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MAINE'S TREE GROWTH TAX LAW:
PROBLEMS AND OPTIONS FOR
CHANGE

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Office of Legislative Assistants
Augusta, Maine
December, 1978

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I. Introduction

During the 2nd Regular Session of the 108th Maine Legislature testimony in public hearings before the Joint Select Committee on Taxation reflected dissatisfaction with the Tree Growth Tax Law (TGTL). In partial response to this criticism two actions were taken by the Taxation Committee. First, it approved a bill, subsequently enacted, providing -- as an alternative to existing reimbursement provisions -- for municipal reimbursement of 11¢ per acre for land under the Tree Growth Tax Law. Second, it recommended that a study of the Tree Growth Tax Law be undertaken. Although the Legislature did not adopt this recommendation the Legislative Council requested the Joint Committee on Taxation to proceed with an investigation. A copy of the study order is appended.

II. The Tree Growth Tax Law

A. Constitutional background

Until 1971, the Constitution and statutes required that all property be valued for property tax purposes in accordance with "just value" which had been interpreted by the courts to mean the equivalent of "fair market value"; that is, the amount agreed upon between an informed person willing but not forced to buy and an informed person willing but not forced to sell.

The "fair market value" of land is based upon the so-called "highest and best use" of land. ("Highest and best use," it should be noted, refers to the most desirable use from an economic point of view, and not necessarily from a social point of view.)

Thus, the current use to which an owner may be putting land is not necessarily the determining factor when considering "fair market" value.

In 1971 an amendment to the Maine Constitution became effective which permits current use rather than fair market valuation (for property tax purposes) of forest, farm and open space lands. This provision was added to the Constitution primarily in response to fear that land development and development pressure would force landowners to sell open space, and production timber and farm lands.

B. The Tree Growth Tax Law

The TGTL is an attempt to implement the Constitutional Amendment by establishing current use values for timberland. However, instead of taking market value prices of timberland as the basis of assessments, the approach taken in the Farm and Open Space Land Law, the TGTL establishes a sophisticated mechanism for estimating the value of the annual wood production of land, and from this, the current value of the land itself. It uses the income approach to just value to establish assessments. This method established a 1978 average value of timberland at \$38/acre. This average value is far less than what timberland owners are currently paying for land for timber production. In an analysis of 141 timberland transactions, the Bureau of Taxation estimated the average price of timberland between 1975 and 1977 was \$129/acre. A detailed description of TGTL is attached.

III. Problems with the TGTL

In testimony at public hearings critics identified two major failings of the Tree Growth Tax Law. First, land owners with no

interest in using their land for timber growth purposes, were, nonetheless, seeking merely to reduce their tax burden by having the land classified as Tree Growth land. Second, in all communities with Tree Growth land other property owners were being forced to bear more than a fair share of the local tax commitment. This problem was particularly acute in municipalities with relatively sizeable proportions of land under Tree Growth. It is important to keep these two problems separate, because, as will be seen, solutions to one are not solutions to the other.

The first problem, sometimes referred to as the equity problem, is best illustrated by an example taken from the coastal community of Freeport, Maine. A shoreland parcel of 5 acres and a residence in that town has a fair market value of \$100,000 and an assessed value of \$80,000. This parcel of land does not qualify under Tree Growth's minimum lot size of 10 acres. A neighboring parcel of shoreland of 15 acres and a residence with an identical fair market value, classified under Tree Growth, has an assessment of only \$40,000. Although this second parcel has an identical market value its taxes are one-half those of the first parcel. The owner of this second lot has no intention of conducting a commercial timber operation on this land and, indeed, it would make no economic sense to do so. As the local tax assessor remarked, it is difficult to justify this difference in tax treatment to the first land owner.

The tax shift, the second problem, resulting from the TGTL is experienced most dramatically in communities that have recently undergone revaluation (insuring that assessments are realistic)

and that have a large proportion of their taxable property classified under Tree Growth. For example, approximately 85%, at market, of Webster Plantation's municipal valuation is under the TGTL. If the almost 20,000 acres of Tree Growth timberland located at that plantation were valued at highest and best use the tax bills of residential owners would be reduced by 50%. On the other hand, assessment of Tree Growth classified lands at market value would result in a 22% increase in timberland owners taxes.

At the other end of the spectrum residents of the town of Freeport, with only 1.6% of property at full value under TGTL, experience only around 1.5% increase in taxes as a result of the tax shift. However, owners of land now under Tree Growth would in the aggregate experience a more than 9 fold increase in taxes if their Tree Growth classified land was assessed at highest and best use.

An example of a town between these two extremes would be Brownsville whose non-Tree Growth property owners are experiencing a nearly 19% tax increase as the result of the TGTL. At highest and best use timberland (around 18,700 acres) is 20% of Brownsville's total valuation. Were ad valorem assessments to replace TGTL assessment of the timberlands, forest owners would experience a 234% rise in taxes.

The Bureau of Taxation has estimated that the total shift under the TGTL (the difference between taxes paid under TGTL assessments and those that would be paid if determined timberland assessments) for 1978 amounted to between \$1,000,000 and \$3,000,000. 1978 total appropriations for TGTL reimbursement amounted to only \$578,000.

IV. Legislative options for curing TGTL problems

A. Options for remedying the equity problems

Options for solving the equity problems created by persons classifying land merely for tax shelter purposes include:

1. modifying the penalty provision;
2. redefining timberland to;
 - a. exclude shoreland as defined in section 4811 and 4811-A of Title 12 (Mandatory Shoreland Zoning and Subdivision Control Act), and/or
 - b. tighten-up the present definition by requiring proof of intent to use land for commercial timberland; and/or
3. increasing minimum lot requirements above the present 10 acre level.

Note, that none of these measures would solve the tax shift problem and, indeed, all are only partial solutions to the equity problem.

Increase Penalties

It is not clear that increasing the penalties for withdrawal of classified land would inhibit voluntary classification. The penalty of 30% of the difference between TGTL assessment and market value is already sizeable. Some local assessors believe it is sufficiently strong to dissuade persons unless they do not intend to develop the land. Indeed, the Forest Products Council (summary of the Position of the MFPC... is attached) takes the position that the penalties are already too stringent. They believe and propose the following:

"The Committee believes that the withdrawal penalties of 36 MRSA §581 which increase in severity over time should be reversed so that the most severe penalties occur earlier.

The Committee recommends that the (b) penalty of said §581 be amended to read as follows:

(b) If the use of the classified land is changed to another use within ten years from its date of classification, or from the date on which interrupted qualifying use began, the land becomes subject to a tax equal to 10 percent of the sales price if sold within the first year of ownership, down to 1 percent if sold in the tenth year.

The 2nd sentence in the 1st paragraph of §581 should be changed to read as follows:

The owner of land subject to this subchapter may at any time withdraw any parcel, or portion thereof, from taxation under the subchapter."

Redefine Timberland More
Restrictively

The simple measure of excluding shoreland as defined by the shoreland zoning laws* would probably go far toward solving the equity problem that towns such as Freeport encounter. A draft bill is included in the Appendix.

This measure would probably result in a substantial amount of high value land being declassified. This approach also recommends itself because there are substantial restrictions on timber cutting in shoreland zones which render their use for commercial timber growth economically unreasonable.

Proposals to more restrictivity, define forestland (owners would have to be in the forest products business or file a management plan or hire a forester to certify that the land is being managed for commercial timber growth) would probably not have the

* 12 MRSA §4811 & §3811-A provide in pertinent part that "Shoreland areas ...[are] land within 250 feet of the normal high water mark of any pond, river or salt water body." Ponds must be at least 10 acres and rivers must provide watersheds of at least 25 square miles to their mouth.

desired effect. Thus, the approach recommended by the Forest Products Council (see draft bill in the Appendix), could be gotten around at very little expense to the tax shelter seeking landowner.

Increase Lot Size Requirements

Increasing lot size requirements -- presently TGTL does not apply to parcels under 10 acres -- would also eliminate the Freeport-type situations, although at the expense of persons holding small fire-woodlots. A draft bill increasing minimum lot size to 50 acres is included in the Appendix.

B. Options for remedying the tax shift

Although it may be argued that the tax shifts resulting from the TGTL need not be remedied (e.g., farm and open space land special tax treatments provide for no reimbursement) the Legislature that passed the TGTL and subsequent legislatures were sufficiently concerned about the tax shift to provide remedies.

Reimbursements

The remedies provided by the Legislature so far have consisted of two different reimbursement formulas. Appropriating moneys from the state's general fund, revenues principally derived from the state sales and income taxes, each formula aims at, to a limited extent, directly reimbursing municipalities for revenues from taxes on timber land lost as a result of the lower assessments under TGTL. No attempt has been made to legislate full replacement of lost revenues, in part, because there has been no official estimates of total actual losses. With the Taxation Bureau's present estimates full reimbursement now becomes a more

practical option.

However, full reimbursement is a possible option that has the net effect of having the State's taxpayers generally subsidize special treatment for timber land owners. For this reason, general fund supported reimbursement has its critics. An alternative would be reimbursement funded from a tax imposed on tree growers at harvest, such as a yield or severance tax or a surcharge on the taxable gain from timber sales. The argument that such a tax would be no better than the old ad valorem property tax is not correct. A principal defect of the pre-Tree Growth property tax was that it taxed heavily between harvests when there was no income from the land to pay the tax. The yield tax does not have this defect, it being in the nature of a sales or excise tax.

In addition to the problem of the proper sources of funds, a reimbursement plan also must address how the loss of funds or the tax shift is to be measured. There are a number of approaches. The original TGTL formula, now one of two measures, reimbursed municipalities for 90% of the difference between the pre-1972 property tax collected on classified lands and the tax collected after TGTL became effective. This measure of lost revenue has become less and less meaningful as state quality standards and minimum ratios have altered assessment practices bringing local assessments up to the constitutional standards of equity and uniformity. The present 11¢ per acre formula is concededly quite arbitrary and was adopted as a stop-gap.

Probably the most desirable formula would be one that pays the municipalities the difference between the tax they would have collected on classified lands under the ad valorem approach and the tax they are receiving under TGTL. However, administrative policing

of the municipality's estimate of ad valorem values has been cited as a problem with this approach. In response, it is not clear why the Bureau of Taxation could not use its present sales ratio studies to audit these estimates of value just as it presently reviews all municipal valuations.

Modification of the Valuation Method by the TGTL

Repeal TGTL

Another solution to this tax shift problem would be to repeal the TGTL and revert to the highest and best use approach to valuation. The reasons for not traveling this path are summarized by the Maine Forestry Products Council as follows:

"A. The forestlands are the primary natural resource of this State and provide the single greatest opportunity for Maine people to enhance their economic well being.

The resource, although renewable, represents a long term investment requiring between 50 and 100 years to bring most trees to full maturity. This long growing cycle requires the stability provided by a tax related to maintaining and increasing the productive capacity of the land.

B. The Tree Growth Tax Law represents a quid pro quo in which forestland owners are restricted in the use to which they may put their forestland in return to current use tax treatment which recognizes the other opportunities for profit which are foregone by the restrictive use.

C. The Tree Growth Tax Law is the only property tax that is structured to provide incentives for better than average growth. This is a desirable public policy objective, particularly when other forces such as land withdrawals and insect infestation are combining to erode substantially the resource base and future productive capacity of Maine forestland.

D. The Tree Growth Tax Law is simple in its theoretical conception (a tax on growth) and inexpensive to administer (one state employee).

E. The Tree Growth Tax Law provides government with a regular and even cash flow that is not susceptible to drastic reduction on any given parcel after major developments on the land such as reduction in the inventory by harvest, fire, insect or disease."

Technical Modification of TGTL

A partial solution to the tax shift dilemma might be to undertake technical modifications of the existing TGTL income capitalization approach. However, it is not clear how any of these suggested technical modification could really cure the underlying problem. The capitalization rate, presently 8 1/2% might be adjusted, as might the discount factor, now 20%, or the method of determining stumpage values. One suggestion on stumpage values has been to look to the Federal tax returns of integrated forest products producers to determine stumpage values claimed by them. Another approach suggested is to adopt a multi-county regional approach to stumpage values.

Replace Income Capitalization With Average Sales

Another option, yielding a partial solution, would be to substitute a current use sales valuation for the present income capitalization approach of the TGTL. The current use sales values of forestland average \$106 per acre (the weighted average value is \$126); the average value per acre under the present TGTL is approximately \$40. This option would solve the tax shifts problem completely for those areas of the State, such as Webster Plantation, where the highest and best use values are identical to current use values; it would not remedy the tax shifts in Freeport and other organized areas where residential or recreational uses are the highest and best use.

This option is recommended by the Maine Municipal Association (see attached "Policy Statement Recommendation," November 13, 1978). The argument in its favor is that it is contrary to the intent be-

hind the provision of the Maine Constitution permitting current use valuation, to permit setting a current use value substantially lower than what willing buyers and sellers are valuing property. The Constitution merely permitted assessments to be set at current use rather than fair market or highest and best use and not at a value one-third of market current use.

Critics of this approach in addition to citing technical problems revolving around establishing average sales values (which would probably be no greater than the technical problems of the present law) argue the following:

"A. Present low return on investment. Ownership of forestland held for the production of forest products is a relatively high risk investment yielding a very low return. The simple fact of the matter is that forestland cannot be burdened with additional tax and remain a viable economic enterprise in and of itself.

B. Burden on smaller landowners. The arguments that have been raised against the Tree Growth Tax Law pertain to difficulties encountered in the organized towns. These are the very towns in which most of Maine's 100,000 land ownerships exist. Most of these ownerships are relatively small and are the very ones that will be most adversely affected by any increase in forestland taxes. Any such tax increase would tend to erode this diversified land ownership pattern which is in best interests of Maine people to maintain.

C. In return for property taxes paid on forestland there are little or no services rendered which benefit the forestland ownership.

D. Higher taxes on forestland will tend to reduce the incentive for better forest management and will tend to reduce the timber inventory."

V. Appendix

Tree Growth Tax Law Study Order

Description of the T.G.T.L.

Summary of the Position of the M.F.P.C.

Draft of Bill Excluding Shoreland Areas From the T.G.T.L.

Draft of Bill to More Restrictively Define Forest Land

Draft of Bill Increasing Minimum Lot Size from Ten to Fifty Acres

Policy Statement Recommendation of the M.M.A., November 13, 1978

TAXATION



STATE OF MAINE
LEGISLATIVE COUNCIL
STATE HOUSE
AUGUSTA, MAINE 04333

May 10, 1978

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TO: Committee Chairman

FROM: Rep. John L. Martin, *Chairman*
Legislative Council

SUBJECT: Study Orders

The Legislative Council has authorized your committee to study the attached Study Order. A budget of \$1,000.⁰⁰ has been set up for this purpose.

Committee budgets will only be charged for the \$25 per diem of members participating in the study, and for any committee clerk salaries paid. Committee chairmen shall have the full authority within the budget amount to authorize expenditures, select participating members when sub-committees are used, and generally determine the method of study.

In order to accomplish the study within the budget figure, the use of Legislative staff should be utilized to the fullest extent for research, and only sub-committees meet when necessary. You will be notified shortly on the Legislative staff assigned to the study.

In no case may the budget amount be exceeded without prior approval of the Legislative Council.

Friday, March 17, 1978

(4-6) On Motion of Mr. CAREY of Waterville, the following Joint Order: (H.P. 2271)

Whereas, the Maine Legislature enacted the Tree Growth Tax Law in 1973; and

Whereas, this statute provided that the assessed value of forest land would be based upon forest productivity; and

Whereas, this new and innovative method of determining forest land value was anticipated to result in a current use valuation; and

Whereas, the Tree Growth Tax Law forest productivity methods for establishing value have resulted in per acre assessed valuations ranging from \$8.10 per acre to \$79.30 per acre; and

Whereas, one effect of the tax treatment afforded by statutes such as the Tree Growth Tax Law is to shift the property tax burden to other tax payers; now, therefore, be it

Ordered, the Senate concurring, that the Joint Standing Committee on Taxation study and make recommendations to the 109th Maine Legislature regarding the Tree Growth Tax Law, Title 36, sections 571-584-A; and be it further

Ordered, that the committee's review include, but not be limited to, the following: A review of whether the current methods for establishing stumpage values, capitalization and discount rates are adequate and appropriate; a review of alternatives to the current Tree Growth Tax Law and recommendations for modification or repeal of the current statute; a review of the current Tree Growth Tax Law and its effect on forest land owners and nonforest land owners; a review of the Tree Growth Tax Law reimbursement provisions for taxes lost by Maine cities and towns; a review of the definition of

Friday, March 17, 1978

those property owners eligible to use the Tree Growth Tax Law and whether or not the mandatory or optional coverage provisions of the statute are appropriate; and a review of the adequacy of the withdrawal and penalty provisions of the current statute; and be it further

Ordered, that the committee shall hold up to 4 public hearings in appropriate areas around the State; and be it further

Ordered, there is allocated from the Legislative Account to the the sum of \$5,000 for the purpose of employing committee/an outside consultant, expert in the taxation of forest land; this consultant will assist the committee in its analysis of the Tree Growth Tax Law; and be it further

Ordered, that the committee hold an initial meeting by June 1, 1978, and that it complete its study no later than December 1, 1978, and submit at that time to the Legislative Council its findings and recommendations, including copies of any recommended legislation in final draft form; and be it further

Ordered, upon passage in concurrence, that a suitable copy of this order shall be forwarded to the members of the committee.

Was read and passed and sent up for concurrence.

Description of the Tree Growth Tax Law

Legislative Intent

Section 572 of Title 36 sets forth the following stated purposes of TGTL:

"It has for many years been the declared public policy of the State of Maine, to tax all forest lands according to their productivity and thereby to encourage their operation on a sustained yield basis. However, the present system of ad valorem taxation does not always accomplish that objective. It has caused inadequate taxation of some forest lands and excessive taxation and forfeiture of other forest lands.

It is declared to be the public policy of this State that the public interests would be best served by encouraging forest landowners to retain and improve their holdings of forest lands upon the tax rolls of the State and to promote better forest management by appropriate tax measures in order to protect this unique economic and recreational resource.

This subchapter implements the 1970 amendment of Section 8 of Article IX of the Maine Constitution providing for valuation of timberland and woodlands according to their current use by means of a classification and

averaging system designed to provide efficient administration.

Therefore, this subchapter is enacted for the purpose of taxing forest lands generally suitable for the planting, culture and continuous growth of forest products on the basis of their potential for annual wood production in accordance with the following provisions."

Definition of Forest Land. (Title 36, M.R.S.A., Section 573, Subsection 3.) "Forest land" eligible for classification as such under the Tree Growth Tax Law, is "land used primarily for growth of trees and forest products, but shall not include ledge, marsh, open swamp, bog, water and similar areas, which are unsuitable for growing a forest type even though such areas may exist within forest lands."

Classification of Forest Land. (Title 36, M.R.S.A., Sections 574, 579, 580 and 581.) The Tree Growth Tax Law applies to land classified as forest land by the municipal assessors (or the State Director of Property Taxation in the unorganized territory). Forest land is defined as land used primarily for growth of trees and forest products. Parcels of such land exceeding 500 acres of forest land in size must be so classified; smaller parcels may be so classified at the option of the landowner. This law does not apply to parcels of less than 10 acres of forest land.

Classification by the assessors is based upon schedules filed by the taxpayer. Schedule forms have been supplied to all local assessors and may be obtained either from them or the Bureau of Property Taxation. On the basis of such schedules (together with any other pertinent information), the assessors

determine whether the land is entitled to classification; and if so, the acreage of each of three forest types; hardwood type, mixed wood type, and softwood type.

Valuation of Classified Forest Land. (Title 36, M.R.S.A., Section 576, 577 and 578.) The law directs the State Director of Property Taxation to determine, after public hearings and on or before June 1, 1974 and biennially thereafter, the average annual net wood production rate (i.e., growth rate), the average stumpage value, and by use of a 8 1/2% capitalization rate, the 100% valuation per acre, for each forest type in each county (Section 576).

These determinations are filed with the Secretary of State and in the State Bureau of Property Taxation, and are to be certified to local assessors on or before November 1, annually (Section 576).

The law directs the State Director of Property Taxation to redetermine growth rates in 1974 and at 10-year intervals thereafter; and to redetermine stumpage values in 1974 and at 2-year intervals thereafter. However, the 100% valuations per acre are to be certified to local assessors on or before November 1, annually (Section 576).

Municipal assessors must use such per acre valuations, adjusted by the ratio to full value which is applied to other property in the municipality, in assessing such classified forest land (Section 578).

Similar use of these valuations is to be made by the State Director of Property Taxation in the unorganized territory.

Reduced Valuation in Special Cases. If classified

forest did not contain more than 3 cords of merchantable wood per acre on January 1, 1972, the valuation is to be reduced by 50% for a period of 10 years, terminating in 1983. Assessors may request the assistance of the Director, Bureau of Forestry in applying this provision.

If the trees on classified forest land are destroyed by fires, disease, insect infestation or other natural disaster after January 1, 1972, so as not to contain more than 3 cords of merchantable wood per acre, the valuation is to be reduced by 75% for the first 10 tax years following the loss.

In either case, to obtain the reduced valuation the landowner must file an affidavit with the assessors on or before January 1 prior to the assessment date, stating the facts and requesting the reduced valuation (Section 577).

Penalties for Withdrawal of Land from TGTL

Once land is classified under TGTL, it remains classified unless it no longer qualifies. If land so classified is later withdrawn (because it no longer is entitled to classification), the landowner is subject to a penalty measured either by the tax advantage gained by classification, or a percentage of the difference between assessed value of the land under the Tree Growth Tax Law and fair market value, whichever is greater.

If the assessors find that land which has been classified as forest land no longer qualifies as such, they may withdraw the land from classification. (Title 36, M.R.S.A., Section 581.) Parcels of less than 10 acres resulting from sale are to be withdrawn from taxation under this law.

The landowner himself may request withdrawal of a parcel from classification by certifying to the assessors that the land is no longer used primarily for the growth of forest products. The landowner is required to notify the assessors of any change in use (which would result in withdrawal of classification); otherwise he will be subject to an additional 25% penalty.

The landowner may request withdrawal of a portion of a parcel from classification by filing with the assessors a plan prepared by a registered surveyor showing the area to be withdrawn and the withdrawn area remaining under this law. Upon approval by the assessor the plan is to be filed in the applicable registry of deeds. It is important to note that withdrawal is contingent upon a change in use.

The penalty on withdrawal is the greater of (a) an amount equal to the taxes which would have been assessed if the land had been assessed at its fair market value on the date of withdrawal less the amount of taxes actually paid, for the previous 5 tax years (or such portion of that period during which the land was classified), together with interest at the legal rate; or (b) an amount equal to the following percentage of the difference between the 100% valuation of the land as classified on the assessment date immediately preceding withdrawal, and the fair market value of the property on the date of withdrawal:

10% from April 1, 1973 to March 31, 1978;

20% from April 1, 1978 to March 31, 1983;

30% after March 31, 1983.

Reimbursement to Municipalities for Excess Tax Loss.

A municipality which subsequent to 1973 has a total assessed valuation of classified forest lands which is more than 10% less than the total assessed valuation of the same forest lands on April 1, 1972, is entitled to reimbursement from the State for taxes lost by reason of such loss in value exceeding 10% (Section 578).

In 1978 the reimbursement provision was amended to provide an alternative measure of reimbursement. Municipalities may now select the original measure or 11¢ per acre of TGTL.

The cost of reimbursement under the original formula was placed at \$253,017 - for 1977 (LD 2089, 108th - 2nd Regular Session). The appropriation under the 11¢ per acre allocation for 1978 was \$325,000 (LD 2049, 108th 2nd Regular Session).

SUMMARY OF THE POSITION OF THE
MAINE FOREST PRODUCTS COUNCIL STUDY
COMMITTEE ON THE TREE GROWTH TAX LAW

I. General Policy Statement

The committee supports the state policy of current use taxation of forest land and specifically favors retention of the Maine Tree Growth Tax Law, but would support modifications as indicated hereafter.

The Committee opposes any change that would result in increased taxes on forest land under the Tree Growth Tax Law.

II. Reasons for Supporting Tree Growth Tax Law

A. The forest lands are the primary natural resource of this State and provide the single greatest opportunity for Maine people to enhance their economic well being.

The resource, although renewable, represents a long term investment requiring between 50 and 100 years to bring most trees to full maturity. This long growing cycle requires the stability provided by a tax related to maintaining and increasing the productive capacity of the land.

B. The Tree Growth Tax Law represents a quid pro quo in which forest land owners are restricted in the use to which they may put their forest land in return for current use tax treatment which recognizes the other opportunities for profit which are foregone by the restricted use.

C. The Tree Growth Tax Law is the only property tax that is structured to provide incentives for better than average growth. This is a desirable public policy objective, particularly when other forces such as land withdrawals and insect infestation are combining to erode substantially the resource base and future productive capacity of Maine forest land.

D. The Tree Growth Tax Law is simple in its theoretical conception (a tax on growth) and inexpensive to administer (one state employee).

E. The Tree Growth Tax Law provides government with a regular and even cash flow that is not susceptible to drastic reduction on any given parcel after major developments on the land such as reduction in the inventory by harvest, fire, insect or disease.

III. Reasons for Opposing Higher Taxes on Forest Land

A. Present low return on investment. Ownership of forest land held for the production of forest products is a relatively high risk investment yielding a very low return. (See Exhibit 1 attached.) The simple fact of the matter is that forest land cannot be burdened with additional tax and remain a viable economic enterprise in and of itself.

B. Burden on Smaller Landowners. The arguments that have been raised against the Tree Growth Tax Law pertain to difficulties encountered in the organized towns. These are the very towns in which most of Maine's 100,000 land ownerships exist. Most of these ownerships are relatively small and are the very ones that will be most adversely affected by any increase in forest land taxes. Any such tax increase would tend to erode this diversified land ownership pattern which is in best interests of Maine people to maintain.

C. In return for property taxes paid on forest land there are little or no services rendered which benefit the forest land ownership.

D. Higher taxes on forest land will tend to reduce the incentive for better forest management and will tend to reduce the timber inventory.

IV. Statutory Changes Supported

A. The Committee recognizes the legitimacy of the complaint heard from several towns that the present law is used as a tax shelter by some people who have no intention of holding the land for commercial growth of trees. The Committee believes that the only solution within the present statutory framework is to provide local officials who approve the Tree Growth Tax Law applications the authority to require assurances that the applicants intend to hold the land for permitted purposes under the law. Accordingly we are submitting language designed to amend the present definition of "Forest land" found in 36 M.R.S.A. §573 (3) as follows:

"Forest land means land used primarily for growth of trees for commercial use, but shall not include ledge, marsh, open swamp, bog, water and similar areas, which are unsuitable for growing a forest product even though such areas may exist within forest lands. Land shall be included, upon presentation by the landowner of evidence that the land is being used primarily for growth of trees for commercial use, as follows:

- A. A sworn affidavit from the landowner establishing that the landowner is engaged in the business of selling or processing forest products, or
- B. A sworn affidavit from a registered professional forester that said land is being managed primarily for growth of trees for commercial use, or
- C. A written forest management plan for said land, accompanied by a sworn affidavit from the landowner that he is following said plan.

Land which would otherwise be included within this definition shall not be excluded because of multiple use for public or private recreation, or because it is under contract with a State or Federal agency restricting its use for timber production."

B. The other substantial problem under the present law is the occurrence in some communities of a substantial tax shift occasioned by large portions of the land area of some towns being placed under the Tree Growth Tax Law.

The Committee will support any effort by the Maine Municipal Association to require reasonable State reimbursement for revenues lost in those towns unduly and adversely impacted by large areas being taxed under the tree growth tax law.

C. Some participants in the joint study effort have raised the question of whether county stumpage values derived by the Bureau of Forestry accurately portray real stumpage prices.

The Committee has reviewed the data and the methods used by the Bureau in deriving stumpage values and finds the methodology and the derived prices to be generally satisfactory.

The Committee can suggest no improvements in the present techniques of the Bureau except that perhaps a broadening of the geographical areas from counties to larger districts would tend to moderate differences in valuation appearing on the schedules of values which have been provided on a county basis in the past.

D. The Committee believes that the withdrawal penalties of 36 M.R.S.A. §581 which increase in severity over time should be reversed so that the most severe penalties occur earlier.

The Committee recommends that the (b) penalty of said §581 be amended to read as follows:

(b) If the use of the classified land is changed to another use within ten years from its date of classification, or from the date on which uninterrupted qualifying use began, the land becomes subject to a tax equal to 10 percent of the sales price if sold within the first year of ownership, down to 1 percent if sold in the tenth year.

The 2nd sentence in the 1st paragraph of Section 581 should be changed to read as follows:

The owner of land subject to this subchapter may at any time withdraw any parcel, or portion thereof, from taxation under the subchapter.

V. Conclusion

The central issue that must be addressed in any public debate regarding the advisability of retaining the Tree Growth Tax Law is whether the people of Maine desire to retain a large portion of this State as a base for the State's forest products industry by restricting the use of the forest and providing the incentive to improve the resource base or whether the people wish to follow a tax policy which tends to expose Maine forest land to development pressure and reduction in forest inventories.

EXHIBIT 1

The following Income and Expense figures are given in terms of constant dollars using 1977, as the base year. These figures are for 16,623 acres of forest land made up of 27 separate parcels. Dollar values are on a per acre basis.

YEAR	GROSS INCOME	MANG'T COSTS	FEE TAXES	NET INCOME
1970	\$2.51	\$0.43	\$0.61	\$1.47
1971	2.51	0.58	0.65	1.28
1972	3.11	0.80	0.74	1.57
1973	4.71	1.10	0.51	3.10
1974	4.95	1.17	0.54	3.24
1975	5.66	1.86	0.98	2.82
1976	5.37	1.17	1.26	2.94
1977	6.22	0.72	1.13	4.37
AVE.	4.38	0.98	0.80	2.60

The following Income and Expense figures are given in terms of constant dollars using 1977, as the base year. These figures are for 45074 acres of forest land, made up of 7 parcels averaging approximately 6500 acres. Per acre tax figures are based on 49752.53 acres.

1972	5.05	0.88	0.45	3.72
1973	3.86	0.80	0.45	2.61
1974	4.70	0.71	0.53	3.46
1975	4.59	1.12	0.59	2.88
1976	7.09	0.74	0.61	5.74
1977	5.04	0.56	0.58	3.90
AVE.	5.05	0.80	0.54	3.71

Note: Figures above do not take into account additional costs of federal and state income taxes.

Source: Forestry Department, James W. Sewall Co.

Draft Bill Excluding "Shoreland Areas" From the T.G.T.L.

Section 574 of Title 36 MRSA is amended by inserting after the second sentence the following new matter:

This subchapter shall not apply to any parcel that is in whole or part within shoreland areas as they are defined in 12 MRSA §4811 and §4811-A.

Draft of Bill to More Restrictively Define Forest land.

36 MRSA §573, sub-§3 is hereby repealed and the following substituted in its place:

3. Forest land. Forest land means land used primarily for growth of trees for commercial use, but shall not include ledge, marsh, open swamp, bog, water and similar areas, which are unsuitable for growing a forest product even though such areas may exist within forest lands. Land shall be included, upon presentation by the landowner of evidence that the land is being used primarily for growth of trees for commercial use, as follows:

A. A sworn affidavit from the landowner establishing that the landowner is engaged in the business of selling or processing forest products; or

B. A sworn affidavit from a registered professional forester that said land is being managed primarily for growth of trees for commercial use; or

C. A written forest management plan for said land, accompanied by a sworn affidavit from the landowner that he is following said plan.

Land which would otherwise be included within this definition shall not be excluded because of multiple use for public or private recreation, or because it is under contract with a State or Federal agency restricting its use for timber production.

12/11/78

Draft Bill Increasing Minimum Lot Sizes from Ten to Fifty Acres

36 MRSA §574, the second sentence, after the semicolon, is
amended as follows:

except that this subchapter shall not apply to any parcel containing
less than ~~10~~ 50 acres of forestland.



November 13, 1978

TO: Maine Municipal Association Legislative Policy Committee

FROM: MMA Tree Growth Taxation Task Force

SUBJECT: Policy Statement Recommendation

The Members of the MMA Tree Growth Task Force are still in the process of working on finalizing the research on the exact amount of property tax shift that has been caused by the preferential tree growth tax law and on the language of legislation we believe the Maine Municipal Association should be advocating. The problem with tree growth taxation from the viewpoint of local assessors, municipal officials and many non-forest landowners is relatively simple: forest land values established under the current law average approximately \$40 per acre and are far less than the current use sales value of forest land. The current use sales value averages \$106 per acre and the weighted average value is \$129 per acre. The result of this undervaluation is a tax shift estimated to be between \$1-3 million. For some communities the shift is as high as 50% of the total tax commitment. Needless to say, many taxpayers also have a great problem understanding the justification for the inequities under the current law.

The following broad statement of policy is recommended by the MMA Tree Growth Task Force for adoption by the Legislative Policy Committee:

The Maine Municipal Association favors a current use method of forest land taxation to encourage maximum forest land productivity and operation on a sustained yield basis. We support any reasonable method of determining current use value provided that the valuation approximates the current use sales value of forest land that is sold for forest land purposes. The Maine Municipal Association recognizes that current use sales valuation of the forest land of owners less than 50 acres could result in significant changes in forest land ownership patterns. We are prepared to support a reasonable forest land tax credit on the Maine State personal or corporate income tax for the first 50 acres of forest land ownership when land is used for wood production purposes on a sustained yield basis. Even with the significant increases in assessed value that will result from a current use sales approach to forest land valuation, some communities could still have significant tax shifts occur. We are prepared to support a program of municipal reimbursement from the State General Fund to compensate for this result of a state enacted tax policy.