

# TITLE V TAXATION

## CHAPTER 79-A CURRENT USE TAXATION

### Section 79-A:1

**79-A:1 Declaration of Public Interest.** – It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources. It is further declared to be in the public interest to prevent the loss of open space due to property taxation at values incompatible with open space usage. **Open space land imposes few if any costs on local government and is therefore an economic benefit to its citizens.** The means for encouraging preservation of open space authorized by this chapter is the assessment of land value for property taxation on the basis of current use. It is the intent of this chapter to encourage but not to require management practices on open space lands under current use assessment.

**Source.** 1973, 372:1. 1991, 281:2. 1996, 176:2, eff. Aug. 2, 1996.

### Section 79-A:2

#### **79-A:2 Definitions.** –

In this chapter:

- I. "Assessing official" means the assessing authority of any town, city or place.
- II. "Board" means the current use board established by RSA 79-A:3.
- 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. "Current use value" means the assessed valuation per acre of open space land based upon the income-producing capability of the land in its current use solely for growing forest or agricultural crops, and not its real estate market value. This valuation shall be determined by the assessor in accordance with the range of current use values established by the board and in accordance with the class, type, grade and location of land.
- VI. "Farm land" means any cleared land devoted to or capable of agricultural or horticultural use as determined and classified by criteria developed by the commissioner of agriculture, markets, and food and adopted by the board.
- VII. "Forest land" means any land growing trees as determined and classified by criteria developed by the state forester and adopted by the board. For the purposes of this paragraph, the board shall recognize the cost of responsible land stewardship in the determination of assessment ranges.
- VIII. "Land use change tax" means a tax that shall be levied when the land use changes from

open space use to a non-qualifying use.

IX. "Open space land" means any or all farm land, forest land, or unproductive land as defined by this section. However, "open space land" shall not include any property held by a city, town or district in another city or town for the purpose of a water supply or flood control, for which a payment in place of taxes is made in accordance with RSA 72:11.

X. "Owner" means the person who is the owner of record of any land.

XI. "Person" means any individual, firm, corporation, partnership or other form of organization or group of individuals.

XII. "Soil potential index" means the production capability of land as determined by the United States Natural Resources Conservation Service.

XIII. "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, as determined and classified by criteria developed by the board. The board shall develop only one category for all unproductive land, setting its current use value not to exceed that of the lowest current use value established by the board for any other category.

XIV. "Wetlands" means those areas of farm, forest and unproductive land that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

**Source.** 1973, 372:1. 1974, 7:1. 1976, 47:14. 1981, 561:5. 1988, 5:1. 1991, 281:3. 1995, 130:5; 206:2. 1996, 176:3. 2006, 103:1. 2010, 237:1, eff. April 1, 2010.

### **Section 79-A:3**

#### **79-A:3 Current Use Advisory Board; Members, Appointments, Term, Chairman. –**

I. There is hereby established a current use board which shall be administratively attached to the department of revenue administration, as provided in RSA 21-J:1-a.

II. The board shall consist of 14 members to be appointed as follows:

(a) Three members who are assessing officials shall be appointed by the governor with the advice and consent of the council, one of whom shall be an assessing official in a town with a population of less than 5,000; one of whom shall be an assessing official in a town with a population of more than 5,000; and one of whom shall be an assessing official in a city. Each member shall hold office for a term of his or her position as assessing official or for 2 years, whichever is shorter, and until a successor shall have been appointed and qualified, and any vacancy shall be filled for the unexpired term, by the governor with the advice and consent of the council. No other members of the board shall be or have been certified under RSA 21-J:14-f, except for the commissioner of the department of revenue administration or the commissioner's designee.

(b) One member of the senate appointed by the president of the senate. The term of said member shall be coterminous with his term as senator to which he was elected at the time of his appointment. A vacancy shall be filled for the unexpired term by the president of the senate.

(c) One member of the house of representatives, appointed by the speaker of the house. The term of said member shall be coterminous with his term as representative to which he was elected at

the time of his appointment. A vacancy shall be filled for the unexpired term by the speaker of the house.

(d) The commissioner of agriculture, markets, and food, or his designate.

(e) The commissioner of the department of natural and cultural resources, or his designate.

(f) The dean of the college of life sciences and agriculture of the university of New Hampshire, or his designate.

(g) The commissioner of revenue administration, or his designee.

(h) The executive director of the New Hampshire association of conservation commissions, or designee.

(i) The executive director of the department of fish and game, or his designate.

(j) Three members of the public appointed by the governor with the advice and consent of the council, at least 2 of whom shall represent the interests of current use landowners. Of these 2, one shall own forest land under current use assessment, and one shall own farm land under current use assessment.

III. Members of the current use advisory board who are not state employees or legislators shall be paid \$25 a day, each, for such time as they are actually engaged in the work of the board, all members shall be paid their actual expenses incurred as a result of such work, and nonlegislative members shall be paid mileage at the same rate as state employees but the legislative members shall be paid mileage at the legislative mileage rates.

IV. The board shall annually elect one of its members as chairman.

**Source.** 1973, 372:1. 1974, 7:2, 3. 1987, 322:4, 5. 1991, 281:4-6. 1995, 130:5. 2011, 33:1, 2, eff. July 8, 2011. 2017, 156:14, I, eff. July 1, 2017.

## **Section 79-A:4**

### **79-A:4 Powers and Duties of Board; Rulemaking. –**

The board shall have the following powers and duties:

I. It shall meet at least annually, after July 1, to establish a schedule of criteria and current use values to be used for the succeeding year. It shall have the power to establish minimum acreage requirements of 10 acres or less. It shall also review all past current use values and criteria for open space land established by past boards. The board shall make such changes and improvements in the administration of this chapter as experience and public reaction may recommend.

II. The board shall reduce by 20 percent the current use value of land which is open 12 months a year to public recreational use, without entrance fee, and which also qualifies for current use assessment under an open space category. There shall be no prohibition of skiing, snowshoeing, fishing, hunting, hiking or nature observation on such open space land, unless these activities would be detrimental to a specific agricultural or forest crop or activity. The owner of land who opens his land to public recreational use as provided in this paragraph shall not be liable for personal injury or property damage to any person, and shall be subject to the same duty of care as provided in RSA 212:34.

III. The board shall annually determine, vote upon and recommend to the chairman of the board the schedule of criteria and current use values for use in the forthcoming tax year. The board shall hold a series of at least 3 public forums throughout the state to receive general comment through verbal and written testimony on the current use law. After the public forums are

concluded and the board has made its recommended changes, the chairman shall proceed to adopt any proposed rules, in accordance with paragraph IV.

IV. The chairman of the board shall adopt rules, pursuant to RSA 541-A, for the schedule of criteria and current use values as recommended by the board, and for other forms and procedures as are needed to implement this chapter consistent with board recommendations and to assure a fair opportunity for owners to qualify under this chapter and to assure compliance of land uses on classified lands.

**Source.** 1973, 372:1. 1974, 7:4. 1977, 326:3. 1982, 33:2. 1986, 62:1. 1988, 5:3. 1991, 281:7. 1993, 205:1. 1995, 137:3, eff. May 24, 1995.

## **Section 79-A:5**

### **79-A:5 Assessment of Open Space Land. –**

I. The selectmen or assessing officials shall appraise open space land, as classified under the provisions of this chapter, excluding any building, appurtenance or other improvement on the land, at valuations based upon the current use values established by the board. The valuations shall be equalized for the purpose of assessing taxes. The selectmen or assessing officials shall use the soil potential index when available, to determine the value of farm land within the ranges established by the board. It shall be the duty of the owner to provide the soil potential index to the selectmen or assessing officials.

II. No owner of land shall be entitled to have a particular parcel of his land classified for any tax year under the provisions of this chapter unless he shall have applied to the assessing officials on or before April 15 of said year, on a form approved by the board and provided by the commissioner, to have his parcel of land so classified. If any owner shall satisfy the assessing officials that he was prevented by accident, mistake or misfortune from filing said application on or before April 15, said officials may receive said application at a later date and classify the parcel of land hereunder; 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 his parcel of land by delivery of such notification to him in person or by mailing such notification to his last and usual place of abode.

IV. Prior to July 1 each year, the assessing officials shall determine if previously classified lands have been reapplied or have undergone a change in use so that the land use change tax may be levied against lands changed in use, according to RSA 79-A:7. A list of all classified 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. [Repealed.]

V-a. 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 land classified as open space. The question shall be written to enable the assessing officials to locate 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 parcels of land classified under the provisions of this chapter. If a parcel of land is classified as open space land 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 approved by the board and 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 open space land 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 current use assessment, as provided in RSA 79-A:7, II(e) and RSA 80:85.

**Source.** 1973, 372:1. 1974, 7:5-8. 1975, 197:2. 1977, 326:4. 1979, 183:1. 1981, 561:2. 1988, 5:2, 4. 1989, 50:6. 1991, 281:8-10, 26, I, eff. Aug. 17, 1991.

### **Section 79-A:6**

**79-A:6 Valuation for Bonding Limit Purposes.** – In computing the total value of all land in a city or town, any land which is appraised at current use value under the provisions of this chapter shall, for all purposes including but not limited to the purposes of RSA 33:4-b, be inventoried by the town or city at its current use value.

**Source.** 1973, 372:1, eff. July 1, 1973.

### **Section 79-A:6-a**

**79-A:6-a Valuation for Computing Equalized Value.** – In computing the equalized value of a city or town, the department of revenue administration shall use the current use value for any land which is so appraised under this chapter.

**Source.** 1975, 197:4, eff. June 2, 1975.

### **Section 79-A:7**

#### **79-A:7 Land Use Change Tax.** –

I. Land which has been classified as open space land and assessed at current use values on or after April 1, 1974, pursuant to this chapter shall be subject to a land use change tax when it is changed to a use which does not qualify for current use assessment. Notwithstanding the provisions of RSA 75:1, the tax shall be at the rate of 10 percent of the full and true value determined without regard to the current use value of the land which is subject to a non-qualifying use or any equalized value factor used by the municipality or the county in the case of unincorporated towns or unorganized places in which the land is located. Notwithstanding the provisions of RSA 76:2, such assessed value shall be determined as of the actual date of the

**change in land use** if such date is not April 1. This tax shall be in addition to the annual real estate tax imposed upon the property, and shall be due and payable upon the change in land use. Nothing in this paragraph shall be construed to require payment of an additional land use change tax when the use is changed from one non-qualifying use to another non-qualifying use. The tax imposed by this section is a tax on the change of use of the land and not a tax on the land itself. The property tax exemptions under RSA 72:23 shall not apply to the land use change tax and no person or entity shall be exempt from payment of the land use change tax.

I-a. Land which is classified as open space land and assessed at current use values shall be assessed at current use values until a change in land use occurs pursuant to RSA 79-A:7, IV, V, or VI.

II. The land use change tax shall be due and payable by the owner, or by the responsible party pursuant to RSA 79-A:7, VI(e), at the time of the change in use to the town or city in which the property is located. If the property is located in an unincorporated town or unorganized place, the tax shall be due and payable by the owner or responsible party at the time of the change in use to the county in which the property is located. Moneys paid to a county from the land use change tax shall be used, in addition to any other funds, to pay for the cost of the services provided in RSA 28:7-a and 7-b. The land use change tax shall be due and payable according to the following procedure:

(a) The commissioner shall prescribe and issue forms to the local assessing officials for the land use change tax bill which shall provide a description of the property which is subject to a non-qualifying use, the RSA 75:1 full value assessment, and the tax payable.

(b) The prescribed form shall be prepared in quadruplicate; the original, duplicate, and triplicate copy of the form shall be given to the collector of taxes for collection of the land use change tax along with a special tax warrant authorizing the collector to collect the land use change tax assessed under the warrant; the quadruplicate copy of the form shall be retained by the local assessing officials for their records.

(c) Upon receipt of the land use change tax warrant and the prescribed forms, the tax collector shall mail the duplicate copy of the tax bill to the owner responsible for the tax as the notice thereof. Such bill shall be mailed, at the latest, within 18 months of the date upon which the local assessing officials receive written notice of the change of use from the landowner or his or her agent, or within 18 months of the date the local assessing officials actually discover that the land use change tax is due and payable. Upon receipt of payment, but except for proceedings under RSA 79-A:7, VI(e), the collector shall forward the original tax bill to the register of deeds of the county in which the land is located for the purpose of releasing recorded contingent liens required under RSA 79-A:5, VI. The tax bill shall state clearly whether all, or only a portion, of the land affected by the notice of contingent lien is subject to release. The recording fee charged by the register of deeds shall be paid by the owner of the land in accordance with the fees to which the register of deeds is entitled under RSA 478:17-g, I.

(d) Payment of the land use change tax, together with the recording fees due the register of deeds, shall be due not later than 30 days after mailing of the tax bills for such tax, and interest at the rate of 18 percent per annum shall be due thereafter on any taxes not paid within the 30-day period.

(e) All land use change tax assessments levied under this section shall, on the date of the change in use, create a lien upon the lands on account of which they are made and against the owner of record of such land or against the responsible party pursuant to RSA 79-A:7, VI(e). Furthermore, such liens shall continue for a period of 24 months following the date upon which the local

assessing officials receive written notice of the change of use from the landowner or his agent, or the date the local assessing officials actually discover that the land use change tax is due and payable, and such assessment shall be subject to statutory collection proceedings against real estate as prescribed by RSA 80.

(f) Thereafter, the land which has changed to a use which does not qualify for current use assessment shall be taxed at its full RSA 75:1 value. The land shall again become eligible for current use assessment if it meets the open space criteria established by the board under RSA 79-A:4, I.

III. Whenever land of nonuniform value shall be subject to the land use change tax under this section, or whenever the full value assessment for the land subject to the tax shall not be readily available then the local assessing officials shall assess the RSA 75:1 full value of such land and the land use change tax shall be paid upon such assessed value.

IV. For purposes of this section land use shall be considered changed and the land use change tax shall become payable when:

(a) Actual construction begins on the site causing physical changes in the earth, such as building a road to serve existing or planned residential, commercial, industrial, or institutional buildings; or installation of sewer, water, electrical or other utilities or services to serve existing or planned residential, commercial, industrial, institutional or commercial buildings; or excavating or grading the site for present or future construction of buildings; or any other act consistent with the construction of buildings on the site; except that roads for agricultural, recreational, watershed or forestry purposes are exempt.

(b) Topsoil, gravel or minerals are excavated or dug from the site; except:

(1) Removal of topsoil in the process of harvesting a sod farm crop in amounts which will not deplete the topsoil; and

(2) Removal of gravel and other materials for construction and maintenance of roads and lands for agricultural and forestry purposes within the qualifying property of the owner or, with the approval of local authorities, to other qualifying property of the owner.

Sale of excavated materials shall constitute a land use change of the property from which the material was excavated. The site shall be reclaimed when the construction or maintenance project is completed to mitigate environmental and aesthetic effects of the excavation. Both project completion time and acceptability of reclamation shall be determined by local authorities. The owner shall keep local officials informed in writing of plans to remove and use of soil material from qualifying lands for purposes of this subparagraph and to assure conformance with any local ordinances, as well as plans for reclamation of the site. Fully reclaimed land shall be eligible for current use assessment if it meets open space criteria established by the board under RSA 79-A:4, I, whether or not such land was under current use assessment prior to the excavation.

(c) By reason of size, the site no longer conforms to criteria established by the board under RSA 79-A:4, I.

V. The amount of land which has changed to a use which does not qualify for current use assessment and on which the land use change tax shall be assessed in the circumstances delineated in RSA 79-A:7, IV shall be according to rules adopted pursuant to RSA 541-A by the chairman of the board, based upon the recommendation of the board. Except in the case of land which has changed to a use which does not qualify for current use assessment due to size, only the number of acres on which an actual physical change has taken place shall become subject to the land use change tax, and land not physically changed shall remain under current use

assessment, except as follows:

(a) When a road is constructed or other utilities installed pursuant to a development plan which has received all necessary local, state or federal approvals, all lots or building sites, including roads and utilities, shown on the plan and served by such road or utilities shall be considered changed in use, with the exception of any lot or site, or combination of adjacent lots or sites shown thereon which are under the same ownership, and large enough to remain qualified for current use assessment; provided, however, that if any physical changes are made to the land prior to the issuance of any required local, state or federal permit or approval, or if such changes otherwise violate any local, state or federal law, ordinance or rule, the local assessing officials may delay the assessment of the land use change tax until any and all required permits or approvals have been secured, or illegal actions remedied, and may base the land use change tax assessed under RSA 79-A:7 upon the land's full and true value at that later time.

(b) When land is required to remain undeveloped to satisfy density, setback, or other local, state, or federal requirements as part of the approval of a plan of a contiguous development area, such land shall be considered changed to a use which does not qualify for current use assessment at the time any portion of such development area is physically changed to a non-qualifying use. However, application of the land use change tax to such development area shall continue to be in accordance with subparagraph (a).

(c) When a road is constructed or utilities installed pursuant to a condominium development plan, only the development area shall be removed from current use along with the percentage interest in the open space land assigned to the unit or units within that development area.

VI. For purposes of this section, land use shall not be considered changed and the land use change tax shall not be assessed when:

(a) Land under current use is taken by eminent domain or any other type of governmental taking which would cause the use change penalty to be invoked because, by reason of an actual physical change or by reason of size, the site no longer conforms to criteria established by the board under RSA 79-A:4, I.

(b) Land abutting a site taken by eminent domain or any other governmental taking upon which construction is in progress is used to stockpile earth taken from the construction site. Stockpiled earth may be removed at a later date after written notification to the appropriate local official.

(c) Land accorded current use assessment in one category is changed in use to any other qualifying category.

(d) Land under current use assessment is eligible for conservation restriction assessment pursuant to RSA 79-B. Such land shall then be allowed to change from current use assessment to conservation restriction assessment with no land use change tax being applied.

(e) A road is constructed on an existing right-of-way on current use land solely for the purpose of access to an adjoining lot where the owner of the land in current use does no other activity changing the use of the land under this section and does not share any ownership interest in the adjoining lot. Provided, however, and notwithstanding any other provision of law to the contrary, that if such road construction on an existing right-of-way would constitute a change in use if done by the owner of the land in current use, then the owner of such adjoining property utilizing the road for access shall be responsible for and shall be assessed the land use change tax penalty on such land as provided for in this section, although such land in current use shall remain in current use. Enforcement and collection proceedings shall be applied to the party responsible for the payment of the penalty under this subparagraph.

VII. When land which is accorded current use assessment in one category is changed in use to



any other qualifying category as provided in subparagraph VI(c), the owner of the land shall notify the local assessing officials in writing of the change in use at the time that the change in use is made. If a land owner fails to provide the notice required under this paragraph, he may be fined not more than \$50 at the discretion of the town or city.

**Source.** 1973, 372:1. 1974, 7:9. 1975, 197:3. 1977, 326:1, 2. 1979, 485:1, 3. 1981, 465:19. 1982, 33:1, 3. 1985, 88:1; 125:1; 227:1, 2. 1989, 50:7; 266:5, 6. 1991, 281:11-17. 1993, 205:2. 2006, 209:1, 2. 2009, 84:1, 2. 2010, 237:2-4, eff. April 1, 2010. 2012, 104:1, eff. July 28, 2012; 160:1, eff. June 7, 2012.

## **Section 79-A:8**

**79-A:8 Failure to Reapply.** – [Repealed 1981, 561:6, eff. Aug. 29, 1981.]

## **Section 79-A:9**

### **79-A:9 Appeal to Board of Tax and Land Appeals.** –

I. If the assessing officials deny in whole or in part any application for classification as open space land, or grant a different classification than that applied for, the applicant, having complied with the requirements of RSA 79-A:5, 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 herein provided. 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 and not thereafter. 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-A:11.

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.

**Source.** 1973, 372:1. 1974, 7:10. 1983, 394:12. 1988, 1:9. 1989, 408:11. 1992, 285:3, eff. April 1, 1992 at 12:01 a.m.

### **Section 79-A:10**

#### **79-A:10 Abatement of Land Use Change Tax. –**

I. Any person aggrieved by the assessment of a land 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 land 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 land 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 land use change tax bill.

V. Each land use change tax bill shall require a separate abatement request and appeal.

**Source.** 1973, 372:1. 1998, 344:4, eff. Aug. 25, 1998.

### **Section 79-A:11**

**79-A:11 Appeal to Superior Court. –** If the assessing officials deny in whole or in part any application for classification as open space land, or grant a different classification from that applied for, the applicant, having complied with the requirements of RSA 79-A:5, 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-A:9.

**Source.** 1973, 372:1. 1974, 7:11. 1983, 394:13, eff. Aug. 21, 1983.

### **Section 79-A:12**

#### **79-A:12 Reclassification by Board of Tax and Land Appeals. –**

The board of tax and land appeals may order a reclassification or a denial of a classification of any parcel of land classified under the provisions of this chapter:

I. When a specific written complaint is filed with it by a land owner, within 90 days of being listed as provided by RSA 79-A:5, IV, that a particular parcel of land not owned by him has been

fraudulently, improperly or illegally so classified, the complainant shall pay a fee of \$10 to the board of tax and land appeals for each specific particular parcel of land complained of. The board of tax and land appeals shall send notice by certified mail to the owner against whose land the complaint is made; or

II. When it comes to the attention of the board of tax and land appeals from any source, except as provided in paragraph I, that a particular parcel of land has been fraudulently, improperly or illegally so classified; or

III. When in the judgment of the board of tax and land appeals any or all of the land so classified in a town or city should be reclassified or denied classification; or

IV. When a complaint is filed with the board of tax and land appeals alleging that all of the land previously so classified in a town or city should be reclassified or denied classification for any reason. The complaint must be signed by at least 50 property taxpayers or 1/3 of the property taxpayers in the city or town, whichever is less.

**Source.** 1973, 372:1. 1974, 7:12, eff. Mar. 28, 1974.

### **Section 79-A:13**

#### **79-A:13 Procedure for Complying With Orders of Board of Tax and Land**

**Appeals.** – When ordered to make a classification, reclassification or denial of classification pursuant to action of the board of tax and land appeals under RSA 79-A:9, the assessing officials shall make it within such time as the board of tax and land appeals orders. If the classification, reclassification or denial of classification is not made in conformity with the order, is not made to the satisfaction of the board of tax and land appeals, or is not made within such time as the board of tax and land appeals has directed, then any order the board of tax and land appeals makes shall, at the expiration of such time, have full force and effect as if it were made by the assessing officials.

**Source.** 1973, 372:1. 1974, 7:13, eff. Mar. 28, 1974.

### **Section 79-A:14**

**79-A:14 Neglect of Duty.** – Neglect or failure on the part of any assessing official to comply with an order of the board of tax and land appeals issued pursuant to RSA 79-A:9 or an order of the superior court made pursuant to RSA 79-A:11 shall be deemed willful neglect of duty, and such assessing official shall be subject to the penalties provided by law in such cases.

**Source.** 1973, 372:1. 1974, 7:14. 1983, 394:14, eff. Aug. 21, 1983.

## **Discretionary Easements**

### **Section 79-A:15 to 79-A:21**

**79-A:15 to 79-A:21 Repealed.** – [Repealed 1996, 176:6, eff. Aug. 2, 1996.]

## Miscellaneous

### Section 79-A:22

**79-A:22 Lien for Unpaid Taxes.** – The real estate of every person shall be held liable for the taxes levied pursuant to RSA 79-A:7.

**Source.** 1973, 372:1. 1996, 176:4, eff. Aug. 2, 1996.

### Section 79-A:23

**79-A:23 Enforcement.** – All taxes levied pursuant to RSA 79-A:7 which shall not be paid when due shall be collected in the same manner as provided in RSA 80:1-42-a.

**Source.** 1973, 372:1. 1996, 176:5, eff. Aug. 2, 1996.

### Section 79-A:24

**79-A:24 False Statement.** – [Repealed 1991, 163:43, XXXIII, eff. May 27, 1991.]

### Section 79-A:25

#### **79-A:25 Disposition of Revenues.** –

I. Except as provided in paragraph II, all money received by the tax collector pursuant to the provisions of this chapter shall be for the use of the town or city.

II. **The legislative body** of the town or city may, by majority vote, elect to place the whole or a specified percentage, amount, or any combination of percentage and amount, of the revenues of all future payments collected pursuant to this chapter in **a conservation fund** in accordance with RSA 36-A:5, III. The whole or specified percentage or amount, or percentage and amount, of such revenues shall be deposited in the conservation fund at the time of collection.

III. If adopted by a town or city, the provisions of RSA 79-A:25, II shall take effect in the tax year beginning on April 1 following the vote and shall remain in effect until altered or rescinded pursuant to RSA 79-A:25, IV.

IV. In any town or city that has adopted the provisions of paragraph II, **the legislative body** may vote to rescind its action or change the percentage or amount, or percentage and amount, of revenues to be placed in the conservation fund. Any such action to rescind or change the percentage or amount, or percentage and amount, shall not take effect before the tax year beginning April 1 following the vote.

**Source.** 1973, 372:1. 1988, 120:2. 1991, 281:19, 20, eff. Aug. 17, 1991.

### Section 79-A:25-a

#### **79-A:25-a Land Use Change Tax Fund.** –

I. Towns and cities may, pursuant to RSA 79-A:25-b, vote to account for all revenues collected

pursuant to this chapter in a land use change tax fund separate from the general fund. After a vote pursuant to RSA 79-A:25-b, no land use change tax revenue collected under this chapter shall be recognized as general fund revenue for the fiscal year in which it is received, except to the extent that such revenue is appropriated pursuant to paragraph II of this section. Any land use change tax revenue collected pursuant to this chapter which is to be placed in a conservation fund in accordance with RSA 79-A:25, II, shall first be accounted for as revenue to the land use change tax fund before being transferred to the conservation fund at the time of collection.

II. After any transfer to the conservation fund required under the provisions of RSA 79-A:25, II, the surplus remaining in the land use change tax fund shall not be deemed part of the general fund nor shall any surplus be expended for any purpose or transferred to any appropriation until such time as the legislative body shall have had the opportunity at an annual meeting to appropriate a specific amount from said fund for any purpose not prohibited by the laws or by the constitution of this state. At the end of an annual meeting, any unappropriated balance of land use change tax revenue received during the prior fiscal year shall be recognized as general fund revenue for the current fiscal year.

**Source.** 1991, 156:1. 1992, 122:1, eff. June 30, 1992.

### **Section 79-A:25-b**

#### **79-A:25-b Procedure for Adoption. –**

I. Any town may adopt the provisions of RSA 79-A:25-a to account for all revenues received pursuant to this chapter in a land use change tax fund separate from the general fund in the following manner:

(a) In a town, the question shall be placed on the warrant of a special or annual town meeting by the selectmen, or by petition under RSA 39:3, and shall be voted on by ballot. The question shall not be placed on the official ballot.

(b) The selectmen shall hold a public hearing on the question at least 15 days but not more than 30 days before the question is to be voted on. Notice of the hearing shall be posted in at least 2 public places in the municipality and published in a newspaper of general circulation at least 7 days before the hearing.

(c) The wording of the question shall be: "Shall we adopt the provisions of RSA 79-A:25-a to account for revenues received from the land use change tax in a fund separate from the general fund? Any surplus remaining in the land use change tax fund shall not be part of the general fund until such time as the legislative body shall have had the opportunity at an annual meeting to vote to appropriate a specific amount from the land use change tax fund for any purpose not prohibited by the laws or by the constitution of this state. After an annual meeting any unappropriated balance of the land use change tax revenue received during the prior fiscal year shall be recognized as general fund revenue for the current fiscal year."

II. If a majority of those voting on the question vote "Yes," RSA 79-A:25-a shall apply within the town, effective immediately.

III. If the question is not approved, the question may later be voted on according to the provisions of RSA 79-A:25-b, I.

IV. Any town which has adopted the provisions of RSA 79-A:25-a shall maintain a land use change tax fund until such time as the legislative body votes to rescind its action.

(a) Any town may consider rescinding its action in the manner prescribed in RSA 79-A:25-b, I(a)

and (b). The wording of the question shall be: "Shall we rescind the provisions of RSA 79-A:25-a which account for revenues received from the land use change tax in a fund separate from the general fund? Any unappropriated surplus remaining in the land use change tax fund, and any future land use change tax revenues received shall immediately be deemed general fund revenue."

(b) If a majority of those voting on the question vote "Yes," RSA 79-A:25-a shall no longer apply within the town, effective immediately.

V. The legislative body of any city may adopt the provisions of RSA 79-A:25-a in the same manner in which it adopts ordinances or bylaws, and may rescind its action in like manner.

**Source.** 1991, 156:1. 1992, 122:2, 3, eff. June 30, 1992.

## **Section 79-A:26**

### **79-A:26 Location of Contiguous Land in More Than One Taxing District. –**

Where contiguous land which could be classified as open space land is located in more than one town, compliance with any minimum area requirement adopted by the open space board shall be determined on the basis of the total area of such land, and not the area which is located in any particular town.

**Source.** 1973, 372:1, eff. July 1, 1973.