

Chapter 61B Open Space and Recreational Land

CURRENT USE TAX PROGRAM



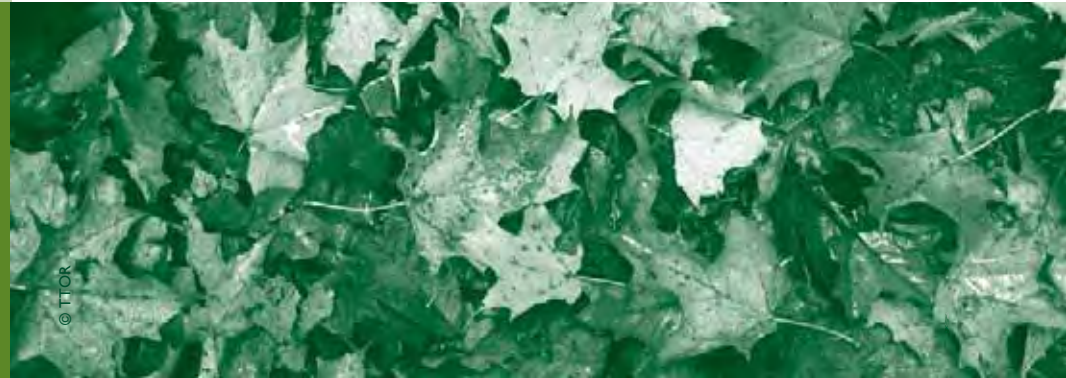
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The Chapter 61B program is one of three current use tax programs (Ch. 61–forestry, 61A–agriculture, 61B–open space and recreational land use) that give landowners an opportunity to reduce their property taxes in exchange for providing their community with many public benefits, such as clean water, wildlife habitat, rural character, and local food and wood products.

Landowners are allowed to switch between current use programs without penalty, although to save time and effort, it is advisable for landowners to choose the program that best fits their objectives and financial needs. Because there is no requirement for land enrolled in Ch. 61B to be actively managed or to have a forest management plan, the Ch. 61B program is a good fit for landowners who take a passive approach to their land. However, the option exists to harvest timber when guided by a management plan while enrolled in Ch. 61B (see “Timber Harvesting” on page 10).

As with any decision about land, the key to success is for landowners to carefully consider their options. This information about the Ch. 61B program is intended to help landowners make a decision that is right for them.





MINIMUM ACREAGE

The Ch. 61B program requires a minimum of 5 acres in an eligible land use. Some or all of a landowner's eligible land may be placed in the program. The landowner will need to exclude their residence, other structures, and any land used in connection with those buildings, typically the minimum building lot size.

TYPES OF ELIGIBLE LAND

In addition to meeting the minimum acreage requirement, land enrolled in the Ch. 61B program must fit within one of the following two land use categories:

1. OPEN SPACE

Land retained in a substantially natural, wild, or open condition; land retained in a landscaped or pasture condition; or managed forest under a state-approved forest management plan. Public access is not required for this category of land uses.

2. RECREATION

Land that is available for recreational purposes – so long as they do not significantly interfere with the environmental benefits of the land – which include hiking, camping, nature study and observation, boating, golfing, horseback riding, hunting, fishing, skiing, swimming, picnicking, private noncommercial flying, hang gliding, archery, and target shooting. Land under this category must be open either to the public or to members of a nonprofit organization, though landowners can charge a fee for this service.

ADMINISTRATION AND APPLICATION

Each town's board of assessors administers Ch. 61B. The deadline for applications is October 1. Tax reductions take effect the following fiscal year, which begins July 1. Landowners must re-apply to their town assessor's office annually by October 1 to remain in the program. There is no fee to enroll, re-enroll, or transfer programs. However, the landowner is responsible for the registry recording fees for lien or release forms.

Landowners can get applications at their town assessor's office and online at www.masswoods.net/images/stories/pdf/ch61b_signup_form.pdf.

TAX REDUCTION FOR CLASSIFIED LAND

Under the Ch. 61B program, land is assessed at its recreational use value, which cannot be more than 25% of the land's full assessed value. Residences, buildings, and other structures are not eligible under the Ch. 61B program and continue to be taxed at the full assessment.

Landowners can calculate the current use taxes on their land by visiting the Ch. 61B and Ch. 61/61A calculators at www.masswoods.net.



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COMPARISON OF PROPERTY TAXES UNDER CH. 59 (NO PROGRAM), CH. 61B, AND CH. 61/61A PROGRAMS

Below are examples of how Ch. 61B taxes are applied and compare to normal (Ch. 59) taxes and property taxes on forestland enrolled in the Ch. 61 or 61A current use programs.

Financial considerations not included in the table are the required costs of a Ch. 61 forest management plan developed every 10 years. Income from timber harvesting is also not included.



Table 1: EXAMPLES OF CURRENT USE TAXES

TOWN	ACRES	LAND ASSESSMENT	TAX RATE	FY	CH. 59	CH. 61B	CH. 61/61A*
Belchertown	35	\$ 201,600	\$ 13.96	2009	\$ 2,814	\$ 704	\$ 33
Buckland	88	\$ 202,800	\$ 13.86	2009	\$ 2,811	\$ 703	\$ 120
Chester	61	\$ 81,900	\$ 16.33	2009	\$ 1,337	\$ 334	\$ 98
Dudley	20	\$ 144,200	\$ 8.21	2009	\$ 1,184	\$ 296	\$ 11
Hamilton	12	\$ 805,100	\$ 15.23	2009	\$ 12,262	\$ 3,065	\$ 12
Hopkinton	7	\$ 242,500	\$ 15.03	2009	\$ 3,645	\$ 911	n/a
Lanesboro	64	\$ 244,500	\$ 14.56	2009	\$ 3,560	\$ 890	\$ 91
Lunenburg	10	\$ 168,200	\$ 13.04	2009	\$ 2,193	\$ 548	\$ 9
Paxton	20	\$ 311,000	\$ 13.26	2009	\$ 4,124	\$ 1,031	\$ 18
Templeton	14	\$ 126,800	\$ 10.20	2009	\$ 1,293	\$ 323	\$ 10
Whately	40	\$ 215,600	\$ 14.49	2009	\$ 3,124	\$ 781	\$ 57

* Based on the 2009 rates of average site productivity for timber

WITHDRAWAL PENALTIES

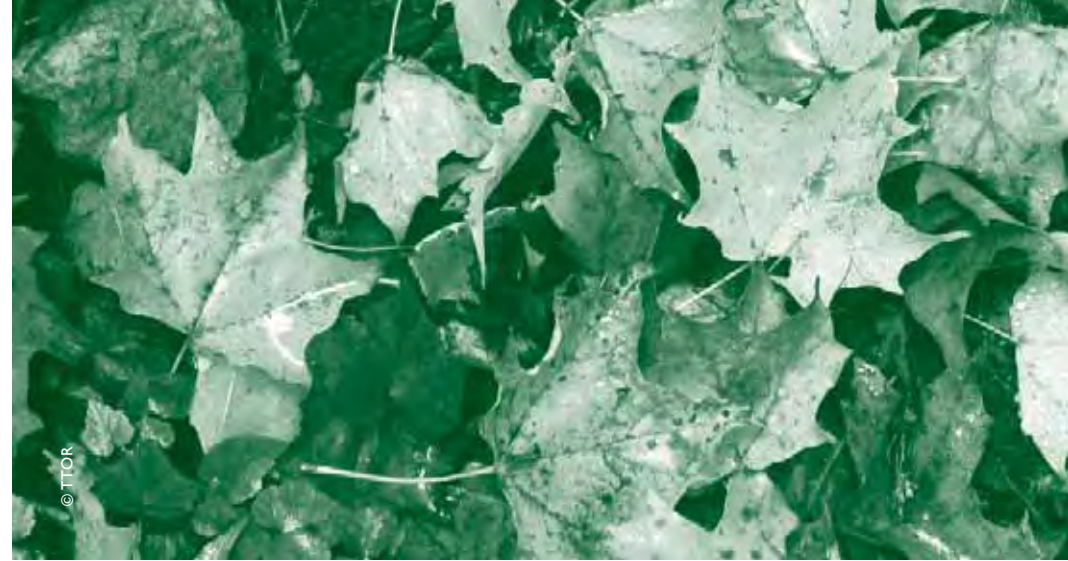
Landowners entering the Ch. 61B program agree to maintain their land in one of its eligible land uses as described above. It is possible to sell or transfer enrolled land without triggering any penalties as long as the land remains enrolled or eligible for enrollment in one of the three Ch. 61 programs. However, if a Ch. 61B property is removed from the program in order to change the land use or is sold with the intent of changing the land use within 10 years from its first classification, the landowner is responsible for either rollback taxes or a conveyance tax, whichever is greater.

ROLLBACK TAXES

When the use of enrolled land is changed to a noneligible use or sold for a change of use, this tax may apply. Rollback taxes are the difference between what the property tax would have been at the full assessment and the tax paid under Ch. 61B, plus 5% simple interest per year. Rollback taxes are calculated for 5 years or the length of enrollment in the program, whichever is shorter, regardless of how long property was in Ch. 61B.

CONVEYANCE TAXES

Conveyance taxes apply only if a property is sold for a change of use within the first 10 years of being enrolled in Ch. 61B. If property is sold within 10 years from the beginning of the fiscal year when it was first classified, this tax is due if it is greater than what the total rollback tax penalty would be. The conveyance tax is 10% of sale price if sold within 0–5 years of its first classification and 5% if sold within 6–10 years of the property's first classification.



After the first 10 years of enrollment, the conveyance tax no longer applies. Rollback taxes will always apply if the use of the property is changed within 5 years of withdrawal from the program. There are no rollback withdrawal penalties for removing a property from Ch. 61B if the landowner keeps the land in a use eligible for one of the current use programs for a period of 5 years after it is withdrawn from the program.

RIGHT OF FIRST REFUSAL

If any land under Ch. 61, 61A, or 61B is converted to a different use (either sold or retained in the same ownership), while enrolled or within one fiscal year of being removed from classification, the town has the option to match a bona fide offer and purchase the property at the full market value as determined by an independent appraiser. The landowner must hand deliver or send by certified mail to their town a detailed notice to sell or convert, including a purchase and sale agreement. Within 120 days of receiving the notice, the town may exercise its right of first refusal to buy the land or may transfer the right of first refusal to an eligible conservation organization. For more information on the right of first refusal process, including what must be included in the notice to sell or convert, landowners may visit www.masswoods.net.

The right of first refusal applies

- when a landowner intends to sell the land for a residential, commercial, or industrial use;
- when a landowner intends to change the use to residential, commercial, or industrial, but not to sell to a new owner; or
- if a landowner withdraws from the program and changes the use within 12 months or within one fiscal year of being removed from classification.

The town does not have the right of first refusal when

- a landowner chooses to switch to a different current use program;
- the change of use is for the construction of a residence for an immediate family member;
- a landowner chooses to withdraw from a program, but keeps the land in agricultural, horticultural, forestry, or recreational use for a period of one year from the time it was last taxed under the chapter; or
- a landowner sells the property to a new owner who agrees to maintain the land use, as verified through an affidavit.

TIMBER HARVESTING

Timber harvesting in Ch. 61B is optional.

Harvesting on properties in a managed forest condition is allowed under a state-approved forest management plan. As is the case with all harvests, landowners are required to also have an approved forest cutting plan. A state service forester working locally can provide landowners with more information on timber harvesting and forest management. State service foresters can be located by town at www.masswoods.net.

EXAMPLES:

Jim has owned 13 acres, which he has had in Ch. 61B for 4 years, when he decides to sell the property to the Smith family. The Smiths intend to keep it in its open space land use. They sign an affidavit promising to not convert the land. Will Jim have to pay penalty taxes for selling the land?

No, as long as the new owners sign the affidavit saying they will not convert the land, Jim will not have to pay anything. The affidavit transfers any penalties for changing the land's use to the new owners. The Ch. 61B lien will remain on the land. If they wish to keep it in Ch. 61B, they must file annually with the town assessor.

Jane has 40 acres in Ch. 61B. After 14 years in the program, she decides to build 10 houses on the property. Will Jane have to pay penalty taxes?

Because the land has been classified under Ch. 61B for over 10 years, it is not subject to a conveyance tax. Because she is converting the land use, however, Jane will have to pay rollback taxes. Her rollback taxes will be the difference in taxes between her Ch. 61B tax payment and the fair market assessment for each year within a period of 5 years, plus 5% interest per year. In addition to the rollback taxes, the town in which Jane owns the land will have the right of first refusal to purchase it at a fair market price as determined by an independent appraiser. The town may also transfer the right to purchase the land to a qualified conservation organization.

Bob and Pam have had 89 acres in Ch. 61B for 12 years. They have decided to remove their land from the program, but not to change its land use. Will Bob and Pam have to pay penalty tax?

Bob and Pam will not have to pay any penalty tax as long as they maintain the land use for a minimum of 5 years and the town will have no right of first refusal. Because the land has been in Ch. 61B for longer than 10 years and because the land is not being sold for or converted to a nonqualifying use, the conveyance tax does not apply.

ADDITIONAL RESOURCES

For specific questions about Ch. 61B in your town, contact your town assessor's office.

Visit www.masswoods.net to

- download a Ch. 61B application;
- calculate your property taxes under Ch. 61B;
- compare your property taxes under Ch. 61/61A;
- learn more about the right of first refusal;
- find a service forester working in your town.

ACKNOWLEDGEMENTS

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THE HIGHLAND COMMUNITIES INITIATIVE

A program of The Trustees of Reservations, the Highland Communities Initiative is a group of neighbors and volunteers working to enhance the quality of life and rural character of our communities. HCI connects people and provides them with the information and support they need to preserve the special natural and cultural landscapes of the Highlands region.

www.highlandcommunities.org

THE TRUSTEES OF RESERVATIONS

We are more than 100,000 people like you who want to protect the places we love, secure our landscapes and landmarks for future generations, or simply like getting outdoors.

Together with our neighbors, we protect the distinct character of our communities and inspire a commitment to special places across the Commonwealth. Our passion is to share with everyone the irreplaceable natural and cultural treasures that we care for, because of their value to our lives every day.

www.thetrustees.org



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