

NEW YORK'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:

New York has long enacted, through its tax policy, a system of preferential taxation for agricultural land and forestland with the objective of taxing these lands at the value as these lands are currently being used, rather than at their highest and best use.¹ New York has two programs that potentially apply to maple producers: (1) the Forest Tax Law;² and (2) Agricultural Assessment (collectively referred to as “Current Use”).³

The concept here is that taxing these lands through a Current Use program lessens the incentive for landowners to develop these lands in the face of rising property taxes.⁴ This tax incentive also indirectly helps lessen the tax pressures on the operations that use these lands in order to keep these businesses viable as well.⁵

¹ N.Y. RPT § 480-A (this program replaced a former program that assessed timberland based on its bare land value (exempting timber value) known as Section 480); N.Y. AGM § 301 et seq. (New York’s Agricultural Assessment program).

² Lincoln Institute of Land Policy, Forest Land Exemption and Yield Tax, <https://www.lincolninst.edu/preferential-property/forest-land-exemption-yield-tax-new-york-2020> (last visited Jan. 29, 2022).

³ Lincoln Institute of Land Policy, Forest Land Exemption and Yield Tax, <https://www.lincolninst.edu/preferential-property/forest-land-exemption-yield-tax-new-york-2020> (last visited Jan. 29, 2022).

⁴ See, e.g., New York State, Dep’t of Taxation and Finance, Agricultural Assessment Program: Overview, https://www.tax.ny.gov/research/property/assess/valuation/ag_overview.htm (last visited Nov. 26, 2021) (providing an overview of the goals of the agricultural assessment program).

⁵ *Id.*

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This short Guide provides an overview of how Current Use programs apply to maple properties in New York. If you are interested in Current Use, this Guide will provide the basics of the applicable programs, including how to apply, key considerations to keep in mind, and how this enrollment will impact your lands once you are in a program.

What Land Qualifies for the Current Use Program?

Forestland:

To enroll forestland under the Forest Tax Law, a parcel must be at least contiguous 50 acres (exclusive of any portion not dedicated to forest use, such as for public roads, utility corridors, etc.).⁶ If the land has been harvested within three years of the intended enrollment, the harvest activities must have been completed under a “sound” forest management program in order for the land to be eligible.⁷ The land must also meet certain minimum stocking requirements.⁸

Agricultural Assessment:

To qualify for agricultural assessment, the land must consist of seven or more acres.⁹ The annual gross sales of agricultural products (which include maple production)¹⁰ from the enrolled lands must also average \$10,000 or more for the preceding two years to be eligible (and must have been used for agriculture for the preceding two years as well).¹¹

Are Buildings Eligible for Current Use?

Both the Forest Tax Law and Agricultural Assessment do not apply to structures.

Under the Forest Tax Law, buildings or structures are excluded from the eligible land area. You should work with your forester who is preparing the forest management plan on how to design your enrollment.

For agricultural land, the land may be eligible for enrollment (but the building value will not be subject to reduced taxes under Agricultural Assessment).¹²

Sugarhouses, however, can qualify for other tax benefits under the Real Property Tax Law (specifically, the Farm Building exemption, which applies to buildings utilized for agricultural use, but not for processing or retail uses).¹³

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

Forestland:

The tax exemption is equal to approximately 20% of the fair market value of the land (or taking the equalization rate for the town and multiplying it by \$40/acre and subtracting this from the original assessment).¹⁴

⁶ N.Y. RPT § 480-A(e) (defining eligibility under the Forest Tax Law).

⁷ *Id.*

⁸ *Id.*

⁹ N.Y. A.G.M. § 301(4). If the farm consists of less than seven acres, it can still qualify for agricultural assessment, but the average gross sales must exceed \$50,000. *Id.*

¹⁰ *Id.* § 301(2)(f).

¹¹ *Id.* § 301(4). There also is some flexibility for start-up operations to qualify more quickly based on gross annual sales.

¹² See State of New York, *supra* note 4; see also Cornell Small Farms Project, 21: Ag Value Assessment for Farmland, <https://smallfarms.cornell.edu/guide/guide-to-farming/agricultural-value-assessment-farmland/> (last visited Jan. 29, 2022).

¹³ State of New York, Department of Tax and Financing, Farm Building Exemption, <https://www.tax.ny.gov/pdf/publications/orpts/farmbuilding.pdf> (last visited Nov. 21, 2021); see also Lincoln Institute of Land Policy, Exemption for Certain Farm Buildings, <https://www.lincolnst.edu/preferential-property/exemption-certain-farm-buildings-new-york-2020> (last visited Jan. 29, 2022) (providing that this includes “facilities . . . for the production of maple syrup and honey.”); see also N.T. RPT § 483.

¹⁴ N.Y. RPT § 480-A(4).

New York's Department of Environmental Conservation ("DEC") provides the following example of how this calculation might work:¹⁵

A forest owner owns a parcel assessed at rate of \$120.00/acre in a town with an equalization rate of 70%.

Step One: The owner would take this assessed rate times .80% (including, the 20% savings), which results in a tax exemption of \$96/acre.

Step Two: The owner would apply the 70% equalization rate to the \$40/acre baseline ($0.70 \times \40) which results in a rate of \$28/acre. This \$28 per acre rate is subtracted from the original assessment rate ($\$120 - \$28 =$ resulting in a \$92/acre exemption).

Picking the Tax Exemption: The final tax exemption will be the smaller of the two exemptions calculated above (comparing Step 1 (\$96 per acre) to Step 2 (\$92 per acre)). \$92 is smaller so will be the amount of the exemption.

Calculating the Final Tax Bill: The final tax bill owed by the farmer then will be calculated by taking the original assessment rate of \$120/acre minus the exemption allowance of \$92/acre for a reduced assessment rate of \$28 per acre.

Depending on the landowner's tax situation (and the specific parcel), this has the potential to result in significant tax savings but should be confirmed with the local assessor to confirm the specific application to a producer's lands.¹⁶

Agricultural Land:

The tax savings will be the difference between the local assessed value for the property and the state's agricultural values (which the state sets annually for 10 different soil groups and for farmed woodlands).¹⁷ The final calculation of the property tax assessment will require the assessor to multiply the acreage in each soil group by the agricultural assessment value times the town/municipalities equalization rate.¹⁸

How Do I Apply?

Forestland:

Applications are due annually by January 1.

A landowner will need to submit to the DEC Regional Forester:

- ◇ A completed application form (for a certificate of approval) and annual commitment form;
- ◇ A map showing the location of the enrolled property; and
- ◇ A forest management plan (more information is provided below) prepared by a forester.¹⁹

A landowner will also need to submit to the County Clerk and/or Town Assessor:

- ◇ An initial Certificate of Approval from the DEC; and
- ◇ An Application for the Real Property Tax Exemption (Form RP-480-a).

¹⁵ New York State, Department of Environmental Conservation, 480a Forest Tax Law, <https://www.dec.ny.gov/lands/5236.html#lands>

¹⁶ See, e.g. David J. Colligan, Why New York's RPTLF § 480a Does Not Encourage Forest Stewardship, Colligan Law LLP, https://forestrylaw.com/_trashed-7/ (explaining that the tax advantages should be confirmed/some potential challenges with assessment).

¹⁷ State of New York, 2021 Agricultural Assessment Values Per Acre, <https://www.tax.ny.gov/pdf/publications/orpts/current-year-ag-values.pdf> (last visited Nov. 21, 2021).

¹⁸ *Id.*

¹⁹ New York State, Dep't of Environmental Conservation, 480a Forest Tax Law, <https://www.dec.ny.gov/lands/5236.html> (last visited Nov. 26, 2021).

Agricultural Land:

Applications are due annually by March 1 (although some counties may have different application deadlines).

A landowner will need to:

- ◇ Work with their local soil and water conservation district to complete a soils worksheet;
- ◇ Submit the completed worksheet to their county/town assessor; and
- ◇ Submit the agricultural assessment application.²⁰

Are There are Costs Associated with Enrolling in Current Use?

Forestland:

The forest owner will have to commission a forest management plan.²¹ The forest owner will also need to pay a 6% stumpage tax (more information is provided below) in the event of harvesting on the enrolled lands.²²

Agricultural Land:

There are no costs associated with agricultural assessment enrollment.

What is the Forest Management Plan?

The Forest Management Plan must include: (1) landowner information; (2) a map depicting forest types/enrolled acres; (3) a forest inventory; (4) stand narratives (with management goals); (5) forest prescriptions; and (6) a schedule of work for the forest (detailing what treatments will be needed to fulfill the management goals).²³ This plan must be prepared by an approved forester.²⁴

Can I Withdraw from the Program?

Forestland:

Yes, but the land will continue to be subject to a rolling ten-year commitment (i.e., for the most recent year you receive preferential tax benefits, you are liable for complying with the program's requirements for a 10-year period moving forward).²⁵

Agricultural Land:

Yes, but the land will be subject to the recapture penalties discussed below.

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

Forestland:

If land is withdrawn from current use, a withdrawal penalty equal to 2.5 times the accumulated tax savings from the program (plus interest) will be owed to the state for a full enrollment, or 5 times (double) the accumulated tax savings (plus interest) for a partial conversion.²⁶

This penalty will also be owed if the land is converted to a non-forest use, if the owner does not give notice of harvest, if the owner fails to pay stumpage tax on the harvested wood or fails to comply with the forest management plan (for example, by not following the management schedule).²⁷

²⁰ Cornell Small Farms Program, *supra* note 12.

²¹ N.Y. RPT § 480-A(a) (defining approved management plans).

²² *Id.* § 480(a)(5).

²³ NYC Watersheds, 480-A, Forest Tax Law Program Overview, https://www.nycwatershed.org/wp-content/uploads/2015/10/480a_forest_tax_law_overview.pdf

²⁴ N.Y. RPT § 480-A(c).

²⁵ N.Y. RPT 480-A(b); 3.

²⁶ *Id.* § (7).

²⁷ *Id.*

Agricultural Land:

If land is converted away from agricultural use (within five years of the initial enrollment if outside an agricultural district/within eight years if within),²⁸ a penalty will be imposed at five times the tax savings in the last year of agricultural assessment plus 6% interest for each year the land was enrolled (not to exceed five years).²⁹

This penalty is owed by the owner who converted the land (not necessarily the party who initially enrolled the land). If the owner fails to notify the applicable assessor within 90 days of the conversion, the assessor may impose an additional penalty (up to twice the conversion penalty) for failure to notify.³⁰ Once a penalty is imposed, it will become a lien on the entire enrolled property until satisfied.³¹

What Ongoing Program Requirements Exist?

Forestland:

New York requires an annual commitment form to be filled out each year to remain current with the program (and to be submitted to both the DEC Regional Forester and the town assessor).³² A landowner will also need to submit an updated work schedule/plan every five years.³³

The landowner will also need to submit a notice of cutting to the DEC forester at least 30 days before harvesting (and will need to pay a 6% tax on the stumpage value to the county upon 30 days of receipt of the certification of value from DEC).³⁴

Last, the landowner will also need to mark and maintain the boundary lines of the enrolled acreage.³⁵

Agricultural Land:

The landowner will need to fill out a renewal form annually to extend the enrollment (a Form RP-305-r, Agricultural Assessment Application Renewal).

Can I Transfer My Property?

Forestland:

Yes. The new owner of the land will be subject to the enrollment obligations.³⁶ If you subdivide (less than 50 acres), you will be liable for rollback penalties.³⁷

Agricultural Land:

Yes, but the potential for liability related to a future development will survive the transfer for the applicable period of years. In short, if the new landowner develops the land (despite not being enrolled in the program), they will be subject to potential penalties as described above.

²⁸ New York State, Agricultural Assessment Program: Overview, https://www.tax.ny.gov/research/property/assess/valuation/ag_overview.htm (last visited Nov. 21, 2021). For more information about the difference between New York's agricultural districts and agricultural assessment, see Noela Hooper, Agricultural Districts vs. Agricultural Assessments, Plan on It: Dutchess County Planning Federation, May 2011, <https://www.dutchessny.gov/Departments/Planning/Docs/eNewsletter-AgDistrictsvsAgAssessment-May2011.pdf>.

²⁹ New York State, Dep't of Taxation and finance, Conversion of Agricultural Lands, https://www.tax.ny.gov/research/property/assess/valuation/ag_conversion.htm (last visited Nov. 21, 2021).

³⁰ N.Y. AGM §§ 305(1)(a)(ii); 306(2)(a)(iii).

³¹ *Id.*

³² N.Y. RPT § 480-A(b) (defining commitment period).

³³ New York State, Dep't of Environmental Conservation, *supra* note 15.

³⁴ N.Y. RPT § 480-A § 6.

³⁶ *Id.*

³⁵ New York State, Dep't of Environmental Conservation, *supra* note 15.

³⁷ *Id.*

Other Issues:

In 2019, DEC began a process of stakeholder meetings to explore potential administrative changes to the Forest Tax Law. While the changes would not impact the tax benefits, the commitment period or penalties, these changes were intended to modernize the program and make it more efficient/able to improve forest outcomes. These changes are still under review/in process.³⁸

Conclusion:

Given the importance and multiple benefits that keeping New York's forestland forested and farmland farmed, New York has made substantial investments in providing tax incentives to qualifying landowners to avoid land use conversion. Maple producers should be aware of the opportunities that these programs present 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. Getting sound advice on staying within the guiderails of the applicable Current Use Program 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 Current Use but use caution in relying on these links as these laws change frequently and these resources may be out-of-date.

- Cornell College of Agriculture and Life Sciences, Cornell Small Farms Program, <https://smallfarms.cornell.edu/guide/guide-to-farming/agricultural-value-assessment-farmland/> (last visited Nov. 21, 2021).
- New York State, Agricultural Assessment Program: Overview, https://www.tax.ny.gov/research/property/assess/valuation/ag_overview.htm.
- New York State, Dep't of Environmental Conservation, 480a Forest Tax Law, <https://www.dec.ny.gov/lands/5236.html>.

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³⁸

Adirondack Explorer, *DEC Eyes Improvements to Forestry Tax Breaks*, Feb. 26, 2019, https://www.adirondackexplorer.org/explorer_reports/dec-eyes-administrative-improvements-in-forestry-tax-breaks.

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