

**Farm and Open Space Tax Law**  
**OPEGA Summary for the Government Oversight Committee**  
**April 2013**

*Note: This summary primarily includes information on the Open Space provisions of the law. A brief synopsis highlighting the Farm provisions of the law is included.*

**Constitutional Power**

Section 8 Article IX of the Maine Constitution was amended in 1970 to grant the Legislature the power to allow certain types of real estate to be assessed for tax purposes based on their use, including farms and agricultural lands and open space lands which are used for recreation or the enjoyment of scenic natural beauty.

**Farm and Open Space Tax Law**

36 MRSA §§1101 – 1121, the current Farm and Open Space Tax Law, was enacted in 1975 after the previous 1971 law was repealed.

Purpose

According to the law, the purpose is “to encourage the preservation of farmland and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the State to conserve the State's natural resources and to provide for the welfare and happiness of the inhabitants of the State” and “to prevent the forced conversion of farmland and open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farmland and open space land.”

Application and Qualifying Land Uses

A landowner may apply for the open space program by filing with the municipal assessor, board of assessors, or the State Tax Assessor if the land is in an unorganized territory. Owners must submit a signed schedule identifying the land.

Statute defines Open Space as “any area of land, including state wildlife and management areas, sanctuaries and preserves designated as such in Title 12, the preservation or restriction of the use of which provides a public benefit in any of the following areas:

- A. Conserving scenic resources;
- B. Enhancing public recreation opportunities;
- C. Promoting game management; or
- D. Preserving wildlife or wildlife habitat.”

There is no minimum parcel size for the program. However, no person can apply for classification for more than an aggregate total of 15,000 acres under this subchapter.

### Valuation of Open Space Land

The municipal assessor is responsible for determining the valuation of the Open Space land based on the amount the parcel would command in the open market if it were to remain in the particular categories of Open Space land for which it qualifies. If the assessor is unable to determine the valuation based on this method, the assessor may value that land under the “alternative method,” which allows for reducing the ordinary assessed valuation of the land as follows:

- A. All open space land is eligible for a reduction of 20%.
- B. Permanently protected open space land, defined by law as land where building development is prohibited under a perpetual conservation easement or as an open space preserve owned and operated by a non-profit entity, is eligible for the reduction set in paragraph A and an additional 30% (or 50% total).
- C. Forever wild open space land, defined by law as land that is permanently protected and subject to restrictions or committed to uses by a nonprofit entity that ensures natural resources on that property will remain substantially unaltered, is eligible for the reduction set in paragraphs A and B and an additional 20% (or 70% total).
- D. Public access open space land, defined by law as an area of open space land under paragraph A, B, or C where public access is permitted, is eligible for the applicable reduction set in paragraph A, B or C and an additional 25% (or up to 95%).
- E. Managed forest open space land, defined by law as an area of open space land under paragraph A, B, or D that contains at least 10 acres of forested land and for which the owner has a forest management and harvest plan, is eligible for the reduction set in paragraphs A, B and D and an additional 10% (or up to 85%). The value of forested open space land may not be reduced to less than the value it would have under the Tree Growth Tax Law.

### Penalties for Withdrawal of Land from Program

Section 8 Article IX of the Maine Constitution imposes a minimum penalty for any change in use of the land resulting in higher valuation. This penalty is the tax which would have been imposed over the 5 years preceding that change of use had that real estate been assessed at its highest and best use, less all taxes paid on that real estate over the preceding 5 years, and interest. However, this is only the minimum. Currently Maine Revenue Services sets the penalty for land in the program 10 years or less at 30% of the difference between open space valuation and market value at the date of change in use. Lands in the program more than 10 years have lower penalty rates, and there is no penalty for the transfer of property between the Tree Growth and Open Space programs.

### Provisions Related to Farm Land

Under the law, Farm Land is defined as at least 5 contiguous acres on which farming or agricultural activities have contributed to a gross annual farming income of at least \$2,000 per year (or in one of the 2, or 3 of the 5 previous calendar years) from the sales value of agricultural products.

Farm land is valued by local assessors based on guidelines established by the Department of Agriculture, Conservation, and Forestry in coordination with the Maine Revenue Service, representatives of municipal assessors and farmers. Owners must submit a signed schedule identifying the land.

## Laws Enacted During the 125<sup>th</sup> Legislature

Two bills were passed during the 125<sup>th</sup> Legislature relating to the Open Space Tax Law as follows.

LD 507 - *An Act To More Closely Coordinate the Classification of Forested Farmland under the Farm and Open Space Tax Laws with the Maine Tree Growth Tax Law*

- Disallows the assessment of penalties when property enrolled under the Tree Growth Tax Law is transferred to farmland under the farm and open space tax program.

LD 1138 - *An Act To Amend the Maine Tree Growth Tax Law and the Open Space Tax Law (note, name was amended by committee from “An Act To Prevent Unnecessary Expulsion of Landowners from the Maine Tree Growth Tax Law Program” which OPEGA referred to in the Tree Growth Law summary)*

- Establishes a new category of open space called “managed forest open space” and creates associated reduced valuation provisions (see description above).
- Requires that, for property transferred from the Maine Tree Growth Tax Law program to the Open Space Tax Law program and subsequently withdrawn from all current use tax programs entirely, the tree growth withdrawal penalty rather than the open space withdrawal penalty applies for the first 10 years after transfer.

## Reports and Additional Information

### Reports to the Legislature

The Farm and Open Space Tax Law contains no requirement for any annual reports to the Legislature on program activities. However, 36 MRSA §1121 specifies that the Department of Agriculture, Conservation and Forestry and the Bureau of Revenue Services shall periodically review participation in the tax program, the taxes saved and fiscal impacts on municipalities due to the program, and its effectiveness in preserving farmland and open space. Statute further states the department and the bureau may report to the joint standing committee of the Legislature having jurisdiction over taxation matters on their findings.

The only recent report on this topic OPEGA could identify resulting from the work of any special committee or task force was the 2008 final report of the Commission to Study the Protection of Farms and Farmland. This report suggested, among many other farmland specific items, that the farm and open space tax law be amended to:

- “tighten eligibility to avoid inclusion of land that is not truly active farmland;
- review the treatment of woodland that is included in a parcel of farmland to reflect the intent of the law; and
- provide state reimbursement to municipalities for tax losses attributable to farmland that becomes eligible for current use taxation.”

### Additional Information

Maine Revenue Service Property Tax Bulletins #19 and #21 provide more detailed summaries of information on the Tree Growth and Open Space tax laws.