O. Box 484
Amherst, MA 01004
(413) 545-5993

Region 5: Berkshire
P.O. Box 1433
Pittsfield, MA 01202
(413) 442-8928

This bulletin was revised by Cynthia Wood, Service Forester for the Department of Environmental Management-Division of Forests & Parks and edited by Susan Campbell of the Massachusetts Forest Stewardship Program, in cooperation with UMass Extension at Amherst. It is based on the 1985 version written by Christina Petersen, then Forestry Specialist at the University of Massachusetts Cooperative Extension. Illustrations: Joe Smith

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