CHAPTERLANDS FREQUENTLY ASKED QUESTIONS (FAQS)

FAQs on Classified Forest, Agricultural/Horticultural and Recreational Land G.L. c. 61, 61A and 61B

Frequently asked questions (FAQs) published by the Division of Local Services (DLS) within the Department of Revenue provide general information about Massachusetts municipal tax and finance laws and DLS policies and procedures in effect when published. They do not answer all questions or address complex issues about their topics. FAQs are not public written statements of the Department. They are informational only as described in 830 CMR 62C.3.1(10)(c), and do not supersede, alter or otherwise change any Massachusetts General Law, Department public written statement or other source of law.

Application Procedures and Deadlines FAQs

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

The application process begins more than a year before the start of the fiscal year for which taxation as classified forest land under G.L. c. 61 is sought. However, once approved, classification of the land continues for a full 10-year period.

A) The landowner must file an application including a forest management plan with the State Forester who is the Commissioner of the Mass. Department of Conservation and Recreation (Department). The application must be filed with the appropriate regional office of the Department on or before 5 p.m. on June 30 of the year preceding the fiscal year for which classification is sought. Applications that are postmarked on or before June 30 are timely. 302 CMR 15.02, 15.04 and 15.05(1). The application must comply with all of the Department's rules and regulations under 302 CMR 15.

For example, a landowner seeking classification of the land for the 10 years starting in fiscal year 2019, which begins on July 1, 2018, must submit an application to the State Forester on or before 5 p.m. June 30, 2017.

B) If the land qualifies for forest land classification, the State Forester will certify it and return the approved application certification and the forest management plan to the landowner. G.L. c. 61, § 2.

C) The landowner then must complete Form CL-1, *Application for Forest – Agricultural or Horticultural – Recreational Land Classification*, and submit it, along with the State Forester's certificate and approved management plan, to the local board of assessors on or before December 1 of the year before the fiscal year in which taxation as classified forest land is to begin. G.L. c. 61, § 2. If the application is timely and in order, the assessors must value and tax the land based on its forestry use as of the next January 1 assessment date for the following fiscal year.

For example, a landowner applying for classification of the land for the 10 years starting in fiscal year 2019, which begins on July 1, 2018, must submit Form CL-1 with the State Forester's certificate and approved management plan, to the assessors on or before December 1, 2017. If timely and in order, the land will be classified as of January 1, 2018, the assessment date for fiscal year 2019.

D) 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, Classified Forest – Agricultural or Horticultural – Recreational Land Tax Lien*). The statement constitutes a lien on the land for all taxes due under G.L. c. 61. The landowner must pay all applicable recording fees. G.L. c. 61, § 2.

E) The certified management plan and forest land classification are effective for 10 years without further action. Unless the State Forester decertifies the land or amends its certification, classified status expires on December 31 of the 10th year. In order to continue to have the land classified and taxed under G.L. c. 61, the landowner must have applied to the State Forester for recertification with an updated forest management plan and submitted Form CL-1 with the recertified plan by the deadlines explained above. Otherwise the land must be removed from G.L. c. 61 classification upon expiration of the certification and taxed thereafter at fair cash value under G.L. c. 59.

> *For example, the certification for land classified as of January 1, 2018 for the 10 years beginning in fiscal year 2019 expires on December 31, 2027. The land will be assessed at fair cash value as of January 1, 2028 for fiscal year 2029 unless the landowner applies to the State Forester for recertification on or before June 30, 2027 and if obtained, applies to the assessors for classification on or before December 1, 2027.*

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

Application for taxation of land as classified agricultural or horticultural land under G.L. c. 61A or classified recreational land under G.L. c. 61B must be made annually. The landowner must complete Form CL-1, *Application for Forest – Agricultural or Horticultural – Recreational Land Classification* and should submit it to the assessors on or before December 1 of the year before the beginning of the fiscal year for which classification is sought. G.L. c. 61A, § 6; G.L. c. 61B, § 3. Upon approval, the assessors will value and tax the land based on its farm or recreational 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, Classified Forest – Agricultural or Horticultural – Recreational Land Tax Lien*). The statement constitutes a lien on the land for all taxes due under G.L. c. 61A or c. 61B. The landowner must pay all applicable recording fees. G.L. c. 61A, § 9; G.L. c. 61B, § 6.

> *For example, a landowner applying for classification of the land for fiscal year 2019, which begins on July 1, 2018, should submit Form CL-1 to the assessors on or before December 1, 2017 in order to receive a fiscal year 2019 actual tax bill based on the reduced current use valuation of the land.*

However, a landowner who misses the December 1 deadline has until the last day for filing an application for abatement 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; G.L. c. 61B, § 5. Because all boards of assessors must review their valuations and consider interim year adjustments in the years between their 5-year certification year, every year is a revaluation year for purposes of the statutory deadline extension.

> *The application deadline date is not later than the last day for filing an overvaluation abatement application. For example, in a community that mails the first of its fiscal year 2019 actual tax bills on December 31, 2018, a landowner applying for classification of*

the land for that year may, generally, submit Form CL-1 to the assessors on or before February 1, 2019.

3. What happens if a landowner obtains timely certification of a forest management plan from the State Forester, but does not file Form CL-1 with the assessors on or before December 1? Can that deadline be extended in a revaluation year?

No. The extended application deadline for revaluation years is not available to applicants for classified forest land under G.L. c. 61. However, a landowner who misses the December 1 deadline can apply on or before the following December 1 and obtain the preferential taxation of the land for the remaining nine years of the certification period.

Eligibility FAQs

4. What are the basic requirements for land to be classified as forest, farm or recreational land for local tax purposes?

A) Forest Land (Chapter 61) - The land must (1) consist of at least 10 acres of contiguous land under the same ownership, (2) be "actively devoted" to growing forest products during the fiscal year for which classification is sought and not used for incompatible purposes during the previous two fiscal years, and (3) be managed under a 10 year forest management plan approved and certified by the State Forester. G.L. c. 61, §§ 1, 2 and 3. The State Forester alone determines whether the land is devoted to growing forest products and eligible for classification under G.L. c. 61 and has issued regulations that define the criteria applied to determine the land included in the certified management plan. G.L. c. 61, § 2; 302 CMR 15.

B) Farm Land (Chapter 61A) - 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.

C) Recreational Land (Chapter 61B) - The land must (1) consist of at least five acres of contiguous land under the same ownership and (2) be retained in one of the following conditions in a manner that preserves wildlife or other natural resources: a substantially natural, wild or open condition, landscaped or pasture condition or forest condition under a forest management plan certified by the State Forester, or be devoted to a qualifying recreational use in a manner that does not materially interfere with the environmental benefits derived from the land. To be classified based on use for a qualifying recreational purpose, the land must be open to the public or members of a non-profit organization. No public access is required if classification is sought based on the condition of the land. It can be open to the public or maintained as private undeveloped land. G.L. c. 61B, § 1.

5. 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.

6. What does same ownership mean?

Same ownership means that 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.*

7. How is the minimum acreage requirement computed?

The minimum acres required for classification as forest, farm or recreational land must be contiguous and under the same ownership.

A) Forest Land (Chapter 61) - The State Forester determines the qualifying acreage. The following land is excluded from the calculation of the minimum 10 acres: (1) land where buildings or structures are located or accessory to their use; (2) land occupied by a dwelling or regularly used for family living; and (3), in the instance of telecommunication or power generating structures, land where the structure is erected along with any land which is deemed incompatible with forest production. G.L. c. 61, § 4; 302 CMR 15.03(3).

B) Farm Land (Chapter 61A) - Land area under farm buildings such as barns and farm sheds count toward the minimum five acres as necessary and related land. Any land under and associated with other buildings that are not related to the farm production is excluded. If there is a house on the land, the following is also 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 forest, farm or recreational use under Chapters 61, 61A or 61B. G.L. c. 61A, § 15.

C) Recreational Land (Chapter 61B) - Any land under and associated with buildings or improvements so as to interfere with the environmental benefits of the land as open and undeveloped, such as paved parking areas and roads, are excluded. If there is a house on the land, the following is also 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 forest, farm or recreational use under Chapters 61, 61A or 61B. G.L. c. 61B, § 10.

8. What are 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.

9. What are qualifying recreational land uses under Chapter 61B?

To be classified under Chapter 61B based on a qualifying recreational use rather than condition of the land, the land must be (1) open to the public or members of a non-profit organization and (2) used for one of the following purposes: hiking, camping, nature study and observation, boating, golfing, non-commercial youth soccer, horseback riding, hunting, fishing, skiing, swimming, picnicking, private non-commercial flying, including hang gliding, archery, target shooting and commercial horseback riding and equine boarding. It may not be used for horse racing, dog racing, or any sport normally undertaken in a stadium, gymnasium or similar structure. G.L. c. 61B, § 1.

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

Chapter 61A provides local property tax incentives for land that is commercially productive farmland, 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 Advisory Commission (FVAC) determines the product development time periods and under its current *Farmland Crop Development Time Period* guidelines, that period represents the approximate time it takes from planting to harvest of the crop. Activities before cultivation of the land, such as planning, 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 approved forest management plan.

Appeal Procedure FAQs

11. What is the procedure to appeal the denial of an application for classification of land as forest, farm or recreational land under Chapters 61, 61A or 61B?

A) Forest Land (Chapter 61) – If the State Forester determines land qualifies for classification as forest land, the landowner submits the State Forester's certificate and approved forest management plan for the land to the assessors with an application for classification on or before December 1. If the assessors believe that any land included within the State Forester's certification and approved management plan does not qualify for classification under G.L. c. 61 (or if previously classified land is not being managed under the approved management plan or is being used in a manner incompatible with forest production), they may appeal in writing to the State Forester on or before February 1and request denial of the application for classification (or removal of the land from classification). The assessors must, by certified mail, send the appeal to the Department and a copy to the landowner. The State Forester must notify the assessors and landowner of its decision on the appeal by March 1 of the following year. The assessors or landowner may appeal that decision on or before June 15. The appeal must be sent, by certified mail, to the Department and a copy to the landowner (or to the assessors if the appeal is by the landowner). In the event no appeal is received by the Department on or before June 15th, the Department's decision becomes final and binding on the assessors and the owner. If an appeal has been timely filed, the State Forester must, within 30 days of receipt, convene a three-person regional panel to hear the appeal. The panel consists of three members: one nominated by the Department, one by the assessors and a third to be selected jointly by the State Forester and the assessors. If the assessors fail to nominate their panel member within 10 days after notice from the Department, the Department will select the assessors' panel member. After the panel has been established, it must set a hearing date and give at least seven days' notice of the hearing to the parties by certified mail. No panel member may serve as a witness at the hearing. Notice of the panel's decision must be given to the assessors and landowner within 10 business days after the hearing ends. Within 45 days of notice of the panel's decision, the assessors or landowner may appeal to the Appellate Tax Board or Superior Court. The State Forester may also initiate the removal of land from classification, on its own, upon knowledge that the land is not being managed according to the approved forest management plan or does not otherwise qualify for classification. The same procedures and deadlines apply to that removal procedure. G.L. c. 61, § 2. Appeals must comply with the Department's procedures established under 302 CMR 15.08.

B) Farm Land (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 the allowance or disallowance of the application within 10 days of the action. The notice, Form CL-2, *Notice of Action on Application for Forest-Agricultural or Horticultural-Recreational Land Classification,* sets forth the reasons for any disallowance and explains the landowner's 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 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 modification, whichever is later. G.L. c. 61A, § 19.

C) Recreational Land (Chapter 61B) – The assessors have 3 months to act on a timely filed application to determine whether the land qualifies for classification as recreational land G.L. c. 61B. If the assessors do not act within that time, the application is deemed allowed. The assessors must send a written notice of the allowance or disallowance of the application within 10 days of the action. The notice, Form CL-2, *Notice of Action on Application for Forest-Agricultural or Horticultural-Recreational Land Classification,* sets forth the reasons for any disallowance and explains the landowner's appeal rights. It must be sent by certified mail. G.L. c. 61B, § 6.

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 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 modification, whichever is later. G.L. c. 61B, § 14.

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

A landowner aggrieved by the assessment of a tax on land classified under G.L. c. 61, c. 61A or c. 61B 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. 61, § 3; G.L. c. 61A, § 19; G.L. c. 61B, § 14.

Sale For or Change in Use FAQs

13. What rights in land classified under Chapters 61, 61A or 61B 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, farm or recreational 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 development or 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. 61, § 8; G.L. c. 61A, § 14; G.L. c. 61B, § 9.

For example, John Jones owns 100 acres that are classified and assessed property taxes on the basis of their classified use for fiscal years 2004-2017. 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, 2003 to June 30, 2017) and the following fiscal year July 1, 2017 to June 30, 2018).

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 within 120 days 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. If the landowner's notice does not contain all the required information, the municipality, within 30 days of receipt of the notice, must notify the landowner in writing that landowner's notice is insufficient and does not comply.

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.

14. What tax benefits provided a landowner may be recaptured by a municipality when the use of classified land under Chapters 61, 61A or 61B is changed?

As a general rule, a landowner must pay one of two "penalty" taxes, a roll-back or conveyance tax, when the use of classified land is changed to a non-qualifying use. No penalty tax is assessed, however, when the change in use is 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. See *Adams v. Assessors of Westport*, 76 Mass. App. 180 (2010) and *Ross v. Assessors of Ipswich,* (ATB docket #F239496, November 21, 2000), 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 as forest land under Chapter 61, agricultural or horticultural land under Chapter 61A or recreational land under Chapter 61B. The tax is assessed to the owner of the land when the change to the non-qualifying use occurs. G.L. c. 61, § 7; G.L. c. 61A, § 13; G.L. c. 61B, § 14. The roll-back tax is assessed only on that portion of the land on which the use has changed to the non-qualifying use.

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.)*

However, pursuant to a 2022 amendment, the roll-back tax recapture period for land that has been used to simultaneously site a renewable energy generating source pursuant to G.L. c. 61A, § 2A is the immediately preceding ten year period, not five year period. G.L. c. 61A, § 2A. G.L. c. 61A, § 13. This increased recapture period only applies to land that has been used to simultaneously site a renewable energy generating source.

Additionally, please note that if a renewable energy generating source received an exemption pursuant to G.L. c. 61A, § 2A prior to the effective date of the amendment, August 11, 2022, then the original five-year rollback would still be applicable.

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 a 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. 61, § 6; G.L. c. 61A, § 12; G.L. c. 61B, § 7. The conveyance tax is assessed only on that portion of the land on which the use has changed to the non-qualifying use.

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 Chapters 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 first 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 to or by the city or town in which the land is located; 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 a result of death. (*Note that a conveyance tax also does not apply to a seller who owned forest land classified 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 a 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 2003 and had the land classified under Chapter 61B, beginning in fiscal year 2005. In fiscal year 2018, she enters into a purchase and sale agreement with a developer to sell the land for residential development. No conveyance tax will apply 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 will be assessed on the land where the use is changed if the conveyance tax is greater than the roll-back tax.*
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> *The roll-back will be assessed based on Mary's tax savings in fiscal years 2014-2018 during which there were savings in all 5 years. However, if Mary's land was last classified in fiscal year 2015, the roll-back will be based on tax savings in fiscal years 2013-2017, during which there were savings in only 3 of the 5 years.*

15. Is a penalty tax (conveyance or roll-back) triggered when a municipality enters into an agreement with a landowner to purchase unimproved classified land located within the municipality (forest land under Chapter 61, farm land under Chapter 61A or recreational land under Chapter 61B)? Is a penalty tax triggered by the transfer of such land to the municipality? Is a penalty tax triggered by the construction by the municipality of a new school complex on such property after the acquisition?

The answer is no to all three questions. Regarding the first two questions – whether a penalty tax is triggered upon either an agreement to sell classified land to the municipality or upon the transfer of the land to the municipality - a penalty tax is not triggered. First, there is a statutory exception in the conveyance tax for "deeds to or by the city or town in which the land is located." G.L. c. 61, § 6; G.L. c. 61A, § 12; G.L. c. 61B, § 7. And, as explained in the previous answer, because the roll-back tax is triggered only by a change in use to a non-qualifying use, which has not yet occurred under these facts, the roll-back tax is likewise not triggered. G.L. c. 61, § 7; G.L. c. 61A, § 13; G.L. c. 61B, § 14.

Regarding the third question – whether construction of a new school complex by the municipality on classified land that it has acquired would constitute a change in use to a non-qualifying use and trigger a penalty tax (conveyance or roll-back) – the answer is still "no." Although the construction of a school is certainly a change in use to a non-qualifying use, because real and personal property owned by a municipality are exempt from local property tax, assessors cannot assess either a conveyance tax or a roll-back tax or any other tax against the municipality. *Tax Collector of North Reading v. Reading*, 366 Mass. 438, 440-441 (1974); *City of Somerville v. City of Waltham*, 170 Mass. 160 (1898).

Installation of Solar or Wind Farms FAQs

Note: The below FAQs relate only to the impact of placing solar or wind facilities upon classified land; they do not relate to the taxation of the solar or wind facility itself.

16. Does the development or installation of solar or wind farms or facilities on classified land impact the classification of land under Chapters 61, 61A or 61B?

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 right of first refusal (ROFR) and penalty tax assessment. However, there are exceptions to this general rule for certain solar or wind facilities located on land classified under Chapter 61A (Farm Land).

A) Forest Land (Chapter 61) - To be classified as forest land under Chapter 61, the land must be "actively devoted" to the growth of forest products. G.L. c. 61, §§ 1, 2 and 3. Under G.L. c. 61, § 2, "[b]uildings and structures and the land on which they are erected and which is accessory to their use shall not be entitled to be classified as forest land." (Emphasis added.) Additionally, under 302 CMR, 15.03(3), land where power generating structures are erected along with any land deemed incompatible with forest production is excluded from classification. As a result, the land on which a solar or wind farm or facility is located does not qualify for classification. Assessors, however, may not deny or remove land from classification under Chapter 61 solely by their own action. The State Forester determines whether land qualifies for inclusion in a certified forest management plan and classification under Chapter 61. Assessors may, however, initiate action by the State Forester to remove land from classification if they believe the land is no longer being used for purposes compatible with the growth of forest products. (For more information on the Forest Land classification, appeal and removal process under Chapter 61 and the role of the State Forester, please see FAQs No. 1A, 4A and 11A above. Also see the State Forester's regulations, 302 CMR 15.)

B) Recreational Land (Chapter 61B) - To be classified as recreational land under Chapter 61B, the land must be: (1) retained in a substantially natural, wild or open condition, landscaped or pasture condition or forest condition under a forest management plan certified by the State Forester, in a manner that preserves wildlife or other natural resources and be open to the public or held as private, undeveloped land; or (2) devoted primarily to certain qualifying recreational uses in a manner that does not materially interfere with the environmental benefits derived from the land and be open to the public or members of a non-profit organization. G.L. c. 61B, § 1.

Land on which a solar or wind farm or facility is located is not eligible for classification under the first option described above because it would not qualify as undeveloped land being retained in a substantially natural, wild or other permitted condition. Nor would the land qualify under the second option for classification because the land would not be devoted to a qualifying recreational use. It would be devoted to the generation of power instead. Moreover, for operational and security reasons, there would be limited access to the land that would prevent it from being open to the public or the non-profit membership organization and available for the qualifying recreational use – a requirement under the second option for classification. Therefore, land used for the siting of solar or wind farms or facilities is not eligible for classification under Chapter 61B (Recreational Land). 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 or facility (*e.g.*, access roads) or impacted by its operation.

C) Farm Land (Chapter 61A) - To be classified as farm land under Chapter 61A, the land must be "actively devoted" to agricultural or horticultural use. Actively devoted means: (1) the land, which includes a minimum of five acres, must be used: (a) primarily and directly for agricultural production

(raising animals or a product derived from animals for the purpose of sale in the regular course of business) or horticultural production (raising fruits, vegetables, etc. for human consumption, feed for animals, nursery or greenhouse products, for the purpose of sale in the regular course of business or raising forest products under a certified forest management plan) or (b) 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; 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.

Effective for fiscal years beginning FY 2018, a new section 2A(a) was added to Chapter 61A. (See Sections 172 – 174 of Chapter 218 of the Acts of 2016, Municipal Modernization Act.) Under that section, land in agricultural use (G.L. c. 61A, § 1) and land in horticultural use (G.L. c. 61A, § 2) "may, in addition to being used primarily and directly for agriculture or horticulture, be used to site a renewable energy generating source," (emphasis added) which includes a source that generates electricity using solar or wind energy. (See full definition of "renewable energy generating source" below.) However, the renewable energy generating source must meet the following purpose and size requirements:

(i) It must produce energy for the exclusive use of the land and farm on which it is located, and

(ii) It cannot produce more than 125% of the annual energy needs of the land and farm upon which it is located.

The land and farm on which the renewable energy generating source is located includes contiguous or non-contiguous land that is owned or leased by the land and farm owner or in which the owner holds an interest.

These changes do not apply to land classified under Chapter 61 (Forest Land) or Chapter 61B (Recreational Land).

Effective for fiscal years beginning FY 2024, said section 2A was further amended by creating an alternative process for installation of eligible renewable energy systems on agricultural or horticultural land. (See Sections 41 – 42 of Chapter 179 of the Acts of 2022, An Act driving clean energy and offshore wind). Under the amendment, land in agricultural use (G.L. c. 61A, § 1) and land in horticultural use (G.L. c. 61A, § 2) "may, in addition to being used primarily and directly for agriculture or horticulture, be used to site a renewable energy generating source as defined in subsection (b) of section 11F of chapter 25A that qualifies in accordance with a solar incentive program for agriculture or horticulture sectors developed by the department of energy resources, if such renewable energy generating source does not impede the continued use of the land for agricultural or horticultural purposes pursuant to this chapter."

This renewable energy generating source does not need to meet the use and scale requirements of G.L. c. 61A, § 2A(a) if it is eligible for Chapter 61A classified status under G.L. c. 61A, § 2A(b). That is, if a qualifying energy generating source produces more than 125% of the power requirements of the farm, it is still eligible for Chapter 61A classification as long as it qualifies for a Department of Energy Resources solar incentive program for agricultural or horticultural chapterland. While G.L. c. 61A, § 2A(a) can apply to any renewable energy generating source that meets the applicable use and scale requirements, G.L. c. 61A, § 2A(b) is particular to qualifying solar.

The land and farm on which the renewable energy generating source is located includes contiguous or non-contiguous land that is owned or leased by the land and farm owner or in which the owner holds an interest.

A renewable energy generating source "qualifies" for a Department of Energy Resources solar incentive program when it receives a final Statement of Qualification from the Department of Energy Resources pursuant to 225 CMR 20.06. However, the installation of a renewable energy generating source or related activity on applicable classified land following the issuance of a preliminary Statement of Qualification from the Department of Energy Resources should not be considered a change in use or trigger a municipality's right of first refusal (ROFR) or penalty tax assessment so long as that Preliminary Statement of Qualification is not subsequently withdrawn.

These changes do not apply to land classified under Chapter 61 (Forest Land) or Chapter 61B (Recreational Land).

17. What is a "renewable energy generating source" under G.L. c. 61A, § 2A?

A "renewable energy generating source" is one that generates electricity from several identified sources, including solar photovoltaic or solar thermal electric energy or wind energy.

18. Can a landowner change the use of all of the owner's agricultural and horticultural land to the production of electricity through solar or wind and still qualify for classification under Chapter 61A (Farm Land)?

This answer differs depending on whether the renewable energy system qualifies for classification under G.L. c. 61A, § 2A(a) or the new section G.L. c. 61A, § 2A(b), effective FY 2024.

In the context of G.L. c. 61A, § 2A(a), all of the owner's classified 61A land cannot be used for renewable energy. The clear language of G.L. c. 61A, § 2A(a) requires that the agricultural use under G.L. c. 61A, § 1 or the horticultural use under G.L. c. 61A, § 2 must continue.

First, G.L. c. 61A, § 2A(a) states that the use of the land to site a renewable energy generating source is "in addition to [the land] being used primarily and directly for agriculture or horticulture."

G.L. c. 61A, § 2A(a) also requires that the renewable energy generating source: "(i) produce energy for the exclusive use of the land and farm upon which it is located… and (ii) not produce more than 125 per cent of the annual energy needs of the land and farm upon which it is located…." (Emphasis added.)

Further, G.L. c. 61A, § 2A(c) states:

> Land used primarily and directly for agricultural purposes pursuant to section 1 or land used primarily and directly for horticultural purposes pursuant to section 2 shall be deemed to be in agricultural or horticultural use pursuant to this chapter if used to simultaneously site a renewable energy generating source pursuant to subsection (a) or subsection (b). (Emphasis added.)

Finally, Mass. Const. Amend. Article 99, which provides the constitutional authority to value and tax agricultural and horticultural land according to its agricultural or horticultural uses, states the following:

> Article XCIX. Full power and authority are hereby given and granted to the general court to prescribe, for the purpose of developing and conserving agricultural or horticultural lands, that such lands shall be valued, for the purpose of taxation, according to their agricultural or horticultural uses; provided, however, that no parcel of land which is less than five acres in area or which has not been actively devoted to agricultural or horticultural uses for the two years preceding the tax year shall be valued at less than fair market value under this article. (Approved by the General Court in 1969 and 1970 and by the voters on November 7, 1972. In 1973, G.L. c. 61A was enacted.)

However, under G.L. c. 61A, § 2A(b), all of the owner's classified 61A land may be available for dual renewable energy use. While the clear language of G.L. c. 61A, § 2A requires that the agricultural use under G.L. c. 61A, § 1 or the horticultural use under G.L. c. 61A, § 2 must continue, G.L. c. 61A, § 2A(b) does not contain G.L. c. 61A, § 2A(a)'s restrictions concerning the scale of the renewable energy generating source. The renewable energy use must accord "with a solar incentive program for agriculture or horticulture sectors developed by the department of energy resources."

19. How can assessors verify that a solar or wind facility meets the purpose and size requirements of G.L. c. 61A, § 2A(a)?

When a solar or wind facility is located on land classified or to be classified under G.L. c. 61A, § 2A(a), assessors will need to determine: (1) whether the solar or wind facility is producing electricity for the exclusive use of the land and farm where located and (2) that the amount of electricity produced by the facility is not more than 125% of the annual energy needs of the land and farm where located. As indicated in FAQ No. 16C above, the land and farm where the facility is located includes contiguous or non-contiguous land that is owned or leased by the landowner claiming classification, or in which the owner holds an interest. Landowners must demonstrate that their land qualifies for classification and assessors should request documentation to establish that the facility meets these requirements.

20. Will the land under the solar arrays, wind turbines and any surrounding land necessary for the operation of the solar or wind facility (*e.g.*, access roads) be included for purposes of determining compliance with the minimum five-acre and the gross sales requirements of G.L. c. 61A, § 3? And how will that land be valued?

It depends.

Note: The following examples are related to cranberry production; but **G.L. c. 61A, § 2A(a)** applies equally to land used for other qualifying horticultural and agricultural uses.

Example 1: A solar facility located on a cranberry bog provides electricity only for the irrigation pumps and farm buildings used in cranberry production. This is similar to land under farm buildings, irrigation ponds and ditches and farm roads. The land is primarily and directly used in a related manner that is incidental to the growing or production of cranberries, *i.e.*, in a manner that directly supports or contributes to the production and represents a customary and necessary use in raising the products and preparing them for market. G.L. c. 61A, § 2. As a result, the land under the solar facility is included in determining whether a farm meets the five-acre minimum requirement of G.L. c. 61A, § 3. (Please see FAQ Nos. 4B and 7B above.) That land will also be included when determining the gross sales requirement under G.L. c. 61A, § 3 and will be classified and valued as actively devoted to cranberry production. (See the Farmland Valuation Advisory Commission (FVAC) recommended values.)

Example 2: A solar facility is located over a sand pit which is part of a cranberry farm. The land (sand pit) is used primarily and directly in a manner that directly supports or contributes to the cranberry production and represents a customary and necessary use in raising cranberries and preparing them for market. G.L. c. 61A, § 2. The solar facility does not interfere with the use of the land for the production of cranberries and the land continues to be used in the production of cranberries, *i.e.*, the sand from the sand pit is still accessible and is still used by the farmer in raising and preparing the cranberries for market.

Because the solar facility is located on land (the sand pit) that is "simultaneously" being used primarily and directly in a manner that directly supports or contributes to the cranberry production and represents a customary and necessary use in raising cranberries and preparing them for market under G.L. c. 61A, § 2, then the land under the solar facility (the sand pit) is included within the minimum five-acre requirement of G.L. c. 61A, § 3 and will be classified and valued as actively devoted to cranberry production. (See the Farmland Valuation Advisory Commission (FVAC) recommended values.) The land is also included when determining the gross sales requirement under G.L. c. 61A, § 3.

Example 3: A solar facility that complies with the purpose and size requirements of G.L. c. 61A, § 2A(a) is placed over a cranberry bog in a manner that prevents the "simultaneous" use of that land for the production of cranberries, *e.g.*, a concrete platform is constructed on the land under the solar panels or the panels are placed so low to the ground that the land can no longer be accessed or used for cranberry production. In this case, the placement of the solar facility prevents the "simultaneous" use of the land for the production of cranberries and the land under the solar facility will not be included when determining compliance with the minimum five-acre requirement of G.L. c. 61A, § 3 and will not be classified or valued as actively devoted to the production of cranberries. The land will be taxed based on its fair cash valuation under G.L. c. 59, §§ 2 and 38. (Note: The same result will occur if the farmer voluntarily discontinues "simultaneous" use of the land under the solar facility for cranberry production.)

Example 4: A solar facility that complies with the purpose and size requirements of G.L. c. 61A, § 2A(a) is installed on a field of grass located next to an active cranberry bog owned by the same farmer. The grass field is or may be classified as contiguous non-productive land, *i.e.*, land "contiguous" to the land actively devoted to cranberry production under G.L. c. 61A, § 4. (For more information on contiguous, non-productive land, please see FAQ No. 4B above.) Because it is non-productive land and not actively devoted to cranberry production, the land cannot be included to meet the minimum five-acre requirement of G.L. c. 61A, § 3. It is also not included when determining the gross sales requirement under G.L. c. 61A, § 3. However, the land could be classified and valued as non-productive contiguous land under G.L. c. 61A, § 4. Once five or more acres of land qualify as land actively devoted to horticultural use (here, cranberry production), up to the same amount of contiguous non-productive land under the same ownership may be classified in addition to the productive land. (See the Farmland Valuation Advisory Commission (FVAC) recommended values for non-productive land.)

21. What if the solar or wind facility does not meet the purpose, size and other requirements of G.L. c. 61A, § 2A(a) and does not qualify for a solar incentive program?

If the solar or wind facility does not meet the requirements of G.L. c. 61A, § 2A(a) or (b), then the land under the solar arrays, wind turbines and any surrounding land necessary for the operation of the solar or wind farm or facility (*e.g.*, access roads) or impacted by its operation will not be eligible for classification under Chapter 61A (Farm Land) and will be taxed based on its fair cash valuation under G.L. c. 59, §§ 2 and 38. The development of the facility will also be subject to a penalty tax. See FAQ No. 22 below.

22. Will the development or installation of solar or wind farms or facilities that comply with the requirements of G.L. c. 61A, § 2A on land classified under Chapter 61A (Farm Land) trigger a penalty tax under G.L. c. 61A, § 12 (conveyance tax) or G.L. c. 61A, § 13 (roll-back tax) or a municipality's right of first refusal (ROFR) under G.L. c. 61A, § 14?

No. G.L. c. 61A, § 13 was amended to provide that the installation of a solar or wind farm or facility that meets the requirements of G.L. c. 61A, § 2A on classified land under Chapter 61A (Farm Land) will not trigger a roll-back tax. (See Section 174 of Chapter 218 of the Acts of 2016.)

Although no similar amendments were made to the conveyance tax under G.L. c. 61A, § 12 or a municipality's ROFR under G.L. c. 61A, § 14, the Appellate Tax Board or a court could hold that when classified land under Chapter 61A (Farm Land) is converted to an eligible renewable energy generating source under G.L. c. 61A, § 2A, no change of use has occurred to trigger the alternative conveyance tax, See *Adams v. Assessors of Westport*, 76 Mass. App. 180 (2010) and *Ross v. Assessors of Ipswich*, (ATB docket #F239496, November 21, 2000), or a municipality's ROFR.

However, development or installation of solar or wind farms or facilities that do not meet the requirements of G.L. c. 61A, § 2A on classified land under Chapter 61A (Farm Land), will be subject to a penalty tax under G.L. c. 61A, § 12 (conveyance tax) or G.L. c. 61A, § 13 (roll-back tax) and a municipality's ROFR under G.L. c. 61A, § 14.

Therefore, the development of the solar or wind facilities described in Examples 1, 2 and 4 in FAQ No. 20 above will not be subject to a penalty tax or a municipality's ROFR. However, the development of the facilities described in Example 3 in FAQ No. 20 and in FAQ No. 21 will be subject to a penalty tax and a municipality's ROFR.