

VERMONT'S CURRENT USE TAXATION PROGRAM: A WORKING GUIDE FOR MAPLE PRODUCERS



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About This Educational Guide

This guide is for informational purposes only and does not provide legal advice or create an attorney-client relationship. You should contact an attorney to obtain advice as to any specific issue or the application of these laws to your unique situation. This guide also references state-specific tax programs that are subject to policy change or different interpretations under certain circumstances. Contact personnel at the state tax department to inquire about your specific situation.

Introduction:

Since 1977, Vermont has enacted through state tax policy, a system of preferential taxation for agricultural and forest land.¹ Known as Vermont's Use Value Appraisal Program (commonly referred to as "Current Use"), enrolled lands are taxed at their use value (determined annually) versus their value for development (assessed at their highest and best use).² These tax benefits can often be significant. The purpose of Current Use is to lessen the incentive to develop these lands in the face of rising property values (and the corresponding rise in property taxes). This tax incentive also, indirectly, helps to keep the operations using these lands viable.³

From the public's perspective, Current Use helps protect forest and farmland and allows these lands to provide continued environmental benefits.⁴

¹ State of Vermont, Agency of Administration, Dep't of Taxes, Current Use, About the Program, <https://tax.vermont.gov/property/current-use/about> (last visited Aug. 21, 2021).

² Vermont Use Value Appraisal Program, 32 V.S.A. § 3750 *et. seq.*

³ It is worth noting that the state makes up the difference or loss to a specific community owing to its enrollment in Current Use to ensure that the impacts of this program are spread amongst all state residents, rather than isolate the impacts to the specific communities where lands are enrolled. See, e.g., Trevor Evans, *Debunking Information About Vermont's Current Use Program*, NORTHERN WOODLANDS, <https://northernwoodlands.org/articles/article/debunking-misinformation-about-vermonts-current-use-program> (last visited Jan. 8, 2022).

⁴ The statutory purpose of the program is to "preserve the working landscape and rural character of Vermont." See 32 V.S.A. 3750. The public support of this mission does not mean that the program is without its criticism and there are periodic calls to revisit this support or to narrow eligibility criteria to become more targeted. See, e.g., Jim Kenyon, *Current Use or Tax Abuse in Vermont?*, VALLEY NEWS, Aug. 31, 2019, <https://www.vnews.com/Hartland-s-Field-of-Poison-Parsnip-28049145>

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As of 2016, more than 18,000 properties were enrolled in Current Use – covering more than 2.4 million acres of land (or approximately a third of the state).⁵ Current Use is of particular importance in that over 80% of forestland in Vermont is owned by private landowners (not in public ownership) making private forestland of critical importance.⁶

This short Guide provides an overview of how Current Use specifically applies to maple producers in Vermont. This Guide will provide the basics of the program, including how to apply, some of the initial factors to consider, and how this enrollment will impact maple properties. This Guide also discusses the two potential options for enrolling maple properties in Current Use (forestland and agricultural land) and differentiates the requirements between these options where appropriate.

What Land and Buildings Qualify for the Current Use Program?

There are two potential paths for enrolling maple properties in Vermont’s Current Use Program – (1) as forestland and (2) as agricultural land.⁷ Separately, sugarhouses can qualify for tax exemption as farm buildings.

Forestland:

To be eligible as forestland, a parcel of land must contain at least 25 contiguous acres (with 20 of those acres being forested).⁸ The landowner must agree to manage the land according to an approved forest management plan (approved by Vermont’s Department of Forests, Parks and Recreation or the county forester).⁹ This plan will need to be updated every ten years and be reapproved. The state will also inspect the parcel to ensure the lands are being managed according to the approved plan. If a landowner fails to comply with their approved forest management plan, this can be deemed as development (the impacts of such a failure will be explored below in the section on the land use change tax). A landowner will also need to submit a Forest Management Activity Report (FMAR) to the state each year detailing any reportable management activities from the prior year.¹⁰

Agricultural Land:

To be eligible as agricultural land, the land must be in “agricultural use” and must generally be at least twenty-five contiguous acres in agricultural use.¹¹ A landowner will need to certify annually that their land continues to be used for these purposes by filing a Form CU-313.¹² Agricultural use extends to lands used to “produce an annual maple crop.”¹³ There are exceptions for smaller acreages as long as the parcels generate at least \$2,000 annually from the sale of farm crops (which includes maple products). This exception may allow some smaller maple parcels to qualify for Current Use if they do not meet the size threshold for forestland.

The forestland option is used by the vast majority of maple producers as it provides substantially more tax savings on a per acre basis, but it requires a larger parcel size and preparation of a forest management plan.

⁵ State of Vermont, Agency of Administration, Dep’t of Taxes, Current Use, <https://tax.vermont.gov/property/current-use> (last visited Nov. 7, 2021).

⁶ Vermont Sustainable Jobs Fund, Landowners are Essential Partner in Vermont’s Forest Products Economy, <https://www.vsjf.org/2018/06/19/landowners-are-essential-partner-in-vermonts-forest-products-economy/> (last visited Jan. 8, 2022).

⁷ Maple properties are in somewhat of a unique position in that they can potentially qualify for both the forestland and agricultural programs – which has led to periodic calls to clarify their status or develop a separate enrollment category. See Vermont Forest, Parks and Recreation, Report on Sugarbush Enrollment Options in UVA, <https://legislature.vermont.gov/Documents/2016/WorkGroups/House%20Fish%20and%20Wildlife/Reports%20and%20Resources/W~Department%20of%20Forests,%20Parks,%20Rec~Sugarbush%20Enrollment%20Options%20in%20UVA~1-15-2016.pdf>.

⁸ 32 V.S.A. § 3752(9).

⁹ 32 V.S.A. § 3755.

¹⁰ Vermont Dep’t of Taxes, Use Value Appraisal Program, Forest Management Activity Report, VT-Form FMR-318, <https://tax.vermont.gov/sites/tax/files/documents/FMR-318.pdf>.

¹¹ 32 V.S.A. § 3752(1).

¹² See, e.g., State of Vermont, Agency of Administration, Form of Agricultural Land and Buildings Certificate, <https://tax.vermont.gov/sites/tax/files/documents/CU-313%202022%20SAMPLE.pdf> (last visited Jan. 17, 2022).

¹³ 32 V.S.A. § 3752(1).

Farm Buildings and Improvements:

Buildings and improvements are addressed separately from farmland and forestland enrollments.¹⁴ Sugarhouses generally qualify for current use, but the building will have to be actively used for agricultural purposes by a farmer (which will require certain documentation of ownership or the qualifying lease).¹⁵ Farm buildings also include “up to \$100,000 of the value of a farm facility processing crops, a minimum of 75% are produced on the farm” allowing for some processing to be covered under the Farm Building category.¹⁶ Farm buildings are exempt from property taxation.¹⁷ To qualify as a farm building, the farm building must be actively used by a farmer as part of their operation, be owned by a farmer (or leased under a written lease (of at least three years)), and on land that is enrolled in a current use program.¹⁸

Farm buildings must be certified annually by the owner to confirm compliance with the statutory requirements. To add a building to an existing enrollment, a landowner will need to complete a CU-301 Form (and if the building no longer qualifies, the landowner will need to file a Form LV-314, Request for Withdrawal).¹⁹

What is the Tax Benefit to Enrolling in the Current Use Program?

The Vermont Current Use Advisory Board sets the tax rate (or the “use rate”) each year for enrolled farm and forestland properties (and for conservation properties).²⁰ For the 2021 tax year, the use value for forestland was \$152 an acre.²¹ The use value for agricultural land was \$405 an acre.²²

The extent of the actual benefit will depend on the specific land being enrolled but having qualifying land taxed at this lower use value can be important to maple producers.

How Do I Apply?

If it is your first enrollment, you must submit the application by September 1 of the applicable year. The initial application should contain the following:

- An application fee of \$100 ;
- A completed **CU-301 form** (the Current Use Program Use Appraisal Voucher Application for Agricultural Land, Forest Land, and Conservation Land and Farm);
- A completed **CU-307 form** (the Current Use Payment Voucher);
- If there are multiple landowners, each owner must submit a completed **CU-302 form** (Additional Owners Form for Use Appraisal Application) and each additional form will require an additional \$15.00 per form recording fee;
- And all other supporting documentation for the application.

¹⁴ State of Vermont, Agency of Administration, Dep’t of Taxes, Eligible Property, <https://tax.vermont.gov/property-owners/current-use/property-types> (last visited Nov. 27, 2021).

¹⁵ *Id.*

¹⁶ 32 V.S.A. § 3752(14).

¹⁷ State of Vermont, *supra* note 14.

¹⁸ 32 V.S.A. § 3752(14).

¹⁹ See, e.g., State of Vermont, Agency of Administration, Form of Agricultural Land and Buildings Certificate, <https://tax.vermont.gov/sites/tax/files/documents/CU-313%202022%20SAMPLE.pdf> (last visited Jan. 17, 2022).

²⁰ State of Vermont, *supra* note 5.

²¹ *Id.*

²² *Id.*

Applications are submitted electronically through the Vermont Department of Taxes website and the eCuse system.²³

The deadline for new enrollments is September 1 of each year.

Are There Costs Associated with Enrolling in Current Use?

Forestland:

Other than paying the application fee noted above, there will likely be costs associated with any consultants that are required (legal or accounting) as well as for a consulting forester to assist with the preparation of the forest management plan and FMARs for harvesting activities.

A consulting forester can also assist to answer questions about what management activities are permissible upon the enrolled lands and help with any forestry-related activities that are conducted on the land during the tax year.

Agricultural Land:

For agricultural land, the same costs apply, with the exception that a maple producer will not need to develop a forest management plan.

What is the Forest Management Plan?

The Forest Management Plan is the guiding document that demonstrates what will occur on the land during the 10-year life of the document.²⁴ It must also comply with the State's best management practices (and provide that the corresponding forestry activities will comply), state the long-term management priorities and goals, describe current stand conditions, and provide fairly detailed stand type mapping.²⁵

Can I Withdraw from the Program?

Yes, but you will need to pay the land use change tax (discussed above) and the removed land will be taxed at the higher rate after it has been withdrawn from Current Use. A landowner should consider how to enroll lands to provide sufficient flexibility to avoid this penalty during their ownership. For example, a landowner may not want to enroll their entire acreage to avoid having to withdraw a portion of the land in the future.

To withdraw lands, you will need to fill out a Form LV-314 (Request for Withdrawal from the Use Appraisal Program) and pay the land use change tax.

What Potential Penalties May be Imposed if I Withdraw my Land?

Once land is enrolled in Current Use, the enrolled acres are subject to a land use change tax of 10% of the fair market value of the developed parcel or the portion of the land developed.²⁶

²³ There is an option to still submit the application and materials through the mail for producers who prefer this option.

²⁴ 32 V.S.A. § 3755(b).

²⁵ See Vermont Woodlands, Current Use: What it Takes, <https://www.vermontwoodlands.org/resources-post/current-use-what-it-takes/> (last visited Aug. 21, 2021).

²⁶ 32 V.S.A. § 3757.

The State of Vermont imposes a statutory contingent lien on enrolled property to protect this value.²⁷ Basically, this means that the state will hold a lien for the value of the land use change tax – but will exercise this lien only if and when the land is developed.²⁸

Development generally means the construction of a road, building, or other structure – including extractive activities (i.e. mining or allowing a landfill). Importantly, it can also mean failing to abide by an approved forest management plan.²⁹

If development occurs, the lien will remain on the property until this land use change tax is paid. To clear title for a future transfer, payment of this lien will likely have to be addressed in the economics of that transaction and be paid off to clear title.

Can I Transfer My Property?

Yes. If the new owner wishes to continue to have the land be entitled to this preferential tax treatment, the new owner will need to complete a new application for the property to keep it in Current Use within 30 days of the ownership transfer.³⁰

What are the Impacts on the New Landowner?

The new landowner will be responsible for any future development of the lands (which will trigger a land use change tax) regardless of whether they re-enroll the lands.

What Requirements/Limits Apply to Maple Production Specifically?

In 2015, Vermont Department of Forests, Parks and Recreation developed sugarbush management standards and tapping guidelines applicable to enrolled lands being used for maple sugar production within the forestland category.³¹ These requirements allow maple sugaring to occur on enrolled lands while also ensuring the health of the enrolled lands.

Notably, the following requirements are in place:

- To avoid a monoculture, 25% of the sugarbush's basal area must be in a combination of non-sugar maple species. There is a permissible 25% variance if approved by the county forester to meet specific harvest-related issues.
- There are limits/guidelines on removal of woody material to establish and maintain saplines to avoid impairing forest health.
- There are tree quality standards that apply regardless of whether the tree is still producing maple (related to defects such as rot, wounds, etc.).
- Conversion of a stand to sugarbush requires some special considerations working with the county forester.
- Tapping guidelines are in place (limiting when and how many taps by spout size may be used by tree size).

²⁷ State of Vermont, *supra* note 1.

²⁸ *Id.*

²⁹ 32 V.S.A. § 3752(5)(C).

³⁰ State of Vermont, Agency of Administration, Dep't of Taxes, Land Use Change Tax, <https://tax.vermont.gov/property-owners/current-use/land-use-change-tax> (last visited Nov. 7, 2021).

³¹ Vermont Department of Forests, Parks and Recreation, Sugarbush Management Standards and Tapping Guidelines for Forest in Use Value Appraisal, https://fpr.vermont.gov/sites/fpr/files/Forest_and_Forestry/Your_Woods/Library/UVA_Sugarbush_Standards_%2010-8-14%20%28final%29_03-19-15%20%28corrected%29.pdf (2015).

Conclusion:

Given the importance and multiple benefits that keeping Vermont's forestland forested, the state has made substantial investments in providing tax incentives to forestland owners to avoid land use conversion. Maple producers should be aware of the opportunities that this program presents to reduce their property taxes. Care, however, should be paid to the design of the current use enrollment within the context of the overall maple operation to ensure that the operation has sufficient flexibility to grow and to avoid violating an approved forest management plan (triggering withdrawal) or needing to proactively withdraw lands from the program to accommodate a specific need.

Other Resources:

These additional resources may be helpful to understanding Current Use, but use caution in relying on these links as these laws change frequently and these resources may become outdated.

- 32 V.S.A. § 3750 *et seq.*
- State of Vermont, Agency of Administration, Department of Taxes, Current Use, <https://tax.vermont.gov/property/current-use> (last visited Nov. 7, 2021).
- Vermont Woodlands, A Guide to Current Use, <https://www.vermontwoodlands.org/resources-post/guide-to-current-use/> (providing more information for the forestland enrollment specifically).
- Vermont Law School, Legal Food Hub, Vermont's Current Use Program, <http://www.legalfoodhub.org/wp-content/uploads/2020/12/Vermonts-Current-Use-Program.pdf> (last visited Nov. 7, 2021) (providing more information on the farmland enrollment).
- Sugarbush Management Standards for the Use Value Appraisal Program and Department of Forest, Parks and Recreation Tapping Guidelines, https://fpr.vermont.gov/sites/fpr/files/Forest_and_Forestry/Your_Woods/Library/UVA_Sugarbush_Standards_%2010-8-14%20%28final%29_03-19-15%20%28corrected%29.pdf

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