



# The National Agricultural Law Center

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## States' Differential Tax Assessment of Agricultural Land Statutes

*New Hampshire*



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# A National Agricultural Law Center Research Publication

## States' Differential Tax Assessment of Agricultural Land Statutes State of New Hampshire

### [N.H. Rev. Stat. ch. 79-F](#)

*Updated with laws current through Chapter 379 of the 2018 Reg. Sess., and C.A.C.R. 15 and 16.*

#### **Section: 79-F:1 Declaration of Public Interest.**

The general court hereby finds it to be in the public interest to encourage the preservation of productive farms and associated structures. These structures are important in sustaining the economic viability of the state's farms, ensuring a reliable and safe local food supply, and providing an attractive environment for recreation, tourism, and wildlife. Farming in New Hampshire has a long and proud history which shaped our state's landscape. It is further declared to be in the public interest to prevent the loss of farms and their associated structures due to property taxation at values incompatible with their usage.

#### **Section: 79-F:2 Local Adoption of This Chapter.**

- I. Any municipality may adopt the provisions of this chapter by vote of its legislative body. Any city or town may do so by following the procedures in this section.
- II. In a town, other than a town that has adopted a charter pursuant to RSA 49-D, the question shall be placed on the warrant of the annual town meeting, by the governing body or by petition under RSA 39:3.
- III. In a city or town that has adopted a charter under RSA 49-C or RSA 49-D, the legislative body may consider and act upon the question in accordance with its normal procedures for passage of resolutions, ordinances, and other legislation. In the alternative, the legislative body of such municipality may vote to place the question on the official ballot for any regular municipal election.
- IV. If a majority of those voting on the question vote "yes," the provisions of this chapter shall take effect on April 1 following the vote, subject to the provisions of paragraph VI of this section.
- V. If the question is not approved, the question may later be voted on according to the provisions of paragraph II or III of this section, whichever applies.
- VI. A municipality that has adopted this program may consider rescinding its action in the manner described in paragraph II or III of this section, whichever applies.



### Section: 79-F:3 Definitions.

- I. "Appurtenances" means the land necessary to support or service the qualifying structure.
- II. "Assessing official" means the assessing authority of any town, city, or place.
- III. "Board of tax and land appeals" means the board of tax and land appeals established pursuant to the provisions of RSA 71-B:1.
- IV. "Commissioner" means the commissioner of the department of revenue administration.
- V. "Land under and curtilage of the qualifying farm structure" means only the land immediately under the footprint of the qualifying farm structure and its appurtenances.
- VI. "Open space land" means any or all farmland, forest land, or unproductive land assessed under RSA 79-A and as defined as follows.
  - (a) "Farmland" means any cleared land devoted to or capable of agricultural or horticultural use.
  - (b) "Forest land" means any land growing trees.
  - (c) "Unproductive land" means land, including wetlands, which by its nature is incapable of producing agricultural or forest products due to poor soil or site characteristics, or the location of which renders it inaccessible or impractical to harvest agricultural or forest products.
- VII. "Owner" means the person who is the owner of record of any land assessed under RSA 79-A.
- VIII. "Person" means any individual, firm, corporation, partnership, or other form of organization or group of individuals.
- IX. "Qualifying farm structures" mean structures contiguous to a minimum of 10 acres of open space land that are used by the owner of the land to exclusively:
  - (a) House livestock;
  - (b) Store feed grown or used on the farm;
  - (c) Store livestock bedding;
  - (d) Store crops or fertilizer for crops grown on the farm;
  - (e) Store farm equipment which is actively used to maintain the farm; or



- (f) Boil sap from maple trees and store fuel-wood used to boil sap from maple trees.
- X. "Use change tax" means a tax that shall be levied when the land use changes from under farm buildings use to a non-qualifying use or when the use of a qualifying farm structure changes to a non-qualifying use.

**Section: 79-F:4 Appraisal of Qualifying Farm Structures and Land Under Them.**

- I. The selectmen or assessing officials in any municipality adopting the provisions of this chapter shall appraise:
  - (a) Qualifying farm structures for no more than their replacement costs less depreciation; and
  - (b) The land under the qualifying farm structures at no more than 10 percent of its market value. The land under the qualifying farm structure shall be contiguous to a minimum of 10 acres of open space land.
- II. No owner of a qualifying structure shall be entitled to have the qualifying structure or land under it classified for any tax year under the provisions of this chapter unless he or she applies to the assessing officials on or before April 15 of said year, on a form approved and provided by the commissioner, to have his or her parcel of land so classified. If any owner satisfies the assessing officials that he or she was prevented by accident, mistake, or misfortune from filing such application on or before April 15, the assessing officials may receive the application at a later date and classify the structure and parcel of land under this chapter; but no such application shall be received after the local tax rate has been approved by the commissioner for that year.
- III. The assessing officials shall notify the applicant on a form provided by the commissioner no later than July 1, or within 15 days if the application is filed after July 1, of their decision to classify or refusal to classify the structure and parcel of land under the provisions of this chapter by delivery of such notification to him or her in person or by mailing such notification to his or her last and usual place of abode.
- IV. Prior to July 1 each year, the assessing officials shall determine if previously classified structures and lands have been reapplied or have undergone a change in use so that the use change tax may be levied against the structures and lands changed in use, according to RSA 79F:5. A list of all classified structures and lands and their owners in each town or city shall be filed by the respective assessing officials each year. Such list shall be part of the invoice and subject to inspection as provided in RSA 76:7.
- V. The commissioner shall include on the inventory blank, required under RSA 74:4, a question concerning whether any changes have been made in the use of qualifying structures and land classified as land under qualifying farm structures. The question shall be written to enable the assessing officials to locate structures and parcels which may require a change in assessment and to fit the context of the blank.



VI. The assessing officials shall file with the register of deeds in the appropriate county, on or before August 1 in each year, a notice of contingent liens describing all structures and parcels of land classified under the provisions of this chapter. If a parcel of land is classified as land under qualifying farm structures after such date, the assessing officials shall file notice of contingent lien with the register of deeds in the appropriate county within 14 days of said classification. The notice filed pursuant to this paragraph shall be on a form provided by the commissioner, shall contain the name of each owner, the date of classification, and a short description of each parcel of real estate together with such other information as the board may prescribe; provided, however, the assessing officials shall not file each year parcels of land classified under this chapter which have been previously filed, unless there has been some change in the acreage involved.

VII. A fee, in accordance with RSA 478:17-g, I, shall be paid by the owner for each parcel which is classified as land under qualifying farm structures to the local assessing officials, to be paid over to the register of deeds for recording the notice of contingent lien. The notice of contingent lien shall constitute notice to all interested parties that a lien on the parcel shall be created if and when the land is subsequently disqualified from taxation under this chapter, in the same manner as provided in RSA 80:85.

#### **Section: 79-F:5 Consideration for Use Change.**

Land and qualifying farm structures which have been appraised pursuant to this chapter shall be subject to a use change tax, payable to the tax collector of the municipality, if the use thereof changes to such an extent that the structure no longer meets the definition of a qualifying farm structure as defined in RSA 79F:3, IX. The consideration shall be at the rate of 10 percent of the full value assessment determined without regard to the current use of the land or qualifying farm structure. Notwithstanding the provisions of RSA 76:2, such assessed value shall be determined as of the actual date of the use change if such date is not April. This use change tax shall be in addition to the annual real estate tax imposed upon the property, and shall be due and payable upon the use change.

#### **Section: 79-F:6 Appeal to Board of Tax and Land Appeals.**

I. If the assessing officials deny in whole or in part any application for classification as land under qualifying farm structures, or grant a different classification than that applied for, the applicant, having complied with the requirements of RSA 79-F:4, II may, on or before 6 months after any such action by the assessing officials, in writing and upon a payment of a \$65 filing fee, apply to such board for a review of the action of the assessing officials.

II. The board of tax and land appeals shall investigate the matter and shall hold a hearing if requested as provided in this section. The board shall make such order thereon as justice requires, and such order shall be enforceable as provided hereafter.

III. Upon receipt of an application under the provisions of paragraph I, the board of tax and land appeals shall give notice in writing to the affected town or city of the receipt of the application by mailing such notice to the town or city clerk thereof by certified mail. Such town or city may request in writing a hearing on such



application within 30 days after the mailing of such notice. If a hearing is requested by a town or city, the board shall, not less than 30 days prior to the date of hearing upon such application, give notice of the time and place of such hearing to the applicant and the town or city in writing. Nothing contained herein shall be construed to limit the rights of taxpayers to a hearing before the board of tax and land appeals.

IV. The applicant and the town or city shall be entitled to appear by counsel, may present evidence to the board of tax and land appeals and, may subpoena witnesses. Either party may request that a stenographic record be kept of the hearing. Any investigative report filed by the staff of the board shall be made a part of such record.

V. In such hearing, the board of tax and land appeals shall not be bound by the technical rules of evidence.

VI. Either party aggrieved by the decision of the board of tax and land appeals may appeal pursuant to the provisions of RSA 71-B:12. For the purposes of such appeal, the findings of fact by said board shall be final. Any such appeal shall be limited to questions of law. An election by an applicant to appeal in accordance with this paragraph shall be deemed a waiver of any right to petition the superior court in accordance with RSA 79-F:7.

VII. A copy of an order of classification ordered by the board of tax and land appeals, attested as such by the chairman of the board, if no appeal is taken hereunder, may be filed in the superior court for the county or in the Merrimack county superior court at the option of said board; and, thereafter, such order may be enforced as a final judgment of the superior court.

#### **Section: 79-F:7 Appeal to Superior Court.**

If the assessing officials deny in whole or in part any application for classification as land under qualifying farm structures, or grant a different classification from that applied for, the applicant, having complied with the requirements of RSA 79-F:4, II may, within 6 months after notice of denial or classification, apply by petition to the superior court of the county, which shall make such order thereon as justice requires. Any appeal to the superior court under this section shall be in lieu of an appeal to the board of tax and land appeals pursuant to RSA 79-F:6.

#### **Section: 79-F:8 Abatement of Use Change Tax.**

- I. Any person aggrieved by the assessment of the use change tax may, within 2 months of the notice of tax date and not afterwards, apply in writing to the selectmen or assessors for an abatement of the use change tax.
- II. Upon receipt of an application under paragraph I, the selectmen or assessors shall review the application and shall grant or deny the application in writing within 6 months after the notice of tax date.
- III. (a) If the selectmen or assessors neglect or refuse to abate the use change tax, any person aggrieved may either:



- (1) Apply in writing to the board of tax and land appeals accompanied with a \$65 filing fee; or
  - (2) Petition the superior court in the county.
    - (b) The appeal to either the board of tax and land appeals or superior court shall be filed within 8 months of the notice of tax date and not afterwards.
- IV. For purposes of this section, “notice of tax date” means the date the taxing jurisdiction mails the use change tax bill.
- V. Each use change tax bill shall require a separate abatement request and appeal.

**Section: 79-F:9 Lien for Unpaid Taxes.**

The real estate of every person shall be held liable for the taxes levied pursuant to RSA 79-F:5.

**Section: 79-F:10 Enforcement.**

All taxes levied pursuant to RSA 79-F:5 which are not paid when due shall be collected in the same manner as provided in RSA 80.

**Section: 79-F:11 Disposition of Revenues.**

All money received by the tax collector pursuant to the provisions of this chapter shall be for the use of the town or city.

**Section: 79-F:12 Location of Contiguous Land in More Than One Taxing District.**

Where contiguous land which could be classified as land under qualifying farm structures is located in more than one town, compliance with any minimum area requirement pursuant to RSA 79-F:4 shall be determined on the basis of the total area of such land, and not the area which is located in any particular town.

