

CHAPTERLAND FAQs

Classified Forest Land FAQs

G.L. c. 61A

Application Procedures / Deadlines FAQs

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Chapter 61A

1. What is the procedure and deadline for applying for classification of agricultural or horticultural land for local tax purposes under G.L. c. 61A?

Application for taxation of land as classified agricultural or horticultural land under G.L. c. 61A must be made annually. The landowner must complete *Form CL-1 Application for Agricultural or Horticultural Land Classification* and should submit it to the assessor on or before October 1 of the year before the beginning of the fiscal year for which classification is sought. G.L.c. 61A, § 6. Upon approval, the assessors will value and tax the land based on its farm use as of the next January 1 assessment date for the following fiscal year. If the land is being classified by the applicant for the first time, the assessors must also record a statement at the Registry of Deeds that includes the name of the landowner and a description of the land (*Form CL-3, Agricultural or Horticultural Land Tax Lien*). The statement constitutes a lien on the land for all taxes due under G.L. c. 61A. The landowner must pay all applicable recording fees. G.L. c. 61A, § 9.

For example, a landowner applying for classification of the land for fiscal year 2017, which begins July 1, 2016, should submit Form CL-1 to the assessors on or before October 1, 2015 in order to receive a fiscal year 2017 actual tax bill based on the reduced current use value of the land.

However, a landowner who misses the October 1 deadline has up to 30 days after the actual tax bills are mailed for the fiscal year to file the application. The application deadline is extended until that time in a revaluation year. G.L. c. 61A, § 8. Because all boards of assessors must review their valuations and consider their interim year adjustments in the years between triennial certification years, every year is a revaluation year for purposes of the statutory deadline extension.

For example, in a community that mails its fiscal year 2017 actual tax bills on December 31, 2016, a landowner applying for classification of the land for that year may submit Form CL-1 to the assessors on or before January 30, 2017.

2. What are the basic requirements for land to be classified as farm land for local tax purposes?

The land must (1) consist of at least five acres of contiguous land under the same ownership and (2) be “actively devoted” to agricultural or horticultural use during the fiscal year for which classification is sought and the previous two fiscal years. Actively devoted means (1) the land must be used primarily and directly in raising animals or growing food, animal feed, plants, shrubs or forest products or in a manner related or necessary to their production or preparation for market, e.g., farm roads, irrigation ponds or land under farm buildings, and (2) annual gross sales of the farm products in the regular course of business must equal or exceed a specified amount that depends on the size of the farm. G.L. c.61A, §§1,2,3 and 4. Once five or more acres qualify as land actively devoted to agricultural or horticultural uses, up to the same amount (100%) of contiguous, non-productive land under the same ownership may be classified in addition to the productive land. G.L. c. 61A, § 4.

3. What does contiguous land mean?

Contiguous land abuts and is separated only by a public or private way or waterway, e.g., land across the road that would touch but for the road. For farmland under Chapter 61A, it also includes land connected to other land by an easement for water supply, e.g., bog land and upland reservoir. G.L. c. 61A, § 4. Contiguous land may cross municipal boundaries.

4. What does same ownership mean?

Same ownership means that the legal title to all of the land must be held in the same name(s) and in the same capacity. The ownership of the land must be identical.

For example, John Jones is the sole owner of record of two abutting parcels of 3 acres each. The 6 acres are under the same ownership. They are not under the same ownership, however, if John Jones is the sole owner of one parcel and owns the other with his spouse.

5. How is the minimum acreage requirement computed?

The minimum acres required for classification as forest land must be contiguous and under the same ownership. Land area under farm buildings such as barns and farm sheds count as the minimum five acres necessary and related land. Any land under and associated with other buildings that are not related to the farm production is excluded: (1) the land under the house and (2) the land around the house that is regularly used for residential living purposes and not actually being used for a qualifying farm use under Chapter 61A. G.L. c. 61A, § 15.

6. What are the qualifying agricultural and horticultural land uses under Chapter 61A?

“Agricultural” use means the land is primarily and directly used to raise animals or products derived from them for sale in the regular course of business. Animals would include, but not be limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals. It also includes land areas that are primarily and directly used in a related

manner and are necessary to raising the animals or preparing them or a product derived from them for market. G.L. c. 61A, § 1.

“Horticultural” use means the land is primarily and directly used to grow fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for sale in the regular course of business or grow forest products under a forest management plan certified by the State Forester. It also includes land areas that are primarily and directly used in a related manner and are necessary to raising the products or preparing them for market. G.L. c. 61A, §2.

7. How is the annual gross sales requirement under Chapter 61A calculated?

Chapter 61A provides local property tax incentives for land that is commercially productive farm land, i.e., produces farm products for sale in the regular course of business. Therefore, gross sales from the land must meet a minimum productivity standard for the fiscal year the land is being classified and the prior two fiscal years. For the first five acres of actively devoted farmland, the annual gross sales requirement is \$500. The requirement is increased by \$5.00 for each additional acre of productive land, except in the case of woodland or wetland which is increased by \$.50 per acre. Contiguous, non-productive land is not considered when determining the gross sales amount. Amounts received under the Massachusetts and United States soil conservation or pollution abatement programs count toward meeting the required gross receipts for the year. G.L. c. 61A, §3. The landowner must establish the gross sales requirement is met with documents maintained in the regular course of business, e.g., sales receipts with standard information such as date of sale, quantity, unit price and total payment or copies of federal or state income tax returns reporting the sales income.

In some years, however, the farmland may not generate sales for agriculturally related reasons, such as the animals or crops require several years to reach maturity or natural conditions or disasters prevent or destroy an annual harvest. Where the land is being managed in order to achieve the required sales within the normal product development time period, it is deemed to meet the annual gross sales requirements. The Farmland Valuation Commission (FVAC) determines the product development time periods and under its current *Crop Development Time Period* guidelines, that period represents the approximate time it takes from planting, permitting, tree and brush clearing, are not part of the normal product development period.

For example, a crop of Christmas trees may require 8 years from planting to maturity, cutting and sale. So long as the land is cultivated and managed for that purpose during that time, it will meet the gross sales requirement because it is within the 8 year development period established by the FVAC for that crop.

For land under an approved forest management plan, the schedule of timber cuttings approved by the State Forester establishes the “product development time period” and the annual gross sales requirement is met in years for which no cutting is scheduled. In order to remain classified, however, the landowner must cut when the timber crop is mature as provided in the plan.

8. What is the procedure to appeal the denial of an application for classification of land as forest land under Chapter 61A?

The assessors have 3 months to act on a timely filed application to determine whether the land qualifies for classification as agricultural or horticultural land under G.L. c. 61A. If the assessors do not act within that time, the application is deemed allowed. The assessors must send a written notice of allowance or disallowance of the application within 10 days of the action. The notice, Form CL-2 Notice of Action on Application for Forest-Horticultural or Horticultural-Recreational Land Classification, sets forth the reasons for any disallowance and explains the landowners' appeal rights. It must be sent by certified mail. G.L. c. 61A, § 9.

A landowner denied classification of all or part of the land may apply to the assessors for a modification of their action on the application for classification. The landowner must apply for the modification within 30 days of the notice of denial. Form CL-7, Application to Modify a Decision/Abate a Tax, Classified Forest, Agricultural-Horticultural-Recreational Land. If the assessors refuse to modify their determination, or they do not act on the application, the landowner may appeal to the Appellate Tax Board within 30 days of the date of notice of the assessor's decision, or within 3 months of the date of the application for modification, whichever is later. G.L. c. 61A, § 19.

9. What is the procedure to contest the assessment of a property, roll-back or conveyance tax assessed a landowner whose property is classified under Chapter 61A?

A landowner aggrieved by the assessment of a tax on land classified under G.L. c. 61A may apply for abatement of the tax to the assessors within 30 days of notice of the assessment. Form CL-7 Application to Modify a Decision/Abate a Tax, Classified Forest, Agricultural-Horticultural-Recreational Land. If the landowner disagrees with the assessors' decision, or the assessors do not act on the application, the landowner may appeal to the Appellate Tax Board within 30 days of the date of notice of the assessors' decision, Form CL-8, Notice of Action on Application to Modify a Decision or Abate a Tax, Classified Forest, Agricultural-Horticultural-Recreational Land, or within 3 months of the date of the application for abatement, whichever is later. If the appeal relates to the annual property tax on the classified land, the tax must be paid for the Appellate Tax Board to hear the appeal. G.L. c. 61A § 14.

10. What rights in land classified under Chapter 61A does a municipality have when the landowner changes its use or decides to sell it for another use?

The classified land statutes provide preferential property tax benefits to landowners who make a long-term commitment to using their land for qualifying forest uses. In exchange for providing those benefits, a municipality has a right of first refusal (ROFR) or option to purchase the land in certain cases where a change of use is planned by the landowner or a new owner after a sale.

Specifically, a municipality has a ROFR when a landowner converts, or decides to sell, classified land for residential, commercial or industrial use during (1) any fiscal year the land is classified or (2) the fiscal year after the year the land was last classified. G.L. c. 61A § 14.

For example, John Jones owns 100 acres that are classified and assessed property taxes on the basis of their classified use for fiscal years 2002-2015. The municipality has a ROFR if he enters into a purchase and sales agreement to sell for, or he decides to change the use to, a residential, commercial or industrial use, at any time during those fiscal years (July 1, 2001 – June 30, 2015) and the following fiscal year July 1, 2015 to June 30, 2016.)

Under the ROFR, the land cannot be sold or converted unless the landowner gives the municipality advance notice of the sale or conversion and the municipality notifies the landowner that it will not exercise option. The content and manner of notices must comply with specific requirements. Upon receipt of a notice that complies with the applicable requirements, the municipality has the option to buy the property or assign its option to the Commonwealth, another political subdivision or a non-profit conservation organization. If the landowner is selling the property, the municipality must match a bona fide offer the landowner received. If the landowner is converting the use, the municipality must pay fair market value, which is determined by an impartial appraisal. The option must be exercised with 120 day of (1) compliance with the notice requirements in the case of a sale or (2) agreement of the consideration in the case of a conversion.

The ROFR does not apply if the landowner (1) simply discontinues the classified use, i.e., leaves the land undeveloped, or (2) sells or converts the land for a residence for the owner; the owner's spouse, parent, grandparent, child, grandchild, brother or sister, or the surviving spouse of those relatives; or an employee working full-time in the use and care of the property for its classified use.

Whenever local officials receive any notice indicating the landowner's intent to sell or convert classified land, or believe a notice should be given, they should consult municipal counsel for guidance on the municipality's rights and the procedures it must follow.

11. What tax benefits provided a landowner may be recaptured by a municipality when classified land under Chapter 61A is sold or its use changed?

As a general rule, a landowner must pay one of two "penalty" taxes, a roll-back or conveyance tax, when classified land is sold for or converted to another use. No penalty tax is assessed, however, when the classified land is being sold for or converted to a residence for the owner; the owner's spouse, parent, grandparent, child, grandchild, brother or sister, or surviving spouse of those relatives; or an employee working full-time in the use and care of the property for its classified use. See Adams V. Assessors of Westport, 76 Mass. App180 (2010)(conveyance tax); Ross V. Assessors of Ipswich, (ATB Docket # F239496, November 21, 2000)(roll-back tax),

both of which involved classified farm land and extended the same exemption from the ROFR to the penalty taxes.

- A. Roll-Back Tax – A roll-back tax is assessed when classified land is changed to a non-qualifying use. A non-qualifying use means (1) land retained as open space as mitigation of a development or (2) any other use or condition that does not qualify for classification under forest land under agricultural or horticultural land under Chapter 61A. The tax assessed to the owner of the land when the change to non-qualifying use occurs. G.L. c. 61A, § 13.

The roll-back tax provides for recapture of the property tax savings on the land for the immediately preceding five year period. If the non-qualifying change in use occurs in a fiscal year the land is classified, the five year period includes the current year and immediately preceding four years. If it occurs in a fiscal year the property is not classified, the recapture period is the immediately preceding five year period. If there were tax savings received under the program for any of the years in the five year recapture period, the savings and interest on those savings for each year are totaled and assessed as the roll-back tax. The amount saved for each year is simply the difference between the tax assessed on the classified land under the program and the tax that would have been assessed on the fair cash value of the land if not classified. The interest on the amount saved each year is calculated at the rate of 5% from the dates interest accrued on unpaid tax installments under the payment system the municipality used for that fiscal year until the date the roll-back tax is paid. (Note that interest is not added as part of a roll-back assessed on land classified under Chapter 61A if the land was classified as of July 1, 2006 and been continuously owned since that date by the July 1, 2006 owner, or that owner's spouse, parent, grandparent, child, grandchild, brother, sister or surviving spouse of any of those deceased relatives. G.L. c. 61A, § 13.)

- B. Conveyance Tax - A conveyance tax is assessed as an alternative to a roll-back tax when classified land is sold for or converted to use or condition that does not qualify for classification under any of the three chapters within a certain time period, but only if greater than the roll-back tax. G.L. c. 61A, § 12.

Specifically, a conveyance tax must be computed, compared to the roll-back tax and assessed if greater when (1) a landowner is selling or converting classified forest or farm land under Chapter 61 or 61A to a non-qualifying use within 10 years after the date the owner acquired the land or began the continuous use of the land for the classified use, whichever is earlier; or (2) a landowner is selling classified recreational land under Chapter 61B for a non-qualifying use within 10 years from the beginning of the fiscal year in which it was classified. The seller is not assessed a conveyance tax if the buyer files an affidavit with the assessors that the classified use will be continued after the sale. If that new owner does not continue that use, or another use that would qualify for classification under any of the three chapters, for at least five years, the new owner is assessed the tax that would have been due when the property was sold. The conveyance tax does not apply to a number of deeds or transfers, including but not limited to, mortgage deeds; deeds that correct, modify,

supplement or confirm a previously recorded deed; deeds between spouses or a parent and child with no consideration, foreclosures of mortgages and conveyances by the foreclosing parties; and property transferred as the result of a death. (Note that a conveyance tax also does not apply to a seller who owned forest land classifieds under Chapter 61 in or before fiscal year 2008. St. 2006, c. 394, § 51.)

The conveyance tax is computed by multiplying the applicable conveyance tax rate to the sales price of the classified land in the case of the sale, or the fair market value as determined by the assessors in the case of a change to a non-qualifying use by the landowner. The conveyance tax rate is set on a descending basis over the initial 10 years of ownership or classification. Under Chapters 61 and 61A the rate is 10% in the first year of ownership, 9% in the second, 8% in the third, and down to 1% in the tenth. Under Chapter 61B, the rate is 10% for the first five years of classification and 5% for the sixth through tenth year of classification.

For example, Mary Smith acquired 50 acres in 2001 and had the land classified beginning in fiscal year 2003. In fiscal year 2016, she enters into a purchase and sales agreement with a developer to sell land for residential development. No conveyance tax applies because Mary has owned the classified land (or had the land classified under Chapter 61B) for over 10 years. However, if Mary had owned the land, or the land was classified under Chapter 61B, for only 8 years, the conveyance tax would be assessed if it was greater than the roll-back tax.

The roll-back assessed based on Mary's tax savings in fiscal years 2012-2016 during which there were savings in all 5 years. However, if Mary's land was last classified in fiscal year 2013, the roll-back would be based on tax savings in fiscal years 2011-2015, during which there were savings in only 3 of the 5 years.

12. Does the development or installation of solar or wind farms or facilities on classified land impact the classification of land under Chapter 61A?

As a general rule, development or installation of solar or wind farms or facilities on classified land will constitute a change in use and trigger a municipality's ROFR and penalty tax assessment.

To be classified as farm land under Chapter 61A, the land has to be actively devoted to agricultural or horticultural use. Actively devoted means the land must be used (1) primarily and directly for agricultural or horticultural production, or (2) in a manner necessary and related to that production, i.e., in a manner that directly supports or contributes to the production, e.g., farm roads, irrigation ponds, land under farm buildings. G.L. c. 61A, §§ 1, 2 and 3.

Therefore, if the solar panels, wind turbines and related structures are integral to farm production, e.g., intended to supply power on-site in order to irrigate the fields, then the land would continue to be considered necessary and related land. However, if used for other power generation purposes, the it no longer qualifies for classification. The ineligible land would include land under the solar arrays, wind turbines and any surrounding land necessary for the operation of the solar or wind farm facility (e.g., access roads) or impacted by its operation.

