

# MAINE STATE LEGISLATURE

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REPORT ON

Farm and Open Space Tax Law

A REPORT PREPARED FOR THE  
JOINT STANDING COMMITTEE ON TAXATION  
AND THE JOINT STANDING COMMITTEE ON AGRICULTURE,  
CONSERVATION AND FORESTRY  
Pursuant to 2011 Resolves c. 86

**Department of Administrative and Financial Services  
Maine Revenue Services**

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January, 2012

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## **NARRATIVE**

### **A. INTRODUCTION**

Pursuant to 2011 Resolves, Chapter 86, the Department of Administrative and Financial Services, Bureau of Revenue Services (Bureau) was directed to work with guidance from the Department of Agriculture, Food and Rural Resources to evaluate land used directly and indirectly for or in support of agricultural activities associated with a parcel enrolled in the farm and open space tax law pursuant to the Maine Revised Statutes, Title 36, chapter 105, subchapter 10.

Pursuant to the Resolve, a working group was formed to:

- 1 Evaluate land within the footprint of agriculture-related buildings, including greenhouses, dairy barns and buildings used to feed or shelter livestock;
- 2 Review the method for the valuation of such lands under a current use valuation methodology, and
- 3 Consider the thresholds for size (acreage) and income that allow farmland to be assessed at current use.

A complete list of working group participants is found at the end of this report.

The Bureau is required to report its finding by December 31, 2011 to the Joint Standing Committee on Taxation and the Joint Standing Committee on Agriculture, Conservation and Forestry.

### **B. HISTORY**

Public Law 1971 c. 548 An ACT Providing for the Taxation and Preservation of Farm and Open Space Land was enacted to implement a “current use” assessment policy for farmland and open space land. The purpose statement for the Farm and Open Space Tax Law remains unchanged from its original enactment and reads as follows:

It is declared that it is in the public interest 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, that it is in the public interest 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, and that the necessity in the public interest of the enactment of this subchapter is a matter of legislative determination (36 M.R.S.A. §1101).

Throughout the history of the Farm and Open Space Tax Law there have been numerous statutory changes enacted with respect to acreage, income, withdrawal penalties, valuation issues and definitions. For purposes of this study, only the changes to the law regarding minimum acreage and income requirements are summarized.

The initial 1971 statutory language defined farmland as follows:

- 1. Farmland.** "Farmland" means any tract or tracts of land including woodland and wasteland constituting a farm unit of at least 10 contiguous acres on which farming activities produce a gross income of at least \$1000 per year for 3 of the 5 calendar years preceding the date of application for classification.

In 1975, "gross income" was expanded to include the value of goods consumed by a farm household and the income requirement was changed to \$1,000 for 10 acres and \$100 per acre for each acre over 10 for 3 of the 5 calendar years preceding the date of application for classification, with the total income required not to exceed \$2,000. In 1987, the Legislature reduced the minimum number of acres required to be enrolled in farmland, amended the size and income requirements for farmland classification to five contiguous acres and changed the gross income requirement to "at least \$2,000 per year." In 1999, the law was amended to clarify that lessee rent or income from the farmland could be used to satisfy the income requirement of the parcel.

### **C. CURRENT LAW**

In order for a parcel of land to qualify for Farmland classification, a landowner must submit an application on or before April 1<sup>st</sup> of the first year for which classification is sought. The parcel must contain at least 5 forested acres. Farming or agricultural activities must contribute to a gross annual farming income of at least \$2,000 per year from the sales value of agricultural products as defined in Title 7, section 152, subsection 2 in one of the two, or three of the five, calendar years preceding the date of application for classification. The farming or agricultural activity, and the income derived from that activity, may be achieved by either the owner or a lessee of the land.

Once land has been classified as Farmland, it remains in the Farmland classification until one of the following occurs:

1. A portion of a classified parcel is sold, resulting in at least one parcel of less than five acres;
2. The landowner is found to be in non-compliance with the income requirement

3. The landowner elects to withdraw some or all of the acreage from Farmland, in which case a penalty will be assessed;
4. The landowner applies for classification of the parcel as Tree Growth or Open Space classification and the application is accepted.

With the exception of transferring the parcel into Tree Growth 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 Farmland classification and a penalty must be imposed for the withdrawal. The amount of the penalty is the recapture of the taxes that would have been paid on the land for the past five years if it had not been classified under this subchapter, less all taxes that were actually paid during those years and interest at the rate set by the town during those years on delinquent taxes. An owner of farmland that has been classified under this subchapter for five full years or more may pay any penalty owed under this paragraph in up to five equal annual installments.

The valuation of classified farmland is to be determined by the local assessor. Farmland values are to be guided by the Department of Agriculture, Food and Rural Resources, which is charged by statute to biennially prepare guidelines to assist assessors in the valuation of farmland. See 36 M.R.S.A. §1119.

Of the four current use programs (Tree Growth, Farmland, Open Space, and Working Waterfront), the Farmland program has the second most number of parcels and acres enrolled. For 2010, over 4,700 farmland classified parcels were enrolled, encompassing approximately 106,000 cropland acres and 145,000 forested acres.

#### **D. DISCUSSION**

The working group met on three separate occasions to discuss property tax treatment for various farmland and farm related issues. Most of the group's discussions centered on the valuation of farm-related buildings and the land associated with these buildings. To better facilitate the discussion, the group members were asked to provide specific instances where land enrolled in the Farmland program had been removed and a penalty assessed for its removal because a farm-related structure had been or was going to be built on classified land or where the valuation of land under farm-related structures had been an issue. No such instances were identified. Further, few other problems with the program as it is currently being implemented were identified.

Specific examples aside, the group engaged in a meaningful discussion of the main issues of the Resolve. The questions raised included (1) should land within the footprint of farm-related buildings (including greenhouses, dairy barns, and buildings used to feed or shelter livestock) be valued as farmland and (2) what should be the valuation of such lands under a current use valuation methodology. The concerns of the farmers and farming community were well-expressed and weighed with the concerns of the assessing community to act within the constitutional and statutory requirements of the law for just valuation.

As the group discussed various proposals to statutorily address the value of land under structures and the variation of assessing practices throughout the State, it was quickly noted that what might seem a good solution and a reduction in value for one farmer might negatively impact another. The group was also reminded that taxpayers enrolled in, or considering enrollment in, current use programs are resistant to change as they desire stability, consistency and predictability.

The discussion turned to a pragmatic interpretation of the current law versus a strict interpretation. The construction of farm-related or farm dependant structures on classified land might prompt some assessors to subsequently remove the footprint of these structures from current use and apply the appropriate penalty. In some cases, farmers are actually required by law to construct animal shelters or animal waste facilities on classified land. As the construction of these structures does not conflict with the spirit or intent of the Farm Tax Law, the structures add little or no value to the land, and the penalties associated with this sort of “removal” are de minimis. A savvy assessor would typically continue to assess the land for its agricultural value and assess the buildings in accordance with local schedules. This common sense approach would constitute good public policy.

Ultimately it was the decision of the group to not pursue statutory language as way to address the farmland buildings issue. The decision of the study group was to propose that the Bureau develop a guide for assessors for the valuation of land and buildings associated with farms and farm-related properties.

The \$2,000 gross income requirement appears to be adequately serving its purpose and the consensus of the group was that the recent law change excluding income from the harvesting of wood products served to strengthen this provision. Discussions pointed out that the inclusion of personal consumption toward achieving the \$2,000 was perhaps overly generous and at times made it difficult to differentiate between actual farmers and recreational gardeners.

## **E. Recommendations**

1. With respect to the valuation of land within the footprint of farm-related buildings (including greenhouses, dairy barns and buildings used to feed or shelter livestock), the Working Group recommends that the Bureau continue to provide guidance, both verbally and in the form of a guidance document, to municipalities and assessors with regards to the Farmland Tax Law.
2. With respect to minimum number of acres required to enroll in the Farmland Tax Law, modern agricultural practices suggest that raising the five acre threshold might have unintended consequences by ignoring recent trends toward smaller parcels with high-yield food production. The Working Group therefore recommends that the five-acre threshold remain unchanged.
3. The Working Group recommends that the \$2,000 gross income requirement, though it is admittedly easily attainable, should remain largely intact, with only a modest change to improve the accountability of that standard. “Gross income as used in this subsection may include, in part, the value of commodities produced for consumption by the farm household, provided at

least some of those commodities are verifiably exchanged for income, goods or services of equal value.”

### **Working Group Participants**

Caldwell Jackson	Deputy Commissioner Department of Agriculture
Mike Marchetti	Dir. of AG Resource Development, Department of Agriculture
Geoff Herman	Maine Municipal Association
Jon Olson	Maine Farm Bureau
Galen Larrabee	Selectman and Dairy Farmer, Town of Knox
David Sawyer	Assessor, Town of Windham
Stanley Millay	Assessor
Sandy George	Farmer, North Ridge Farms
David Ledew	Maine Revenue Services, Property Tax Division
Jeff Kendall	Maine Revenue Services, Property Tax Division



## **Resolve, Directing the Department of Administrative and Financial Services, Bureau of Revenue Services To Review the Farm and Open Space Tax Law**

**Sec. 1 Review. Resolved:** That the Department of Administrative and Financial Services, Bureau of Revenue Services, referred to in this resolve as "the bureau," shall work with guidance from the Department of Agriculture, Food and Rural Resources to evaluate:

- 1) land used directly and indirectly for or in support of agricultural activities associated with a parcel enrolled in the farm and open space tax law pursuant to the Maine Revised Statutes, Title 36, chapter 105, subchapter 10.
- 2) The bureau shall invite representatives from a statewide farming association and a statewide association representing municipalities to participate in the review.
- 3) The bureau's review must consider:
  - a. land within the footprint of agriculture-related buildings, including greenhouses, dairy barns and buildings used to feed or shelter livestock.
  - b. The bureau's review must consider the method for the valuation of such lands under a current use valuation methodology
  - c. and an assessment of the thresholds for
    - i. acreage and
    - ii. income that allow farmland to be assessed at current use; and be it further

**Sec. 2 Report. Resolved:** That, no later than December 31, 2011, the bureau shall submit a report that includes the findings of the review under section 1 and provides recommendations, including suggested legislation to implement the recommendations, to the Joint Standing Committee on Taxation and the Joint Standing Committee on Agriculture, Conservation and Forestry; and be it further

**Sec. 3 Authority to submit legislation. Resolved:** That the Joint Standing Committee on Taxation may submit a bill pertaining to recommendations pursuant to section 2 to the Second Regular Session of the 125th Legislature.