Review of Tree Growth Tax Law

A Report Prepared for the Joint Standing Committee on Taxation

Department of Administrative and Financial Services
Maine Revenue Services

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INTRODUCTION

By letter dated March 22, 2010, to Ryan Low, Commissioner of the Department of Administrative and Financial Services, the Co-Chairs of the Joint Standing Committee on Taxation, Senate Chair Joseph C. Perry and House Chair Thomas R. Watson, requested that Maine Revenue Services convene a working group to review the Tree Growth Tax Law and report to the Taxation Committee the findings and recommendations of the working group for addressing three specific issues:

1) Possible changes to the penalties that are imposed by Maine law when a parcel is withdrawn for reasons other than the actual change in use of the lands. Such reasons include, but are not limited to, failure to comply timely with refiling requirements relating to the update of management plans or the transfer of parcel ownership.
2) Possible changes to the law to address the issue of how much land should be excluded from classification when a portion of a tree growth parcel is used in support of development, including minimum lot size and shoreland exclusion from classification similar to existing Open Space restrictions.
3) Possible changes to the law that would better balance the need for providing assessors with sufficient information to assure parcels are properly enrolled in Tree Growth with the protection of the confidentiality of forest land plans.

A copy of the letter is attached to this report.

HISTORY

In 1972, the Tree Growth Tax Law ("TGTL" or "Tree Growth") was enacted to implement a "current use" assessment policy for forestland based upon its potential for annual wood production. (36 MRSA § 571 *et seq*.) The TGTL values forest land according to its average annual production value. These values are determined annually by the State Tax Assessor in accordance with statutory guidelines. "Forest land," for Tree Growth purposes, is land that is used primarily for the growth of trees to be harvested for commercial use, but does not include ledge, marsh, open swamp, bog, water and similar areas, which are unsuitable for growing forest products for commercial use even though these areas may exist within forest lands.

Upon the initial enactment of the TGTL, all forest land parcels exceeding 500 acres were automatically taxed under TGTL. Owners of forest land parcels between 10 acres and 500 acres could choose to apply to be taxed under TGTL, but the law required that all owners of a parcel must unanimously agree to enroll the parcel in Tree Growth Taxation. In 1981, the law was changed to eliminate the mandatory classification of parcels over 500 acres.

Since the inception of the Tree Growth Tax Law, there have been over 100 legislative documents (LDs) proposing changes relating to Tree Growth. Arguably the most

significant change occurred in 1989 when the law was amended to require all Tree Growth owners to have a forest management and harvest plan ("FMHP" or "plan") in place by December 31, 1999. This deadline was later extended to December 31, 2000. The only exception to this requirement was for classified land transferred to a new owner after September 30, 1989; land owners in that circumstance had one year from the date of the transfer to acquire a plan. After acquiring the initial plan, all landowners were required to comply with the plan and to submit to the local tax assessor every 10 years a statement from a licensed professional forester stating that the landowner was managing the parcel according to schedules in the plan. 36 MRSA §574-B.

Today there are over 23,000 parcels of forestland enrolled in Tree Growth statewide comprising approximately 11 million acres. Approximately 35% of all taxable acreage located in municipalities, and over 75% of all land located in the Unorganized Territory, is in Tree Growth.

CURRENT LAW

In order for a parcel of land to qualify for Tree Growth classification, a landowner must submit an application on or before April 1st of the first year for which classification is sought, the parcel must contain at least 10 forested acres, and a FMHP must have been prepared for the parcel and approved by a licensed professional forester. The landowner must comply with the plan and every ten years must submit a statement from a licensed professional forester that the landowner is managing the parcel according to schedules in the plan and that the plan has been updated for the next ten year period. Though a landowner is required to possess and follow an approved FMHP, the plan is considered proprietary and is not required to be filed with the municipal assessor. The assessor may request, and retain for a reasonable amount of time, a copy of the FMHP in order to verify that the plan exists or to determine whether the plan is appropriate and is being followed.

Once land has been classified in Tree Growth it remains in Tree Growth until one of the following occurs:

1. A portion of a classified parcel is sold, resulting in at least one parcel of less than 10 acres;
2. The landowner is found to be in non-compliance with the requirement to submit a FMHP as required by 36 MRSA §574-B;
3. The landowner elects to withdraw some or all of the acreage from Tree Growth, in which case a penalty will be assessed;
4. The assessor determines that the classified parcel no longer meets the requirements of classification pursuant to 36 MRSA §§ 573, 581; or
5. The landowner applies for classification of the parcel as farmland or open space classification and the application is accepted.

With the exception of transferring the parcel into farmland or open space or a withdrawal occasioned by a transfer through the exercise or threatened exercise of eminent domain, each of the foregoing events requires the withdrawal of the parcel or a portion of the

parcel from Tree Growth classification and a penalty must be imposed for the withdrawal. The amount of the penalty is the greater of:

- An amount equal to the taxes that would have been assessed on the first day of April for the 5 tax years, or any lesser number of tax years starting with the year in which the land was first classified, preceding the withdrawal had that land been assessed in each of those years at its just value on the date of withdrawal. That amount must be reduced by all taxes paid on that land over the preceding 5 years, or any lesser number of tax years starting with the year in which the land was first classified, and increased by interest at the prevailing municipal rate from the date or dates on which those amounts would have been payable; and
- If the land has been in Tree Growth for ten years or less as of the date of withdrawal, the penalty is equal to 30% of the amount, if any, by which the just value of the land on the date of withdrawal exceeds the 100% valuation of the land as valued in Tree Growth on the preceding April 1st. If the land has been in Tree Growth for more than 10 years prior to the date of withdrawal, the percentage by which the just value of the land on the date of withdrawal exceeds the 100% valuation of the land as valued in Tree Growth is obtained by subtracting 1% from 30% for each full year beyond 10 years that the land was enrolled in tree growth subject to valuation under this subchapter prior to the date of withdrawal, except that the minimum rate is 20%.

Initially, landowners were expected to remember to submit the statement from their forester before the end of the 10–year period. A landowner who failed to comply with this requirement would not be in compliance with the requirements of Tree Growth, and the parcel could be withdrawn and a penalty assessed. In 2007, the law was amended to require municipal assessors to send a 60-day notice to landowners when the landowner failed to file the required statements following the end of the expiration period, but the wording of the law did not allow the landowner to obtain the forester's statement after the expiration of the 10–year period.

Following a statutory amendment in 2010, an assessor must give at least 120 days notice to landowners of Tree Growth parcels, of the statutory requirements that need to be met and the date of the deadline for compliance, together with a statement that the consequences of withdrawal could include the assessment of substantial financial penalties against the landowner. The notice may not be sent more than 185 days prior to the expiration of the landowner's FMHP deadline (10 years from the date of the landowner's original FMHP) and must allow the landowner at least 120 days from notice to achieve compliance with the recertification requirements.

DISCUSSION

A working group was convened as a part of the 63rd Annual Maine Property Tax School held in Belfast on August 5, 2010. Forty-three people attended and participated in a discussion led by Tom Doak, Executive Director of Small Woodlot Owners of Maine; Geoff Herman, Director of State and Federal Relations at Maine Municipal Association;

and David Ledew, Director of Property Tax Division at Maine Revenue Services. The following is a summary of the discussion.

1) Possible changes to the penalties that are imposed by Maine law when a parcel is withdrawn for reasons other than the actual change in use of the lands. Such reasons would include, but are not limited to, failure to comply timely with refiling requirements relating to the update of management plans or the transfer of parcel ownership.

LD 1635 as introduced in the 124th Legislature, but not enacted, would have mandated a one-year suspension of a parcel from Tree Growth classification, rather than a permanent withdrawal, whenever the landowner failed to properly provide the assessor with evidence of compliance with the FMHP. This suspension would have required assessors to "suspend" the use of tree growth valuation on the parcel for one year and required the parcel to be assessed at just value. This increase in assessed value was seen as a less onerous alternative "administrative" penalty to be paid by the landowner in exchange for additional time to comply with the certification requirements. Though the idea generally received broad support at the public hearing, LD 1645 was opposed by municipal officials who viewed the proposal as overprotective of a class of taxpayers who they felt should be responsible enough to comply with the standards of eligibility for Tree Growth status, which in many cases represents a substantial tax benefit. Municipalities also characterized the bill as an administrative burden carrying a fiscal cost or "mandate" for municipal compliance. Municipal assessors would be required to assess at just value for one year and review the parcel the following year for compliance, with no guarantee that the landowner would comply at that time.

The working group reviewed this proposal and discussed other ways to provide for a penalty, such as a one-time penalty in a given amount (e.g. $100) or an amount per acre. The group also discussed whether an alternative administrative penalty is really needed in light of the new 120-day noticing requirement, which provides landowners with additional notice and additional time to comply with refiling requirements. The group did not reach a consensus on the need to change the current noticing and penalty requirements. Landowners, through the Small Woodlot Owners of Maine, would still like to have the protection of an administrative penalty to provide extra time and notice for preventing the premature assessment of the full tree growth withdrawal penalty. Assessors and the Maine Municipal Association believe that current law provides sufficient notice.

2) Possible changes to the law to address the issue of how much land should be excluded from classification when a portion of a tree growth parcel is used in support of development including minimum lot size and shoreland exclusion from classification similar to existing Open Space restrictions.

Public Law 1989, c.748 amended the Open Space Tax Law to require a landowner seeking classification for a parcel that contained one or more structures to exclude from Open Space classification an area at least equivalent in size to the state minimum lot size

as prescribed by Title 12, section 4807-A or by the zoning ordinances pertaining to the area in which the land is located, whichever is larger. If any of the buildings or improvements are located within shoreland areas as defined in Title 38, Chapter 3, Subchapter I, Article 2-B, the excluded parcel must include the minimum shoreland frontage required by the applicable minimum lot standards under the minimum guidelines established pursuant to Title 38, Chapter 3, Subchapter I, Article 2-B or by the zoning ordinance for the area in which the land is located, whichever is larger. At the time minimum lot standards for Open Space was enacted, there were only 427 parcels with 19,508 acres enrolled in Open Space in municipalities as opposed to 18,545 parcels with 3,635,358 acres enrolled in Tree Growth.

Currently, the TGTL does not set a minimum lot size to be excluded from classification when a parcel contains structures. Local practice among assessors varies from excluding the minimum lot size to excluding only the area closely associated with the structure where trees are not growing. This excluded area can be as little as several hundreds or thousands of square feet. Also, current Tree Growth law does not expressly require the exclusion of a minimum amount of shore frontage from enrollment. In some circumstances, the landowner has enrolled the waterfront forestland in Tree Growth even though a dwelling may be located in close proximity to the shore.

The group discussed the issues associated with the adoption of the Open Space language into Tree Growth law. Some of the issues discussed included:

- Because minimum lot sizes vary significantly from one municipality to another and can range from 20,000 sq. ft. (46/100s of an acre) to 5 acres, should a standard minimum lot size be enacted for Tree Growth purposes?
- Should there be a maximum lot size to be excluded from Tree Growth set by statute?
- Would the requirement be only for newly enrolled parcels or for all parcels?
- If the minimum lot size exclusion pertains to all parcels, when would parcels currently enrolled in Tree Growth be required to comply?
- If complying with the new requirements, would a parcel be required to be removed from Tree Growth if the resulting forestland contained less than 10 acres?

The group found merit in the idea of setting a minimum lot size and shore frontage to be excluded where structures exist in the shoreland area, but no consensus was reached as to how it might be implemented.

3) Possible changes to the law that would better balance the need for providing assessors with sufficient information to assure parcels are properly enrolled in Tree Growth with the protection of the confidentiality of forest land plans.

The concern on the part of the municipal government is that some people abuse the Tree Growth program by enrolling their relatively small shorefront residential properties into the program thereby obtaining a substantial property tax benefit, without actually doing

anything in the way of commercial timber harvesting. One element of that concern focuses on the content of the forest management plans, because these plans can be written in such a way that compliance can be achieved decade after decade even though the landowner conducts no forest management practices whatsoever (other than obtaining the plan).

The working group discussed the possibility of amending the Tree Growth law to allow a municipality to retain a copy of a FMHP for any parcel of less than 100 acres. Though some of the group members agreed this would be useful in the administration of the law, most in the group felt the current law allows municipal assessors sufficient ability to obtain a copy of any FMHP for any parcel in that municipality.

CONCLUSION

While the discussions contained in this report failed to result in any recommendations for the Committee, the views expressed by the interested parties at the meeting of the working group on August 5th and reflected in this report should be useful in any future discussions of amendments concerning these areas of the Tree Growth Tax Law.