

REAL ESTATE LAWYERS OF NOVA SCOTIA
2017 CONFERENCE

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CHANGE IN USE TAX

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LEGISLATIVE FRAMEWORK

Section 42(1) of the Assessment Act R.S., c. 23:

“All property shall be assessed at its market value, such value being the amount which in the opinion of the assessor would be paid if it were sold on a date prescribed by the Director in the open market by a willing seller to a willing buyer, but in forming his opinion the assessor shall have regard to the assessment of other properties in the municipality so as to ensure that, subject to Section 45A, taxation falls in a uniform manner upon all residential and resource property and in a uniform manner upon all commercial property in the municipality.”

However, certain categories of property are exempt or qualify for a reduced level of taxation:

A. “Farm Property”

Pursuant to s.2(1)(g) of the Assessment Act “Farm Property” means “the land and complementary buildings used for agricultural purposes but does not include any residential property and the land used in connection therewith”.

B. “Forest Property”

Section 2(1)(h) “Forest Property” means “any lot of land, excluding any buildings or structures thereon, not used or intended to be used [**Note: Pursuant to Section 2(1)(i) “intended to used” means “a present intent supported by some substantial act to carry out the intent”**] for residential or commercial or industrial purposes or any combination of such purposes”.

C. “Conservation Property”

Section 2(1)(e) “Conservation Property” means “any lot of land that is

- i) *subject to a conservation easement . . . and is entered into in perpetuity . . . ,*
- ii) *owned or held primarily for the protection of native biodiversity and natural processes by an eligible body within the meaning of the Conservation Easements Act,*
- iii) *designated as an ecological site pursuant to the Special Places Protection Act; or*
- iv) *designated permanently as a wilderness area pursuant to the Wilderness Areas Protection Act,*

excluding any buildings or structures on the land and any of the land used in connection with those buildings or structures, and excluding any lands used or permitted to be used primarily for purposes other than the protection of native biodiversity and natural processes;”.

D. **Property owned by the Crown or Used for Religious, Educational, Fire Protection, Cemetery and Certain Other Purposes**

Section 5 of the Assessment Act creates certain exemptions from taxation including:

- “a) *all property vested in Her Majesty or vested in any person for Imperial, Dominion or Provincial purposes and either unoccupied or occupied by some person in an official capacity . . . ;*

- b) *every church and place of worship and the land used in connection therewith, and every churchyard and church burial ground and every church hall used for religious or congregational purposes exclusively save only for occasions specially authorized by church authorities and for which no revenue in excess of one hundred dollars per annum is received, but in computing revenue for the purposes of this clause there shall be excluded any contribution paid towards the reasonable additional costs of upkeep imposed by the use;*
- c) *the property of a non-profit community cemetery . . . ;*
- d) *the property of every college, academy or other public institution of learning . . . ;*
- e) *every public school house, city or town hall, gaol, lockup house and temperance hall and the land used in connection therewith;*
- f) *all school lands;*
- g) *all public landings, public breakwaters and public wharfs;*
- h) *the property of every municipality if occupied or used for the purposes of such municipality or unoccupied . . . ;*
- i) *. . . . the property of a fire department . . . ;*
- l) *the property of an agricultural society . . . ;*
- n) *the property of The Royal Canadian Legion and the property of the Army, Navy and Airforce Veterans in Canada . . . ;*

- o) *the property of . . . Boy Scouts;*

- p) *the property of . . . Girl Guides;”*

While this is not pertinent to a discussion of change in use, it should be noted that Section 9(1) of the Assessment Act provides that:

“If any property exempt from taxation ceases to be so exempt on or before the first day of March in any year, the owner or occupant of the property after it ceases to be exempt shall be taxed in respect of that property for the portion of the taxation year during which it is not exempt”.

Section 45B of the Assessment Act provides that conservation property shall be exempt from taxation. A similar exemption is afforded to farm property (excluding buildings or structures) pursuant to s.46(1).

Although s.47(1) provides that *“all forest property bona fide used or intended to be used for forestry purposes shall be exempt from taxation under this Act”*, there is a proviso *“except as provided in the Municipal Government Act”*. Reference to s.78(1) of the Municipal Government Act indicates that forest property is to be assessed at twenty-five cents per acre if it is classified as resource property, or forty cents per acre if it is classified as commercial property. It should be noted that forest property owned by a person owning 50,000 acres or more of forest property in Nova Scotia is classified as commercial property. Thus for example the lands owned by Northern Timber Nova Scotia Corp. (the land-holding affiliate of Northern Pulp) are identified in Property Online as “commercial forest”.

Forested lands owned by the Province are identified in Property Online as “Provincial Forest”. That classification will be considered later in this paper.

I have been advised by PVSC as follows:

“The “bona fide” practice of silviculture is what distinguishes the vast majority of resource taxable land (“forest property” category under “Resource Property” definition) and makes some forest property exempt. There are two distinct uses of the term “forest”. “Forest” is category of taxable resource property (Section 2(1)(5)) and does not require the presence of trees. See the definition in Section 2(1)(h) set out above. Within that larger category, if forest property is bona fide being used for the practice of silviculture (“bona fide” used or intended to be used for forestry purposes . . .”), then it should be exempt per s. 47. Without evidence of bona fide silviculture use, forest property should be resource taxable land.”

Section 29(1) of the Assessment Act provides that:

“All land in excess of three acres of any non-profit community, charitable, fraternal, educational, recreational, religious, cultural or sporting organization or institution, excluding any buildings or structures thereon, that is subject to taxation and that is used directly and solely for the purposes of the non-profit community, charitable, fraternal, educational, recreational, religious, cultural, or sporting organization or institution shall be exempt from taxation under this Act or any other general or special Act of the Legislature authorizing a tax on the assessed value of property except as provided in the Municipal Government Act, unless the proper officers of the organization or the institution prior to the first day of December, 1977, inform the Director in writing that they do not wish this Section to apply to their property.”

Section 76(1) of the Municipal Government Act provides that “An owner of land to which Section 29 of the Assessment Act applies shall annually pay to the municipality in which the land is situate a tax, to be known as a recreational property tax, equal to five dollars per acre, or part of an acre, for all of the land assessed as recreational property”. I am advised by PVSC that in accordance with the Municipal Government Act this amount has been indexed at the rate of 5% per year beginning in 1977 and the rate should now be approximately \$33.34 per acre.

Thus we can see that there is a regime whereby certain land uses are encouraged/supported by way of preferential property tax treatment.

CHANGE IN USE LEGISLATIVE PROVISIONS

The following provisions of the Municipal Government Act should be noted:

Non-Profit, etc.

Section 76(4):

*“In the event that any land, or any part thereof, to which this Section applies ceases to be land used directly and solely for the purposes of a non-profit community, charitable, fraternal, educational, recreational, religious, cultural or sporting organization or institution a change in use tax equal to **fifty per cent [my emphasis added]** of the value, determined by the assessor pursuant to the Assessment Act, of the land or part thereof to which this Section ceased to apply, is due and payable to the municipality in which the land is situate by the person determined by the assessor to be responsible for the change in use, unless the land becomes farm property, in which case no change in use tax is payable.”*

Farm Property

Section 77(3):

*“Where any land, or part thereof, to which this Section applies ceases to be farm property, a change in use tax, determined by the assessor pursuant to the Assessment Act, equal to **twenty per cent [my emphasis added]** of the value of the land, or part thereof, that ceased to be farm property is due and payable to the municipality in which the land is situate by the person determined by the assessor to have been responsible for the change in use, unless the land, or part thereof, becomes forest property bona fide used or intended to be used for forestry purposes, in which case no change in use tax is payable.”*

Forest Property

Section 78(2):

*“Where any land, or part thereof, to which this Section applies, ceases to be land used for forestry purposes, a change in use tax, determined by the assessor pursuant to the Assessment Act, equal to **twenty per cent [my emphasis added]** of the value of the land, or part thereof, that ceased to be used for forestry purposes is due and payable to the municipality in which the land is situate by the person determined by the assessor to have been responsible for the change in use, unless the land, or part thereof, is used for agricultural purposes, in which case no change in use tax is payable.”*

EXEMPTIONS

Pursuant to s.77(4) of the Municipal Government Act an owner of farm property may

“(a) transfer to each of the owner’s father, mother, brother, sister, son, daughter, grandson, granddaughter or spouse; or

(b) convey, reserve to or set aside for the owner,

one lot suitable for the erection of a single family dwelling and the

(c) lot shall not exceed one acre or the minimum size required by any applicable law, whichever is larger; and

(d) change in use tax is not payable if the land ceases to be used for agricultural purposes.

A similar exemption respecting forest property is found in s.78(3) of the Municipal Government Act.

It is my opinion that it would be reasonable to suppose that a lot size of 100,000 square feet would be permissible in order to comply with Environment Act requirements unless the lot is serviced by a public sewer.

Be aware of the fact the exemption is available only if a statutory declaration is registered in the Land Registration Office (or Registry of Deeds), setting out the basis of the exemption. If title has been migrated, I have used Form 28, specifying "Other" "Statutory Declaration - 452". If the parcel is still old-world, then registration is effected under a Form 44. The \$100.00 registration fee applies in both cases.

However, things don't necessarily end with the registration of a statutory declaration. The Grantor in the exempt transaction is liable to pay the tax if, within seven years of the date of the transfer, title is conveyed to a non-exempt person. The authority for this proposition is found in Sections 77(6) and 78(5) of the Municipal Government Act. **Thus any time we are searching title (migrated or non-migrated) to a parcel we need to alert our clients if the registration of a statutory declaration claiming exemption from change in use tax appears in the parcel register.** This impacts not only the original Grantor but also the present owner of the property as the unpaid tax is essentially a lien on the property if crystallized by a later change of ownership.

APPEALS

There are appeal provisions. For example, s.29(12) of the Assessment Act provides that *“an assessment under subsection (7), a determination that land had ceased to be used for a purpose set out in subsection 1 and a determination of acreage under subsection 2 may be appealed in accordance with Sections 62 and 63”*. The appeal is to the Nova Scotia Assessment Appeal Tribunal, which is an independent third party tribunal.

Similar appeal provisions exist respecting farm property (s.46(11) of the Assessment Act) and forest property (see s.47(11) of the Assessment Act). I have been advised by PVSC that the determination of whether land has “ceased to be used” is made by the Tribunal but the question of an exemption in the first instance is to be determined by the Supreme Court on appeal.

Additional points to consider:

1. As noted earlier, change in use tax should not be triggered if changing from one exempt use to another (by way of example, from forest to farm property). This may necessitate some dialogue with Property Valuation Services Corporation (PVSC).
2. There are many instances of parcels which are classified as farm property or forest property but such use has been discontinued. In those situations the classification ought to have been changed to “resource taxable” which would have the result of significantly higher municipal property taxes. Perhaps neither PVSC nor the owner is aware of the change or of the significance of the change. In advance of subdivision or transfer of ownership, PVSC can be asked to review the classification, perhaps resulting in a reclassification as “resource (taxable)”. While that means higher municipal property taxes on a going-forward basis, it also means that change in use tax may not apply. Bear in mind the fact that the determination of incorrect classification or a change in use is determined on a case by case basis.

3. Let's suppose that Farmer Brown owns one hundred acres of land, all of which is assessed as farm property and forest property. He is selling a building lot to a person to whom an exemption does not apply. However, this particular building lot has not been used for forestry or agricultural purposes. I would contact PVSC in advance of completion of the transaction and I would argue for a change of classification to resource exempt (of the area not used for forestry or farm purposes), thereby legally avoiding change in use tax. Will PVSC accept this argument? My prediction is that any such determination would be fact-specific and would be determined on a case by case basis. It had been suggested to me by PVSC that it might be difficult to convince them to accept this argument.
4. Farmer Brown subdivides his one hundred acre of farm property by creating a 2.1 acre lot. He then retains ownership of the lot and continues to conduct his farming operations on that lot as if it were part of the larger parcel. In that case I would argue that the creation of the new lot is only a red flag, it does not constitute a change in use in these particular circumstances. Some dialogue with PVSC will be critical. Of course change in use tax will be triggered upon sale or other transfer.
5. Farmer Brown sells a portion of his farm property to a neighbouring home owner who desires privacy but likes the fact that Farmer Brown proposes to continue farming the land. In that case, I would argue that the change in use has not occurred, but I believe some dialogue with PVSC will be necessary in order to make them aware of the situation.
6. Farmer Brown sells a very small portion of his farm land to a party not entitled to an exemption based upon a family relationship. On the face of it, a change in use has occurred as I think it is fair to say that generally speaking a very small area of land small could not be considered to be farm property. However, the buyer intends to engage in market gardening, grape production or perhaps Haskap berry production. Each of these is arguably suited to smaller acreages and thus I would suggest that these plans be disclosed to PVSC so as to try to persuade them that a change in use has not occurred.

7. Title to the lands farmed by Farmer Brown is held by his corporation. I have been advised that PVSC will treat that corporation as a distinct legal person or individual, even though Farmer Brown may be the sole shareholder, officer and director. Thus, if Farmer Brown wishes to have the corporation create a building lot for transfer to Farmer Brown's daughter, the exemption will not apply.

8. A church property is being sold. It sits on an area of land consisting of less than three acres. Change in use tax will not apply given the size of the lot (ie. less than three acres). Remember that the tax exemption applies, pursuant to s.29(1) of the Assessment Act, to *"all land in excess of three acres of any non-profit community . . . "*. In any event, a Section 5 exemption applies.

However, bear in mind the fact that the exemption from payment of municipal taxes, rates and levies will be lost upon sale.

9. A church sits on five acres of land, some of which is sold for a non-exempt use. The church has retained ownership of the building and some land. Change in use tax may be applicable to the sale. However, if the parcel which contained the church was "land used in connection therewith . . ." is exempt in accordance with Section 5 of the Assessment Act and is not subject to change in use tax in accordance with Section 29.

10. The exemption includes a transfer to a "spouse". However, the term "spouse" is not defined in the Assessment Act nor in the Municipal Government Act. Those of us attending the RELANS conference on December 8, 2015 were told that for purposes of the Capped Assessment Program:

"Both the Nova Scotia Interpretation Act R.S., c. 235, s. 1 and the Nova Scotia Assessment Act, R.S., c. 23, s. 1 are silent regarding the definition of "spouse". However, having regard to trends in Canadian law, the Director

of Assessment interprets “spouse” for the purposes of s. 45A(5) family transfers and the capped assessment program (CAP) to include individuals cohabiting in a conjugal relationship for a period of at least one (1) year continuously or individuals who have a subsisting registered domestic partner declaration pursuant to Part II of the Vital Statistics Act, R.S. c.494, s.1, regardless of the length of cohabitation.”

11. Earlier in this paper reference was made to the category of “provincial forest”. I recently had a client who was buying a 2.5 acre portion of a large Crown parcel, all of which was classified as “provincial forest”. I contacted PVSC, asking if change in use tax would apply in these circumstances. The response is informative, both as to this particular determination but also in terms of highlighting the fact-dependent nature of some of these determinations. The response reads in part:

“Your letter . . . asking if the CIU tax is applicable to a sale of land from the Provincial Crown to a private land owner is a good example of a situation where the specifics of both the vendor’s and purchaser’s actions are relevant and where it is possible that with more information the opinion might change . . .

Under the circumstances where a non-exempt landowner subdivides lands which are assessed as exempt, the subdivision itself can trigger an investigation into the use, or change in use of the lands. Where the owner is exempt, such a subdivision would not necessary trigger the enquiry. It is the post-subdivision sale to a non-exempt purchaser that would do so.

In the above case, the property is likely to be re-categorized as taxable, but a change in use tax assessment is not likely as the exempt vendor would be deemed to have been the one to change the use by either ceasing the forestry activity prior to or at the time of subdivision, and the CIU tax is not applicable to the Crown.

Different facts, which indicated that the purchaser was the one to change the property use from exempt use to non-exempt use might create a different result.”

SOME ADDITIONAL COMMENTS CONCERNING THE EXAMPLES NOTED ABOVE:

- a. Change in Use questionnaire packages will be sent by PVSC where there is a sale or subdivision of exempt lands. Individual statement of use forms should be completed and returned. If these forms are not completed and returned, PVSC may be forced to make a decision respecting change in use based upon the limited information available to it.
- b. Although Section 29 of the Assessment Act provides a “partial exemption”, “churches” are fully exempt pursuant to Section 5 of the Assessment Act. PVSC does not apply Section 29 to transfers of church properties except in accordance with Section 5(1)(b).

Church halls are exempt in accordance with Section 5 as long as they are used for congregational purposes only. However, other property owned by a church and used directly and solely for religious purposes is eligible for Section 29 partial exemption and is subject to change in use tax. A house gifted to a church by Will but not used for religious purposes will be taxable. A property owned by an eligible religious organization and used solely and directly for religious purposes (for example, a Bible Camp) is eligible for Section 29 partial exemption.

HOW IS THE CHANGE IN USE TAX CALCULATED?

The price for which the property is being sold is not determinative of the value used for purposes of calculating the change in use tax. PVSC will value the land as though it were not exempt at the time the change in use occurs. We have been encouraged to contact Chris Kent, Program Manager with PVSC. His email address is chriskent@pvsc.ca and his telephone number is 902 720-7817.

JUDICIAL INTERPRETATION

I am aware of only three instances where our Courts have considered matters involving change in use tax:

Green Meadows Estates Ltd. v. Director of Assessment (1984), 64 N.S.R. (2d) 36

Justice Hallett determined that the property was to be valued when it ceased to be used for agricultural purposes, rather than when the new use was approved. At page 39, he stated:

“[14] Section 40A(6) of the Assessment Act does not specify that the change in use tax shall be based on a new use of the property. The section simply says in effect that if farm property ceases to be used for agricultural purposes it is no longer exempt from taxation and a change in use is payable. What triggers the change in use tax therefore is not a new use of the land but rather the cessation of an existing one. The phrase “change in use tax” is really not quite accurate; it is a tax rather for ceasing to use for farm purposes. It

requires a new assessment to be made valued at the time of cessation of use. It is a tax additional to whatever tax has been or will be levied as a result of the normal annual classification and assessment of the land for the year in which cessation of use occurs or the normal tax for the following year.

[15] *Counsel for the appellant submitted that the change in use tax should be based on the value of the land as farm property as shown on the assessment roll. I do not agree. Had such been the intention of the legislature it would have said so. In my opinion what is called for by s.40(6) of the Act is a new assessment.*

[16] *Such issues as whether there was any evidence of a substantial act indicating an intent to use the land as residential property or as to how the property should be classified when it has ceased to be used for agricultural purposes are really irrelevant. The question here for determination is not when did the property first become used for residential purposes; rather, the crucial question is when did the property cease to be used for agricultural purposes.”*

Eastern Forestry Resources Limited v. The Director of Assessment and Municipality of the District of Lunenburg (1991), 108 N.S.R. (2d) 357

Scott Paper sold a block of land to Eastern Forestry which then sold individual lots. In this case the assessment classification had been forest land. A number of waterfront lots were created and sold as cottage lots to individual purchasers. Matthews, J.A., considered the Decision in Green

Meadows (above) and concluded that “the same reasoning applies to land which had been used for “forestry purposes”. At page 4 he stated:

“Over the years Scott had used the Lake Parcel in the same manner as its other lands for forestry purposes. The fact that Scott, in calculating the sale price recognized that the Lake Parcel was of greater value to the appellant who intended a different use, is irrelevant. Also irrelevant is the fact that the sale to the appellant took place in mid year and thus Scott was the assessed owner on the assessment records at the time the change-in-use occurred. It was the appellant who ceased using the land for forestry purposes”.

Nova Scotia (Director of Assessment) v. McQuillan, 2001 NSCA 91 (Can LII)

Mr. and Mrs. McQuillan were farmers. They sold a portion of their farmland to the Province which subsequently built a school on the property. The appeal was from a Decision of the Nova Scotia Utility and Review Board which determined that the McQuillans were not responsible for the payment of change in use tax after they sold the land. At page 4 of the Decision, Roscoe, J.A. confirmed the Board’s finding that:

“... The McQuillans used the lands for agricultural purposes until the lands were sold to the Province. There is no evidence that they intended anything but an agricultural use for the lands. They did nothing different with the lands up to the time they were conveyed. The McQuillans did not survey or subdivide the lands. The Board finds that it was the Province who ceased using the land for agricultural purposes as they proceeded with steps leading to the construction of a school immediately upon taking title to the property, including surveying and subdividing the lands in preparation for the development.”

CONCLUSION

Assessment of change in use tax is back, after a lengthy absence. That does not necessarily mean that bills are being issued as of yet, although there have been instances where the tax has indeed been assessed and bills have been issued. Subdivision or sale can trigger an inquiry into a possible change in use tax. The new owner, the former owner or the lawyer acting for one or the other of these parties may be contacted by PVSC to obtain further information. This represents an opportunity to engage in dialogue to determine whether or not an assessment of change in use tax is indeed appropriate, and if so in what amount? Of course we can be more proactive by contacting PVSC in advance of any subdivision or transfer.

My experience with PVSC over the past several years has been that they are very receptive to questions and input. I have been encouraged by Valerie Paul, Corporate Counsel with PVSC, to ask questions or present scenarios which may be of assistance to them in their development of policies respecting change in use tax.

We need to be vigilant when advising clients with respect to transactions which may result in a change in use tax assessment. We should be proactive in terms of drafting our Agreements of Purchase and Sale (and in terms of interjecting under the "Lawyer's Approval" section of the standard Real Estate Commission Agreement of Purchase and Sale). Early contact with PVSC may serve to put any change in use tax issues to rest, or alternatively may help to quantify the amount of tax to be paid.

As stated by Harry Munro, Q.C., in his presentation at the Continuing Legal Education Society Real Property Conference in 1994: *"Thus it would seem that every case must resolve around its own facts"*.

RESOURCES

- 1 Munro, Harry "Change of Use Tax - A Brief Overview", C.L.E. Real Property Conference 1994
- 2 Parcel Register containing registration particulars of Statutory Declaration respecting change in use exemption (appearing in Non-Enabling Documents section)
- 3 Material sent by PVSC to current property owner inquiring about exempt status of parcel of land
- 4 Statutory Declaration template provided by PVSC respecting use of land
- 5 Statutory Declaration claiming entitlement to exemption

RESOURCE 1

CHANGE OF USE TAX - A BRIEF OVERVIEW

Presented by Harry Munro at Continuing Legal Education Real Property Conference 1994

Change of use tax is a subject all too often overlooked by the Real-Estate practitioner when advising a purchasing client. Generally speaking it will be of primary concern to practitioners when advising clients on raw land/lot purchases. There are three classifications of assessment, in The Assessment Act R.S.N.S. 1989 c.23 (as amended) which in the normal course of events should alert practitioners to review the issue with their clients more fully, and these are;

- farm property (s.47)
- forest property (s.49)
- for want of a better term "non-profit property" (s.29).
-

Farm property

Farm property is defined in s.2(g) of the Assessment Act to mean,

"the land and complementary buildings used for Agricultural purposes but does not include any residential property and the land used in connection therewith"

Section 46 subsection (1) of the Assessment Act exempts this classification of property from taxation, but there is a price exacted for this generous treatment by subsection (6) in the form of change in use tax. This tax is levied when "the land ceases to be used for agricultural purposes" and amounts to 20% of the property's assessed value. (subject to some exemptions common to farm and forestry property which will be dealt with later in this paper).

Most important to the client is that this change of use tax is constituted a lien on the land by subsection 46(8).

Forestry Property

Forestry property is also exempt tax pursuant to subsection 47(1) of the Act. The subsection states that

"all property bona fide used or intended to be used for forestry purposes shall be exempt from real property tax."

Forestry property is defined by subsection 2(h) to include essentially all property not used

for residential, commercial or industrial purposes. . But once again should the forestry use cease then a change of use tax equal to 20% of the assessed value will be levied and the tax due will constitute a lien on the land.

Non Profit Property

Section 29 of the act exempts from taxation with

"all land in excess of 3 acres of any non-profit charitable fraternal educational religious cultural or sporting organization excluding buildings and structures."

The section, however, imposes a per acre tax on the land and in addition levies a 50% change of use tax when the land ceases to be used for its original non-profit purpose. Similar to the other two sections of the Act this tax also constitutes a lien against the land.

Exceptions

In the case of Farm and Forest property there are exceptions to the general rule:

- If the new use is either Farm or forest property.
- If the land which ceases to be used for forest or farm purposes is sold as a building lot to an immediate family member and does not exceed one acre or the minimum size required by law.

Conclusion and Analysis

Ideally this issue should be discussed with the client before the Agreement of Purchase and Sale is signed. At that time the prudent practitioner should determine the assessment classification of the subject property and then find out from the client what the client's proposed use of the land is, in order to determine if there is a possibility that change of use tax might be levied.

The issue of liability for change of use tax was recently canvassed by the Supreme Court Appeals Division in the case of Eastern Forestry Resources Limited v. The Director of Assessment and Municipality of the District of Lunenburg (1991), 108 N.S.R. (2d) 357. In rendering the decision of the court Matthews J.A. quoted from an earlier decision of MacDonald J.A. Green Meadows Estates Ltd v. Director of Assessment (1984), 64 N.S.R. (2d) 36 where he commented at p.39:

"[14] Section 40A(6) (now s.46(6)) of the Assessment Act does not specify that the change-in-use tax shall be based on a new use of the property. The section simply says in effect that if farm property ceases to be used for agricultural purposes it is no longer exempt from taxation and a change-in-use tax is therefore payable. What triggers the change-in-use tax therefore, is not a new use of the land but rather the cessation of an existing one. The phrase 'change-in-use tax' is really not quite accurate; it is a tax rather for ceasing to use for farm purposes. It requires a new assessment to be made, valued at the time of the cessation of use. It is a tax additional to whatever tax has been or will be levied as a result of the normal annual classification and assessment to the land for the year in which cessation of use occurs or the normal tax for the following year.

.....

"[16] Such issues as whether there was any evidence of a substantial act indicating an intent to use the land as residential property or as to how the property should be classified when it has ceased to be used for agricultural purposes are really irrelevant. The question here for determination is not when did the property first become used for residential purposes; rather, the crucial question is when did the property cease to be used for agricultural purposes?"

After quoting this excerpt Matthews J.A. states,

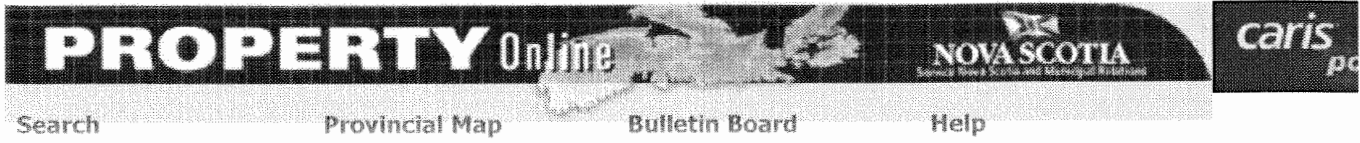
"the same reasoning applies to land which had been used for forestry purposes."

Thus it would seem that every case must revolve around its own facts. If the Vendor, as a farmer had gone out and obtained subdivision approval for a number of lots and had then advertised the lots for sale as building lots, then using the analysis of the Appeals Division, he as Vendor should be responsible for the change in use tax since its use as a farm property ceased when he obtained approval for the subdivision. If however the client had approached the Vendor and asked to purchase a lot off a farm or woodlot then it would seem that the use would cease when the purchaser acquired title. In between these two situations there are innumerable variations, each of which must be interpreted on its own facts.

What if the client, has, as is usually the case already signed the Agreement of purchase and sale when they first attend to provide instructions? There is still an onus on the

practitioner to determine the assessed classification of the land and enquire as to the intended use of the land. The framework of the analysis should still be the same and the question asked, "when did the property cease to be used for agricultural or forestry purposes? If there is a dispute, then as a matter of practicality, I would suggest that a speedy way of having it resolved would be to make an application under the Vendors and Purchasers Act.

One last area to be aware of is "the exception to the exception" when there is a sale of a building lot to an immediate family member! If that family member then resells the lot within seven years, of acquiring it the family member as transferor is liable for the change of use tax (see subsection 14 of section 46 and 47 of the Assessment Act. The warning signal for this should be the appearance of a statutory declaration in the Registry of Deeds which must be filed, whereby the transferor makes the original claim for exemption. Obviously if this is dated within seven years of the closing date the issue of change of use tax as an adjustment must be raised with the Vendor prior to closing.



Search

Provincial Map

Bulletin Board

Help

Land Registration View

* Indicates interests inherited on subdivision or re-configuration of parcel

| | | | | | |
|-------------|-------------------|----------------|--|------------------|---------------|
| PID | 20466538 | Parcel Type | STANDARD PARCEL | Status | ACTIVE |
| Area | 3.96 ACRE(S) | Parcel Access | PUBLIC | Manag. Unit | MU0409 |
| Lot | LOT 12-B1 | Created | Jun 15, 2012 03:54:04PM | | |
| PDCA Status | APPROVED | Municipal Unit | MUNICIPALITY OF THE COUNTY OF COLCHESTER | Manner of Tenure | JOINT TENANTS |
| LR Status | LAND REGISTRATION | LR Date | Jun 15, 2012 03:54:04PM | | |

| | | | |
|--|-------------------|------------------|--------------------------|
| Location | County | Primary Location | Source |
| 419 UPPER RIVER JOHN ROAD WAUGHS RIVER | COLCHESTER COUNTY | Yes | Assigned by Municipality |

Comments

MAP:11E11Y2
MAP:11E11Y4

| | | | | |
|--------------------|--------------------------------------|--------------|----------|---------|
| Assessment Account | Value | Tax District | Tax Ward | Tax Sub |
| 10459613 | \$221,200 (2016 RESIDENTIAL TAXABLE) | 070 | 000 | |

- [Back to Results](#)
- [Details View](#)
- [Parcel Archive View](#)
- [Map View](#)

Registered Interests

| Interest Holder (Qualifier) | Interest Holder Type | Mailing Address | Type | Year | Doc # | Book/Page/Plan | Registration Date | NS Non-Res? |
|-----------------------------|----------------------|--|------|------|--|----------------|-------------------|-------------|
| JAMES OLIVER CRIPPS | FEE SIMPLE | 475 UPPER RIVER JOHN ROAD RURAL ROUTE 5 TATAMAGOUCHE NS CA B0K 1V0 | DEED | 2012 | 100945121 View Doc | | Jun 21, 2012 | No |
| JAMIE ALEXANDRA CRIPPS | FEE SIMPLE | 475 UPPER RIVER JOHN ROAD RURAL ROUTE 5 TATAMAGOUCHE NS CA B0K 1V0 | DEED | 2012 | 100945121 View Doc | | Jun 21, 2012 | No |

Farm Loan Board - Occupants & Mailing Addresses

| Name | Interest Holder Type | Mailing Address |
|------|----------------------|-----------------|
|------|----------------------|-----------------|

No Records Found

Benefits to the Registered Interests

Benefit Details Interest Holder Type Type Year Doc # Book/Page/Plan Registration Date

No Records Found

Burdens on the Registered Interests

| Interest Holder (Qualifier) | Interest Holder Type | Mailing Address | Type | Year | Doc # | Book/Page/Plan | Registration Date |
|-----------------------------|---|-----------------|------|------|------------------------------|----------------|-------------------|
| 20026258 | EASEMENT/ROW HOLDER (BURDEN) - DOMINANT PID | | DEED | 2012 | 100945121 View Doc | | Jun 21, 2012 |

Textual Qualifications on Title

Qualifications Text

Tenants in Common not registered pursuant to the *Land Registration Act*

| Interest Holder (Qualifier) | Interest Holder Type | Mailing Address | Type | Year | Doc # | Book/Page/Plan | Registration Date |
|-----------------------------|----------------------|-----------------|------|------|-------|----------------|-------------------|
|-----------------------------|----------------------|-----------------|------|------|-------|----------------|-------------------|

No Records Found

Recorded Interests

| Interest Holder (Qualifier) | Interest Holder Type | Mailing Address | Type | Year | Doc # | Book/Page/Plan | Registration Date |
|-----------------------------|----------------------|--|----------|------|---|----------------|-------------------|
| THE TORONTO-DOMINION BANK | MORTGAGEE | 4750 RUE DE LA SAVANE MONTREAL QC CA H4P 1T7 | MORTGAGE | 2012 | 102144285 View Form View Doc | | Dec 13, 2012 |

Parcel Description

ALL that certain lot, piece or parcel of land situate, lying and being on the Northern boundary of the Upper River John Road, at Waughs River, in the County of Colchester, Province of Nova Scotia, and being Lot 12-B1 as shown on a plan showing subdivision lands of James Arthur Baillie and Sandra Darlene Baillie, dated April 30, 2012, signed by Stevan J. Forbes, N.S. Land Surveyor, bounded and described as follows:

BEGINNING at a survey marker on the South Western corner of lands of The Nova Scotia Farm Loan Board (Matthew O.B. Cripps) on the Northern boundary of the Upper River John Road.

THENCE Westerly following along the various courses of the Northern boundary of the Upper River John Road North 86 degrees 43.0 minutes West a distance of 450.0 feet; thence South 86 degrees 40.9 minutes West by chord and a chord distance of 110.3 feet to a survey marker.

THENCE North 2 degrees 35.3 minutes East dividing the lands of the grantors a distance of 351.3 feet to a survey marker on the Southern boundary of Crown Land (Nova Scotia Department Of Natural

Resources).

THENCE South 89 degrees 55.0 minutes East along the Southern boundary of Crown Land (Nova Scotia Department Of Natural Resources) a distance of 418.35 feet to a survey marker on the North Western corner of lands of The Nova Scotia Farm Loan Board (Matthew O.B. Cripps).

THENCE South 18 degrees 42.2 minutes East along the Western boundary of lands of The Nova Scotia Farm Loan Board (Matthew O.B. Cripps) a distance of 390.32 feet to a survey marker on the South Western corner of said Nova Scotia Farm Loan Board lands on the Northern boundary of the Upper River John Road and being the place of beginning. Containing 3.959 acres. Bearings from Grid North 1979.

Burden:

Subject to the right of James Arthur Baillie and Sandra Darlene Baillie and their successors in title with respect to the "Remaining Lands" shown on said plan to draw water from the existing well located on the above described Lot 12-B1. The location of said well being as shown on the above mentioned plan.

*** Municipal Government Act, Part IX Compliance ***

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act
 Registration District: COLCHESTER COUNTY
 Registration Year: 2012
 Plan or Document Number: 100873372

Non-Enabling Documents

| Inst Type | Inst No | Year | Type | Book/Page | Registration System | Registration Date |
|-----------|------------------|------|--------------------------------------|-----------|---------------------|-------------------|
| Document | 102677896 | 2013 | STATUTORY DECLARATION (NON-ENABLING) | | LAND REGISTRATION | Mar 20, 2013 |

[View Doc](#)

Non-Enabling Plans

| Inst Type | Inst No | Year | Type | Plan Name | Drawer Number | Registration Date |
|-----------|------------------|------|-----------------------------|---|---------------|-------------------|
| Plan | 100873372 | 2012 | SUBDIVISION & AMALGAMATIONS | LOT 12-B1 PLAN OF SUBDIVISION SHOWING LOT 12-B1 SUBDIVISION LANDS OF JAMES ARTHUR BAILLIE AND SANDRA DARLENE BAILLIE, UPPER RIVER JOHN ROAD, WAUGHS RIVER, COL CO | | Jun 12, 2012 |

[View Plan](#)

AFR Bundles

| Inst Type | Inst No | Year | Type | Filing Reference | Instrument Date |
|-----------|---------|------|------|------------------|-----------------|
|-----------|---------|------|------|------------------|-----------------|

No AFR Bundles Found

Parcel Relationships

| Related PID | Type of Relationship |
|-----------------|----------------------|
| 20026258 | PARENT PARCEL NUMBER |

[Back to Results](#)[Details View](#)[Parcel Archive View](#)[Map View](#)

This parcel IS REGISTERED PURSUANT TO THE *Land Registration Act*. The registered owner of the registered interest owns the interest defined in this register in respect of the parcel described in the register, subject to any discrepancy in the location, boundaries or extent of the parcel and subject to the overriding interests [*Land Registration Act* subsection 20(1)].

No representations whatsoever are made as to the validity or effect of recorded documents listed in this parcel register. The description of the parcel is not conclusive as to the location, boundaries or extent of the parcel [*Land Registration Act* subsection 21(1)].

[Boundary/Area Problem](#)[General Problem](#)[Municipal Tax Query](#)

Property Online version 2.0

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Truro, Nova Scotia
B2N 0G9

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1.800.380.7775
Fax 902.893.6101
1.888.339.4555
www.pvsc.ca

May 16, 2016

VIA REGULAR MAIL

«MAIL_PADDR1»

«MAIL_PADDR2»

«MAIL_PADDR3»

Re: «LEGDAT_SITUS»

Assessment Account Number (AAN): «PARID»

Dear «OWN1»«OWN2»:

Property Valuation Services Corporation (PVSC) is the not-for-profit organization responsible for assessing all property in Nova Scotia as mandated under the Nova Scotia Assessment Act.

As part of the reassessment process, PVSC is required to determine whether property assessed as farm or forest is used in a manner consistent with the criteria for exemption. A review of your account indicates that there has been a recent transaction, subdivision or sale. For that reason, and because your land is in part or whole exempt from property tax, we request that you complete the attached *Statement of Property Use* documents.

Also, included is a *Statutory Declaration*. If the recent land transaction, subdivision or sale registered with the Nova Scotia Land Registry was transferred to a family member, then a *Statutory Declaration* can be filled out by the property owner who sold, gave, or subdivided this property. A completed *Statutory Declaration*, that meets set requirements, may provide an exemption from a *Change In Use* tax for the parcel of land transferred.

There are two methods you can use to return the completed form(s) to PVSC:

Mail:

Property Valuation Services Corporation
15 Arlington Place, Suite #6
Truro, NS B2N 0G9

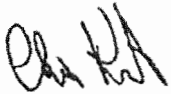
email:

inquiry@pvsc.ca

Receipt of the completed form[s] within 30 days assists PVSC staff in determining whether a *Change In Use* tax is applied to your property account. PVSC may contact you with questions regarding your entries on the *Statement of Property Use* form, the *Statutory Declaration*, or to better understand the uses of the property.

We appreciate your cooperation. If you have any questions or would like to discuss details with respect to your property, please contact us at 1-800-380-7775.

Regards,



Chris Kent
Program Manager, PVSC

STATEMENT OF PROPERTY USE - Farming and/or Forestry

(Evidence for PVSC to consider)

CANADA
PROVINCE OF NOVA SCOTIA

IN THE MATTER OF THE ASSESSMENT ACT
RS, s.23, c1, as amended

I, _____, of _____
First, Last, Initial City

_____, Nova Scotia, Canada, state the following:
Municipality

1. I am the owner of property located at «LEGDAT_SITUS», identified further as Assessment Account Number (AAN) «PARID» and Nova Scotia Land Registry Property Identification Document (PID)«RIMS_PID».
2. I use the above property to actively:

| | | | | | |
|--------|--------------------------|-----|--------------------------|----|---|
| Farm | <input type="checkbox"/> | Yes | <input type="checkbox"/> | NO | (If yes, please fill out all fields pertaining to Farming Use) |
| Forest | <input type="checkbox"/> | Yes | <input type="checkbox"/> | NO | (If yes, please fill out all fields pertaining to Forestry Use) |

Please Print:

Name: _____

Address: _____

Telephone number: (_____) _____

Email address: _____

FARMING USE

1. Of the _____ acres assessed as farm, I actively farm _____ acres. (If 0, skip to paragraph 5)

2. I have a valid *Nova Scotia Farm Registration* issued by the Province of Nova Scotia.

YES NO

If yes, please provide your *Nova Scotia Farm Registration* number and expiry date:

_____ _____
Registration Number **Expiry Date (mm/dd/yyyy)**

3. I currently participate in the following farming activities (check all that apply):

- Livestock
- Poultry or other birds
- Pasture or forage lands
- Crop vegetables, grains, or fruit trees
- Dormant fields in crop rotation
- Hayed fields
- Other

Please provide details regarding the Farming activity(s) noted:

(Example: Livestock – 100 head of cattle)

4. Treed lands which act as a "buffer" to roads or abutting lands is: _____
Number of acres

5. Should the land, located at the above address, cease being used for farming purposes or not meet the criteria to qualify as farming, I understand my property classification will change, and pursuant to s.77(3) of the *Municipal Government Act*, a Change in Use Tax may be applicable.

Property Owner

Date (mm/dd/yyyy)

FORESTRY USE

1. Of the _____ acres assessed as forest, I actively conduct forest activity on _____ acres. (If 0, skip to paragraph 6)
2. I currently participate in the following forestry activities (check all that apply):

- Timber harvesting and/or tree cutting
- Renewal and/or planting
- Construction, continued maintenance, of roads or trails
- Blazing, signage and/or making of boundary lines
- Wildlife management
- Regular inspections of the property
- Spraying, pruning and/or cutting
- Sugar woods harvesting
- Other

Please provide details regarding the Forestry activity(s) noted:

(Example: Currently, 50 acres being commercially harvested)

3. I have a current Forestry/Woodlot Management Plan.

YES NO (If yes, please attach a copy, or pages that indicate name, plan number and expiry date)

4. Have you implemented components of the DNR's Woodlot Management Strategy
(<http://novascotia.ca/natr/>)

YES NO (If yes, please describe below)

5. The objective of my forestry activities is for (check all that apply):

Income Recreation Wildlife Habitat

Please indicate what you do for each:

6. Should the land, located at the above address, cease being used for forestry purposes or not meet the criteria to qualify as forestry, I understand my property classification will change, and pursuant to s.77(3) of the *Municipal Government Act*, a Change in Use Tax may be applicable.

Property Owner

Date (mm/dd/yyyy)

CANADA
PROVINCE OF NOVA SCOTIA
COUNTY OF _____

STATUTORY DECLARATION

I, _____ of _____, in _____, in the Province of Nova Scotia, make oath and say as follows:

- 1. THAT I am the owner of certain lands situate on _____ at or near _____, Nova Scotia.
2. THAT I have conveyed a single lot from those lands (attach Schedule "A" - legal description) to _____ who is my _____.
3. THAT these lands were formerly used for _____ purposes and are now used for _____ purposes.
4. THAT this declaration is made for the purpose of seeking an exemption from a change in use tax on the conveyance.
5. THAT I make this solemn declaration conscientiously believing that this is true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

DECLARED before me, at _____,)
(city, town or village)
county of _____, in the)
Province of Nova Scotia, this _____ day)
of _____, 20____.)
)
)
)
A Commissioner of the Supreme Court)
of Nova Scotia)

[name]

RESOURCE 5

PROVINCE OF NOVA SCOTIA

IN THE MATTER OF: The Canada Evidence Act

AND IN THE MATTER OF: Change of Use Tax Assessed With Respect to Assessment Account No. 10459613

STATUTORY DECLARATION

I, JAMES ARTHUR BAILLIE of Waughs River, Colchester County, Nova Scotia, do solemnly declare that:

1. I have personal knowledge of the things herein declared.
2. I am one of the Grantors named in the Deed registered at the Land Registration Office in Truro, Nova Scotia on June 21, 2012 as Document No. 100945121 whereby my spouse, Sandra Darlene Baillie and I conveyed to our daughter, Jamie Alexandra Cripps and her spouse, James Oliver Cripps, the lands which are now identified as PID 20466538 and as AAN 10459613. The area of land thus transferred is 3.959 acres at Waughs River, Colchester County, Nova Scotia which I believe is required in this case for purposes of construction of a home thereon.
3. The aforesaid conveyance was made for the purpose of allowing our daughter and her spouse to erect a single family dwelling on the aforesaid parcel.
4. In light of the foregoing, I hereby claim exemption from payment of change of use tax.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

DECLARED BEFORE ME at Pictou,)
 in the County of Pictou, Province of)
 Nova Scotia, this 21 day of)
January A.D., 2013)
)
Linda Maclean)
 A COMMISSIONER OF THE SUPREME COURT)
 OF NOVA SCOTIA)

J. Arthur Baillie
 JAMES ARTHUR BAILLIE

LINDA E. MACLEAN
 A Commissioner of the Supreme
 Court of Nova Scotia