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DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

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Honorable John L. Martin
Speaker of the House
House of Representatives
State House
Augusta, Maine 04333

Dear Mr. Speaker:

This responds to your request for advice on certain questions regarding the relationship of the constitutional amendment proposed by L.D. 2209 and the Tree Growth Tax Law, 36 M.R.S.A. § 571, et seq. Specifically, your questions were:

1. Whether the constitutional amendment proposed by L.D. 2209 will, if adopted, affect the determinations of the State Tax Assessor under the Tree Growth Tax Law?

2. Whether the shifting of the property tax base of municipalities occasioned by implementation of the Tree Growth Tax Law would be prohibited by L.D. 2209?

3. Whether the Tree Growth Tax Law is a program or service subject to subsection 4 of the constitutional amendment proposed by L.D. 2209.

We answer your first question in the negative. We answer your second question in the negative with a qualification. We are unable to answer the third question based on information and interpretations of L.D. 2209 currently available.

DISCUSSION:

The constitutional amendments proposed in L.D. 2209 are intended to limit the annual appropriations of units of government. The limit does not prescribe the methods by which government revenues, within the appropriation limits, are to be collected. (Subsection 2 of the proposed Article 1, § 22, does, of course, specify certain procedures for the disposition of any surplus of revenues over appropriation limits, and tax rates may be affected in such disposition.)

The Tree Growth Tax Law is a method for valuation of certain forest land in the State. To the extent that forest land property valuations, within a municipality, are reduced by application of the Tree Growth valuation method, and spending needs of the municipality remain constant, the burden of taxes is shifted from Tree Growth property to other property. However, there is nothing in the constitutional amendment which would affect or limit the shifting of such burden within any particular unit of government. Nor would any limitations in the proposed constitutional amendment affect the calculation of the State Tax Assessor relating to Tree Growth Tax practices. Should the Tree Growth Tax law be changed to increase tree growth tax land valuation, any appropriation limits would, of course, limit the capacity of a municipality to increase appropriations to take advantage of the new valuation levels.

As to the third question you posed, we are not in a position to advise whether the Tree Growth Tax would be a program or service within the meaning of the proposed subsection 4 of Article I, Section 2. Without the benefit of a full legislative history including debate and consideration of any amendments which may be proposed regarding the constitutional amendment, we would not be in a position to render an interpretation of the meaning of these words based solely on the text of the statute.

We can see arguments both that the tree growth tax is a program and that it is not a program. Clearly the Tree Growth Tax like other State programs which result in direct or indirect subsidies, is an effort by the Legislature to provide a particular economic incentive for particular activity. As such, it may be considered a program. On the other hand, the Tree Growth Tax is not a traditional subsidy program or other activity which requires direct expenditures by units of government (although it may cause losses of revenue). If the term program is construed narrowly and limited only to programs which directly spend money as opposed to other legislation which does have financial implications, it may be that the Tree Growth Tax is not a program within the meaning of section 4. We cannot, however, speculate, based on the current information available how a court might construe the term "programs or services" under subsection 4.

The legislature might wish to address any ambiguity in the term "programs or services" by way of amendment.

I hope this information is helpful.

Sincerely,

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Deputy Attorney General

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