



MAINE REVENUE SERVICES PROPERTY TAX DIVISION PROPERTY TAX BULLETIN NO. 21

OPEN SPACE TAX LAW

REFERENCE: Title 36, M.R.S.A., § 1101 - 1121

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1. General Information.

The Open Space Tax Law provides for the valuation of land which has been classified as open space land based on its current use as open space, rather than its potential fair market value for more intensive uses other than open space. The purpose of this bulletin is to explain the more important features of this law. As used in this bulletin, the title "assessor(s)" means the assessor or board of assessors of a municipality, the chief assessor of a Primary Assessing Area and the State Tax Assessor in the case of the Unorganized Territory.

2. Valuation

A. Valuation Method - The current use value of open space land is the sale price that particular open space parcel would command in the marketplace if it were required to remain in the particular category or categories of open space land for which it qualifies, adjusted by the certified ratio.

The values may be established based on such considerations as sales of land subject to permanent conservation restrictions, sales of land subject to enforceable deed restrictions, enhancement to unclassified appurtenant land areas under same ownership, before and after appraisals of permanently restricted land in the region and other relevant factors. These values may not reflect development or market value purposes other than open space use.

B. Alternative Valuation Method - Notwithstanding any other provision of law, if an assessor is unable to determine the valuation of open space land under the conventional method above, the assessor may value that land under the following *alternative method*. The assessor may reduce the assessed valuation, as adjusted by the certified ratio of similar land in the municipality but without conservation easement restrictions, by the cumulative percentage reduction for which the land is eligible according to the following categories.

- (1) All ordinary open space land is eligible for a reduction of 20% off the standard value.
- (2) Permanently protected open space land is eligible for the reduction set in paragraph 1 and an additional 30%; in other words, 50% off the standard value.
- (3) Forever wild open space land is eligible for the reduction set in paragraphs 1 and 2 and an additional 20%; in other words, 70% off the standard value.
- (4) Public access open space land is eligible for the applicable reduction set in paragraph 1, 2 or 3 *and* an additional 25%; in other words, up to 95% off the standard value.

- (5) Managed forest open space land is eligible for the reduction set in paragraphs 1, 2 and 4 and an additional 10%; in other words, up to 85% off the standard value

Notwithstanding the above, the value of forested open space land may not be reduced to less than the values certified under the Tree Growth Tax Law and the open space land valuation may not exceed just value as required under §701-A.

3. **Definition of Land Categories Eligible For Additional Percentage Reduction**

- A. Permanently protected open space is an area of open space land that is subject to restrictions prohibiting building development under a perpetual conservation easement or as an open space preserve owned and operated by a nonprofit entity committed to conservation and will permanently preserve the property in its natural, scenic or open character. (50% off)
- B. Forever wild open space is an area of open space land that is permanently protected and subject to restrictions or committed to uses by a nonprofit entity committed to conservation and will ensure that in the future the natural resources on that protected property will remain unaltered, except for: Fishing or hunting; Harvesting shellfish in the intertidal zone; Prevention of the spread of fires or disease; or Providing opportunities for low-impact outdoor recreation, nature observation and study. (70% off)
- C. Public access open space is any area of open space land allowing public access by reasonable means and the applicant agrees to refrain from taking action to discourage or prohibit daytime, non-motorized and nondestructive public use. The applicant may permit, but is not obligated to permit as a condition of qualification for public access status, hunting, snowmobiling, overnight use or other more intensive outdoor recreational uses. The applicant may impose temporary or localized public access restrictions to: Protect active habitat of endangered species; Prevent destruction or harm to fragile protected natural resources; or protect the recreational user from any hazardous area. (Additional 25% off).
- D. Managed forest open space land is an area of open space land whether ordinary, permanently protected pursuant to paragraph A or public access pursuant to paragraph C containing at least 10 acres of forested land that is eligible for an additional cumulative percentage reduction in valuation because the applicant has provided proof of a forest management and harvest plan. (Additional 10% off).

4. **Standards for Classification**

- A. Minimum size - There is no minimum acreage requirement for Open Space. However, minimum area(s) and setback(s) for non-conforming use must be excluded from classification.
- B. Use - The tract must be preserved or restricted in use to provide a public benefit by conserving scenic resources; enhancing public recreation opportunities; promoting game management; or preserving wildlife or wildlife habitat.
- C. Developed Lands - Any building or improvement area(s) are excluded from classification as open space land. Each excluded area must include at least the minimum lot size and, for improvements within the 250 foot shoreland area (75 feet on streams), the minimum shoreland frontage required by the applicable minimum lot standards or zoning ordinance for the area in which the land is located, whichever is larger. The shoreland frontage requirement is waived if: the affected frontage is part of a contiguous shore path or a beach for which there is or will be, once classified, regular and substantial use by the public; or the legislative body of the municipality determines that a public benefit will be served by preventing future development near the shore or by securing access for the public on the particular shoreland area that would otherwise be excluded from classification. See 36 M.R.S.A. § 1109(3) and 38 M.R.S.A. § 435.

- D. Managed Forest Open Space Lands - A forest management and harvest plan must be prepared for each parcel of managed forest open space land and updated every 10 years. The landowner must comply with the forest management and harvest plan and must submit every 10 years to the assessor(s) of the jurisdiction where the property is located a statement from a licensed professional forester that the landowner is managing the parcel according to the forest management and harvest plan. Failure to comply with the forest management and harvest plan results in the loss of the additional cumulative percentage reduction under this paragraph for 10 years.

The assessor or the assessor's duly authorized representative may enter and examine the forested land and may examine any information in the forest management and harvest plan submitted by the owner. A copy of the forest management and harvest plan must be made available to the assessor to review upon request. Upon completion of a review, the forest management and harvest plan must be returned to the owner or an agent of the owner. A forest management and harvest plan provided in accordance with this section is confidential and is not a public record as defined in Title 1, section 402, subsection 3.

5. **Public Benefit Factors**

Factors appropriate to one application may be irrelevant in determining the public benefit of another application. A single Factor, whether listed here or not, may be determinative of public benefit. Among the Factors to be considered are:

- A. The importance of the land by virtue of its size or uniqueness in the vicinity or proximity to extensive development or comprising an entire landscape feature;
- B. The likelihood that development of the land would contribute to degradation of the scenic, natural, historic or archeological character of the area;
- C. The opportunity of the general public to appreciate significant scenic values of the land;
- D. The opportunity for regular and substantial use of the land by the general public for recreational or educational use;
- E. The importance of the land in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;
- F. The likelihood that the preservation of the land as undeveloped open space will provide economic benefit to the town by limiting municipal expenditures required to service development;
- G. Whether the land is included in an area designated as open space land or resource protection land on a comprehensive plan or in a zoning ordinance or on a zoning map as finally adopted;
- H. The existence of a conservation easement, other legally enforceable restriction, or ownership by a nonprofit entity committed to conservation of the property that will permanently preserve the land in its natural, scenic or open character;
- I. The proximity of other private or public conservation lands protected by permanent easement or ownership by governmental or nonprofit entities committed to conservation of the property;
- J. The likelihood that protection of the land will contribute to the ecological viability of a local, state or national park, nature preserve, wildlife refuge, wilderness area or similar protected area;
- K. The existence on the land of habitat for rare, endangered or threatened species of animals, fish or plants, or of a high quality example of a terrestrial or aquatic community;
- L. The consistency of the proposed open space use with public programs for scenic preservation, wildlife preservation, historic preservation, game management or recreation in the region;

- M. The identification of the land or of outstanding natural resources on the land by a legislatively mandated program, on the state, local or federal level, as particular areas, parcels, land types or natural resources for protection including, but not limited to, the register of critical areas under Title 12, section 544-B; the laws governing wildlife sanctuaries and management areas under Title 12, sections 10109(1), 12706 and 12708; the laws governing the State's rivers under Title 12, chapter 200; the natural resource protection laws under Title 38, chapter 3, subchapter 1, article 5-A; and the Maine Coastal Barrier Resources Systems under Title 38, chapter 21;
- N. Whether the land contains historic or archeological resources listed in the National Register of Historic Places or is determined eligible for such a listing by the Maine Historic Preservation Commission, either in its own right or as contributing to the significance of an adjacent historic or archeological resource listed, or eligible to be listed, in the National Register of Historic Places;
- O. Whether the land contains a wildlife habitat, which is subject to a written management agreement between the landowner and either the Department of Inland Fisheries and Wildlife or the Department of Conservation to ensure that the habitat benefits provided by the land are not lost; or
- P. Whether the land is maintained in accordance with criteria that are adopted under local ordinance that provide for preserving the integrity of historically important structures or conserving a scenic view (30-A M.R.S.A. §5730).

Land containing structures or any substantial improvements; the owner shall indicate on the application schedule and classification map the area(s) within the parcel containing improvements and exclude from open space classification area(s) equal to the applicable building lot size prescribed by the zoning regulations relevant to that site.

6. **General Provisions**

- A. Filing - Owners must file an application by April 1 of the year in which classification is first requested with the assessor(s) of the jurisdiction where the property is located. Annual filing is not necessary; however, assessor(s) may request the filing of a new application at any time. The application must be accompanied by a map or sketch showing the open space classified acres as well as the non-open space classified acres within the tract.
- B. Notification of Classification - The assessor(s) must determine whether the land is subject to classification and classify the land as to type and notify the owner of the decision by June 1st of that year. If the application is denied, the assessor(s) must state the reasons for the denial and provide the landowner an opportunity to amend the schedule to conform to the requirements of the statute.
- C. Reclassification - Landowners are required to give the assessor(s) notice of any change in open space land classification. If the landowners do not give notice of any change in classification, the assessor(s) must reclassify the parcel where the facts justify a change in classification or use.
- D. Tax Rate - Classified open space land shall be subject to the same property tax rate applicable to other property in the jurisdiction.

7. **Valuation of Areas Other Than Open Space**

Areas other than open space land must be valued on the basis of fair market value.

8. **Appeal from Assessor(s)**

- A. Abatement Procedure - Assessments made under this subchapter are subject to the abatement procedures provided by 36 M.R.S.A. §841. The assessors, on written application within 185 days from date of commitment, stating the grounds therefore, or on their own initiative within one year from date of commitment, may make such reasonable abatement as they think proper, provided the taxpayer has complied with section 706.

- B. Notice of Decision - The assessor shall by June 1st notify the landowner that his application has been accepted or denied. If the application is denied, the assessor shall state the reasons for the denial and provide the landowner an opportunity to amend the schedule to conform to the requirements of this chapter within 60 days. If the landowner fails to respond to the assessor's request to file a schedule or provide other information, the owner is deemed to have waived all rights of appeal.
- C. State Board of Property Tax Review - An application for review must be filed within 60 days from receipt of the assessors' decision or within 60 days from the date the application for abatement was deemed to have been denied.
- D. Superior Court - Any party dissatisfied with the decision of the State Board of Property Tax Review may further appeal to Superior Court in the county where the property is located.

9. **Penalty; Withdrawal of Classification**

- A. Change in Use - If classified open space land no longer meets the requirement for classification, it may be withdrawn from classification by the assessor(s) or at the request of the owner. Any change in use disqualifying land for classification under this subchapter shall cause a penalty to be assessed.
- B. Exception - Penalties shall be applied as a result of a change in use and the withdrawal of a portion of a classified parcel except when withdrawal is caused by a transfer resulting from the exercise or threatened exercise of the power of eminent domain. Change from Farmland to Open Space, Farmland to Tree Growth, Open Space to Farmland or Open Space to Tree Growth may not be penalized if parcel also meets eligibility requirements of the new classification.
- C. Determination of Penalty - The penalty shall be an amount equal to one of the following:
 - (1) An amount equal to 30% of the difference between the 100% open space valuation (of the classified land on the assessment date immediately preceding withdrawal) and the 100% fair market value of the property on the date of withdrawal.
 - (2) If the land has been classified for more than 10 years, the following percentages shall apply to the difference between the open space valuation and the assessed fair market value:

10 years or less	30%
11 years	29%
12 years	28%
13 years	27%
14 years	26%
15 years	25%
16 years	24%
17 years	23%
18 years	22%
19 years	21%
20 years or more	20%

- (3) The recapture penalty for withdrawal from open space classification within 10 years of a transfer from tree growth classification occurring on or after August 1, 2012, is the same that would be imposed if the land were being withdrawn from the tree growth classification. See Property Tax Bulletin 19
- D. Assessed Fair Market Value - Assessed fair market value at the time of withdrawal is the assessed value of comparable property in the taxing jurisdiction adjusted by the certified assessment ratio to 100%.

IMPORTANT. In no event may the penalty be less than the minimum required by the Constitution of Maine, Article IX, Section 8: " . . . a minimum penalty equal to 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, upon such reasonable and equitable basis as the Legislature shall determine. Any statutory or constitutional penalty imposed as a result of a change of use, whether imposed before or after the approval of this subsection, shall be determined without regard to the presence of minerals."

NOTE: This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. If further information is needed, contact the Property Tax Division of Maine Revenue Services.

MAINE REVENUE SERVICES
PROPERTY TAX DIVISION
PO BOX 9106
AUGUSTA, MAINE 04332-9106
TEL: (207) 624-5600

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