

Tree Growth Tax Law
OPEGA Summary for the Government Oversight Committee
March 8, 2013

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 timberlands and woodlands, and open space lands which are used for recreation or the enjoyment of scenic natural beauty.

Section 8 Article IX also imposes a minimum penalty for any change in use of the land resulting in higher valuation. (The 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.)

Maine Tree Growth Tax Law

36 MRSA §§571 - 584-A, enacted in 1971 to implement the constitutional amendment to Article IX.

Purpose

According to the law, the purpose is “taxing forest lands generally suitable for planting, culture and continuous growth of forest products on the basis of their potential for annual wood production.”

Administration

The Tree Growth Tax Law is administered by the municipal assessor, or in the case of land in the unorganized territory, the State Tax Assessor. The Maine Forest Service does not administer or enforce the law. Under the law, the assessor determines whether the land is eligible for valuation and taxation under the Tree Growth Law, and classifies the land as to forest type. The assessor or the assessor’s representative may enter and examine the forest lands.

Evidence of Compliance

- The law requires the landowner to have a forest management and harvest plan which outlines activities to regenerate, improve, and harvest a standing crop of timber.
- The landowner must file a sworn statement with the assessor that the forest management plan has been prepared. The landowner must also submit a signed schedule identifying the land, listing the number of acres of each forest type and their location, and representing that the land is used primarily for the growth of trees and to be harvested for commercial use.
- A copy of this plan must be made available to the assessor and the Forest Service to review upon request, but must be returned to the landowner upon completion of review. Plans are confidential and are not public records.
- The plan must be reviewed and certified by a licensed professional forester and updated every 10 years.

- The landowner must submit a statement from a licensed professional forester to the assessor every 10 years that the land is being managed in accordance with the plan.
- The assessor may request the assistance of the Maine Forest Service in determining whether the plan meets the definition required by law. This may include entering and examining the land to determine compliance.

Limitations

The law applies to any parcel with 10 acres or more of forest land.

Rulemaking

The law authorizes the State Tax Assessor to adopt rules for carrying out this law, and to establish the valuation per acre for each forest type for each area using wood production rates and values. The Maine Revenue Services annually publishes the Tree Growth Tax Law Valuation Schedule by economic region and forest type.

Municipal Reimbursement

The law allows for some State reimbursement to municipalities for lost tax.

Reports to Maine Forest Service

Municipalities are required to report annually to the Maine Forest Service on land taxed under this law.

Laws Enacted During the 125th Legislature

Multiple bills were passed during the 125th Legislature relating to the Tree Growth 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

Provides for municipalities to continue receiving reimbursement from the State when property enrolled under the Tree Growth Tax Law is transferred to the farm and open space tax program.

LD 1470 - An Act To Evaluate the Harvesting of Timber on Land Taxed under the Maine Tree Growth Tax Law

- Authorizes the director of the Maine Forest Service to conduct periodic random sampling of land enrolled under the Maine Tree Growth Tax Law and assess overall compliance with the law as well as differences in compliance based on property location.
- Allows the director, or the director's designee, to examine forest land and review the forest management and harvest plan, or an expired plan, upon request when the director is conducting a random sampling.
- Requires the director to provide a report that includes findings and recommendations to the joint standing committee of the Legislature having jurisdiction over taxation matters no later than March 1, 2014.

LD 1138 - An Act To Prevent Unnecessary Expulsion of Landowners from the Maine Tree Growth Tax Law Program

- Requires landowners seeking Tree Growth classification to exclude certain land if it contains a structure for which a minimum lot size is required under state law or by municipal ordinance. If the parcel contains a residential structure in a shoreland area, the owner must exclude that area of land and specified shoreland frontage.
- Requires a landowner to attest at the time of enrollment and at each update of the forest management and harvest plan that the primary use of the enrolled property is commercial timber harvesting or the property meets the definition of forest land in statute.
- Creates a multiple-step process for notification and imposing penalties when a landowner fails to comply with the requirement to update the forest management and harvest plan every 10 years, including withdrawal from the program.
- Requires that, for property transferred from the Maine Tree Growth Tax Law program to the open space tax 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 Tree Growth Law contains no requirement for MFS to report annually to the Legislature on program activities. However, OPEGA identified the following:

- “Tree Growth Tax Law Issues, Report to the Committee on Taxation of the 124th Maine Legislature, First Regular Session”
 - This 2009 report from a task force convened by MFS was required by a legislative resolve which directed a review of issues concerning the Maine Tree Growth Tax Law (Resolve 2007, Chapter 197, Sec. 3).
 - The report identified two key factors contributing to the perception of problems with the Tree Growth Tax Law: (1) The forest management activities (or lack thereof) of a very small percentage of landowners, largely family forest owners with holdings not exceeding 100 acres; and (2) a belief on the part of some assessors and municipal officers that certain types of enrollments, while legal, have the primary purpose of residential use and avoiding waterfront property taxes.
 - The report noted that some of these perceptions have arisen because some assessors were not aware of and/or did not exercise the full range of their statutory roles and responsibilities in administering the Tree Growth Tax Law. This may include rejecting an application for enrollment, or requiring the landowner to answer questions about the land. MFS reported they were working to correct these issues by providing technical assistance to municipalities, and recommended continued strong outreach efforts to address this issue, in addition to removing properties from the program that do not meet the law’s requirements.

- MFS found some validity to the criticisms levied at the program, but based on their findings above, noted they believed the problems identified with the program largely were limited to a very small percentage of enrolled landowners and acres that would be weeded out over time when 10 year recertifications occur. Assessors have the authority to address issues with new applications and recertifications. It is unclear to OPEGA whether anything can be done about parcels of concern in the interim (i.e. after the assessor has approved the plan and before recertification is due 10 years later) other than assessors checking whether the forest management plans are being followed. MFS noted that they can provide technical assistance to assessors such activities if requested by the municipality.
- The report includes an appendix with concerns expressed by the Maine Municipal Association (MMA) regarding nine specific parcels enrolled in the program which they believed met the requirements of the law, but did not fulfill its true intent. They noted these parcels were either not being harvested, some acreage was used for other purposes, or sustainable harvesting was not possible. MFS noted that those situations do not render a property ineligible for enrollment in Tree Growth. OPEGA's understanding is that LD 1138 may prevent some of these parcels from being recertified in the future, as it enacted requirements related to reducing the size of the eligible Tree Growth area for certain residential properties and shoreland areas.
- As described above, LD 1470 enacted during the 125th Legislature requires MFS to review Tree Growth compliance and report to the Taxation Committee by March 1, 2014. The report is to include:
 - findings from the periodic random sampling of land enrolled under the Maine Tree Growth Tax Law, including any findings related to any differences in compliance issues based on the location of parcels, such as coastal and waterfront properties as compared to other parcels;
 - a summary of data concerning violations and enforcement activities;
 - an assessment of the effectiveness of the Maine Tree Growth Tax Law in promoting the harvesting of fiber for commercial purposes and its impact on the fiber industry; and
 - recommendations to address any problems identified and to ensure that parcels enrolled under the Maine Tree Growth Tax Law meet the requirements of the law.

Reports to MFS

Municipalities are required to report annually to MFS on land taxed under this law.

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.