Massachusetts
Department of Revenue
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Division of Local Services

# Taxpayer's Guide to Classification and Taxation Of Chapter Land In Massachusetts

Chapter 61 Forest Land
Chapter 61A Agricultural and Horticultural Land
Chapter 61B Recreational Land

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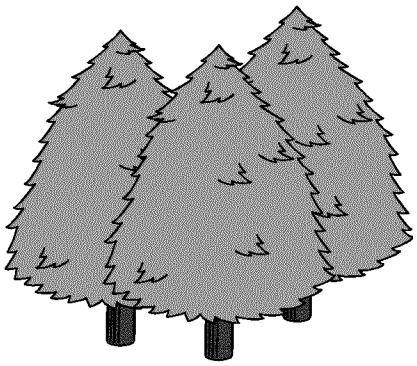
# *CHAPTER 61*



*Taxpayer's Guide to*
*Classification and Taxation*
*Of Forest Land*
*In Massachusetts*

# CHAPTER 61 FOREST LAND

## Chapter 61: Section 1. Definitions

Section 1. For purposes of this chapter, unless the context otherwise requires, the following words shall have the following meanings:—

"Cut", sever or taken from the soil.

"Forest land", land devoted to the growth of forest products. Upon application, the state forester may allow accessory land devoted to other non-timber uses to be included in certification.

"Forest products", wood, timber, Christmas trees, other tree forest growth and any other product produced by forest vegetation.

"Certification", approval of a forest management plan by the state forester.

"Contiguous land", land separated from other land under the same ownership by a public or private way, waterway or an easement for water supply.

"Forest management plan" or "management plan", a completed copy of a form provided by the state forester executed by the owner and the state forester that provides for a ten year program of forest management, including intermediate and regeneration cuttings.

"Cutting plan", a completed copy of a form approved by the state forester which describes the species, dimensions, and quantity of a proposed forest crop to be harvested and which is certified by the state forester as being in accordance with the provisions of section forty to forty-six, inclusive, of chapter one hundred and thirty-two.

"Not used for purposes incompatible with forest production", uses formally proposed or permitted that do not interfere with or reduce the quantity and quality of a continuous forest crop.

"Owner", person, persons, or another legal entity holding title to a parcel of forest land.

“Parcel”, land held by the same owner under a deed of title which has no encumbrance incompatible with this chapter.

“Region”, one of the five geographic subdivisions of the commonwealth utilized for administrative purposes by the department of environmental management.

**Chapter 61: Section 2. Classification of forest lands by assessors; application**

Section 2. Except as otherwise herein provided, all forest land, parcels of not less than 10 contiguous acres in area, used for forest production shall be classified by the assessors as forest land upon written application sufficient for identification and certification by the state forester. Such application shall be accompanied by a forest management plan. The state forester will have sole responsibility for review and certification with regard to forest land and forest production.

The rate of tax applicable to certified forest land shall be the rate determined to be applicable to class three, commercial property under chapter 59.

Upon receipt of such certified application, the board of assessors shall, upon a form approved by the commissioner of revenue, forthwith record in the registry of deeds of the county or district in which the parcel is situated, a statement of such classification which shall constitute a lien upon the land for taxes levied under the provisions of this chapter. The statement shall name the owner and a description of the land. The assessors shall return a copy of said recorded statement to the office of the state forester containing the date, book and page number of such recording. Said lien may be discharged by the board of assessors. All recording fees in connection with such statement or discharge shall be paid by the owner of such parcel.

Land shall be removed from classification by the assessor unless, at least every ten years, the owner files with said assessor a new certification by the state forester. The state forester, or his designee, shall have the authority to enter on private lands for the purpose of making investigations to assure compliance with this chapter. Classified forest land shall be subject to the taxes provided in section three. Buildings 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.

If a single parcel or tract of land consists in part of forest land and in part of other land, the portion consisting of forest land, if said portion comprises at least ten contiguous acres in area and otherwise conforms to the requirements of this chapter shall be classified forest land upon application as hereinbefore provided.

An application to have land classified as forest land shall be submitted to the state forester prior to July first in any year. After certification the owner shall submit to the assessors prior to October first of the same year evidence of certification together with the approved management plan. Classification shall take effect on January first of the year following certification and taxation under this chapter and shall commence with the fiscal year beginning after said January first.

When in judgment of the assessors, land which is classified as forest land or which is the subject of an application for such classification is not being managed under a program, or is being used for purposes incompatible with forest production, or does not otherwise qualify under this chapter, the assessors may, on or before December first in any year file an appeal in writing mailed by certified mail to the state forester requesting a denial of application or, in the case of classified land, requesting removal of the land from such classification. Such appeal shall state the reasons for such request. A copy of the appeal shall be mailed by the assessors by certified mail to the owner of the land. The state forester may initiate, on or before December first of any year, a proceeding to remove land from classification, sending notice of his action by certified mail to the assessors and the owner of such land. The state forester may deny the owner's application, may withdraw all or part of the land from classification, or may grant the application, imposing such terms and conditions as he deems reasonable to carry out the purpose of this chapter, and shall notify the assessors and the owner of his decision no later than March first of the following year. If the owner or the assessors are aggrieved by his decision they may, on or before April fifteenth, give notice to the state forester of a claim of appeal. The state forester shall convene on or before May fifteenth, a panel in the region in which the land is located. Said panel shall consist of three members, one of whom shall be named by the state forester, one of whom shall be named by the assessors, and one of whom shall be named by the state forester and the assessors. Said panel shall give notice of the date and place of the hearing in writing to the parties seven days at least before the date of said hearing. The

panel shall furnish the parties, in writing, a notice of its decision within ten days after the adjournment of said hearing. Decisions of the panel shall be by majority vote of its members. If the owner or the assessors are aggrieved by such decision, they may, within forty-five days from receipt of the decision, petition either the superior court in the county in which the land is located for a review of such decision under the provisions of chapter thirty A or the appellate tax board under the provisions of chapter fifty-eight A, and said land shall not be classified or withdrawn from classification until the final determination of such petition. The state forester may adopt such regulations as he deems necessary to carry out the provisions of this chapter.

**Chapter 61: Section 2A. Tax rate for certified forest land**

Section 2A. In a city or town that accepts this section, the rate of tax applicable to certified forest land shall be the rate determined to be applicable to class two, open space.

**Chapter 61: Section 3. Valuation of forest production land; assessment of property taxes; grievance procedure**

Section 3. For general property tax purposes, the value of land that is actively devoted to forest production use during the tax year in issue and has not been used for purposes incompatible with forest production in the 2 immediately preceding tax years, shall, upon application of the owner of that land and approval of that application, be the value that the land has for forest production purposes.

The board of assessors of a city or town, in valuing land with respect to which timely application has been made and approved as provided in this chapter, shall consider only those indicia of value which the land has for forest production. The board, in establishing the use value of land, shall use the list of ranges published under section 11 of chapter 61A and its personal knowledge, judgment and experience as to forest land values, but these factors shall be limited to data specific to forest production.

The land tax shall be committed to the collector for collection in the same manner as taxes assessed under chapter 59. The collector shall notify the person assessed of the amount of the tax in the manner provided in section 3 of chapter 60. For the collection of taxes under this chapter the collector shall have all the remedies provided by chapter 60. Taxes so assessed shall

be due and payable on October first of the year in which the return is required to be made, and, if not paid on or before November first of the year of assessment, or within 30 days after notification of the taxes if the notice is given after October first, shall bear interest at the rate as provided in section 57 of chapter 59. Any person aggrieved by the assessment of a tax under this section may, within 30 days after the date of notice of the tax, apply in writing to the assessors upon a form approved by the commissioner of revenue for abatement of that tax, and if the assessors, after hearing, find that the tax is excessive, they shall abate it in whole or in part. If the tax has been paid, the town treasurer shall repay to the person assessed the amount of the abatement with interest on that amount at the current rate provided in section 69 of said chapter 59. Any person aggrieved by the refusal of the assessors to abate a tax in whole or in part or by their failure to act upon an application may appeal to the appellate tax board within 30 days after the date of notice of decision of the assessors or within 3 months after the date of the application for abatement, whichever date is later. Any overpayment of tax determined by decision of the appellate tax board shall be reimbursed by the town treasurer with interest at the current rate as provided in said section 69.

**Chapter 61: Section 4. Valuation of buildings and dwellings located on forest production land**

Section 4. All buildings located on land which is valued, assessed and taxed on the basis of its forest production use in accordance with this chapter and all land occupied by a dwelling or regularly used for family living shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable property.

**Chapter 61: Section 5. Special and betterment assessments**

Section 5. Land qualifying for valuation, assessment and taxation under this chapter shall be subject to special assessments or betterment assessments to the pro rata extent that the service or facility financed by the assessment is used for improving the forest production use capability of the land or for the personal benefit of the owner of the land. These assessments shall, upon application, be suspended during the time the land is in forest production use and shall become due and payable as of the date when the use of the land is changed. Payment of the assessment and interest on it shall be made in accordance with section 13 of chapter 80, but interest shall be computed

from the date of the change in use. In the event only a portion of a tract of land which benefits from a suspension of payment is changed from this use, the assessment shall become due and payable as of the date when the use was changed only to the extent of and in the proportion that the frontage of that portion bears to the street frontage of the entire tract of land which originally benefited from a suspension of payment. Upon receipt of full payment of a portion of a suspended assessment, the tax collector shall dissolve the lien for the assessment insofar as it affects the portion of the land changed from forest production use. The lien for the portion of the original assessment which remains unpaid shall continue and remain in full force and effect until dissolved in accordance with law. A request for a release shall be made in writing to the tax collector and shall be accompanied by a plan and any other information that is required in the case of a request for a division of an assessment under section 4.

**Chapter 61: Section 6. Conveyance tax on forest production land sold for other use; rate; exceptions**

Section 6. Any land in forest production use which is valued, assessed and taxed under this chapter, if sold for other use within a period of 10 years after the date of its acquisition or after the earliest date of its uninterrupted use by the current owner in forest production, whichever is earlier, shall be subject to a conveyance tax applicable to the total sales price of that land, which tax shall be in addition to taxes that may be imposed under any other law. Notwithstanding the previous sentence, no conveyance tax shall be assessed if the land involved, or a lesser interest in that land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold or converted to commercial, residential or industrial use within 5 years after acquisition by a nonprofit conservation organization, the conveyance tax shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had such transaction been subject to a conveyance tax. The conveyance tax shall be assessed on only that portion of land whose use has changed. The conveyance tax shall be at the following rate: 10 per cent if sold within the first year of ownership; 9 per cent if sold within the second year of ownership; 8 per cent if sold within the third year of ownership; 7 per cent if sold within the fourth year of ownership; 6 per cent if sold within

the fifth year of ownership; 5 per cent if sold within the sixth year of ownership; 4 per cent if sold within the seventh year of ownership; 3 per cent if sold within the eighth year of ownership; 2 per cent if sold within the ninth year of ownership; and 1 per cent if sold within the tenth year of ownership. No conveyance tax shall be imposed under this section after the end of the tenth year of ownership. The conveyance tax shall be due and payable by the grantor at the time of transfer of the property by deed or other instrument of conveyance and shall be payable to the tax collector of the city or town in which the property is entered upon the tax list, but in the case of taking by eminent domain, the value of the property taken shall be determined in accordance with chapter 79, and the amount of conveyance tax, if any, shall be added as an added value. If there is filed with the board of assessors an affidavit by the purchaser that the land is being purchased for forest production use, no conveyance tax shall be payable by the seller by reasons of the sale, but if the land is not in fact continued in this use for at least 5 consecutive years, the purchaser shall be liable for any conveyance tax that would have been payable on the sale as a sale for other use. The conveyance tax shall be assessed on only that portion of land for which the use has changed.

Except with respect to eminent domain takings, this section shall not be applicable to the following: mortgage deeds; deeds to or by the city or town in which the land is located; deeds which correct, modify, supplement or confirm a deed previously recorded; deeds between husband and wife and parent and child when no consideration is received; tax deeds; deeds releasing any property which is a security for a debt or other obligation; deeds for division of property between owners without monetary consideration; foreclosures of mortgages and conveyances by the foreclosing parties; deeds made under a merger of a corporation or by a subsidiary corporation to its parent corporation for no consideration other than the cancellation and surrender of capital stock of the subsidiary which do not change beneficial ownership; and property transferred by devise or otherwise as a result of death.

A nonexempt transfer after any exempt transfer or transfers shall be subject to this section. Upon the nonexempt transfer, the date of acquisition by the grantor, for purposes of this section, shall be considered to be the date of the last preceding transfer not excluded by the foregoing provisions from application of this section, but in the case of transfer by a grantor who has

acquired the property from a foreclosing mortgagee, the date of acquisition shall be considered to be the date of the acquisition. Any land in forest production use which is valued, assessed and taxed under this chapter, if changed by the owner of the land to another use within a period of 10 years after the date of its acquisition by that owner, shall be subject to the conveyance tax applicable under this section at the time of the change in use as if there had been an actual conveyance, and the value of the land for the purpose of determining a total sales price shall be fair market value as determined by the board of assessors of the city or town involved for all other property.

If any tax imposed under this section should not be paid, the collector of taxes shall have the same powers and be subject to the same duties with respect to these taxes as in the case of the annual taxes upon real estate, and the law in regard to the collection of the annual taxes, the sale of land for the nonpayment of taxes and redemption shall apply to these taxes.

No conveyance tax imposed by this section will be assessed on land that is considered to be in agricultural use under sections 1 and 3 of chapter 61A, in horticultural use under sections 2 and 3 of said chapter 61A or recreational land under section 1 of chapter 61B.

**Chapter 61: Section 7. Disqualification of land from classification; roll-back taxes; calculation; interest**

Section 7. Whenever land which is valued, assessed and taxed under this chapter no longer meets the definition of forest land, it shall be subject to additional taxes, in this section called roll-back taxes, in the tax year in which it is disqualified and in each of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed, but these roll-back taxes shall not apply unless the amount of the taxes, as computed under this section, exceeds the amount, imposed under section 6 and, in that case, the land shall not be subject to the conveyance tax imposed under said section 6. For each tax year, the roll-back tax shall be an amount equal to the difference, if any, between the taxes paid or payable for that tax year in accordance with this chapter and the taxes that would have been paid or payable in that tax year had the land been valued, assessed and taxed without regard to these provisions.

If, at the time during a tax year when a change in land use has occurred, the land is not valued, assessed and taxed under this chapter, then the land shall be subject to roll-back taxes only for those years of the 5 immediately preceding years in which the land was valued, assessed and taxed under this chapter.

In determining the amount of roll-back taxes on land which has undergone a change in use, the board of assessors shall ascertain the following for each of the roll-back tax years involved:—

(a) the full and fair value of the land under the valuation standard applicable to other land in the city or town;

(b) the amount of the land assessment for the particular tax year;

(c) the amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under subsection (a); and

(d) the amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under subsection (c) by the general property tax rate of the city or town applicable for that tax year.

Roll-back taxes will be subject to simple interest at a rate of 5 per cent per annum. If the board of assessors determines that the total amount of roll-back taxes to be assessed under this section, before the addition of any interest, as provided for in the preceding paragraph, would be less than $10, no tax shall be assessed.

No roll-back tax imposed by this section will be assessed on land that meets the definition of land in agricultural use under sections 1 and 3 of chapter 61A or the definition of land in horticultural use under sections 2 and 3 of said chapter 61A or the definition of recreational land under section 1 of chapter 61B.

Land retained as open space as required for the mitigation of a development shall be subject to the roll-back taxes imposed by this section.

**Chapter 61: Section 8. Conversion of land to residential, industrial or commercial use; notice to city or town; first refusal option**

Section 8. Land taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within 1 year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.

The discontinuance of forest certification shall not, in itself, for the purposes of this section, be considered a conversion. Specific use of land for a residence for the owner, the owner's spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full-time in the forest use of that land, shall not be a conversion for the purposes of this section, and a certificate of the board of assessors, recorded with the registry of deeds, shall conclusively establish that particular use.

Any notice of intent to sell for other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or

commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

Any notice of intent to convert to other use shall be accompanied by a statement of intent to convert, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, the name, address and telephone number of the landowner and the landowner's attorney, if any.

The notice of intent to sell or convert shall be sent by the landowner, by certified mail or hand-delivered, to the mayor and city council of a city, or board of selectmen of a town, and in the case of either a city or a town, to its board of assessors, to its planning board and conservation commission, if any, and to the state forester.

A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell or convert shall be conclusive evidence that the landowner has mailed the notice in the manner and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to which it relates.

The notice of intent to sell or convert shall be considered to have been duly mailed if addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to the planning board and conservation commission if addressed to them directly; to the state forester if addressed to the commissioner of the department of conservation and recreation and to the assessors if addressed to them directly.

If the notice of intent to sell or convert does not contain all of the material as described above, then the town or city, within 30 days after receipt, shall notify the landowner in writing that the notice is insufficient and does not comply.

For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

In the case of intended or determined conversion not involving sale, the municipality shall have an option to purchase the land at full and fair market

value to be determined by an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to the landowner within 30 days after the notice of conversion to the municipality. In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense, contract for a second appraisal, the second appraisal to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties shall contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the municipality and shall be the final determination of consideration. Upon agreement of a consideration, the city or town shall then have 120 days to exercise its option. During the appraisal process, the landowner may revoke the intent to convert at any time and with no recourse to either party.

This option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at such address as may be specified in the notice of intent. Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of it.

The notice to the landowner of the city or town's election to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period the landowner has agreed to in writing, whichever is later.

At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under terms and conditions that the mayor or board of selectmen may consider appropriate. Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

The assignment shall be for the purpose of maintaining no less than 70 per cent of the land in use as forest land as defined in section 1 of this chapter, as agricultural and horticultural land as defined in sections 1 and 2 of chapter 61A or as recreation land as defined in section 1 of chapter 61B, and in no case shall the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall then be bound by a permanent deed restriction that meets the requirements of chapter 184.

If the first refusal option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions as provided in this section, the mayor or board of selectmen shall provide written notice of assignment to the landowner.

The notice of assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in addition to the terms and conditions of the assignment. The notice of assignment shall be recorded with the registry of deeds.

Failure to record either the notice of exercise or the notice of assignment within the 120 day period shall be conclusive evidence that the city or town has not exercised its option.

If the option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the option may be exercised by the assignee only by written notice to the landowner signed by the assignee, mailed to the landowner by certified mail at the address that is specified in the notice of intent. The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period the landowner has agreed to in writing, from the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the assignee.

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon said land

for the purpose of surveying and inspecting said land, including but not limited to soil testing for purposes of Title V and the taking of water samples.

The city or town or its assignee shall have all rights assigned to the buyer in the purchase and sales agreement contained in the notice of intent.

If the city or town elects not to exercise the option, and not to assign its right to exercise the option, the city or town shall send written notice of non-exercise signed by the mayor or board of selectmen to the landowner by certified mail at the address that is specified in the notice of intent. The notice of non-exercise shall contain the name of the owner of record of the land and description of the premises adequate for identification of them, and shall be recorded with the registry of deeds.

No sale or conversion of the land shall be consummated until the option period has expired or the notice of non-exercise has been recorded with the registry of deeds, and no sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided in this section.

This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the parties in the manner described in this section for notice of intent to sell or convert, and the giving of this notice may be established by an affidavit as described in this section.

# CHAPTER 61A

Taxpayer's Guide to
Classification and Taxation
Of
Agricultural and Horticultural Land
In Massachusetts

# CHAPTER 61A AGRICULTURAL OR HORTICULTURAL LAND

## Chapter 61A: Section 1. Land in agricultural use defined

Section 1. Land shall be deemed to be in agricultural use when primarily and directly used in raising animals, including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, for the purpose of selling such animals or a product derived from such animals in the regular course of business; or when primarily and directly used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals and preparing them or the products derived there from for market.

## Chapter 61A: Section 2. Land in horticultural use defined

Section 2. Land shall be considered to be in horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling these products in the regular course of business; or when primarily and directly used in raising forest products under a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business; or when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

## Chapter 61A: Section 3. Land of five-acre minimum area actively devoted to agricultural or horticultural uses defined; gross sales and program payment standard

Section 3. Land not less than five acres in area shall be deemed to be actively devoted to agricultural or horticultural uses when the gross sales of agricultural, horticultural or agricultural and horticultural products resulting from such uses together with the amount, if any, payable under a soil conservation or pollution abatement program of the federal government or

the commonwealth total not less than five hundred dollars per year or when the use of such land is clearly proven to be for the purpose of achieving an annual total of not less than five hundred dollars from such gross sales and program payments within the normal product development period as determined by the farmland valuation advisory commission established pursuant to section eleven of this chapter. In cases where the land is more than five acres in area, the gross sales and program payment standard above set forth shall be increased at the rate of five dollars per acre except in the case of woodland or wetland for which such increase shall be at the rate of fifty cents per acre.

**Chapter 61A: Section 4. Valuation of land in agricultural, etc. use; contiguous land; tax rate**

Section 4. For general property tax purposes, the value of land, not less than five acres in area, which is actively devoted to agricultural, horticultural or agricultural and horticultural uses during the tax year in issue and has been so devoted for at least the two immediately preceding tax years, shall, upon application of the owner of such land and approval thereof, be that value which such land has for agricultural or horticultural purposes. For the said tax purposes, land so devoted shall be deemed to include such contiguous land under the same ownership as is not committed to residential, industrial or commercial use and which is covered by application submitted pursuant to section six. Land shall be deemed contiguous if it is separated from other land under the same ownership only by a public or private way or waterway.

Land under the same ownership shall be deemed contiguous if it is connected to other land under the same ownership by an easement for water supply. All such land which is contiguous or is deemed contiguous for purposes of this chapter shall not exceed in acreage one hundred per cent of the acreage which is actively devoted to agricultural, horticultural or agricultural and horticultural uses.

The rate of tax applicable to such agricultural or horticultural land shall be the rate determined to be applicable to class three, commercial property under chapter fifty-nine.

**Chapter 61A: Section 4A. Tax rate for land actively devoted to agricultural or horticultural use**

Section 4A. In a city or town that accepts this section, the rate of tax applicable to land actively devoted to agricultural, horticultural or agricultural and horticultural uses shall be the rate determined to be applicable to class two, open space.

**Chapter 61A: Section 5. Contiguous land under one ownership within more than one city or town**

Section 5. Where contiguous land in agricultural, horticultural or agricultural and horticultural uses under one ownership is located in more than one city or town, compliance with the five-acre minimum area requirements of section four shall be determined on the basis of the entire area of such land and not on the basis of the land area which falls within the bounds of any particular city or town.

**Chapter 61A: Section 6. Annual determination of eligibility for valuation; application; form; certification**

Section 6. Eligibility of land for valuation, assessment and taxation pursuant to section four shall be determined separately for each tax year. Application there for shall be submitted to the board of assessors of each city or town in which such land is situated not later than October first of the year preceding each tax year for which such valuation, assessment and taxation are being sought and may not thereafter be withdrawn. Application shall be made on a form prescribed by the commissioner of revenue and provided for the use of claimants by said board of assessors. Such form shall provide for the reporting of information pertinent to the provisions of this chapter and of Article XCIX of the Articles of Amendment to the Constitution of the Commonwealth and for certification by the applicant that he will immediately notify the board of assessors in writing of any subsequently developing circumstance within his control or knowledge which may cause a change in use of the land covered by such form prior to October first next following. Any application submitted under this section and covering leased land shall be accompanied by a written statement signed by any lessee of his intent to use such land for the purposes set forth in said application. A certification by a landowner that the information set forth in his application is true may be prescribed by said commissioner to be in lieu of a sworn

statement to that effect. An application so certified shall be considered as if made under oath and subject to the same penalties as provided by law for perjury.

**Chapter 61A: Section 7. Additional assessment; change in use in pre-tax year between October 1 and June 30**

Section 7. If a change in use of land actively devoted to agricultural, horticultural or agricultural and horticultural use occurs between October first and June thirtieth of the year preceding the tax year, the board of assessors shall disallow or nullify the application filed under authority of section six, and, after examination and inquiry, shall determine the full and fair value of said land under the valuation standard applicable to other land and shall assess the same according to such value. If, notwithstanding such change of use, the land is valued, assessed and taxed under the provisions of this chapter in the ensuing year, upon notice thereof said board shall enter an assessment and the amount of the increased tax resulting from such assessment, as an added assessment and tax against such land, in the "Omitted list" for the particular year involved in the manner prescribed in section seventy-five of chapter fifty-nine. The amount of the added assessment shall be equal to the difference, if any, between the assessment imposed under this chapter and the assessment which would have been imposed had the land been valued and assessed as other land. The enforcement and collection of additional taxes resulting from any additional assessment so imposed shall be as provided by said chapter fifty-nine. The additional assessment imposed under this section shall not affect the conveyance or roll-back taxes, if any, applicable under sections twelve and thirteen.

**Chapter 61A: Section 8. Timely filing of application in towns or cities with programs of revaluation not completed by October 1 of pre-tax year**

Section 8. In any city or town in which a program of revaluation of all property therein has been or shall be undertaken and completed in time to be reflected in the assessments for the next succeeding tax year but not insufficient time to permit landowners to make application prior to October first of the pre-tax year for the valuation, assessment and taxation of their lands for the ensuing tax year on the basis of being actively devoted to agricultural or horticultural use, any such application which has been or shall

be filed with the board of assessors after October first and not more than thirty days following the mailing of the tax bill containing the new valuation shall be deemed to have been timely made for the tax year of the revaluation program, notwithstanding any provision of this chapter to the contrary. If such application is approved and the lands qualify for valuation, assessment and taxation as lands actively devoted to agricultural, horticultural or agricultural and horticultural use in the ensuing tax year, that portion of any tax assessed for such year which is in excess of the tax which would have been assessed on such lands had such application been timely made and approved shall be abated.

**Chapter 61A: Section 9. Allowance or disallowance of application for valuation; notice; liens**

Section 9. An application for valuation, assessment and taxation of land under the provisions of this chapter shall be allowed or disallowed by the board of assessors of the city or town in which such land is located within three months of the filing thereof. An application for valuation, assessment and taxation of land under the provisions of this chapter shall be disallowed by the board of assessors of the city or town in which such land is located if, in their judgment such land, in whole or in part, does not qualify there under. If any board of assessors shall determine that any application pursuant to this chapter is submitted for the purpose of evading payment of full and proper taxes, such board shall be and hereby is authorized to disallow such application. The failure of a board of assessors to allow or disallow any such application within three months following the filing thereof, shall be deemed an allowance of such application. The board of assessors shall, within ten days of an allowance, or disallowance, send written notice of such allowance, or disallowance, by certified mail to the landowner applicant and shall set forth therein the reason or reasons for disallowance together with a statement advising the landowner of his right to appeal there from as provided in section nineteen. In the case of a partial disallowance, the landowner shall be permitted to file an amendment to the original application.

With respect to the first application relating to a parcel of land which has been approved, and any subsequent such applications after a lapse of time when such land has not been valued, assessed and taxed under this chapter or after a change of record ownership of such land, the board of assessors shall forthwith cause to be recorded in the registry of deeds of the county or

district in which the city or town is situated a statement of their action which shall constitute a lien upon the land covered by such application for such taxes as may be levied under the provisions of this chapter. The statement shall name the owner or owners of record and shall include a description of the land adequate for identification. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. Upon application by any record owner, such liens shall be released by the board of assessors with respect to any parcel of land as provided below in this section upon the applicable facts being established by their records or by affidavits or otherwise.

All liens for special assessments or betterment assessments under section eighteen shall be released in full or in part upon its being so established that any such assessment or portion of such assessment which have become due have been paid.

All liens for conveyance tax under section twelve, shall be released upon its being so established that no conveyance or change of use by the owner at the time of such release will result in a conveyance tax under said section twelve or that any such taxes which have become due have been paid.

All liens for roll-back taxes under section thirteen, other than roll-back taxes based on change of use after the date of such release, shall be released upon its being so established that no roll-back taxes have become due or that any such taxes which have become due have been paid.

The board of assessors shall also have the power and authority to release any such liens to correct any errors or omissions. Any release under this section shall be recorded with the registry of deeds.

When any land which has been valued, assessed and taxed under this chapter ceases to be so valued, assessed and taxed the board of assessors shall forthwith record in the registry of deeds a statement to that effect which shall include the name of the record owner or owners, the date when such land ceased to be so valued, assessed and taxed and a description of the land adequate for identification.

All recording fees paid pursuant to the provisions of this chapter whether for statements of liens, certificates, releases or otherwise shall be borne by the owner of record of the land.

**Chapter 61A: Section 10. Factors to be considered in valuing land**

Section 10. The board of assessors of a city or town, in valuing land with respect to which timely application has been made and approved as provided in this chapter, shall consider only those indicia of value which such land has for agricultural, horticultural or agricultural and horticultural uses. Said board, in establishing the use value of such land, shall use the list of ranges published pursuant to section eleven and its personal knowledge, judgment and experience as to such agricultural land values but these factors shall be limited to data specific to the crop or product being grown or produced.

**Chapter 61A: Section 11. Farmland valuation advisory commission; expenditures**

Section 11. There is hereby created a farmland valuation advisory commission, the members of which shall be the commissioner of revenue who shall be chairman, the commissioner of agriculture, commissioner of the department of conservation and recreation, the director of housing and community development, the dean of the college of food and natural resources of the University of Massachusetts, or their respective designees, and one person to be appointed by the governor who shall be a member of a local board of assessors. The commission shall meet from time to time at the call of any of the above named commissioners and shall, prior to January first of each year, determine, for application during the ensuing tax year, a range of values on a per acre basis for each of the several classifications of land in agricultural or horticultural or forest land uses in the several counties of the commonwealth. The annual list of value ranges so determined shall be published by the commissioner of revenue and shall be mailed by him to the board of assessors of each city and town in the commonwealth no later than February first of each year. In determining such ranges in value, the commission shall consider evidence of agricultural or horticultural land use capability available from soil surveys and such other evidence and documentation as may, in its judgment, appear pertinent.

The commissioner of revenue may expend such sums as may be appropriated for the farmland valuation advisory commission for the

purposes of securing data for use in determinations by said commission and for expenses incurred in the administration of this chapter.

**Chapter 61A: Section 12. Sale of land or change of use; liability for conveyance tax; exemptions**

Section 12. Any land in agricultural, horticultural or agricultural and horticultural use which is valued, assessed and taxed under the provisions of this chapter, if sold for other use within a period of ten years from the date of its acquisition or the earliest date of its uninterrupted use by the current owner in agriculture or horticulture, whichever is earlier, shall be subject to a conveyance tax applicable to the total sales price of such land, which tax shall be in addition to such taxes as may be imposed under any other provision of law. Said conveyance tax shall be at the following rate: ten per cent if sold within the first year of ownership; nine per cent if sold within the second year of ownership; eight per cent if sold within the third year of ownership; seven per cent if sold within the fourth year of ownership; six per cent if sold within the fifth year of ownership; five per cent if sold within the sixth year of ownership; four per cent if sold within the seventh year of ownership; three per cent if sold within the eighth year of ownership; two per cent if sold within the ninth year of ownership; one per cent if sold within the tenth year of ownership. Notwithstanding the previous sentence, no conveyance tax shall be assessed if the land involved, or a lesser interest in that land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold or converted to commercial, residential or industrial use within 5 years after acquisition by a nonprofit conservation organization, the conveyance tax shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had that transaction been subject to a conveyance tax. The conveyance tax shall be assessed on only that portion of land on which the use has changed. No conveyance tax shall be imposed under the provisions of this section following the end of the tenth year of ownership. Said conveyance tax shall be due and payable by the grantor at the time of transfer of the property by deed or other instrument of conveyance and shall be payable to the tax collector of the city or town in which the property is entered upon the tax list. In the case of taking by eminent domain, the value of the property taken shall be determined in

accordance with chapter 79, and the amount of conveyance tax, if any, shall be added to that amount as an added value. If there is filed with the board of assessors an affidavit by the purchaser that the land is being purchased for agricultural, horticultural or agricultural and horticultural use, no conveyance tax shall be payable by the seller by reason of the sale, but if the land is not continued in that use for at least 5 consecutive years, the purchaser shall be liable for any conveyance tax that would have been payable on the sale as a sale for other use. The conveyance tax shall be assessed on only that portion of land whose use has changed. Except with respect to eminent domain takings, the provisions of this section shall not be applicable to the following: mortgage deeds; deeds to or by the city or town in which such land is located; deeds which correct, modify, supplement or confirm a deed previously recorded; deeds between husband and wife and parent and child when no consideration is received; tax deeds; deeds releasing any property which is a security for a debt or other obligation; deeds for division of property between owners without monetary consideration; foreclosures of mortgages and conveyances by the foreclosing parties; deeds made pursuant to a merger of a corporation or by a subsidiary corporation to its parent corporation for no consideration other than the cancellation and surrender of capital stock of such subsidiary which do not change beneficial ownership; and property transferred by devise or otherwise as a result of death. A nonexempt transfer subsequent to any exempt transfer or transfers shall be subject to the provisions of this section. Upon such nonexempt transfer the date of acquisition by the grantor, for purposes of this section, shall be deemed to be the date of the last preceding transfer not excluded by the foregoing provisions from application of this section; except that in the case of transfer by a grantor who has acquired the property from a foreclosing mortgagee the date of acquisition shall be deemed to be the date of such acquisition. Any land in agricultural or horticultural use which is valued, assessed and taxed under the provisions of this chapter, if changed by the owner thereof to another use within a period of ten years from the date of its acquisition by said owner, shall be subject to the conveyance tax applicable hereunder at the time of such change in use as if there had been an actual conveyance, and the value of such land for the purpose of determining a total sales price shall be fair market value as determined by the board of assessors of the city or town involved for all other property. If any tax imposed under this section should not be paid, the collector of taxes shall have the same powers and be subject to the same duties with respect to such taxes as in the case of the annual taxes upon real

estate, and the law in regard to the collection of the annual taxes, to the sale of land for the nonpayment thereof and to redemption there from shall apply to such taxes, so far as the same are applicable.

No conveyance tax will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or the definition of recreational land under section 1 of chapter 61B.

**Chapter 61A: Section 13. Change of use; liability for roll-back taxes**

Section 13. Whenever land which is valued, assessed and taxed under this chapter no longer meets the definition of land actively devoted to agricultural, horticultural or agricultural and horticultural use, it shall be subject to additional taxes, in this section called roll-back taxes, in the current tax year in which it is disqualified and in those years of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed, but roll-back taxes shall not apply unless the amount of those taxes as computed under this section, exceeds the amount, if any, imposed under section 12 and, in that case, the land shall not be subject to the conveyance tax imposed under said section 12. For each tax year, the roll-back tax shall be an amount equal to the difference, if any, between the taxes paid or payable for that tax year in accordance with this chapter and the taxes that would have been paid or payable in that tax year had the land been valued, assessed and taxed without regard to those provisions. If, at the time during a tax year when a change in land use has occurred, the land was not then valued, assessed and taxed under the provisions of this chapter, then such land shall be subject to roll-back taxes only for such of the five immediately preceding years in which the land was valued, assessed and taxed there under. In determining the amount of roll-back taxes on land which has undergone a change in use, the board of assessors shall have ascertained the following for each of the roll-back tax years involved:

(a) The full and fair value of such land under the valuation standard applicable to other land in the city or town;

(b) The amount of the land assessment for the particular tax year;

(c) The amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that

year from the amount of the land assessment determined under subsection (a); and,

(d) The amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under subsection (c) by the general property tax rate of the city or town applicable for that tax year.

Roll-back taxes will be subject to a simple interest rate of 5 per cent per annum. Land which is valued, assessed and taxed under this chapter as of July 1, 2006 shall be exempt from any interest if it remains in the same ownership as it was on that date or under the ownership of the original owner's spouse, parent, grandparent, child, grandchild, brother, sister or surviving spouse of any deceased such relative.

If the board of assessors determines that the total amount of roll-back taxes to be assessed under this section, before the addition of any interest, as provided for in the preceding paragraph, would be less than $10, no tax shall be assessed.

No roll-back tax imposed by this section will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or recreational land under section 1 of chapter 61B.

Land retained as open space as required for the mitigation of development shall be subject to the roll-back taxes imposed by this section.

**Chapter 61A: Section 14. Sale for or conversion to residential or commercial use; notice of intent to city or town; option to purchase; assignment of option**

Section 14. Land taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within 1 year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.

The discontinuance of forest certification shall not, in itself, for the purposes of this section, be considered a conversion. Specific use of land for a residence for the owner, the owner's spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively

employed full-time in the forest use of land, shall not be a conversion for the purposes of this section, and a certificate of the board of assessors, recorded with the registry of deeds, shall conclusively establish that particular use.

Any notice of intent to sell for other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

Any notice of intent to convert to other use shall be accompanied by a statement of intent to convert, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, the name, address and telephone number of the landowner and the landowner's attorney, if any.

The notice of intent to sell or convert shall be sent by the landowner by certified mail or hand delivered to the mayor and city council of a city, or board of selectmen of a town, and in the case of either a city or a town, to its

board of assessors, to its planning board and conservation commission, if any, and to the state forester.

A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell or convert shall be conclusive evidence that the landowner has mailed the notice in the manner and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to which it relates.

The notice of intent to sell or convert shall be considered to have been duly mailed if addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to the planning board and conservation commission if addressed to them directly; to the state forester if addressed to the commissioner of the department of conservation and recreation; and to the assessors if addressed to them directly.

If the notice of intent to sell or convert does not contain all of the material described above, then the town or city, within 30 days after receipt, shall notify the landowner in writing that notice is insufficient and does not comply.

For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

In the case of intended or determined conversion not involving sale, the municipality shall have an option to purchase the land at full and fair market value to be determined by an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to the landowner within 30 days after the notice of conversion to the municipality. In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense, contract for a second appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties will contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the municipality and shall be the final determination of consideration. Upon agreement of a consideration, the city or town shall then

have 120 days to exercise its option. During the appraisal process, the landowner may revoke the intent to convert at any time and with no recourse to either party.

The option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at the address that is specified in the notice of intent. Notice of public hearing shall be given in accordance with section 23B of chapter 39.

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice to the landowner of the city or town's election to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period that the landowner has agreed to in writing, whichever is later.

At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under the terms and conditions that the mayor or board of selectmen may consider appropriate. Notice of public hearing shall be given in accordance with section 23B of chapter 39.

The assignment shall be for the purpose of maintaining no less than 70 per cent of the land in use as forest land as defined in section 1, as agricultural and horticultural land as defined in sections 1 and 2 of chapter 61A or as recreation land as defined in section 1 of chapter 61B, and in no case shall the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall then be bound by a permanent deed restriction that meets the requirements of chapter 184.

If the first refusal option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions as

provided in this section, the mayor or board of selectmen shall provide written notice of assignment to the landowner.

The notice of assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in addition to the terms and conditions of the assignment. The notice of assignment shall be recorded with the registry of deeds.

Failure to record either the notice of exercise or the notice of assignment within the 120 day period shall be conclusive evidence that the city or town has not exercised its option.

If the option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the option may be exercised by the assignee only by written notice to the landowner signed by the assignee, mailed to the landowner by certified mail at the address that is specified in the notice of intent. The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period the landowner has agreed to in writing, from the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the assignee.

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying and inspecting the land, including, but not limited to, soil testing for purposes of Title V and the taking of water samples.

The city or town or its assignee shall have all rights assigned to the buyer in the purchase and sale agreement contained in the notice of intent.

If the city or town elects not to exercise the option, and not to assign its right to exercise the option, the city or town shall send written notice of nonexercise, signed by the mayor or board of selectmen, to the landowner by certified mail at the address that is specified in the notice of intent. The

notice of nonexercise shall contain the name of the owner of record of the land and description of the premises adequate for identification of them and shall be recorded with the registry of deeds.

No sale or conversion of the land shall be consummated until the option period has expired or the notice of nonexercise has been recorded with the registry of deeds, and no sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided in this section.

This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the parties in the manner described in this section for notice of intent to sell or convert, and the giving of notice may be established by an affidavit as described in this section.

**Chapter 61A: Section 15. Taxation of buildings and land occupied by dwelling**

Section 15. All buildings located on land which is valued, assessed and taxed on the basis of its agricultural or horticultural uses in accordance with the provisions of this chapter and all land occupied by a dwelling or regularly used for family living shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable property.

**Chapter 61A: Section 16. Continuance of land valuation, assessment and taxation under this chapter dependent upon qualifying use**

Section 16. Continuance of land valuation, assessment and taxation under the provisions of this chapter shall depend upon continuance of such land in agricultural or horticultural uses and compliance with other requirements of this chapter and not upon continuance in the same owner of title to such land. Liability to roll-back taxes, determined pursuant to section thirteen, shall attach when such land no longer qualifies as actively devoted to agricultural or horticultural use and shall be the obligation of the then owner of the land. For purposes relating to roll-back taxes such qualification shall depend on the actual use of such land for the previous 5 years, and not on the filing of application under section six for any year.

**Chapter 61A: Section 17. Separation of land to other use; liability for conveyance or roll-back taxes; continuing qualification of remainder**

Section 17. If, by conveyance or other action of the owner thereof, a portion of land which is valued, assessed and taxed under the provisions of this chapter is separated for a use other than agricultural or horticultural, the land so separated shall be subject to liability for conveyance or roll-back taxes applicable thereto, but such separation shall not impair the right of the remainder of such land to continuance of valuation, assessment and taxation there under; provided, that such remaining land continues to qualify under the usage, minimum acreage and other provisions thereof.

**Chapter 61A: Section 18. Special or betterment assessments; payment; interest**

Section 18. Land qualifying for valuation, assessment and taxation under this chapter shall be subject to special assessments or betterment assessments to such pro rata extent as the service or facility financed by such assessment is used for improving the agricultural or horticultural use capability of said land or for the personal benefit of the owner thereof. Any such assessment shall, however, upon application, be suspended during the time the land is in agricultural or horticultural use and shall become due and payable as of the date when the use of such land is changed. In the event only a portion of a tract of land which benefits from a suspension of payment is changed from such use, the assessment shall become due and payable as of the date when the use was changed only to the extent of and in the proportion that the frontage of such portion bears to the street frontage of the entire tract of land which originally benefited from a suspension of payment. Upon full payment of a portion of a suspended assessment, the tax collector may dissolve the lien for the assessment insofar as it affects the portion of the land changed from agricultural or horticultural use. The lien for the portion of the original assessment which remains unpaid shall continue and remain in full force and effect until dissolved in accordance with law. A request for such release shall be made in writing to the tax collector, and shall be accompanied by a plan and such other information as is required in the case of a request for a division of an assessment pursuant to section fifteen.

Payment of the assessment and interest on it shall be made in accordance with section 13 of chapter 80, but any interest shall be computed from the date of the change in use.

## Chapter 61A: Section 19. Roll-back taxes; procedures for assessment; appeal to appellate tax board

Section 19. The assessment, collection, apportionment and payment over of the roll-back taxes imposed by section thirteen shall be governed by the procedures provided for the assessment and taxation of omitted property under section seventy-five of chapter fifty-nine. Such procedures shall apply to each tax year for which roll-back taxes may be imposed notwithstanding the limitation set forth in said chapter fifty-nine with respect to the periods for which omitted property assessments may be imposed. Any person aggrieved by any determination or assessment by the board of assessors under this chapter may within 30 days of the date of notice thereof apply in writing to the assessors for modification or abatement thereof. Any person aggrieved by the refusal of the assessors to modify such a determination or make such an abatement or by their failure to act upon such an application may appeal to the appellate tax board within thirty days after the date of notice of their decision or within three months of the date of the application, whichever date is later. It shall be a condition of such appeal with respect to the annual general property tax that the asserted tax be paid, but no payment shall be required as a condition of such appeal with respect to any asserted conveyance tax or roll-back tax. If any payment of any tax imposed by this chapter should be made and as the result of any such modification or abatement by the board of assessors or decision by the appellate tax board it shall appear that any such tax has been overpaid, such excess payment shall be reimbursed by the town treasurer with interest at the rate of six per cent per annum from time of payment. Collection of any conveyance or roll back taxes, by sale or taking or otherwise, may be stayed by the appellate tax board while any such appeal is pending. Any partial payment of the asserted tax that may be required by the appellate tax board in connection with such stay shall not exceed one half of the asserted tax.

## Chapter 61A: Section 19A. Sale of land; certification of taxes paid or payable

Section 19A. In connection with any proposed or completed sale or other transfer of any land which has been valued, assessed and taxed under the provisions of this chapter, the owner of record of the land may apply to the board of assessors for a certificate of the amount of conveyance tax and roll-back tax, if any, payable by reason of such sale or other transfer, or that no such tax will or has so become payable and stating the amount of any conveyance or roll-back taxes that have theretofore become payable with respect to such land; and such a certificate shall be provided to the applicant within twenty days after application there for. Such certificate may be

recorded with the registry of deeds; and upon recording of such a certificate that no such tax will or has so become payable, or a certificate by the collector of taxes that the amount of tax stated in such certificate of the board of assessors has been paid, all liens on such land for taxes under this chapter shall terminate, except that any liens for any roll-back taxes assessed by reason of such land ceasing to qualify for valuation, assessment and taxation under this chapter after the date of such sale or other transfer, shall continue. In connection with the issuance of such a certificate, the board of assessors may rely upon their own records, affidavits and such other information as they may deem appropriate. The board of assessors shall charge six dollars for each certificate so issued, and the money so received shall be paid into the town treasury.

**Chapter 61A: Section 20. Valuation and assessment for purposes other than provisions of this chapter; equalization**

Section 20. For any purpose, other than the provisions of this chapter, for which the assessed value of land is relevant, including exemptions under the provisions of chapter fifty-nine, land qualifying for taxation under this chapter shall be valued and deemed to have been assessed by the same standards, methods and procedures as other taxable property.

In determining the equalization required by section nine of chapter fifty-eight, the commissioner of revenue shall determine the value of such land on the basis of its agricultural and horticultural use.

**Chapter 61A: Section 21. Factual details on tax list**

Section 21. The factual details to be shown on the tax list of a board of assessors with respect to land which is valued, assessed and taxed under this chapter shall be the same as those set forth by said board with respect to other taxable property in the same city or town.

**Chapter 61A: Section 22. Rules and regulations; forms and procedures**

Section 22. The commissioner of revenue shall promulgate such rules and regulations and shall prescribe the use of such forms and procedures as he deems appropriate to and consistent with effectuation of the purposes of this chapter.

**Chapter 61A: Section 23. Use of valuation, etc. procedures to evade taxes; penalties**

Section 23. Any person using the valuation, assessment and taxation procedures set forth in this chapter for the purposes of evading payment of full and proper taxes shall be subject to a fine of not more than ten thousand dollars or imprisonment for one year or both and to payment to the city or town in which the land is located of an amount equal to three times the amount of taxes so evaded.

**Chapter 61A: Section 24. Severability**

Section 24. If any clause, sentence, subdivision, paragraph, section or part of this act be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy in which said judgment shall have been rendered.

# CHAPTER 61B

Taxpayer's Guide to
Classification and Taxation
Of
Recreational Land
In
Massachusetts

CHAPTER 61B RECREATIONAL LAND

## Chapter 61B: Section 1. Recreational land and uses

Section 1. Land not less than five acres in area shall be deemed to be recreational land if it is retained in substantially a natural, wild, or open condition or in a landscaped or pasture condition or in a managed forest condition under a certified forest management plan approved by and subject to procedures established by the state forester in such a manner as to allow to a significant extent the preservation of wildlife and other natural resources, including but not limited to, ground or surface water resources, clean air, vegetation, rare or endangered species, geologic features, high quality soils, and scenic resources. Land not less than five acres in area shall also be deemed to be recreational land which is devoted primarily to recreational use and which does not materially interfere with the environmental benefits which are derived from said land, and is available to the general public or to members of a non-profit organization including a corporation organized under chapter one hundred and eighty.

For the purpose of this chapter, the term recreational use shall be limited to the following: 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.

Such recreational use shall not include horse racing, dog racing, or any sport normally undertaken in a stadium, gymnasium or similar structure.

## Chapter 61B: Section 2. Value of recreational land; rate of tax

Section 2. The value of land classified under the provisions of this chapter shall be determined under section thirty-eight of chapter fifty-nine solely on the basis of its use. The board of assessors shall assess such land at valuations based upon the guidelines established under the provisions of chapter fifty-eight, but in no event shall such valuation exceed twenty-five per cent of its fair cash value as determined pursuant to chapter fifty-nine.

The rate of tax applicable to such recreational land shall be the rate determined to be applicable to class three, commercial property under chapter fifty-nine.

**Chapter 61B: Section 2A. Tax rate for recreational land**

Section 2A. In a city or town that accepts this section, the rate of tax applicable to recreational land shall be the rate determined to be applicable to class two, open space.

**Chapter 61B: Section 3. Eligibility for classification as recreational**

Section 3. Eligibility of land for valuation, assessment and taxation under this chapter shall be determined separately for each tax year. Application there for shall be submitted to the board of assessors of each city or town in which such land is situated not later than October first of the year preceding each tax year for which such valuation, assessment and taxation is being sought. Application shall be made on a form prescribed by the commissioner of revenue and provided for the use of applicants by said board of assessors. Such form shall provide for the reporting of information pertinent to the provisions of this chapter and for certification by the applicant that he will immediately notify the board of assessors in writing of any subsequent circumstance within his control or knowledge which may cause a change in use of the land covered by such form prior to October first next following. Any application submitted under this section and covering leased land shall be accompanied by a written statement signed by the lessee of his intent to use such land for the purposes set forth in said application. A certification by a landowner that the information set forth in his application is true may be prescribed by said commissioner to be in lieu of a sworn statement to that effect. An application so certified shall be considered as if made under oath and subject to the same penalties as provided by law for perjury.

**Chapter 61B: Section 4. Changes in use; valuation; additional assessments**

Section 4. If a change in use of land maintained as recreational land as defined in section one occurs between October first and June thirtieth of the year preceding the tax year, the board of assessors shall disallow or nullify the application filed under authority of section three, and, after examination and inquiry, shall determine the full and fair value of said land under the

valuation standard applicable to other land and shall assess the same according to such value. If, notwithstanding such change of use, the land is valued, assessed and taxed under the provisions of this chapter in the ensuing year, upon notice thereof said board shall enter an assessment and the amount of the increased tax resulting from such assessment, as an added assessment and tax against such land, for the particular year involved in the manner prescribed in section seventy-five of chapter fifty-nine. The amount of the added assessment shall be equal to the difference, if any, between the assessment imposed under this chapter and the assessment which would have been imposed had the land been valued and assessed as other land. The enforcement and collection of additional taxes resulting from any additional assessment so imposed shall be as provided by said chapters fifty-nine and sixty.

**Chapter 61B: Section 5. Revaluation programs; time for application for recreational classification**

Section 5. In any city or town in which a program of revaluation of all property therein has been or shall be undertaken and completed in time to be reflected in the assessments for the next succeeding tax year but not in sufficient time to permit landowners to make application prior to October first of the year preceding the tax year for the valuation, assessment and taxation of their lands for the ensuing tax year on the basis of being maintained in recreational use, any such application filed with the board of assessors after October first and not more than thirty days following the mailing of the tax bill containing the new valuation shall be deemed to have been timely made for the tax year of the revaluation program, notwithstanding any provision of this chapter to the contrary. If such application is approved and the lands qualify for valuation, assessment and taxation as lands maintained for recreational use in the ensuing tax year, the portion of any tax assessed for such year which is in excess of the tax which would have been assessed on such lands had such application been timely made and approved shall be abated.

**Chapter 61B: Section 6. Allowance or disallowance of applications; time; records; liens**

Section 6. An application for valuation, assessment and taxation of land under the provisions of this chapter shall be allowed or disallowed by the board of assessors of the city or town in which such land is located within

three months of the filing thereof. An application for valuation, assessment and taxation of land under the provisions of this chapter shall be disallowed by the board of assessors of the city or town in which such land is located if, in their judgment such land, in whole or in part, does not qualify there under. If any board of assessors shall determine that any such application is submitted for the purpose of evading payment of full and proper taxes, such board shall disallow such application. The failure of a board of assessors to allow or disallow any such application within three months following the filing thereof, shall be deemed a disallowance of such application. The board of assessors shall, within ten days of an allowance, or disallowance, send written notice of such allowance, or disallowance, by certified mail to the applicant and shall set forth therein the reason or reasons for disallowance together with a statement advising the applicant of his right to appeal there from as provided in section fourteen. In the case of a partial disallowance, the applicant shall be permitted to file an amendment to the original application.

With respect to the first application relating to a parcel of land which has been approved, and any subsequent such applications after a lapse of time when such land has not been valued, assessed and taxed under this chapter or after a change of record ownership of such land, the board of assessors shall forthwith cause to be recorded in the registry of deeds of the county or district in which the city or town is situated a statement of their action which shall constitute a lien upon the land covered by such application for such taxes as may be levied under the provisions of this chapter. The statement shall name the owner or owners of record and shall include a description of the land adequate for identification. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. Upon application of any record owner, such liens shall be released by the board of assessors with respect to any parcel of land as hereinafter provided upon the applicable facts being established by records, affidavits or otherwise.

All liens for conveyance tax under section seven shall be released upon its being established that no conveyance or change of use by the owner at the time of such release will result in a conveyance tax under said section seven or that any such taxes which have become due have been paid.

All liens for roll-back taxes under section eight, other than roll-back taxes based on change of use after the date of such release, shall be released upon

its being so established that no roll-back taxes have become due or that any such taxes which have become due have been paid.

The board of assessors shall also have the power and authority to release any such liens to correct any errors or omissions. Any release under this section shall be recorded with the registry of deeds.

When any land which has been valued, assessed and taxed under this chapter ceases to be so valued, assessed and taxed the board of assessors shall forthwith record in the said registry of deeds a statement to that effect which shall include the name of the record owner or owners, the date when such land ceased to be so valued, assessed and taxed and a description of the land adequate for identification.

All recording fees paid under this chapter whether for statements of liens, certificates, releases or otherwise shall be borne by the owner of record of the land.

**Chapter 61B: Section 7. Land sold for other uses; conveyance tax; nonexempt transfers**

Section 7. Any recreational land which is valued, assessed and taxed under the provisions of this chapter, if sold for other use within a period of ten years from the beginning of the fiscal year in which it was first so classified shall be subject to a conveyance tax applicable to the total sales price of such land, which tax shall be in addition to such taxes as may be imposed under any other provision of law. Said conveyance tax shall be at the following rate: ten per cent if sold within the first five years of its being first so classified; and, five per cent if sold within the sixth through tenth year of its being first so classified. No conveyance tax shall be imposed under the provisions of this section following the end of the tenth year of its being first so classified. The conveyance tax shall be due and payable by the grantor at the time of transfer of the property by deed or other instrument of conveyance and shall be payable to the tax collector of the city or town in which the property is entered upon the tax list. In the case of taking by eminent domain, the value of the property taken shall be determined in accordance with chapter 79, and the amount of conveyance tax, if any, shall be added as an added value. If there is filed with the board of assessors an affidavit by the purchaser that the land is being purchased for recreational use, no conveyance tax shall be payable by the seller by reason of the sale,

but if the land is not continued in that use for at least 5 consecutive years, the purchaser shall be liable for any conveyance tax that would have been payable on the sale as a sale for other use. The conveyance tax shall be assessed only on the portion of land whose use has changed. Notwithstanding the foregoing provisions, no conveyance tax shall be assessed if the land involved, or a lesser interest in the land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold for or converted to commercial, residential, or industrial use within 5 years of acquisition by a nonprofit conservation organization, the conveyance tax shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had such transaction been subject to a conveyance tax. The conveyance tax shall be assessed only on the portion of land whose use has changed.

Except with respect to eminent domain takings, this section shall not apply to the following: mortgage deeds; deeds to or by the city or town in which the land is located; deeds which correct, modify, supplement or confirm a deed previously recorded; deeds between husband and wife and parent and child when no consideration is received; tax deeds; deeds releasing any property which is a security for a debt or other obligation; deeds for division of property between owners without monetary consideration; foreclosures of mortgages and conveyances by the foreclosing parties; deeds made pursuant to a merger of a corporation or by a subsidiary corporation to a parent corporation for no consideration other than cancellation and surrender of capital stock of the subsidiary which do not change beneficial ownership; and property transferred by devise or other as a result of death. A nonexempt transfer subsequent to any exempt transfer or transfers shall be subject to the provisions of this section. Upon such nonexempt transfer the date of acquisition by the grantor, for purposes of this section, shall be deemed to be the date of the last preceding transfer not excluded by the foregoing provisions from application of this section; except that in the case of transfer by a grantor who has acquired the property from a foreclosing mortgagee the date of acquisition shall be deemed to be the date of such acquisition. If any tax imposed under this section should not be paid, the collector of taxes shall have the same powers and be subject to the same duties with respect to such taxes as in the case of the annual taxes upon real estate. The law in regard to

the collection of the annual taxes, to the sale of land for the nonpayment thereof and to redemption there from shall apply to such taxes, so far as the same are applicable. Any classified recreational land which is valued, assessed and taxed under the provisions of this chapter, if changed by the owner thereof to another use within a period of ten years from the date of its classification for recreational use by said owner, shall be subject to the conveyance tax applicable hereunder at the time of such change in use as if there had been an actual conveyance, and the value of such land for the purpose of determining a total sales price shall be fair market value as determined by the board of assessors of the city or town involved for all other property.

Notwithstanding this section, no conveyance tax imposed by this section will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or the definition of agricultural land under sections 1 and 3 of chapter 61A or the definition of horticultural land under sections 2 and 3 of chapter 61A.

**Chapter 61B: Section 8. Disqualification of land; roll-back taxes**

Section 8. Whenever land which is valued, assessed and taxed under this chapter no longer meets the definition of recreational use, it shall be subject to additional taxes, in this section called roll-back taxes, in the current tax year in which it is disqualified and in each of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed, but the roll-back taxes shall not apply unless the amount of the taxes, as computed under this section, exceeds the amount, if any, imposed under section 7 and, in that case, the land shall not be subject to the conveyance tax imposed under said section 7. For each tax year, the roll-back tax shall be equal to the difference, if any, between the taxes paid or payable for that tax year in accordance with this chapter and the taxes that would have been paid or payable had the land been valued, assessed and taxed without regard to these provisions. Notwithstanding the foregoing provisions, no roll-back taxes shall be assessed if the land involved, or a lesser interest in the land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold or converted to commercial, residential, or industrial use within 5 years after acquisition by a nonprofit conservation organization, roll-back taxes shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at

the time of acquisition of the subject parcel by the nonprofit conservation organization had the transaction been subject to a roll-back tax. If, at the time during a tax year when a change in land use has occurred, the land was not then valued, assessed and taxed under the provisions of this chapter, then such land shall be subject to roll-back taxes only for such of the ten immediately preceding years in which the land was valued, assessed and taxed there under. In determining the amount of roll-back taxes on land which has undergone a change in use, the board of assessors shall have ascertained the following for each of the roll-back tax years involved:

(a) the full and fair value of such land under the valuation standard applicable to other land in the city or town;

(b) the amount of the land assessment for the particular tax year;

(c) the amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under clause (a); and,

(d) the amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under clause (c) by the general property tax rate of the city or town applicable for that tax year.

Interest on roll-back taxes shall be payable and shall be computed as simple interest at 5 per cent per annum. If the board of assessors determines that the total amount of the roll-back taxes to be assessed under this section, before the addition of any interest as provided for in the preceding paragraph, would be less than $10, no tax shall be assessed.

No roll-back tax imposed by this section will be assessed on land that meets the definition of forest land under section 1 of chapter 61, agricultural land under sections 1 and 3 of chapter 61A, or horticultural land under sections 2 and 3 of chapter 61A.

Land retained as open space as required for the mitigation of a development shall be subject to the roll-back taxes imposed by this section.

**Chapter 61B: Section 9. Notice of intent to sell for or convert to other use; option of first refusal; assignment of option**

Section 9. Land taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within 1 year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.

The discontinuance of forest certification shall not, in itself, for the purposes of this section, be considered a conversion. Specific use of land for a residence for the owner, the owner's spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full-time in the forest use of such land, shall not be a conversion for the purposes of this section, and a certificate of the board of assessors, recorded with the registry of deeds, shall conclusively establish that particular use.

Any notice of intent to sell for such other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or

commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

Any notice of intent to convert to other use shall be accompanied by a statement of intent to convert, a statement of proposed use of such land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, the name, address and telephone number of the landowner and the landowner's attorney, if any.

The notice of intent to sell or convert shall be sent by the landowner by certified mail or hand delivered to the mayor and city council of a city, or board of selectmen of a town, and in the case of either a city or a town, to its board of assessors, to its planning board and conservation commission, if any, and to the state forester.

A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell or convert shall be conclusive evidence that the landowner has mailed the notice in the manner and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to which it relates.

The notice of intent to sell or convert shall be considered to have been duly mailed if addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to the planning board and conservation commission if addressed to them directly; to the state forester if addressed to the commissioner of the department of conservation and recreation and to the assessors if addressed to them directly.

If the notice of intent to sell or convert does not contain all of the material as described above, then the town or city, within 30 days after receipt, shall notify the landowner in writing that notice is insufficient and does not comply.

For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

In the case of intended or determined conversion not involving sale, the municipality shall have an option to purchase the land at full and fair market

value to be determined by an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to the landowner within 30 days after the notice of conversion to the municipality. In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense contract for a second appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties will contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the municipality and shall be the final determination of consideration. Upon agreement of a consideration, the city or town shall then have 120 days to exercise its option. During the appraisal process, the landowner may revoke the intent to convert at any time and with no recourse to either party.

The option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at the address that is specified in the notice of intent. Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice to the landowner of the city or town's election to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period that the landowner has agreed to in writing, whichever is later.

At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under the terms and conditions that the

mayor or board of selectmen may consider appropriate. Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

The assignment shall be for the purpose of maintaining no less than 70 per cent of the land in use as forest land as defined in section 1 of this chapter, as agricultural and horticultural land as defined in sections 1 and 2 of chapter 61A or as recreation land as defined in section 1 of chapter 61B, and in no case shall the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall then be bound by a permanent deed restriction that meets the requirements of chapter 184.

If the first refusal option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions as provided in this section, the mayor or board of selectmen shall provide written notice of assignment to the landowner.

The notice of assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in addition to the terms and conditions of the assignment. The notice of assignment shall be recorded with the registry of deeds.

Failure to record either the notice of exercise or the notice of assignment within the 120 day period shall be conclusive evidence that the city or town has not exercised its option.

If the option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the option may be exercised by the assignee only by written notice to the landowner signed by the assignee, mailed to the landowner by certified mail at the address that is specified in the notice of intent.

The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period that the landowner

has agreed to in writing, from the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the assignee.

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying and inspecting said land, including but not limited to soil testing for purposes of Title V and the taking of water samples.

The city or town or its assignee shall have all rights assigned to the buyer in the purchase and sales agreement contained in the notice of intent.

If the city or town elects not to exercise the option, and not to assign its right to exercise the option, the city or town shall send written notice of nonexercise signed by the mayor or board of selectmen to the landowner by certified mail at the address that is specified in the notice of intent. The notice of nonexercise shall contain the name of the owner of record of the land and description of the premises adequate for identification of them, and shall be recorded with the registry of deeds.

No sale or conversion of the land shall be consummated until the option period has expired or the notice of nonexercise has been recorded with the registry of deeds, and no sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided herein.

This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the parties in the manner described in this section for notice of intent to sell or convert, and the giving of that notice may be established by an affidavit as described in this section.

**Chapter 61B: Section 10. Buildings on recreational land; land occupied by dwellings or used for family living; taxation**

Section 10. All building located on land which is valued, assessed and taxed on the basis of its recreational use in accordance with the provisions of this chapter and all land occupied by a dwelling or regularly used for family

living shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable property.

**Chapter 61B: Section 11. Continuance of classification**

Section 11. Continuance of land valuation, assessment and taxation under the provisions of this chapter shall depend upon continuance of such land in recreational use and compliance with other requirements of this chapter and not upon continuance in the same owner of title to such land. Liability to roll-back taxes, determined pursuant to section eight shall attach when such land no longer qualifies as recreational land actively and shall be the obligation of the then owner of the land. For purposes relating to roll-back taxes such qualification shall depend on the actual use of such land for the previous 5 years, and not on the filing of application under section three for any year.

**Chapter 61B: Section 12. Separation of land for non-recreational use**

Section 12. If, by conveyance or other action of the owner thereof, a portion of land which is valued, assessed and taxed under the provisions of this chapter is separated for a use which does not qualify as recreational land, the land so separated shall be subject to liability for conveyance or roll-back taxes applicable thereto, but such separation shall not impair the right of the remainder of such land to continuance of valuation, assessment and taxation there under; provided, however, that such remaining land continues to so qualify.

**Chapter 61B: Section 13. Special or betterment assessments**

Section 13. Land qualifying for valuation, assessment and taxation under this chapter shall be subject to special assessments or betterment assessments to such pro rata extent as the service or facility financed by such assessment is used for improving the recreational use capability of said land or for the personal benefit of the owner thereof. This assessment shall, however, upon application, be suspended during the time the land is in classified recreational use and shall become due and payable as of the date when the use of the land is changed. Payment of the assessment and interest on it shall be made in accordance with section 13 of chapter 80, but the interest shall be computed from the date of the change in use. If only a portion of a tract of land which benefits from a suspension of payment is

changed from that use, the assessment shall become due and payable as of the date when the use was changed only to the extent of and in the proportion that the frontage of that portion bears to the street frontage of the entire tract of land which originally benefited from a suspension of payment. Upon receipt of full payment of a portion of a suspended assessment, the tax collector shall dissolve the lien for the assessment insofar as it affects the portion of the land changed from recreational use. The lien for the portion of the original assessment which remains unpaid shall continue and remain in full force and effect until dissolved in accordance with law. A request for this release shall be made in writing to the tax collector and shall be accompanied by a plan and other information that is required in the case of a request for a division of an assessment under section 10.

**Chapter 61B: Section 14. Roll-back taxes; procedures for assessment, etc.; modification or abatement; appeals**

Section 14. The assessment, collection, apportionment and payment over of the roll-back taxes imposed by section eight shall be governed by the procedures provided for the assessment and taxation of omitted property under section seventy-five of chapter fifty-nine. Such procedures shall apply to each tax year for which roll-back taxes may be imposed notwithstanding the limitation set forth in said chapter fifty-nine with r respect to the periods for which omitted property assessments may be imposed. Any person aggrieved by any determination or assessment by the board of assessors under this chapter may within sixty days of the date of notice thereof apply in writing to the assessors for modification or abatement thereof. Any person aggrieved by the refusal of the assessors to modify such a determination or make such an abatement or by their failure to act upon such an application may appeal to the appellate tax board within thirty days after the date of notice of their decision or within three months of the date of the application, whichever date is later. It shall be a condition of such appeal with respect to the annual general property tax that the asserted tax be paid, but no payment shall be required as a condition of such appeal with respect to any asserted conveyance tax or roll-back tax. If any payment of any tax imposed by this chapter should be made and as the result of any such modification or abatement by the board of assessors or decision by the appellate tax board it shall appear that any such tax has been overpaid, such excess payment shall be reimbursed by the town treasurer with interest at the rate of six per cent per annum from time of payment. Collection of any conveyance or roll-back

taxes, by sale or taking or otherwise, may be stayed by the appellate tax board while any such appeal is pending. Any partial payment of the asserted tax that may be required by the appellate tax board in connection with such tax shall not exceed one-half of the asserted tax.

**Chapter 61B: Section 15. Certificate of amount of conveyance or roll-back tax**

Section 15. In connection with any proposed or completed sale or other transfer of any land which has been valued, assessed and taxed under the provisions of this chapter, the owner of record of the land may apply to the board of assessors for a certificate of the amount of conveyance tax and roll-back tax, if any, payable by reason of such sale or other transfer, or that no such tax is payable and stating the amount of any conveyance or roll-back taxes that are payable with respect to such land. Such certificate shall be provided to the applicant within twenty days after application there for. Such certificate may be recorded with the registry of deeds, and upon such recording of such a certificate become payable, or a certificate by the collector of taxes that the amount of tax stated in such certificate of the board of assessors has been paid, all liens on such land for taxes under this chapter shall terminate, except that any liens for any roll-back taxes assessed by reason of land ceasing to qualify for valuation, assessment and taxation under this chapter after the date of such sale or other transfer, shall continue. In connection with the issuance of such a certificate, the board of assessors may rely upon their own records, affidavits and such other information as they may deem appropriate. The board of assessors shall charge six dollars for each certificate so issued, and the money so received shall be paid into the town treasury.

**Chapter 61B: Section 16. Equalized valuation based on recreational use**

Section 16. In determining the equalization required by section nine of chapter fifty-eight, the commissioner of revenue shall determine the value of such land on the basis of its recreational use.

## Chapter 61B: Section 17. Tax list of board of assessors; information required

Section 17. The factual details to be shown on the tax list of a board of assessors with respect to land which is valued, assessed and taxed under this chapter shall be the same as those set forth by said board with respect to other taxable property in the same city or town.

## Chapter 61B: Section 18. Rules and regulations; forms and procedures

Section 18. The commissioner of revenue shall promulgate such rules and regulations and shall prescribe the use of such forms and procedures as he deems appropriate to and consistent with effectuation of the purposes of this chapter.

For further information, contact your Local Board of Assessors, or contact:

Department of Revenue
Division of Local Services
Bureau of Municipal Finance Law
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