

MAINE'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 1971¹, Maine has enacted through its tax policy, a system of preferential taxation for forestland with the objective of taxing these lands at the value as they are currently being used, rather than at their highest and best use.² The program directly applicable to maple production is Maine's Tree Growth Tax Law ("TGTL").³

Lands enrolled in the TGTL are taxed at their use value (determined annually) versus their value for another use.⁴ These tax benefits have the potential to be significant.⁵ The concept here is that taxing these lands in this manner lessens the incentive to develop these lands in the face of rising property taxes.⁶ This tax incentive also helps lessen the tax pressures on the operations using these working lands to keep these entities viable.⁷

¹ Maine State Legislature, Legislative History Collection, Tree Growth Tax Law, <https://www.maine.gov/legis/lawlib/lldl/treegrowthtax/index.html> (last visited Nov. 13, 2021).

² State of Maine, Department of Administrative and Financial Services, Maine Revenue Services, Current Land Use Programs, <https://www.maine.gov/revenue/taxes/tax-relief-credits-programs/property-tax-relief-programs/land-use-programs>

³ 36 M.S.R.A. §§ 571 – 584-A.

⁴ Maine Forest Service, The Maine Tree Growth Law, April 2011, https://digitalmaine.com/cgi/viewcontent.cgi?article=1236&context=for_docs (last visited Nov. 14, 2021).

⁵ *Id.*

⁶ Maine Forest Service, Tree Growth Tax Law Information, https://www.maine.gov/dacf/mfs/policymanagement/woodswise/tree_growth_tax_law.html (last visited Nov. 14, 2021).

⁷ *Id.*

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From the public's perspective, TGTL helps conserve forestland, and allows these lands to provide continued public benefits – scenic, conservation, environmental, and cultural.⁸ There are currently approximately 12 million acres in Maine enrolled in TGTL.⁹

This short Guide provides an overview of how TGTL applies to maple properties in Maine. This Guide provides the basics of the program as it applies to maple producers, including how to apply, primary considerations to keep in mind, and how this enrollment will impact your forestlands covered by the application of the TGTL.

What Land Qualifies for TGTL?

To enroll, the land must include at least 10 acres based on its productive use as forestland.¹⁰ Commercial harvesting or managing trees for commercial use must be the primary use of the lands to be enrolled.¹¹ This is defined as the harvesting of forestry products that have commercial value (one of which is maple syrup production).¹² Secondary uses of the land, like recreation, can be considered in the plan, but again, the primary management purpose is the production of forest products.¹³

Are Structures Allowed?

For buildings requiring a minimum lot size under state law or municipal ordinance, the overall enrollment must exclude the land upon which structures are located (and the excluded area must be at least 0.5 acres).¹⁴ This means that a sugarhouse will likely not have to be excluded, but if your activities cross over into processing it may. A maple producer should contact their local assessor and/or Maine Revenue Services to get more information about how their structure (or planned structure) might be treated.

What is the Tax Benefit to Enrolling in TGTL?

Forestland is taxed based upon valuations determined by the State Tax Assessor for specific forest types from region to region.¹⁵ Municipal assessors will then adjust the 100% valuation from the State Tax Assessor based on their certified ratio to determine the final taxable rate for enrolled properties.¹⁶

How Do I Apply?

Applications are due by April 1 of the year the classification is requested.¹⁷ The application will need to include a map showing the location of the forest types (and also note lands that are not eligible for enrollment, such as structures or non-forestland).¹⁸ This application will also include the forest management plan.¹⁹

⁸ See, e.g., Rick Bisson, *Maine's Tree Growth Tax Program: A Win-Win*, Times Record, Sept. 9, 2018, <https://www.pressherald.com/2018/09/09/maines-tree-growth-tax-program-a-win-win/>

⁹ Cully Lab for Economic Studies, *Maine's Tree Growth Properties*, <https://storymaps.arcgis.com/stories/0a26328853af4da5ae55a5d10867e6fd> (last visited Nov. 13, 2021).

¹⁰ 36 M.S.R.A. § 574-B.

¹¹ *Id.* § 573 2-A.

¹² *Id.* § 573 3-B.

¹³ Maine Forest Service, *supra* note 6, at 3.

¹⁴ *Id.* §§ 574-C; 576-A.

¹⁵ Ken Laustsen, *Maine's Tree Growth Forest Tax Law: The Valuation Process*, Maine Forest Products Council, <https://maineforest.org/issues-information/maine-tree-growth-tax-law-the-valuation-process/> (last visited Nov. 14, 2021); see also Kenneth M. Lausten, Maine Forest Service, *The 6 Steps in the MFS TGTL Valuation*, Jan. 23, 2017, <https://maineforest.org/wp-content/uploads/2017/02/The-6-steps-in-the-MFS-TGTL-Valuation.pdf>.

¹⁶ State of Maine, Maine Revenue Services, Property Tax Division, Property Tax Bulletin No. 19, *Maine Tree Growth Tax Law*, <https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/bull19.pdf>.

¹⁷ For the 2021 Tree Growth Tax Law Valuations, see State of Maine, Department of Administrative and Financial Services, Bureau of Revenue Services, *Three Growth Tax Law Valuations – 2021*, <https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/rule202.pdf>.

¹⁸ See State of Maine, *Application for Maine Tree Growth Tax Law Program*, <https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/treegrowthapp.pdf>.

¹⁹ *Id.*

¹⁹ Maine Forest Service, *supra* note 4, at 4, at 1.

To apply, a maple producer will need to submit to the applicable assessor:

- A completed Application of Tree Growth Tax Law Program (the form is available at: <https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/treegrowthapp.pdf>);
- A map of the parcel showing classified and other lands.²⁰

Are There Costs Associated with Enrolling in TGTL?

The forest owner must commission a forest management plan and commit to keeping their lands forested.²¹ The state may have financial assistance available to help with the development of forest management plans and harvest plans.²²

What is the Forest Management Plan?

The primary landowner intent related to enrolled lands must be to grow and harvest timber products (which includes maple production).²³ The Forest Management Plan is a written document that outlines activities for timber stand improvement, recommendations for regeneration, harvesting plans and other silvicultural practices relevant to the property.²⁴ This plan must be certified by a Maine licensed forester.²⁵

Can I Withdraw from TGTL?

Yes, land can be withdrawn from the program, but it will be subject to applicable rollbacks/penalties. TGTL enrollment runs with the land, not the landowner, and enrollment will need to be accounted for in a sale process. There is, however, no penalty for transferring between enrollment classifications (for example, from Tree Growth to Open Space).²⁶

What Potential Penalties May be Imposed if Land is Withdrawn?

If a landowner creates parcels less than 10 acres, fails to follow the forest management plan, or fails to timely recertify, a penalty will be due.²⁷ No penalty is owed if the land is being transferred to either the Open Space or Farmland current use programs.²⁸

In addition to potential penalties for not meeting deadlines/providing requested information, the actual withdrawal penalty will be a percentage of the difference between the fair market value and the current use value that the landowner has been paying over a period of time based on a formula (ranging from 30% to 20% of the difference between fair market value and the TGTL valuation of the property depending on length of enrollment).²⁹ The minimum penalty is the landowner's tax savings over the last five years plus interest - so the withdrawal penalties can be significant.

What Ongoing Program Requirements Exist?

Once lands are enrolled in the TGTL, a landowner will need to:

- Maintain and comply with the forest management plan (which must be updated and certified every 10 years).
- For harvesting activities, the landowner will need to provide a Forest Operations Notification with the Maine Forest Service (and indicate that the land is in TGTL and that the harvest is complying with the forest management plan).³⁰

²⁰ *Id.*

²¹ Maine Forest Service, Maine's Tree Growth Tax Law: The Basics, https://www.maine.gov/dacf/mfs/policy_management/tgtl/tgtl_basics_presentation.pdf

²² Maine Forest Service, *supra* note 4, at 1.

²³ *Id.*

²⁴ *Id.*

²⁵ 36 M.S.R.A. § 573-3A.

²⁶ *Id.* § 581(7).

²⁷ *Id.* § 581.

²⁸ *Id.*

²⁹ *Id.* § 581(3).

³⁰ Maine Forest Service, *supra* note 4, at 1.

Can I Transfer My Property?

Yes, a landowner can transfer all or a portion of enrolled lands.³¹ The new owner must, within one year of the transfer, file a certification that a new forest management plan has been prepared, or that the former forest management plan is being followed.³² No harvesting is permitted on the property until this certification has been made to the municipal assessor.

How Does this Program Apply to Maple Production?

Maple products are specifically included in the definition of forest products.³³ While TGTL allows harvesting maple products, as noted above, TGTL does not allow for structures to exist on enrolled lands so these lands will need to be excluded from the enrollment.

Conclusion:

Given the importance and multiple benefits of keeping Maine's forestland forested, Maine 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 through this program. 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. Working with a licensed forester and getting sound advice on staying within the guidelines of the TGTL is critical to ensure continued access to this beneficial tax savings and avoiding substantial withdrawal penalties.

Other Resources:

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

- Maine Revenue Services. Property Tax Division, Property Tax Bulletin No. 19, <https://www.maine.gov/revenue/sites/maine.gov.revenue/files/inline-files/bull19.pdf>
- Maine Forest Service, Maine's Tree Growth Tax Law: The Basics (2021), https://www.maine.gov/dacf/mfs/policy_management/tgtl/tgtl_basics_presentation.pdf
- Maine Forest Service, Tree Growth Tax Law Information, https://www.maine.gov/dacf/mfs/policy_management/tree_growth_tax_law_info.html (last visited Nov. 14, 2021).
- Maine Coast Heritage Trust, Property Taxation of Conservation Land: Options for Property Owners, <https://mltn.org/wp-content/uploads/2018/12/property-taxation-of-conservation-land-former-tb-104-july302013.pdf>

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³¹ See, e.g., 36 M.S.R.A. § 581-A.

³² *Id.* § 574-B(3).

³³ *Id.* § 573 3-B.